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HORN OF AFRICA BULLETIN

ANALYSES • CONTEXT • CONNECTIONS

Analyses

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News and Resources

Child soldiers in the Horn – cause to remain at attention!

My squad was my family, my gun was my provider and protector, and my rule was to kill or be killed[1] – Ishmael Beah, former Child Soldier (Sierra Leone), author and activist

This paper explores the phenomenon of child soldiers as currently manifests in the Horn of Africa (HOA). It premises this upon a backdrop of the situation globally and the efforts that the international community has taken to deal with this issue. It then zeroes in on the HOA and examines whether the recent political developments like the Comprehensive Peace Agreement between South Sudan and Sudan have had an impact on the use of child soldiers. It then makes recommendations that can alleviate the problem.

Background

The words 'child' and 'soldier' are as incongruent as the words 'good' and 'Lucifer', yet the phenomenon of 'child soldiers' as unthinkable as it may seem, is a reality that we live with today. Children (persons under the age of 18) are used as soldiers all over the world with hundreds of thousands estimated to be in active service. According to Save the Children 'there are between 300, 000 and 800,000 children involved in armed conflict globally, both with armed forces, groups or organised gangs.'[2]

Various reasons contribute to this phenomenon. Romeo Dellaire epitomises these reasons effectively in his book, *They Fight Like Soldiers, They Die like Children*[3]. He attributes 'negligible technology, simple unlimited versatility in all possible facets of low-intensity conflict, and capacity for barbarism' to be some of the reasons why children are used as 'the weapon of choice'[4] during armed conflict.

Child soldiers abound globally. However, The Coalition To Stop the Use of Child Soldiers[5] (Coalition), observes that, '([T]he problem is most critical in Africa, where children as young as nine have been involved in armed conflicts'[6]. Child soldiers in Africa have mainly and in recent times been used in war-torn or conflict afflicted areas such as the Democratic Republic of Congo (DRC), Rwanda and Burundi. Sierra Leone, Sudan and Southern Sudan have also seen children take part in actual combat. Uganda, Chad, Central African Republic and Somalia have also manifested this phenomenon in recent times. Sudan and Southern Sudan follow suit.

However, child soldiers are not found in Africa only. According to the Coalition, 'children are also used as soldiers in various Asian countries and in parts of Latin America, Europe and the Middle East.' Countries such as Myanmar, Nepal and Peru have also seen children used as soldiers. In Europe, the United Kingdom has also come into sharp focus because of its use of child soldiers. Looking at the situations where there has been or there is conflict *vis-a-vis* the use of children as soldiers, it is almost regrettably safe to argue that wherever there is conflict, then invariably persons under the age of 18 are being used as soldiers and in other ways.

Children are legally recruited (voluntarily) or conscripted into government forces while others fight for non-state armed groups such as rebel, militia and other groups. The Coalition states that 'more than 25 countries continue to legally permit the voluntary recruitment of 16 and 17 year-olds'[7]. In its Global Report published in 2008, the Coalition noted that there were governments that were still recruiting children into their armed forces. The countries included Chad, Somalia, Uganda and Sudan. Israel and Yemen were also reported as having recruited child soldiers while the UK government was reported as having deployed persons under 18 to Iraq[8] . The Report also revealed that governments have also used children as soldiers through 'proxies'. This entailed supporting on-state armed groups such as militia, rebel or armed groups that recruited children into their ranks. The Sudanese government was reported to have supported the *Janjaweed*, a group of armed militia that is known to recruit child soldiers.

Children are also used by other groups other than government forces during armed conflict. These include militias, rebel groups and armed gangs. They are used as combatants while others are used as spies, porters and cooks. Girls are also not left out. According to Dellaire (2010) girls represent about 40 % of all child soldiers[9]. Girls are as Dellaire adds, 'a more valuable resource than boys' because they come with additional domestic skills and 'they can be used as sexual rewards for the soldiers'[10] in the form of bush wives or sex slaves.

In some relatively peaceful countries or situations absent of armed conflict, children are also recruited into armed groups or gangs. In Kenya, children were reported to have been recruited into the proscribed gangs like the *Mungiki* which is reported to commit murders and other atrocities[11]. Dellaire (2010) buttresses this point when he cautions readers of his book who come from what he refers to as 'stable democracies' who might think that their lands are bereft of the phenomenon. He writes, 'In case readers in stable democracies think this weapon system is only deployed in countries with serious social unrest, they should remember the growing number of children used in many of the same ways by street gangs in the drug trade.'[12]

As a result of the above anatomy of the use of child soldiers in the past and presently, the international community has taken steps towards protecting children in armed conflict. These efforts take the form of legal and policy initiatives and in cases where the situation is real, programmes aimed at rescuing and rehabilitating the children. It is these that the paper epitomises below.

Efforts to end child soldiering

The adoption in 1989 and subsequent coming into force of the UN Convention on the Rights of the Child (UNCRC) was seminal. The UNCRC although not optimal, endeavours to protect children in armed conflict. Article 38 states: "State parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities." The gap is evident in that as much as the instrument was drawn and adopted to protect children (persons under 18) in all situations; it fails to protect those between the ages of 15 and 18 when it comes to armed conflict. In other words the UNCRC tolerated the involvement of children aged between 15 and 18 in armed conflict especially where the laws of that country permitted this.

However in 2000, the international community rectified the lacunae in the UNCRC by drafting and adopting the Optional Protocol to the UNCRC on the Involvement of Children in Armed Conflict (Optional Protocol). The Optional Protocol

which came into force in 2002 and it obligates State parties to 'take all feasible measures to ensure that persons below the age of 18 do not take a direct part in hostilities and that they are not compulsorily recruited into their armed forces'[13]. It also further calls on governments to 'take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.'[14]

Regionally, the African Charter on the Rights and Welfare of the Child[15] protects children in Africa against use as child soldiers. It also calls on African governments to 'take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child'[16]. This is a benchmark provision considering the magnitude of the problem in Africa as has been seen above.

