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GSPIA Edition

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About the Journal

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Staff and Author Contact Information

To reach one of our staff members or contributing authors, please send an email to ppreditorialboard@gmail.com.

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A Toast to Privatization: A PPR Case Study on the Pennsylvania Liquor Laws

Meredith M. Fahey- MPA, Policy Research and Analysis; Joshua T. Hoffman- MPIA, SIS; Colin D. Saunders- MPIA, SIS

A long way from the Whiskey Rebellion

The most significant rebellion occurring between the American Revolution and the Civil War was in western Pennsylvania and was in response to the first federal excise tax enacted in the new republic; an excise tax on distilled liquors. At the time, the western Alleghenies housed one fourth of the nation's stills, and whiskey was a staple used for much more than drink. Most importantly, whiskey was the bartering system's chief means of exchange. A monetary tax on something that didn't have monetary value was devastating. Additionally, the colonists were never fond of taxes and overt federal control.

Between 1791 and 1794, federal tax collectors in the region were burned, beaten, and generally terrorized. Chief Tax Collector John Neville's plantation was burned to the ground. And taxes in those years went uncollected. In 1794, with rebel forces numbering nearly 5,000, President Washington led nearly 13,000 federal troops westward to quell the unrest.[1] Little resistance was met and the rebellion eventually died down.

For the past thirty years there has been a similar, albeit peaceful rebellion, brewing within Pennsylvania: efforts to privatize Pennsylvania's wine and spirits industry. Weighted under increasing budget deficits, states are under pressure to close budget gaps without increasing taxes. Some see privatizing the wine and spirit industry as a way to add a considerable windfall to the general fund, which would supplement annual revenues currently generated from state taxes and fees. Opponents to privatizing note that the Pennsylvania Liquor Control Board (PLCB) is financially self-sufficient and already adds considerable monies to the general fund. They argue that private owners will have more incentive to sell to

1.United States, Alcohol and Tobacco, Tax and Trade Bureau, The Whiskey Rebellion (Washington DC, Department of the Treasury) http://www.ttb.gov/public_info/whisky_rebellion.shtml

minors and that overall alcohol consumption will increase – a position historically adopted by social groups such as Mothers Against Drunk Drivers (MADD).

In decades past, states across the country have lifted the constraints on wine and liquor control for a myriad of reasons. This paper will discuss a brief history of liquor in Pennsylvania, highlight prospective legislation, frame the current debate, and outline what other states have done in order to provide a recommendation for moving forward.

History

In 1933, the 18th Amendment came to an end after fifteen years of federally imposed sobriety. Under the terms of the 21st Amendment to repeal Prohibition, states were given authority to create their own system of alcohol control. Pennsylvania's governor Gifford Pinchot called an emergency meeting of the Pennsylvania General Assembly four days before the purchase of alcohol became legal to establish a regulatory commission. Pinchot famously said that he wanted to "discourage the purchase of alcoholic beverages by making it as expensive and inconvenient as possible." The state adopted the Liquor Control Act and the Beverage License Law which established the Pennsylvania Liquor Control Board as an independent board to carry out the responsibilities dictated in those acts.

Throughout subsequent years, minor adjustments have been made to the PLCB, most notably in 1951 when the PLCB gained control of the wholesale aspects of the industry. In 1987, the legislature passed an act that transferred power from the PLCB to the Pennsylvania State Police Bureau of Liquor Control Enforcement to enforce provisions of the liquor code. [2] Since 1987, a progression of enacted laws has made access to alcohol less strenuous, particularly with adjustments made to increase liquor sales and permits, expand sales to Sunday, and extend store hours.

Former Republican Governor Dick Thornburgh (1979-1987) was the first serious advocate of privatizing Pennsylvania's wine and liquor industry. As an ardent believer in the free market, Thornburgh had a problem with the state monopoly on wine and liquor sales. Thornburgh stated over and over that "government should not be doing things which can be better and more properly

2. State of Pennsylvania. Auditor General. Pennsylvania Liquor Control Board Audit Report. State Stores Fund, Liquor License Fund For Fiscal Year June 30, 2009. Harrisburg, PA: 2010 http://www.auditorgen.state.pa.us/Reports/Federal/fedLCB063010.pdf

done by the private sector."[3] Governor Thornburgh was also serious in tackling government corruption and abuse. During his tenure, the PLCB was plagued with corruption, bribery, and pay-offs, resulting in the indictment of a PLCB agent.[4] Additionally, he believed it was the state's duty to enforce liquor laws, rather than act as a seller. His privatization proposals would have phased out government control over a five-year period. Even though he was able to conjure bipartisan support, his attempt ultimately proved unsuccessful.[5]

Efforts to privatize the wine and spirit industry were shelved during the subsequent Casey administration but were re-examined during Republican Tom Ridge's years as governor from 1995 to 2001. A Price Waterhouse report in 1997 assessed the amount of money that would be made by privatizing its retail and wholesale wine and liquor outlets at approximately $600 million.[6] Ridge's privatization efforts did not come to pass during his years in office due in part to strong opposition from MADD, the government union representing the state employees, and religious coalitions.

In November 2010, former Attorney General Tom Corbett was elected Governor on a platform that expressed his seriousness about closing the budget deficit by cutting government programs – not increasing taxes. During his campaign, Corbett indicated he would support privatizing Pennsylvania's liquor and wine outlets, a line he has continued to toe since his Inaugural Address in January of 2011.

