

INTRODUCTION

WHEN IS A NATION NOT A NATION?

“We’re not here because it’s easy. We’re here out of love.”

– Member of Watu ya Amani (“People of Peace”), a group composed of people from both the warring Turkana and Samburu tribes living together in an abandoned church in the Samburu district.

“We believe in the need to know principle.”

– Local government official, when asked about public participation in improving local security.

“This traditionally despotic African way of keeping security out of the hands of the people can’t last in a democracy.”

– Field worker for a locally based NGO, Northeastern Province.

Factors driving the demand for small arms are diverse and constantly shifting. Unlike anti-proliferation initiatives aimed at supply-side intervention, approaches targeting the demand side of the gun market require flexibility and imagination: specifically, the ability to see socio-economic, environmental, political, and even ‘ethnic’ factors as both part of the problem and the solution. In general, government bodies dealing with security and small arms are more prone to use force than imagination in dealing with the presence of illegal weapons. This traditional mindset, in former colonies often a holdover from pre-independence tactics, is no longer effective (if it ever was) in improving human security where government presence is limited.

Traditional definitions of state power and sovereignty do not apply in the face of social, economic and cultural realities that transcend national borders. Peace and conflict are not, as policy makers often assume, the sole domain of the state apparatus: in most African conflicts, individuals, clans, tribes, and private militias are the units of war. Actors in violence that straddles visible state borders often define themselves as belonging primarily to groups that are outside of or more significant than national affiliation.

Economically, post-colonial economic transformation and globalization have opened markets for trafficking in weapons, drugs, and human beings that both causes and sustains conflict. With economies based on black or grey markets, informal trading, and informal cross-border trading ('smuggling'), state-level security failure is common. A recent World Bank report addresses the impact of economic factors on the outbreak of civil war under the heading "What Can We Do about Ancestral Hatreds?"

"Economic characteristics matter more than has usually been recognized. If a country is in economic decline, is dependent on primary commodity exports, and has a low per capita income and that income is unequally distributed, it is at high risk of civil war... Disputes often fall along ethnic and religious divisions, but they are much more likely to turn violent in countries with low and declining incomes."¹

The global economic system perpetuates inequality between nations. This effect cannot be ignored in policy analysis of small arms markets and government effectiveness in reforming or shutting down such markets. Policy recommendations tend to overlook the reality of state capacity for control:

"Many of the normative models we apply in these discussions are drawn from the historical experience of a handful of strong, capable and effective nation states, occupying a dominant position in the global economy. To what extent is this model applicable to what we see in Africa today, especially given the continent's tenuous position on the global margins? ... Structural violence consists in the deliberate maintenance of a global system based on fundamental and self-reinforcing inequity."²

The term 'borderlands', used in this research, suggests marginality in both a geographical and socio-economic context. At the global level, Africa as a continent occupies an edgy space in the world economy. Slum dwellers around Nairobi subsist on the borders of capitalism, while pastoralists in Northern Kenya live on the edges of both national borders (with Sudan, Ethiopia, Uganda, and Somalia) and lines demarcating ethnic and clan divisions, districts, and voting constituencies that influence access to power. Many pastoralists are excluded from ties to an 'official' economy. In his recent book *Somalia: Economy without State* Peter D. Little highlights the flexibility of the term 'border':

“Primarily it describes a geographic or political feature, the territory (“borderlands”) that straddles two countries... As applied to Africa, this notion captures the porous nature of political boundaries on the continent and the informal economic opportunities they afford. However, border has other meanings. The term can signify an arbitrary edge or divide between two parts that can entail considerable ambiguity—a kind of “between and betwixt” condition... Where does the border between two phenomena exist? Where does one condition begin and one end?”³

The ambiguity of borders particularly applies to conflict in Kenya’s remotest areas, where it is often unclear where ‘peace’ ends and a state of conflict begins. In interviews, peace builders constantly sought to clarify that peace is more than just an absence of outright war. A peace committee member in Isiolo (Eastern Province) described the situation in 2000, which was not recognized as a war, in the most graphic terms: “Everybody was very scared. We used to urinate in our houses during the night. No would go outside otherwise they would be shot.”