Other important initiatives include the appointment of an independent expert to study the impact of armed conflict on children. The UN appointed Graca Machel as the expert and she delivered her report dubbed "The Impact of Armed Conflict on Children" to the UN General Assembly on 26th August 1996. This and other measures like the adoption of International Labour Organisation's (ILO) Resolution number 182 that set child soldiering as a worst form of child labour and the formulation of the Paris Principles in 2007 are some of the pivotal measures and instruments undertaken by the international community in reaction to the growing number and use of children in armed conflict.

Measures have also been taken to ensure that those who violate the rights of children by using them in armed conflict are brought to book breathing life to the fact that 'effective criminal prosecutions are a necessary element to confronting this challenge.'[17] The Rome Statute of the International Criminal Court (ICC) that entered into force in 2002 declares it a war crime the 'conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities'[18]. Importantly, in 2007, as a milestone, the Special Court for Sierra Leone convicted Alex Tamba Brima and other milia leaders for using child soldiers[19]. This was an important precedent that affirmed the recruitment and use of child soldiers as an illegal war crime. This and the indictment of Joseph Kony, leader of the Lord's Resistance Army (LRA) fighting the Government of Uganda in Northern Uganda by the International Criminal Court (ICC) is testimony to the attempts the international community is taking to bring to book those who are found guilty of using child soldiers.

A number of countries have come up with constitutional and legislative measures aimed at protecting children in armed conflict. The South African Constitution edicts children: 'not to be used directly in armed conflict and to be protected in times of armed conflict'[20]. Kenya's Children Act 2001 also protects children from use in child conflicts. It States: 'No child shall take part in hostilities or be recruited in armed conflicts, and where armed conflict occurs, respect for and protection and care of children shall be maintained in accordance with the law. It further gives the government the obligation to 'provide protection, rehabilitation care, recovery and re-integration into normal social life for any child who may become a victim of armed conflict or natural disaster'.

The above matrix reveals that the child soldier is indeed followed by a retinue of important efforts. Numerous steps and measures have been taken both by international and sub-international apparatuses to end the use of children in armed conflict. After the rather long but important detour let us look at the situation within the HOA; the *raison d'être* of this paper.

Child Soldiers in the HOA

As earlier mentioned, the issue of child soldiers is most discerning in Africa where estimates place 'over half of the world's child soldiers'.[21] Some of the situations that occasioned use of child soldiers are within the HOA; a region that comprises Djibouti, Sudan, Eritrea, Ethiopia and Somalia.

An examination of existing literature indicates that actual violence has ceased in some of these countries. According to the Coalition's 2008 Report, there was no reported use of child soldiers in Djibouti[22], Eritrea[23] and Ethiopia[24]. Inability to access information and the lack of proper registration regimes were challenges the Coalition noted in compiling information concerning the named countries. However they had through their national legislation set their minimum age of recruitment to 18. Others like Eritrea were parties to the Optional Protocol. Importantly, the conflict situations that led these countries to use children in armed conflict in previous years had ended. However the situation was different for both Sudan and Somalia.

According to the Coalition, several situations occasioned the use of child soldiers in the Sudan. Inasmuch as the government enacted the Armed Forces Act of 2007, which set the age of voluntary recruitment at 18, some reports of child soldiers were made. The Committee of Experts for the UNCRC did observe this development in its concluding observations to Sudan's Initial Report on the Optional Protocol in 2010. It noted its concern on 'reports of children being associated with the Sudan Armed Forces and Government backed militias'[25].The Committee further noted its misgivings with the use of child soldiers by non-state armed groups and particularly, the *laissez faire* environment that these groups were able to involuntarily force children to join its ranks. It further added 'its concern at reports of the forced recruitment of children into armed groups, including the Justice and Equality Movement (JEM) and the Sudanese Liberation Army (SLA), as well as their use in hostilities[26].

Somalia is another country in the HOA where the use of children in combat still rears its ugly head. According to Child Soldier Relief, the Transitional Federal Government (TFG) of Somalia has been accused by the UN as being one of the most persistent violators of using child soldiers[27]. According to the UN Secretary General's Report on Children and Armed Conflict of 2010, manifestation of recruitment and use of child soldiers by state and non-state groups was 'widespread'[28]. This was corroborated by the Secretary General's Report on Somalia published on 30th December 2010. The Report stated, 'The recruitment and use of children for direct participation in hostilities in southern and central Somalia continues to be of major concern. Partners on the ground consistently reported extensive forced recruitment of children by Al-Shabaab, with an estimated 2 000 children being trained in camps in southern Somalia[29].

There is clear evidence that the problem of child soldiers still lingers in the HOA. The problem does not only affect the countries mentioned above but also to neighbouring countries that are not within the HOA. As the Coalition reported in its 2008 Report, the LRA from Uganda has been reported to abduct and use children from Southern Sudan as soldiers. Chadian children have also been reported to have been abducted and recruited by non-state armed groups in Sudan and vice versa. Children were also reported to have been recruited form refugee camps in Kenya by non-state armed groups from Somalia. They have also been reports in Kenyan press that young men and women from Kenya were being recruited to join and fight for Somalia's Al Shabab group[30].

It is therefore imperative for all efforts that have taken to eliminate the problem in the area to be sustained and enhanced. Three main issues come to mind.