"This is the time," assures Representative Ron Miller (R-Jacobus), "if it's ever going to happen, this is the year."[7] As a member of the House Liquor

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3. Dick Thornburgh Papers, The, "Proposes plan to replace Liquor Control Board (LCB) and call for resignation of Daniel W. Pennick, Liquor Control Board Chairman," New Releases. 30 Nov. 1983: University of Pittsburgh Library System. http://digital.library.pitt.edu/cgi-bin/t/text/pageviewer-idx?c=thornnewsreleases;cc=thornnewsreleases;q1=liquor;rgn=full%20text;idno=AIS9830.11.02.1228;didno=AIS9830.11.02.1228;view=pdf;seq=7;page=root;size=s;frm=frameset;

4. Dick Thornburgh Papers, The, "Proposes state liquor monopoly be put to statewide referendum," New Releases. 24 Oct. 1984: University of Pittsburgh Library System http://digital.library.pitt.edu/cgi-bin/t/text/pageviewer-idx?c=thornnewsreleases;cc=thornnewsreleases;q1=liquor;rgn=full%20text;idno=AIS9830.11.02.1462;didno=AIS9830.11.02.1462;view=pdf;seq=2-;page=root;size=s;frm=frameset

5. Dick Thornburgh Papers, The, "Urges breakup of PA's state stores monopoly," Press Releases. 2 Feb. 1984: The University of Pittsburgh Library System http://digital.library.pitt.edu/cgi-bin/t/text/pageviewer-idx?c=thornnewsreleases;cc=thornnewsreleases;q1=liquor;rgn=full%20text;idno=AIS9830.11.02.1273;didno=AIS9830.11.02.1273;view=pdf;seq=1;page=root;size=s;frm=frameset;

6. Bill Tolan,. "Spirits of privatization are likely stay bottled up," Pittsburgh Post-Gazette 16 Feb. 2007: http://www.post-gazette.com/pg/07047/762547-28.stm,

Control Committee, Miller will be one of the first to open up debate on the privatization of Pennsylvania liquor stores in the 2011-2012 Session. After years of unsuccessful lobbying campaigns, it appears the opportunity in favor of a positive vote for privatization has arrived. A large part of this momentum can be attributed to the newly controlled GOP legislature and a governor that has affirmed, it's time "to move our state out of the 19th century and refocus state government on its core functions and services."[8] From inventory to distribution to pricing to the number of outlets and hours open for business, Pennsylvania maintains one of the most restrictive liquor-control systems in the United States.

Prospective Legislation

"Government should not be in the business of selling alcohol."
-Representative Turzai(R-Allegheny)

Majority Speaker Mike Turzai (R-Allegheny) is preparing to reintroduce the bill he sponsored in the assembly's previous legislative session. The bill would privatize state retail and wholesale outlets of wine and spirits in Pennsylvania. It would auction 750 retail wine and spirit licenses and 100 wholesale licenses to the highest bidder. There are currently 621 wine and spirits stores located throughout the state. To prevent a private monopoly, Turzai's bill would put a cap on market share of retail and wholesale licenses at ten percent. According to Turzai, the auctioning of 850 licenses would bring a $2 billion windfall to the state's general fund.[9] [10]

The bill would eliminate both the thirty percent mark-up that the state levies on its retail products and the eighteen percent Johnstown emergency tax.[11] In its place, it would establish a gallonage tax that other licensing states have adopted.[12] The $2–6 dollar tax is levied on a per gallon basis. The six percent

7. Lauren Boyer, "Liquor-store privatization, more than just talk," York Daily Record 21 Jan. 2001: http://www.allbusiness.com/government/government-bodies-offices-regional-local/15455759-1.html

8. James O'Toole, "Corbett reprises GOP's stance on LCB," Pittsburgh Post Gazette 21 Oct. 2010: http://www.post-gazette.com/pg/10294/1096823-454.stm

9. Numbers are based on a 1997 Price Waterhouse Report and adjusted for inflation

10. Recently, Turzai indicated that he would consider a new independent study to review and update those numbers

11. Mike Turzai, "Turzai Introduces Legislation to Privatize Sale of Wine and Spirits," Press Statement 21 Apr. 2010: http://www.repturzai.com/NewsItem.aspx?NewsID=8783

12. Ibid

sales tax would remain but would be transferred to the end user. The bill also features provisions that address the displacement of PLCB employees. Among these provisions are tax credits for newly privatized stores that hire former state store employees, tuition assistance, and a possible three points towards the Civil Service Test for those wishing to seek government employment.[13]

Under this bill, the responsibilities of the PLCB would shift to a more regulatory and educational role, allowing it to retain only a fraction of the current 4,600 LCB employees.

Rep. Turzai believes that along with the immediate windfall, the state will continue to receive $400 million plus in taxes and fees and that current revenues being lost to "border bleed" will be recouped.[14] Additionally, Turzai is convinced privatization will give consumers more choices, competitive prices, and better quality.

The Debate

The mere allusion to privatizing the state wine and liquor store system engenders strong arguments from both proponents – predominately conservatives – and detractors – most often liberals. As previously referenced in the historical background, efforts to extract the state from the liquor selling business have failed on each occasion. The opposition has taken shape not only through the Democratic Party, but also from special interest groups such as MADD, the National Alcohol Beverage Control Association, United Food and Commercial Workers (UFCW), and the Independent State Store Union. Though each group tends to promote varying degrees of objection, their collective dispute is that privatization will substantially escalate incidents of underage drinking, binge drinking, and DUI fatalities. Their wide-held belief is that state store employees are more dependable in terms of screening underage customers than the personnel of a private, profit-driven company. Finally, the opposition notes that the revenue generated from the auctioning of inventories of state stores, as well as the licenses of retail and wholesale distribution stores, would not be collected in a timely manner to compensate for the current budget crisis. The transition away from a state-controlled system to a free market could take many years to perfect, thereby preventing a quick infusion of funds.