The presence of American military operations in Africa suggests an increasingly international concern with activities in borderlands and on the margins of conventional state control. Speaking at the Pentagon on 10 October 2003, General James Jones, commander of the United States military’s European command, which incorporates Africa, said, “Large ungoverned areas are potential havens for the terrorists of the world and the future merchants of all kinds of things we are trying to do battle with,” he said. “It is a huge continent and there are many places for this type of activity to go on so we are examining it, we’re calling more attention to it and we think it’s a source of future difficulty.”⁴

Approaching small arms proliferation from the perspective of communities whose collective lives are influenced daily by the presence and use of illegal weapons requires a balanced view of what the demand side of the market looks like. Small arms policy has so far tended towards a supply-side focus that ignores the thriving ‘unofficial’ economies based on local conflict and trade. Demand factors that emerged from this research include environmental and resource management; identity-based conflict (with ethnicity, youth, and tribal affiliation causing fracture points); availability of small arms; economic factors (such as joblessness and poverty); and education and development factors (no alternative sources of income, low literacy rates, and limited contact with ‘the nation’).

In Kenya, local community based organizations (CBOs), non-governmental organizations (NGOs), and government-based ‘peace committees’ have been approaching peace building with strategies that take demand-side factors into account. While not every organization identifies small arms as a specific area of work, all acknowledge that the presence of illegal weapons is crucial to a cycle of violence that sustains meso-level conflict in both urban and rural borderlands.

Tying these demand factors together is the larger framework we use to analyse them. When is a nation not a nation? When the people living on the margins (whether geographically or socio-economically) consider themselves non-members? As Ellis points out in reference to Mobutu Sese Seko’s Zaire, “diplomatic convention and international law require us to use the vocabulary of statehood in regard to every member state of the United Nations.”⁵ Little goes one step further to add, “It does not mean, however, that we have to assume these states have the capacity or the will to govern.”⁶

What meaning or hope can we ascribe to human rights ideology and supply-side rhetoric when the communities in question exist outside of a formal state framework? In the absence of human rights-based law enforcement, should customary law be acknowledged as a more pragmatic method of government? These questions must be considered in the formation of small arms policies.

Human Rights and Customary Law: the Al Fatah Declaration

After a sustained period of violence in Kenya’s Northeastern Province, during which an aid worker with UNICEF was killed and highway banditry rendered roads impassable, a group of elders came together to negotiate a peace settlement involving all of the major clans in the area. On 29 September 1993, two years after the official collapse of the neighbouring Somali state, these elders issued the Al Fatah Peace Declaration (named for the Islamic madrasah where they convened) in the town of Wajir. Signed by 25 ‘thought leaders’ representing all of the warring clans, it set forth a powerful example of customary law in practice. The Declaration resolves, among other things:

1. That during this cease fire, livestock stolen from the Ogaden clans by Degodia and vice versa be mutually returned within seven days effective from 1 October 1993.

2. That from the date of this cease fire, the traditional law pertaining to blood feud [sic] will apply to those who commit murder namely the payment of a hundred camels for a man and fifty camels for a woman. In the case of stock theft, the rule of collective punishment involving whole groups of people will be applied.

Ten years later, the Wajir Peace Reconciliation and Development Committee reports that the demand for guns in the district where the Declaration was signed has declined significantly. Roads are passable, buses between urban settlements are frequent, and the law of Al Fatah is supreme in the resolution of disputes. The laws of Kenya recognize murder as a capital offence for which there are minimum sentences; the payment of camels to the family of the victim does not factor into any law on the books. Government and police administrators look the other way and even condone such customary negotiations, however, because they work. The question remains, for whom?

Al Fatah-based negotiations raise difficult issues, particularly in cases where communal decisions may not reflect the will of the victim or victim's family. In a rape case, the age, virginity, and marital status of the victim determine standard payment. The rape of an unmarried woman typically costs no more than five camels, with a new dress for the victim. While this payment may appease clan elders and avoid escalation to a larger conflict, it does not respect the individual nature of the crime or the right of the victim to live free from harm if the perpetrator is allowed to pay the fine and be excused. Similarly, the valuing of human life according to gender (in the traditional law, a woman's life is half the worth of a man's) conflicts with the Kenyan Constitution and the idea of citizenship as defined by the individual's relationship to the state rather than to the clan or tribe. Are human rights an idealistic luxury that should be bargained with to keep the pragmatic peace?

Notes

1. "Breaking the Conflict Trap: Civil War and Development Policy", A World Bank Policy Research Report, World Bank, Washington, 2003.
2. R Cornwell, Where to from here?, in J Lind and K Sturman, (eds), *Scarcity and Surfeit*, Institute for Security Studies, Pretoria, 2002.
3. P Little, *Somalia: Economy Without State*. Indiana University Press, Bloomington, 2003. p 4.

4. Official transcript of on-the-record press briefing can be found at <http://www.defenselink.mil/transcripts/2003/tr20031010-0751.html>
5. S Ellis, *Africa and the Cold War: New Patterns of Government and Politics. Development and Change* 1996. 27: 9.
6. Little, p 15.