Recommendations

First of all, there is need to ensure that the international and national legal framework for protection of children against their use in armed conflict is set out in all countries in the HOA. Reports indicate that there has been effort amongst the countries that straddle the Horn to either sign or ratify the relevant international treaties that have been conjured to deal with this phenomenon. These international instruments lay the foundation and beacons for prevention and protection of children in armed conflict. In the same vein, efforts to bring to book those who are found to have the greatest responsibility in perpetuating such crimes like at the Inernational

Criminal Court should be enhanced. With the exception of Somalia which needs to stabilise politically, other nations need to ensure that the relevant national legislation is enacted in line with internationally set standards immediately and where the legislation is in place like in Sudan and Southern Sudan, strict implementation of the law is practised.

One of the main reasons for the explosion of the use of child soldiers has been attributed to the proliferation of small arms. As Senait Mehari, a former child soldier in Eritrea pointed out in her book, *Heart of Fire*, 'Nowadays there are also smaller and lighter semi-automatic machine guns which children can handle better than the gigantic Kalashnikov I had to carry when I was a child soldier.'[31] International and national measures aimed at ensuring that the availability of these weapons in the region must be enhanced. Those who are found to be dealing in the trade illegally should also be brought to book.

Lastly and most importantly efforts to attain sustainable peace must be prioritised. As has been observed earlier, it is almost inevitable that whenever and wherever armed conflict occurs, children are involved as combatants. The volatile situation between Eritrea and Ethiopia over their border, the management of the Comprehensive Peace Agreement (CPA) between the governments of North and South Sudan, the management of the new found independence of South Sudan from the North, the enhancement of the capacity of the Transitional Federal Government (TFG) of Somalia which includes the writing of a new constitution, are all processes that must be handled with care to ensure that they liberate the region from strife *ad infinitum*.

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1 Ishmael Beah, *A Long Way Gone*, Harper Perennial, London, 2008, p 126
2 Addendum to Ishmael Beah's *A Long Way Gone* , p14
3 Romeo Dellaire, *They Die Like Soldiers, They Die Like Children*, Hutchinson ,London,2010
4 Ibid, p 3
5 http://www.child-soldiers.org
6 http://www.child-soldiers.org/home
7 http://www.child-soldiers.org/home
8 http://www.childsoldiersglobalreport.org/content , 16p
9 Ibid 3, p 129
10 Ibid
11 http://www.childsoldiersglobalreport.org/content/kenya
12 Romeo Dellaire, *They Die Like Soldiers, They Die Like Children*, Hutchinson ,London,2010, p 104
13 Article of the Optional Protocol
14 Article 4 of the Optionol Protocol
15 www.africa-union.org/child/home.htm; Adopted by the OAU in 1990 but came into force in 1999
16 Article 22 (2) of the African Charter on the Rights and Welfare of the child
17 (2005) 50 McGill L.J. 687
18 Article 8.2.26 of the Rome Statute
19 http://www.sc-sl.org/CASES/ProsecutorvsBrimaKamaraandKanuAFRCCase/tabid/106/Default.aspx
20 (Article 28 1 (i) of The Constitution of the Republic of South Africa, 1996
21 Romeo Dellaire, *They Die Like Soldiers, They Die Like Children*, Hutchinson ,London,2010, p 105
22 http://www.child-soldiers.org/search?query=Djibouti
23 http://www.child-soldiers.org/regions/country?id=66
24 http://www.child-soldiers.org/regions/country?id=68
25 Committee on the Rights of the Child Concluding Observation on Sudan October 2010; paragraph 17 as found at http://www.child-soldiers.org/regions/country?id=201

26 Ibid; paragraph 23

27 http://childsoldierrelief.org/category/countries/somalia/

28 http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/474/21/PDF/N1047421.pdf?OpenElement

29 http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/703/94/PDF/N1070394.pdf?OpenElement,p 6, paragraph 37

30 http://www.jihadwatch.org/2011/03/kenya.

31 p 242. Senait Mehari was handed over together with her stepsisters to the Eritrea Liberation Front as a six year old girl. She lived in a training camp for three years where she witnessed and experienced firsthand manifestations of armed conflict. She reveals this in her book, Heart of Fire published in 2007. She now lives in Germany where she works as an author, activist and singer.

Kenya and the International Criminal Court

Role and protection of human rights defenders

After the worst ever post election violence experienced by Kenya in 2008, characterized by gross human rights violation, calls and pressure for justice have been received from all over the world as well as from within the country. Despite promises made by the government to set up a local tribunal as a way to deal with the issue at the national level, the government has showed no concrete political commitment to hold presumed perpetrators and accomplices of crimes against humanities accountable. The inaction by the Kenyan authorities to bring those responsible for the post-election violence to account formed the basis for the International Criminal Court (ICC) decision to authorize its prosecutor to begin an investigation. This falls under the theory of Responsibility to Protect (International Commission on Intervention and State Sovereignty Report on Responsibility to Protect, 2001) which authorizes the international community to intervene to provide security and justice to hold perpetrators of human rights violations accountable when the State, the primary guarantor is unable or like in the case of Kenya unwilling to hold perpetrators and accomplices of human rights violations accountable as a way of ending impunity and preventing such human rights violations from reoccurring.

Human rights defenders are among actors who have a very important role to play to help the ICC achieve its mission in the case of Kenya. Who are human rights defenders and what is the role as far the ongoing ICC investigations are concerned? As far as the ICC investigations in Kenya are concerned, Kenyan Human rights defenders will have to play the same above role. They will have to help the ICC in collecting and disseminating information related to gross human violation committed during the Kenya post election violence; they will also help in providing support to victims of human rights violations and this in a bit to secure accountability and to end impunity in the country (Office of The United Nations Commissioner for Human Rights).