With the need to ameliorate its ever-expanding budget gap, proponents

13. Ibid

14. "Border Bleed" is the lost wine and liquor revenue that currently goes to other states with cheaper prices and lesser taxes

of privatization believe that there are sound economic arguments for the divestiture of Pennsylvania's liquor stores. These individuals agree that the state is relying on an antiquated system that results in higher prices, limited selection, and poor customer service – issues that push many buyers beyond our borders to New York, New Jersey, and Delaware to satisfy their expectations. "The system still suffers from the hardening of the arteries that you see in any government bureaucracy," explains Mark Squires, a writer for renowned wine critic Robert Parker Jr.[15] Squires, along with sixty six percent of Pennsylvanians, would like to see the state's monopoly on liquor sales dissolved.[16] By doing so, customers stand to benefit from lower prices, more flexible hours, and a wider variety of choices; each of which could help Pennsylvania recapture business that has been lost to neighboring states. Non-profit organizations such as the Reason Foundation, the Commonwealth Foundation, the Allegheny Institute for Public Policy, and the National Federation of Independent Business have all confirmed their support for privatization through various policy briefs and reports.

For members of the legislature, the one-time sale of the retail and distribution licenses could prove crucial for a state that faces a budget deficit of $4 billion. The potential revenue generated from the auctions has been estimated from as high as $2 billion to as low as $1.7 billion, an amount that could ease the government's obligation to other state-funded programs such as the pension system. Opponents have been quick to discount these projections based on regional averages available for New Jersey and West Virginia. Licenses in these states range from $200,000 to $250,000 per location.[17] If these numbers were applied to Pennsylvania's possible auction of 850 licenses, [18] the revenue generated would not exceed $250 million – quite a shortfall of the $2 billion mark that has been featured in the press. Moreover, opponents contend that by transferring liquor sales to the private sector, the state will stand to lose one of its few reliable revenue streams.

Leading the charge against a move to privatization is Wendell Young, president of Local 1776 the United Food and Commercial Workers, which

15. Steve Twedt, "Pa.'s liquor control system lets state keep a tight grip on the bottle," Pittsburgh Post Gazette 27 Jan. 2008: http://www.post-gazette.com/pg/08027/852212-85.stm

16. "Selling Liquor Stores Is Top Choice To Balance Budget," Quinnipiac University 15 Dec. 2010: http://www.quinnipiac.edu/x1327.xml?ReleaseID=1543

17. Twedt, "Pa.'s liquor control system."

18. Stipulation for retail licenses and the wholesale licenses – also, must reference the fact that Pennsylvania would have far fewer licenses available than these other comparable states which would create higher prices

represents the individuals who work at Wine and Spirits stores in Philadelphia. "There is no reason to do this, and, no, I don't think it will get any traction," comments Young.[19] Still, the argument made by Young and other opponents requires clarification. If the push for privatization were to succeed, in no way would the state's revenues from alcohol sales be diminished or eliminated. The General Fund would still collect close to $400 million in taxes annually in taxes and fees[20] regardless of whether the state or private industry is in control of sales.

Another aspect of the debate is whether selling alcohol is an inherent function of government and whether the private sector is better equipped to provide the service. According to a 2009 state audit, the PLCB remitted $518 million to the general fund for fiscal year ending June 30 (FY) 2009, a 14.8 percent increase over the previous year. Interestingly, the net profits the PLCB sent to the general fund in FY09 was $89 million; a decrease of 31.6 percent from the previous year.[21] Furthermore, a loan of $110 million from the general fund supported the PLCB's working capital needs.[22] Despite the generally lagging economy and increasing cost of operating the PLCB, wine and spirits sales net of taxes increased by 5.5 percent in FY09.[23] These numbers show that the PLCB continues to adopt a consumer friendly model to promote sales and profits; at the same time, the agency appears to be bogged down by its size and numerous functions. Like all other government agencies, the PLCB has become burdened by increasing pension obligations and costs from the continuing pressures to modernize. Taxes and fees on wine and spirits cannot go up indefinitely to support the functions of the PLCB.

Other States leading by example

State legislatures have been searching for ways to balance seemingly uncontrollable budgets before austerity measures are taken to avoid catastrophic economic situations. In Virginia, one proposal has been to privatize liquor

19. John Luciew, "Big ideas: Sell the Pennsylvania Liquor Control Board," The Patriot News, 7 June. 2009: http://www.pennlive.com/specialprojects/index.ssf/2009/06/big_ideas_for_pennsylvania_lcb.html

20. Under Representative Turzai's new bill, the Johnstown Flood Tax would be replaced with a gallonage tax.

21. Pennsylvania Liquor Control Board Audit Report-State Stores Fund, Liquor License Fund For Fiscal Year June 30, 2009. Pg. 9 http://www.auditorgen.state.pa.us/Reports/Federal/fedLCB063010.pdf,

22. Ibid.

23. Ibid.

licenses which are currently operated by state institutions. Both proponents and opponents of the idea acknowledge that there are certain tradeoffs, both economic and public safety issues that exist and must be accounted for if privatization were to become a reality.

Other Liquor Laws

While each state has its own nuances and caveats regarding liquor policy, it is important to highlight trends and look at specific states to get a sense of how the rest of the country conducts its liquor policy. Only eighteen states continue to directly control the sale of liquor through wholesale, distribution, or retail.[24] In other words, eighteen states, including Pennsylvania, control some aspect of the liquor industry. Other interesting templates for administering and regulating the sale of liquor are based on tradition, religion, and a various other reasons. For example, Georgians are not allowed to purchase liquor on Sundays, but they can buy beer and wine in stores any day of the week; while in Maryland, liquor sales are not prohibited on Sundays, but beer and wine purchases must be made in private retail stores with an approved license that must be purchased by the retailer from the state.[25]

States that do not have direct control over the sale of liquor impose a special gallonage tax on liquor, wine, and beer. Liquor sales have long generated much needed revenue for states, although taxes levied on the sale of liquor is widely regarded as a "sin tax." Some states charge more than others, such as Alaska, which boasts America's highest tax, at $12.80 per gallon of liquor, while Maryland and Washington D.C. feature the lowest sales tax at $1.50 per gallon of liquor.[26] Looking at the taxes on a per gallon basis will not tell the whole story as many states levy other taxes depending on the percentage of alcohol by volume.

Proposals and Implications for Two Commonwealths

Pennsylvania's liquor laws are similar to Virginia in that it has a state-run monopoly over all liquor sales. Unlike Virginia, Pennsylvania controls retail and wholesale wine sales and does not allow for the mass-retail of wine in its grocery

24. Federation of Tax Administrators. "State Tax Rates on Distilled Spirits." 1 Jan. 2010: http://www.taxadmin.org/fta/rate/liquor.pdf

25. Unofficial Alcohol Laws.org 23 Jan. 2010: http://www.alcohollaws.org/georgiaalcohollaws.html

26. "State Tax Rates on Distilled Spirits." http://www.taxadmin.org/fta/rate/liquor.pdf

stores or other convenient stores.

Currently in Virginia, the state owns and controls 332 retail and wholesale liquor stores. Governor Bob McDonnell's proposal in September 2010 to privatize liquor stores would have provided an estimated $458 million in windfall profits and $229 million in recurring revenue each year through the auctioning of liquor licenses.[27] This would have resulted in the privatization of all facets of the system – including wholesale, distribution, and sales. However, due to a lack of coalitional support in the state legislature, McDonnell was forced to amend his original policy. This amended proposal would maintain the state's role as the wholesaler but would privatize the retail aspect by auctioning of 1000 new liquor licenses.[28] Those licenses would be auctioned off to the 6,600 stores in Virginia where beer and wine are already sold including big-box stores such as Wal-Mart and Rite-Aid.[29] This new proposal would still provide for an extra $13 million a year in addition to the one-time profit of $200 million. [30]

Free-Market Perspective

Virginia Governor Bob McDonnell and newly elected Pennsylvania Governor Tom Corbett each acknowledge that the free market is best suited for maintaining its respective states' liquor sales. As James A. Goodman, a former member of the PLCB, stated, "Private entities will compete amongst one another and lower the cost of alcohol for the average consumer."[31] Governor McDonnell has also referenced the potential profits from selling property, transferring license fees to private vendors, and auctioning off retail licenses.[32] Both governors argue that the state monopoly on liquor sales creates market inefficiency; therefore,

27. Anita Kumar and Rosalind Helderman, "McDonnell unveils plan to privatize Va. Liquor sales, but skeptics question taxes," Washington Post 9 Sept. 2010: http://www.washingtonpost.com/wp-dyn/content/article/2010/09/08/AR2010090807169.html?sid=ST2010082802905

28. Anita Kumar and Rosalind Helderman "McDonnell proposal would privatize Va. liquor stores," Washington Post 25 Jan. 2011 http://www.washingtonpost.com/wp-dyn/content/article/2011/01/11/AR2011011107243.html

29. Ibid.

30. Ibid.

31. Ben Wolfgang, "Former Liquor Control Board officials say liquor store privatization complex, but current efforts seems serious," The Republican Herald 25 Jan. 2011 http://republicanherald.com/news/former-liquor-control-board-officials-say-liquor-store-privatization-complex-but-current-effort-seems-serious-1.1094851

32. Anita Kumar and Rosalind Helderman, "McDonnell unveils plan to privatize Va. Liquor sales, but skeptics question taxes," http://www.washingtonpost.com/wp-dyn/content/article/2010/09/08/AR2010090807169.html?sid=ST2010082802905

limiting the role of government is a way to alleviate unnecessary services and lower costs for the average consumer.

Public Safety

Critics of privatization cite an increase in access to alcohol will increase overall consumption, underage drinking, and alcohol-related traffic incidents. According to a study done by the Alcohol Research Group (ARG), liquor consumption per capita increases roughly fourteen percent in states that have privatized retail of liquor as opposed to state control.[33] Although these concerns are justified, it is important to look at specific cases where states transitioned from a state-controlled liquor system to privatization.