Definition and role of human rights defenders

Human rights defenders are defined as people who, individually or with others, act to promote or protect human rights. To be a human rights defender, a person can act to address any human right (or rights) on behalf of individuals or groups. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realization of economic, social and cultural rights (Office of The United Nations High Commissioner for Human Rights). They are often the only force standing between ordinary people and the unbridled power of the state. They are vital to the development of democratic processes and institutions, ending impunity and the promotion and protection of human rights, (Enrique et al, 3, 2005).

Human rights defenders' actions consist notably in investigating human rights violations or gathering and disseminating information; providing support to the victims; ensuring accountability and ending impunity; supporting more effective public

management and governance; contributing to the implementation of human rights treaties, educating and training in human rights.

They play a primary role in the protection and promotion of human rights, often supported by intergovernmental organizations (Council of Europe, 46, 2007). They strive to bring an end to impunity of human rights violations and to promote social justice and peace. In a nutshell, these actions aim at giving a voice to the voiceless victims as far as promoting, protecting and providing them justice are concerned.

The above clearly indicates how important is the role of human rights defenders in helping the ICC carry out its mandate as far as the Kenya situation is concerned. As it is the case across the world, this role puts them at the forefront and therefore at particular increased danger and risk of attack and intimidation.

Human rights defenders are facing numerous obstacles and restrictions ranging from direct use of violence, often by non-state actors, to more insidious measures, such as administrative obstacles and restrictive laws, which may have an equally drastic impact on the ability of NGOs and individuals to promote and defend human rights. Human rights defenders have been the victims of false accusations and unfair trial and conviction. They face defamation campaigns aimed at discrediting them or are accused of being unpatriotic or extremist. In most cases, they receive death threats or are assassinated. In addition, attacks on human rights defenders are often not properly investigated and many perpetrators, organizers or instigators are never prosecuted. As a result, the defenders are subject to violations of their human rights, the target of executions, torture, beatings, arbitrary arrest and detention, death threats, harassment and defamation, as well as restrictions on their freedoms of movement, expression, association and assembly. To provide some few recent examples, Anna Politkovskaya a most prominent Russian journalist reporting on human rights violation in the Chen Chen Republic was murdered for her work; Floribert Chebeya Bahizire, the founder of a human right organization (voice of voiceless) based in DRCongo was murdered for activities related to his work of human rights defenders.

Protection of human rights defenders a primary role of the Kenyan government

While acknowledging "the valuable work of individuals, groups and associations in contributing to the effective elimination of all violations of human rights and fundamental freedoms" and "the relationship between international peace and security and the enjoyment of human rights and fundamental freedom, the Declaration on Human Rights Defenders adopted by consensus by the UN General Assembly in 1998 stresses that the state is primarily responsible for protecting human rights defenders.

It is the primary duty of the State to guarantee the respect for human rights of those persons living within its territory without discrimination. The responsibility of civil society and the international community is to assist the State to comply with its national obligations. States have the obligation as the responsibility to protect human rights defenders and their work, also by creating conditions that fully enable them to carryout advocacy, monitoring and reporting on human rights (Ramcharan, 231, 2006). This also includes physical protection where their safety is in jeopardy. Within the Kenya context, it is the duty of the Kenya government to provide such protection to human rights defenders who will be playing a vital role in helping the ICC investigations.

However, despite the high level of commitment given to the protection of human rights defenders in theory, the sad reality is that the effective space for human rights defenders to work is steadily shrinking, (Mary Lawlor, 2010). The reality in Kenya like in many countries is that HRDs are living in increased danger of the life (see report released by Human Right House Foundation, 2010).

Waki report mentioned politicians as main instigators and inciters of post election violence that led to gross human rights violation using their militia within their

respective ethnic groups to achieve their political goal.; This is confirmed by Kimani when he says '…that whereas some of the post election violence was spontaneous, much of it was organized and planned by political leaders…" (Kimani Njogu, 4, 2009). Some are the politicians serve under other capacities in the government leading their obstruction of justice. This justifies lack of political commitment on the part of the government to hold the same politicians within its institutions accountable. Exposing proof of crimes against humanity committed by the same politicians who still have strong support of their ethnic community members will not be an easy task.

In countries where there is an opposition, human rights defenders are perceived as supporters/members of the opposition. In the case of Kenya however the current political situation does not provide ''official opposition'' since the Grand Coalition government accommodated the opposition in the government. As such human rights defenders are now perceived as political opponents, a threat to the ruling status quo. This justifies the fact that they are subjected to repression, intimidation, harassment, death threats, target killings, etc. not only from the state but also from non-state actors benefiting from total impunity seeking to silence them. Some have gone into hiding; some others have fled to foreign countries for their safety and two were killed for trying to investigate extra-judicial killings of presumed members of Mungiki sect by the police, (Human Rights House Foundation, 2010)

Because the cycle of impunity still remains deeply rooted in the country political system, it makes the work of human rights defenders quite challenging and the reality is that the current political context of Kenya is not be favourable to the work of human rights defenders particularly in their role of helping the International Criminal Court to carry out investigations related to the Kenyan 2008 post election violence.

Comprehensive and dynamic security strategies

As indicated above, despite the high level of commitment and action by the ICC prosecutor to the protection of human rights defenders, the sad reality is that the effective space for human rights defenders to work is steadily shrinking. Furthermore, considering deeply rooted situation of impunity in Kenya as well as challenges related to the role that they are likely to play in helping the ICC carry out its investigations, only giving defenders well meant pieces of advice recommending that they "take care" is not enough.