The state of Iowa privatized its liquor sales in 1987, causing the number of stores with licenses to double. Still, the results are somewhat mixed and surprising. The number of alcohol-related traffic incidents and underage drinking has remained unchanged. In fact, MADD has labeled Iowa as the 7th lowest state in terms of drunk driving.[34] Many studies arguing against liquor privatization conclude that incidents of alcohol-related traffic accidents and underage drinking would spike by as much as thirty percent in Pennsylvania if liquor stores were privatized. But the data coming out of Iowa do not seem to support this hypothesis.

Professors of Economics Antony Davies and John Pulito, recently published a study that found the effects of binge drinking and underage drinking unchanged by privatizing the wine and liquor enterprises within a state and found DUI fatalities unchanged amongst licensed and full control states.[35] [36]

The same study also analyzed the direct effects of liquor privatization in the years following privatization in West Virginia and Iowa. In Iowa there was a slight increase initially, but it was not permanent and quickly fell back to levels seen before privatization took place.[37] In West Virginia, a similar story can be

33. Alcohol Research Group, "Alcohol Control Systems and the Potential Effects of Privatization," http://www.usdrinksconference.com/assets/files/download/Privatization%20Pamphlet%20Final.pdf

34. Mothers Against Drunk Driving. 15 March. 2011: http://www.madd.org/drunk-driving/campaign/state-ranking/Iowa.html

35. J. Pulito, and A. Davies, Government-run alcohol stores: The social impact of privatization,‖ Commonwealth Foundation Policy Brief, 2009: 21(3): 1-16

36. There has been criticism regarding this research because it was supported by the Reason Foundation and it has not gone through the peer review process, at this time.

told; 1991 spirit sales remained unchanged even when the privatization first took effect.[38]

West Virginia is an interesting case as the state decided to privatize liquor control in 1991. According to the West Virginia Alcohol Beverage Control Administration, the state has generated an additional $26 million annually to the state's general fund since the decision to privatize.[39] In Iowa, nearly $12 million was collected from liquor licenses in 2010 accounting for a relatively small portion of income for the general state budget.[40]

Recommendations

While the current debate on whether to privatize the wine and spirits industry in Pennsylvania is focused on its fiscal impact, it is important to remember that over the years those in favor of privatization often referenced government corruption, customer dissatisfaction, and the inherent conflict of interest between enforcement and sales of wine and spirits as reasons for privatization.

The current financial numbers are based on an outdated report that cannot be deemed accurate even after adjusting for inflation. There is a need for an independent review and update of the potential windfall that the auction of the 850 licenses could bring to the state. Even then, it will be difficult to know how much money the state stands to receive from privatization. Will the licenses be ten-year leases or thirty-year leases? If there is a ten percent cap on license ownership, will all 850 licenses sell? Will smaller entities have access to credit to compete against larger entities? Will the legislature consider increasing the number of licenses available to create a more competitive and freer market? Will the legislature consider decentralizing the process of giving licensing rights and duties to county and local governments as do many other states?

Additionally, what is the long term financial picture of the PLCB? Will they be fiscally viable in the future? Or become a burden to the taxpayers?

While the social aspect of transferring state control to the private sector

37. Antony Davies, "Review of Studies on Liquor Control and Consumption" http://www.scribd.com/doc/47990129/Liquor-Privatization-Lit-Review

38. Ibid.

39. Annie Johnson, "Virginia grapples with liquor laws," Roanoke.com 25 Jan. 2010: http://www.roanoke.com/business/bizjournal/archive/wb/233909

40. State of Iowa. Iowa Alcoholic Beverages Division. Des Moines, IA http://www.iowaabd.com/

is something that concerns many groups, the empirical evidence does not seem to support the fears that Pennsylvania will see an increase in underage drinking, binge drinking, or DUI fatalities. Additional concerns have been raised about the enforcement of carding underage purchasers of alcohol. The counter to these claims is intuitive; the state retains control of enforcement and regulation. The onus of a seamless transfer to the private sector falls to the state; and should there be irregularities, mechanisms should be in place to obviate them. Fundamentally, when someone invests a significant amount of capital and personal assets into something like a liquor license and private business, there is an incentive to not lose it by selling to underage citizens. Furthermore, because the state retains control of enforcing and regulating underage purchasing and consumption, the state can increase fines for selling to minors and can increase the penalty to the minor. There are numerous mechanisms that can be employed to deter the purchasing of alcohol by minors in licensed states.

The loss of thousands of jobs is a significant factor in the debate. Representative Turzai's bill does address worker displacement by offering tax credits to those who transition to the private sector as well as education assistance and three points on the civil service test for government employment. Turzai's bill could go further by offering current employees the first choice in purchasing the licenses like Governor Ridge had offered in the 1990s, or offering further incentives for private owners to hire former state employees.

The first of many hearings began on February 14, 2011 in the Pennsylvania Senate. The state has just begun the enormous task of deciding whether to privatize its wine and spirits industry. The arguments on both sides of this debate are strong and should not be discounted. With huge budget deficits and pressure to not raise taxes, streamlining government functions is one way to add immediate money to the general fund and eliminate the future spending of government pensions, benefits, and salaries. Additionally, in the long term, there is evidence that privatizing has the potential to bring in more money than the PLCB currently sends to the general fund. Privatizing governmental functions does not always make sense, but in the case of the PLCB, it does. The American colonists of the late 1700s would agree.

References

Alcohol Research Group. "Alcohol Control Systems and the Potential Effects of Privatization" http://www.usdrinksconference.com/assets/files/download/Privatization%20Pamphlet%20Final.pdf

Boyer, Lauren. "Liquor-store privatization, more than just talk," York Daily Record 21 Jan. 2001: http://www.allbusiness.com/government/government-bodies-offices-regional-local/15455759-1.html

Bumsted, Brad. "Turzai says he'll push for private sale of wine, liquor," Pittsburgh Tribune-Review 25 Jan. 2011

Commonwealth Foundation. "Budget Facts 2010: Pennsylvania State Budget Overview," http://www.commonwealthfoundation.org/research/detail/budget-facts-2010-pennsylvania-state-budget-overview

Davies, A. and Pulito, J. Government-run alcohol stores: The social impact of privatization. Commonwealth Foundation Policy Brief. 2009: 21(3): 1-16

Davies, Antony, Ph.D. "Review of Studies on Liquor Control and Consumption," Duquesne University. http://www.scribd.com/doc/47990129/Liquor-Privatization-Lit-Review

Dick Thornburgh Papers, The. "Proposes plan to replace Liquor Control Board (LCB) and calls for resignation of Daniel W. Pennick, Liquor Control Board chairman," 30 Nov. 1983: University of Pittsburgh Library System http://digital.library.pitt.edu/cgi-bin/t/text/pageviewer-idx?c=thornnewsreleases;cc=thornnewsreleases;q1=liquor;rgn=full%20text;idno=AIS9830.11.02.1228;didno=AIS9830.11.02.1228;view=pdf;seq=0001

Dick Thornburgh Papers, The. "Proposes plan to replace Liquor Control Board (LCB) and call for resignation of Daniel W. Pennick, Liquor Control Board Chairman." 30, November 1983 University of Pittsburgh Library System. http://digital.library.pitt.edu/cgi-bin/t/text/pageviewer-idx?c=thornnewsreleases;cc=thornnewsreleases;q1=liquor;rgn=full%20text;idno=AIS9830.11.02.1228;didno=AIS9830.11.02.1228;view=pdf;seq=7;page=root;size=s;frm=frameset;

Dick Thornburgh Papers, The. "Proposes state liquor monopoly be put to statewide referendum." New Releases. 24, October 1984: University of Pittsburgh Library System http://digital.library.pitt.edu/cgi-bin/t/text/pageviewer-idx?c=thornnewsreleases;cc=thornnewsreleases;q1=liquor;rgn=full%20text;idno=AIS9830.11.02.1462;didno=AIS9830.11.02.1462;view=pdf;seq=2;page=root;size=s;frm=frameset

Federation of Tax Administrators. "State Tax Rates on Distilled Spirits." 1 Jan. 2010: http://www.taxadmin.org/fta/rate/liquor.pdf

Johnson, Annie. "Virginia grapples with liquor laws," Roanoke.com 25 Jan. 2010: http://www.roanoke.com/business/bizjournal/archive/wb/233909

Kumar, Anita and Helderman, Rosalind. "McDonnell unveils plan to privatize Va. Liquor sales, but skeptics question taxes," Washington Post 9 Sept. 2010: http://www.washingtonpost.com/wp-dyn/content/article/2010/09/08/AR2010090807169.html?sid=ST2010082802905

Kumar, Anita and Helderman, Rosalind. "McDonnell proposal would privatize Va. liquor stores." Washington Post 25 Jan. 2011 http://www.washingtonpost.com/wp-dyn/content/article/2011/01/11/AR2011011107243.html

Luciew, John. "Big ideas: Sell the Pennsylvania Liquor Control Board," The Patriot News, 7 June. 2009: http://www.pennlive.com/specialprojects/index.ssf/2009/06/big_ideas_for_pennsylvania_lcb.html

Mothers Against Drunk Driving. 15 March. 2011: http://www.madd.org/drunk-driving/campaign/state-ranking/Iowa.html

National Alcohol Beverage Control Association. http://www.nabca.org/States/States.aspx

O'Toole, James. "Corbett reprises GOP's stance on LCB," Pittsburgh Post-Gazette, 21 Oct. 2010: http://www.post-gazette.com/pg/10294/1096823-454.stm

Seelye, Katherine. "A Push to Privatize Pennsylvania's Liquor Stores," New York Times. 31 Dec. 2010

"Selling Liquor Stores Is Top Choice To Balance Budget," Quinnipiac University, 15 Dec. 2010: http://www.quinnipiac.edu/x1327.xml?ReleaseID=1543

Smeltz, Adam. "On Privatizing Pa. Liquor Stores, Conklin Is Opposed; Corman, Undecided." StateCollege.com 13 Jan. 2011

State of Iowa. Iowa Alcoholic Beverages Division. http://www.iowaabd.com/

State of Pennsylvania. Pennsylvania Liquor Control Board Audit Report. State Stores Fund, Liquor License Fund. Harrisburg, PA: 2010

State of Pennsylvania. Pennsylvania Liquor Control Board. Website. Harrisburg, PA.