For the purpose of their own protection, Kenya human rights defenders are rather required to 'put in place and implement comprehensive and dynamic security strategies in their day to day work', (Enrique et al, 3, 2005). They should develop their role and capacitate their offices so as to achieve an effective mechanism of their protection in any case. A better security management is the key. Without pretending to provide exhaustive comprehensive and dynamic security strategies, a better security management would among other consist of making informed decisions about security and protection through comprehensive and continuous analysis of working environment, assessment and understanding of risks, threats as well as security incidents with the aim of preparing and putting in place a security strategy and plan which must be constantly improved after continuous security performance assessment; a continuous process through the assessment of security performance of the organization so as to improve security at any point of time because political situation changes from time to time. This assessment must allow human rights defenders to be able to react to security incidents and to prevent backlash to their activities.

Security and protection are difficult areas. They are based around structured knowledge, but also influenced by individual attitudes and organizational behaviour (Enrique et al, 4, 2005).

This article would recommend that human rights defenders put in place a strategy and plan that will be followed and respected by all; upholding and reinforcing already existing mechanisms. A realistic and feasible security strategy and plan should include sensitive, adaptable, sustainable, effective and reversible security measures

to be followed and implemented by all in order to respond to both individual and group's security needs. This can only be achieved through an accurate and continuous environmental analysis.

Human rights defenders need to be aware that 'the most effective security lessons come from defenders themselves - from their daily experiences and the tactics and strategies they develop overtime in order to protect others and their own working environments' (Enrique et al, 4, 2005).

Conclusion

Conclusively, we wish to remind that defenders risk their well-being and their lives (Enrique et al, 5, 2005). The presence of a very active Civil Society in Kenya, particularly the establishment of a National Commission on Human Right was seen as an encouraging development that has helped to raise the profile of human rights in the country. One way of dealing with these forthcoming challenges is for human rights defenders to continue working in synergy with the Kenya National Commission on Human Rights and the entire Civil Society so as to draw and implement a comprehensive and dynamic advocacy and security strategies program through risk and threats assessments and understanding that this would aim at preventing and reacting to aggressions, repugnance and other eventual obstacles.

Furthermore, by allowing the ICC to investigate crimes committed in Kenya, the International Community must show commitment, provide continued support to the process and put pressure on the current political leadership to respect obligations that result from Kenya being a signatory of the Rome statute notably in exercising its duty to enable Kenya human rights defenders to engage freely in their activities, protect them when threatened from attempts to kill or injure them, refrain from creating obstacles to their work, thoroughly investigate violations of their rights and fight against impunity as far as the forthcoming ICC investigations will be concerned.

The current country development is that not only the Kenya government has presented a request to the ICC for deferral of the case to the country jurisdictions but also that the country political leadership is lobbying for withdrawal from the Rome Statute. In the last case, and as far as the 2007 post election violence is concerned, any withdrawal would have not legal impact on the ongoing process. Whatever the case (deferral of the case or withdrawal the Rome from statute), Human rights defenders will still have to play their role as explained above and there is still need for them to seriously consider their security.

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Privatization of security in Somalia

Implications for the Horn of Africa

Somalia has been mired in violent conflict and has not had a stable government for nearly two decades. The current fighting engages different conflict actors, the main ones being: the Transitional Federal Government (TFG); the Islamist group of *AlShabab*; Ahlu Sunna Wal Jama'a (ASWJ), the African Union Mission for Somalia (AMISOM); 'Puntland,' 'Somaliland,' and the newly-emerged politico-military group Sol, Sanag and Cayn (SSC); the Djibouti-based United States' anti-terror Combined Joint Task Forces (CJTF), Horn of Africa; and foreign jihadists. Currently, the TFG has only partial control over small areas of the country.

While there are over 3.6 million needy Somalis – a third of the country's population – depending on aid for their survival, another 1.6 million people are displaced; thus creating one of the most difficult and challenging humanitarian crises in the world.[1] Also, the country continues to be a source of refugees, the proliferation of illegal small arms and light weapons as well as insecurity for its neighbours and beyond.

Background

The usage of foreign individuals or groups of individuals, for private reward, by a state or non-state entity to serve in a combat role dates back to ancient times. Historically, examples show of the recruitment and deployment of mercenaries during wars: the Ramese II's use of Numidian mercenaries in ancient Egypt; Caesar's use of mercenaries for his cavalry; and mercenary Flemish soldiers fighting for William during the Norman Conquest.[2]

Military contracting came back into favor after the Cold War and the subsequent downsizing of military forces, as the form of response to the unpopularity garnered by particular governments when national troops lose battles and/or disintegrate like that of Somalia.

Africa has had a number of contemporary internal conflicts that have rendered some of the states to have weak structure and weak states. It is situations like this that have led to the presence of private military security companies (PMSCs) in conflict states in Africa. In an attempt to regulate the operations of PMSCs in Africa, the AU Convention for the Elimination of Mercenarisim in Africa was adopted less than a month, after the Additional Protocol I, on 3rd July 1977. This document differentiated PMSCs activities and mercenaries. In its preamble, it states that mercenaries are a grave threat to the sovereignty, territorial integrity, political independence and harmonious development of member states.

The growth of the Private Security Industry in the last two decades worldwide also reflects the general transformation of modern armies and the budgetary constraints (cost-cutting) facing states. Armies are becoming leaner and many young and well-trained people are becoming demobilized. From an economic standpoint it can be argued that any system that absorbs this surplus soldiery and offers them gainful employment is good – reducing the number of unemployed citizens. Other advantages and factors that explain the utility of PMSCs, beyond employment, include the fact that PMSCs maintain a pool of expertise – a reserve army that states

can draw upon in times of war. Despite the negative public perception of PMSCs – no doubt reinforced by conducts in countries like Afghanistan and Iraq – the reality is that it is a growth industry.