State of Pennsylvania. Auditor General. Pennsylvania Liquor Control Board Audit Report. State Stores Fund, Liquor License Fund For Fiscal Year June 30, 2009. Harrisburg, PA: 2010 http://www.auditorgen.state.pa.us/Reports/Federal/fedLCB063010.pdf

Toland Bill. "Spirits of privatization are likely stay bottled up," Pittsburgh Post-Gazette 16 Feb. 2007: http://www.post-gazette.com/pg/07047/762547-28.stm

Turzai, Mike. "Turzai Introduces Legislation to Privatize Sale of Wine and Spirits." Press Statement. 21 April 2010

Twedt, Steve. "Pa.'s liquor control system lets state keep a tight grip on the bottle," Pittsburgh Post-Gazette, 27 Jan. 2008: http://www.post-gazette.com/pg/08027/852212-85.stm

United States, Alcohol and Tobacco, Tax and Trade Bureau, The Whiskey Rebellion (Washington DC, Department of the Treasury) http://www.ttb.gov/public_info/whisky_rebellion.shtml

Unofficial Alcohol Laws.org http://www.alcohollaws.org/georgiaalcohollaws.html

Wolfgang, Ben. "Former Liquor Control Board officials say liquor store privatization complex, but current efforts seems serious." The Republican Herald 25 Jan. 2011 http://republicanherald.com/news/former-liquor-control-board-officials-say-liquor-store-privatization-complex-but-current-effort-seems-serious-1.1094851

Legal and Societal Injustice: Gender Inequality and Land Rights in Tanzania

L. Caitlin Newman
MID, NGOs and Civil Society

Abstract

Land is the lifeblood of 80% of Tanzanians living in rural areas, and Tanzania's contradictory dualistic land ownership system is causing unnecessary land disputes for an immeasurable amount of people. Problems include boundary disputes, irresponsible actions of local government officials, a burdensome court track for land issues, and the clan's assumed authority over a person's land. The complex land system leads to the suffering of one of Tanzanian society's most vulnerable groups, women. Contributing to their vulnerable status in society, women are subject to problems caused by the ambiguous and intricate land system. Issues discussed which are based on a general disregard for the rights of women to own land are the following: the husband took and sold land without consulting his wife, a neighbor stole the land, or the husband's clan interfered unnecessarily in land decisions. Differing opinions regarding a woman's right to inherit property are also documented. In addition to revealing the problem of women's access to land in Karagwe, this research also uncovers many other problems that are commonly linked with women's land disputes. The following common issues are discussed: lack of education, polygamy, corruption in courts, and mistreatment of wives.

This technical report was made possible by an internship with the Women Emancipation and Development Agency (WOMEDA) located in Kayanga, Tanzania. During this experience, 32 conversations were conducted with: men and women who had experienced land rights issues, various officials who possess decision-making power for land cases, and youth who were questioned about their perception of gender equality and land rights. "Responses to structured conversations and discussions with WOMEDA's executive director are documented in this report." Case studies are used from the structured conversations in order to highlight important findings throughout the report.

Background

This report is the culmination of 32 conversations conducted by me and Lida Alichard for use by the Women Emancipation and Development Agency (WOMEDA) located in Kayanga, Tanzania. The aim of this report is to increase awareness of the problems surrounding land rights and gender inequality in Tanzania's Karagwe District.

WOMEDA is a non-governmental organization located in Kayanga town of Karagwe District of Tanzania. It provides many free services to the community through its USAID and PACT Tanzania funding including: marriage counseling, legal advice, and provision of free goods to vulnerable children and their families. Founded in 2002, WOMEDA's mission is to promote the status of the marginalized groups in Karagwe by creating and strengthening equal opportunities for women, men and children through provision of socioeconomic, legal, and human rights activities in order to attain sustainable development. WOMEDA's focus on both men and women follows current thought in gender studies which emphasizes the need to focus on all groups in society in order to realize gender equality.

This report will document the many issues which were discovered through Newman's internship with WOMEDA. The following ideas will be discussed: the importance of land and land rights in Karagwe, the existence of gender inequality within land rights, a contradictory system of laws as the major cause of this inequality, and other social issues commonly linked to land issues. The main source of information is answers collected from conversations, with some supporting information found in authoritative sources.

The conclusions made in this report are largely dependent on anecdotal evidence, and therefore would be significantly strengthened with further research supported by statistical analysis. This report is a documentation of my observations, the responses gathered through structured conversations, and discussions with WOMEDA's executive director, Juma Masisi. Case studies are used from the structured conversations in order to highlight important findings throughout the report.

Methodology

The data for this report was gathered through research regarding land rights and gender inequality during August 2010. I conducted 32 conversations with the help of Alichard as translator. Interviewees included: men and women who had experienced land rights issues, various officials who possess decision-

making power for land cases, and youth who were questioned about their perception of gender equality and land rights.

Four questionnaires were created to guide conversations with clients, land officials, youth, and customary law authorities. The client questionnaire was used to guide conversations with people who had experienced land disputes. These conversations were designed to solicit narrative responses from clients. The land official questionnaire was created to gather information from local court and government officials. Questions were posed regarding the tribunal or court procedures for each case and perceived corruption in Tanzanian courts and gender inequality in Karagwe. The general knowledge questionnaire was created to gather the opinions and perceptions of youth regarding the importance of land and women's rights to ownership. The customary laws questionnaire was created to garner the perceptions of a court assessor, village chair person, and religious leader. These authorities, who are very knowledgeable concerning customary law and highly respected in the community, were asked about the origin of customary laws, some positive and negative aspects, and whether customary law ever contradicts Tanzanian statutory law.

Each interview followed the same general procedure. I introduced myself and explained the purpose of my research. Each person was first asked a series of demographics questions including age, occupation, religion, education completed, income per month, etc. Alichard asked the questions in Swahili and translated blocks of the response while I transcribed the answer. Additional questions were posed if a response was especially interesting in order to gather more detailed information.