In the Somalia case, due to the absence of the rule of law and a functional government in Mogadishu, the capital for over two decades, the now refined and aggressive pirate scourge and general insecurity have become a constant concern to the Somalis and to the wider international community. These have had broader security and humanitarian implications such as the disruption of foreign aid, the ransom payments, the worsening Somali war economy, the potential of terrorist groups operating from Somalia, the devastating environmental dangers to the coastal ecosystem, arms and drug trafficking, human smuggling from Somalia to Yemen, and illegal, fishing and toxic waste dumping.[3] Consequently these events have necessitated and presented an opportunity for the privatization of security in Somalia.[4]

Private Security Companies (PSCs) can be defined as "companies that specialize in providing security and protection of personnel and property, including humanitarian and industrial assets."[5] Private Military Companies (PMCs) are "corporate entities that provide military expertise and other professional services essential to combat and warfare."[6] PMSC's can further be grouped into three categories:

a) Non-lethal service providers who undertake non-combat operations including the provision of logistics for national armies, humanitarian operations, intelligence and mapping services, and risk assessment for potential investors;

b) PSCs which provide passive security for public and private facilities and operations in high-risk conflict zones like that of Somalia. They generally guard resource mines and foreign embassies, provide protection for personnel conducting humanitarian operations and train indigenous security company personnel: for example South Africa's Saracen International;

c) PMCs which provide active military services to states and multinational corporations (MNCs) with their services ranging from training military units, strategic advisory services, to actual combat operations: for example British Sandline International.[7]

In the vacuum of such lawlessness for over two decades, Somalia has shown a preference for private security and its stateless economy, characterized by the enforcement of protection money and kidnapping, stimulated dependence on private security networks.[8]

The privatization of security in Somalia

The TFG, 'Somaliland' and 'Puntland' have all at various points contracted PMSCs. The areas of responsibility allocated to PMSCs by 'Puntland' and the TFG were very similar in character, involving coastal guard services in the form of protection against illegal fishing, the prevention of piracy and illegal dumping of waste. Some of these private companies were also contracted to train local forces to perform coastal guard services.

Historically, 'Puntland' was the first to employ a private security company, hiring the British company Hart Security from 2000 to 2001, followed by the Somali, but Emirates-registered and Dubai-based, SOMCAN from 2001 to 2006 and later on the Saudi based Al-Hababi Marine Services in 2006, all with a view to ending piracy and illegal fishing.

The TFG initially hired the American firm TopCat Maritime to protect Somali waters from illegal fishing, toxic dumping and piracy. TopCat forfeited their contract in May 2006 and the Somali cabinet then hired Northbridge Services Group Ltd on 12 May 2006, which in turn withdrew a year later.

'Somaliland's' engagement with PMSCs is interestingly different, in that it is financed by the Norwegian aid agency NORAD and aims to improve security of the territory's main port in Berbera.

While some of these companies can facilitate knowledge transfer and access to international expertise, others might be more exclusively concerned with their profit, or lack the expertise and experience to make any positive impact on the security situation. In such cases, the use of PMSCs has been counter-productive, further increasing political rivalry and instability. The best example here is probably SOMCAN which, due to its strong local networks, came to be seen as a part of the local political struggles. Accordingly, it lost both local and international legitimacy as a neutral actor seeking to prevent illegal fishing and piracy off the Somali coast along the 'Puntland' region.

The activities and impact of PMSCs were also often influenced by the extent of their global connections: Hart group was, for example, able to mobilize extensive foreign financial and legal support, which would in turn enhance local capacities and institutions.[9]

Recent trends

The controversial South African mercenary firm Saracen has received backing from the security giant Blackwater Worldwide. By doing this, it inserted itself into Somalia's s bloody civil war by getting contracted to protect government leaders, train Somali troops, and possibly battle pirate and armed Islamist militants in Somalia, according to American and other Western officials.

Saracen International was first reported to be training a 1 000-member anti-piracy militia in 'Puntland,' in northeastern Somalia, and that it planned to do the same for a separate militia in Mogadishu, the capital. The company has trained a first group of 150 militia members and was drilling a second group of equal size by early January, 2011. It drew its legitimacy from the TFG and the 'Puntland' authority. For example, the TFG's Ministry of Information issued a news release stating that Saracen was contracted to train security personnel and to carry out humanitarian work. However, Saracen has come to the spotlight internationally for this training with the concern that its work in Somalia, both in 'Puntland' and in Mogadishu, would have a major regional security impact that could affect efforts to restore peace in Somalia, including the efforts of the Mogadishu-based AU peace support mission: AMISOM.[10]

Similarly, a number of Somali lawmakers have demanded the suspension of the work of this international security company in Somalia and called on Prime Minister Mohamed Abdullahi Farmajo to explain government deals with this firm and others engaged in the security sector. The group is also linked the Ugandan President's half brother Gen. Caleb Akandwanaho (aka Gen. Salem). As a result, both the TFG and the 'Puntland' authorities suspended Saracen's work in the country. It is also pertinent to point out the role of Kuwait and the United Arab Emirates (UAE) in bankrolling the Saracen operation in 'Puntland.' The motive may be economic – for example the desire by Arab oil companies to pre-position themselves ahead of a possible race to obtain lucrative energy and mineral exploration and extraction contracts in 'Puntland.' This can also be best explained by the contested Nugaal and Daroor valley.

Implications

The preference for PMSCs in Somalia coupled with recent trends and suspicions over their security implications - for AMISOM, Somalia and the entire Horn of Africa region -has had some regional impact in the IGAD region.

First and foremost, security-military firms play a fundamental role in the proliferation of small arms and light weapons (SALWs) through arms brokering and transportation activities; the violation of UN arms embargo and the driving up of the demand for small arms in an already turbulent region like the Horn of Africa.[11]

During a conference report by the Institute of Security Studies (ISS) on the involvement of the private security industry in peace-keeping missions, the partici-

pants expressed concern regarding the storage of PMSCs arms. These arms find their way into neighbouring countries; hence driving up crime rates in other countries within the region.

PMSCs have negative impact on human security since they acquire significant capabilities and therefore begin getting into the brutal resource wars of sub-Saharan Africa by marketing their services to factions most able to pay.[12] This stems from the fuzziness in the definition of who PMSCs are. Coupled with the absence of international legal framework to regulate their operations and activities and their current attempt to masquerade as protectors of weak African states, promoters of democracy and human rights, PMSCs have had an impact on human rights and humanitarian law in general.

PMSCs pose threats to the protection of human rights. With respect to PMSCs, the UN Commission on Human Rights (UNCHR) has expressed the view that irrespective of the manner in which PMSCs' activities are carried out or which form they take to acquire some semblance of legitimacy; they are a threat to international peace and security and an obstacle to the enjoyment of basic human rights. There are numerous documented violations of human rights committed by PMSCs in contemporary conflict situations.[13] These violations take the form of war crimes or crimes against humanity which further complicated the problem of refugees in hosting countries; sometimes complicating the management of refugees in hosting countries.

Finally, PMSCs are primarily driven by the profit motive and only care about the bottom-line. Despite their rhetoric about ethical policies and corporate social responsibilities (CSRs), they have little stake in stability. On the contrary, they profit from conflict. Consequently, they either passively help to perpetuate conflict or actively thwart wider socio-political reforms by selling their services to repressive governments and groups. Also, due to the absence of proper definitions and laws for PMSCs, it is difficult to regulate their operations and activities.[14] This also presents the problem of accountability and transparency on their part.

Conclusions

While any popular and legitimately-elected government can harness the kind of non-combat, technical expertise PMSCs can provide, in the Somali case, the various authorities must bear in mind that this has to be limited, the process should be transparent, and the nature of the security/military expertise being imparted should be one that is not available to the regular security and armed services. PMSCs must also not be hired to supplant the role of legitimate state organs and/or other regional states. In the absence of a functional security sector, PMSCs may have a role in specialized tasks such as airport security, logistical support, infrastructure improvement, etc, like that of South Africa's Executive Outcomes whose engagement in post-conflict Sierra Leone has positively changed the dynamic.

At the international and regional level, more should be done to establish a 'watertight' legal framework for PMSC's engagements. Such a move would make them more defined, transparent and accountable. It would also lessen their human rights violations.

For all practical reasons, the only way out would have been if the TFG and other regional 'governments' can work towards becoming self-sufficient and therefore steer clear of PMSCs. There is, however, a high level of scepticism if this is achievable; or at least for now. One realistic option, however, is for them to work to minimize and/or mitigate their negativity by putting in place strict and enforceable regimes to improve accountability and enhance their ethical conduct. A precedent exists which may offer some guidance – the Kimberley Process, for example, and the resulting system of self-regulation which has helped to clean up the diamond industry. In the same way in which strict certification has significantly reduced the availability of tainted or conflict diamonds in the market, it is

also possible to agree, enforce and/or police a new regime of ethical conduct that locks PMSCs out of intractable and problematic conflict areas like the one in Somalia.

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NEWS AND RESOURCES

The Peacebuilding program guidelines

An initiative of the Rockerfeller Brothers Fund the Peacebuilding program aspires to strengthen local constituencies for peace and to connect them with policymaking on the regional and international levels. It aims to understand the conditions that lead to violence and the processes that support durable peace in order to identify innovative solutions to the most pressing drivers of insecurity. The program's grant making focuses on conflicts that have a disproportionate influence on international peace and security.

Formerly known as Peace and Security, the Peacebuilding program is grounded in the theme of conflict transformation. The revised program aims to identify opportunities to support innovative and collaborative approaches to conflict prevention, management, and transformation; strengthen constituencies and political will for durable peace; and explore solutions to emerging transnational threats and drivers of conflict.

To view the peacebuilding guidelines *http://www.rbf.org/program/peacebuilding*

Linking disarmament and gender

On 7th March, 2011 the Women's International League for Peace and Freedom (WILPF) held a seminar on the occasion of the 2011 International Women's Day. Discussions centred "Women, disarmament, non-proliferation and arms control". The seminar, chaired by the Secretary General of WILPF, Ms. Madeleine Rees, addressed the impact of disarmament and arms control on human rights from a gender perspective. International experts and grassroots activists drew out the linkages between gender and disarmament in a panel of women's rights and disarmament activists from Costa Rica, Democratic Republic of Congo (DRC), Pakistan, and the United Kingdom (UK). The presentations and subsequent discussion revealed that disarmament is not only about the removal of weapons themselves, but it is also about tackling the militarisation of people and societies.

Disarmament needs to be addressed from multiple angles, combining local, national, regional, and international levels as well as including both men and women in the processes. To not include women and their experiences of war in all levels of conflict resolution and peace building can, in the long run, legitimise gender-based violence and violations of women's rights and can undermine sustainable development, peace, and security. Militarisation and weaponisation are both part of conflict as well as root causes and outcomes of war. From the statements given during the seminar, it is clear that proliferation and the patriarchal militarisation of societies have a direct effect on women's lives and survival.

Read more at *http://www.peacewomen.org/portal_resources_resource.php?id=1439*

Somalia

New semi-autonomous region formed

Somalia government, civil society organizations and members of parliament endorsed the formation of yet another semi-autonomous region. The newly created state known as Azzaniya comprises lower and middle Juba and Gedo regions that borders Kenya has a population of 1.3 million. An interim president has already been sworn in a Nairobi. The move is supported by regional organizations and is seen as a strategy that would undermine the presence of Al Shaabab. The breakaway is in conformity with the constitution that allows formation or two or more regions semi-autonomous states that are loyal to the main government.

South Sudan

Concern about transition period

The international community is concerned about the transition period in the newly created state South Sudan. The state faces issues of distrust between the Sudan Liberation Movement (SPLM) and opposition parties that may undermine stability of the newly formed nation if not addressed from its inception. SPLM seems to be reclining from its earlier inclusive and participatory transition values that include national unity and inclusion and instead increasing the number of SPLM in the technical committee.

New report: "We Can't Be Sure Who Killed Us: Memory and Memorialization in Post-Conflict Northern Uganda"

The Justice and Reconciliation Project (JRP) and the International Center for Transitional Justice (ICTJ) have released a joint report: We Can't Be Sure Who Killed Us: Memory and Memorialization in Post-Conflict Northern Uganda.

The report examines the role memorials have played in Uganda's transitional justice process. Addressed to community members, conflict survivors, policymakers, and donors, it reviews existing memorials and offers recommendations to those seeking to initiate new memorial activities. It is based on research conducted in the Acholi and Lango sub-regions, yet reveals post-war insights into memory and memorialisation relevant to the greater North and any society in transition. It highlights

the activities that had a positive and negative impact in fostering relations among the affected communities. A key finding is that traditional reconciliation mechanisms are essential to a successful reconciliation process as well as taking into account the overlapping constituencies of traditional and Christian beliefs.

The full report can be accessed on the website *http://justiceandreconciliation.com/*

New book on the Politics of Peacebuilding - Rethinking the Liberal Peace: External Models and Local Alternatives

This anthology, published by the Norwegian Peace Research Institute, PRIO, presents a critical analysis of the liberal peace project and offers possible alternatives and models.

In the past decade, the model used for reconstructing societies after conflicts has been based on liberal assumptions about the pacifying effects of 'open markets' and 'open societies'. Yet, despite the vast resources invested in helping establish the precepts of this liberal peace, outcomes have left much to be desired. The book argues that failures in the liberal peace project are not only due to efficiency problems related to its adaptation in adverse local environments, but mostly due to problems of legitimacy of turning an ideal into a doctrine for action.

The aim of the book is to scrutinize assumptions about the value of democratization and marketization and realities on the ground by combining theoretical discussions with empirical evidence from key post-conflict settings such as Iraq and Afghanistan. These show the disparities that exist between the ideals and the reality of the liberal peace project, as seen by external peacebuilders and domestic actors. The book then proposes various alternatives and modifications to better accommodate local perspectives, values and agency in attempts to forge a new consensus. *http://www.prio.no/News/NewsItem/?oid=64751187*

International Law and the Right to a Nationality in Sudan

In the aftermath of the referendums on the status of South Sudan and Abyei, questions surrounding nationality and citizenship loom especially large in Sudan. This report, published by the Open Society Foundations, weighs in on the debate and offers specific recommendations on the criteria that should be used to determine citizenship in the new entities.

The paper argues strongly that the negotiating parties should reject ethnicity as the basis for determining membership of the new polities. Instead, they should adopt the non discriminatory norms established by international human rights law, providing for citizenship to be granted on the basis of any appropriate connection to the territory, respecting the rights of individuals to opt for the nationality they prefer, and with the default option based on habitual residence. To access the full paper follow this link *http://www.soros.org/initiatives/justice/articles_publications/publications/sudan-nationality-20110218*

No redress: Somalia's forgotten minorities

The report examines the current situation of neglected minorities in three regions of Somalia – Somaliland, Puntland and south-central Somalia, where differing political climates have left minorities in a state of desperation. Severe human rights violations against internally displaced minorities, particularly women, were reported in Puntland. Accounts of hate speech, displacement and religious persecution, particularly of Christians, emerged in the violent south-central region of the country, where the militant al Shaabab controls much of the territory. Meanwhile in the relatively peaceful self-declared Republic of Somaliland in north-west Somalia, minorities still face significant barriers in the political, educational and social spheres.

Minority Rights Group International emphasizes that the future new Constitution of Somalia recognizes the country's minorities and guarantees their right to non-discrimination; that the participation of minorities in public life should be promoted;

and that special measures should be implemented to protect and promote the rights of women living in minority communities. The full report can be accessed at *http://www.minorityrights.org/10370/reports/no-redress-somalias-forgotten-minorities.html*

World Development Report 2011 focuses on Conflict, Security, and Development

The WDR 2011 which is entitled' Conflict, Security, and Development' has been released recently. The report highlights that some 1.5 billion people live in countries affected by repeated cycles of political and criminal violence, and no low-income fragile or conflict-affected country has yet to achieve a single Millennium Development Goal. Fixing the economic, political, and security problems that disrupt development and trap fragile states in cycles of violence requires strengthening national institutions and improving governance in ways that prioritize citizen security, justice, and jobs.

The World Bank President, Robert B. Zoellick maintains that if we are to break the cycles of violence and lessen the stresses that drive them, countries must develop more legitimate, accountable and capable national institutions that provide for citizen security, justice and jobs. s. Children living in fragile states are twice as likely to be undernourished and three times as likely to be out of school. The report can be downloaded from: *http://wdr2011.worldbank.org/fulltext*

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Editorial principles

The Horn of Africa Bulletin (HAB) is an international newsletter, compiling analyses, news and resources primarily in the Horn of Africa region. The material published in HAB represents a variety of sources and does not necessarily represent the views of the Life & Peace Institute (LPI) or the cooperating partners, the All Africa Conference of Churches (AACC) and the Fellowship of Christian Councils and Churches in the Great Lakes and the Horn of Africa (FECCLAHA). Writers and sources are normally referred to, although in exceptional cases, the editors of the HAB may choose not to reveal the real identity of a writer or publish the source.