Land Rights in Tanzania

Over 80 percent of Tanzania's people live in rural areas and identify themselves as peasant farmers (Tanzania National Website 2010). Land is the lifeblood of this wide majority of Tanzanian society. Land is a livelihood, a source of food and cash crops, a place to build shelter, and a personal place to be buried. Many people answered the question concerning the importance of land with answers like "Without land, a person cannot survive."

Given the critical importance of land to the average person living in Tanzania, my question asking "Are land rights important to your life?" produced obvious responses. Every person answered in the affirmative and noted the great importance of land. Land rights enable a person to live and cultivate crops freely. Without distinct rights to the land, a person can be chased away, taken to court, or threatened with violence while attempting to cultivate crops.

Because land and land rights are so important to a person's life in Karagwe, small cracks in the land ownership system are causing major conflict. For example, Tanzanians rarely prepare wills before dying, and laws and customs are not always clear about the new, rightful owner. According to Musa Gema, a Primary Court magistrate working in Karagwe, land is the most prevalent source of conflict in the cases he judges. See Appendix A for a short overview of the Tanzanian court system.

The aim of this research was to uncover issues of gender inequality within land rights, but the process also enabled the discovery of other land issues in Karagwe. Before discussing the main focus of this report, light should be shed on these other evident problems. Besides gender inequality within land rights, four major issues can be identified. These are: boundary disputes, irresponsible actions of District Council Land Department officials, the court system for land issues, and the clan's assumed authority over a person's land.

Boundary disputes

There are some instances in which neighbors do not agree on boundaries between each other's land. Typically, the issue is brought to a Ward Tribunal and officials visit the land and try to designate official boundaries. People tend to use sisal plants and other growth to designate boundaries, which can easily be uprooted and replanted by parties during a dispute. This is a well-known tactic in Karagwe. One WOMEDA client named Hasibu Athomani told a story of buying land from his brother-in-law and experiencing old boundary disputes with his new neighbor. While the case has been in court, Athomani's neighbor continues to uproot boundaries and cultivate on his land.

A mother of three, Praxeda Aliphonce, was also dealing with a boundary issue at the time of this report. She was given land by her grandfather in his will, and after six years of freely owning and cultivating the land, her neighbor decided to pronounce the land his own. After telling Aliphonce his decision, he uprooted her sisal plants and cultivated her land for his own profit. The Ward Tribunal judged in favor of Aliphonce, but her neighbor has threatened to appeal to the Land and Housing Tribunal in Bukoba. Official boundaries have not yet been drawn for many in rural Tanzania, and many feel free to impose upon others land because of the current ambiguity.

Irresponsible Actions of District Council Land Department Officials

The District Council Land Department (DCLD) is a local government branch invested with the authority to grant land titles and at times, to solve land disputes out of court. This office can also partition and assign public land. An example: Martin Verdiani Katabarua, a 71-year-old man with 13 children, was granted a piece of land in Kayanga by the DCLD. Katabarua then encountered problems when he attempted to cultivate his new land. The DCLD gave Katabarua the title deed to the land in 1993. Not having enough money at the time to build a house, he let the land lay fallow for 15 years. In 2008, DCLD officials helped Katabarua find his land's boundaries only to discover some neighbors were cultivating on his land. The neighbor had bought the land back in 1983 and the officials made the mistake of allocating land that was already owned. After losing a case at the Land and Housing Tribunal, Katabarua was advised to bring a complaint against the DCLD officials. Double-allocation of land is a major problem in the Karagwe district, and the ineffective system of the DCLD is largely to blame. Officials make mistakes in drawing boundaries and regularly fail to inform neighbors when land is sold to someone.

Inaccessible Court System for Land Issues

When conducting the conversation with Musa Gema, a primary court magistrate, Juma Masisi identified the problem of Tanzania's troublesome court track for land dispute issues. Land issues are first brought to the ward tribunal, and then appeals are sent straight to the Housing and Land Tribunal, which is a part of the district court, circumventing the primary court. For residents of Kayanga town, this means traveling to a town about an hour away for land dispute appeals, which is very cumbersome for people with limited resources living in remote villages. Gema and Masisi agreed that the court tract for land disputes allows uneducated tribunal members to pass judgment, and then forces people to travel a far distance for an appeal. Indeed, I talked with people who lamented about the travel fees to journey to the Housing and Land Tribunal.

Another problem with this system is the bottleneck effect it creates at the Housing and Land Tribunal. This tribunal has authority over the entire Kagera region, which is composed of six districts. Gema stated that there are only two people trying to handle the land appeals from all six districts. To summarize the faulty court tract system for land disputes, Gema said "Ward Tribunal officers

know nothing. Land involves many technicalities. Judicial systems dealing with land is not good. All appeals go to [the tribunal] and they cannot handle the work load."

Clans' Assumed Authority over Individual's Land

The most pervasive land issue in Karagwe is the existence of both customary law and Tanzanian law. I will expand on this problematic dualistic system later in reference to gender inequality, but customary laws lead to problems for both genders through the clan's assumed authority over an individual's land.

Land is typically handed down through generations. According to customary law, land is owned collectively by the clan. Therefore, an individual owning the land has many restrictions and limitations, such as the inability to manage the land freely or sell the land without the clan's consent. This was stated clearly by Winifred Kahumuza, a retired village chairperson, who said "Customary laws do not give people freedom to decide. Clan members must make all decisions." Kahumuza told the story of her sister, who after being widowed, wanted to claim the matrimonial properties. The sister's brother-in-law tried to force her to have sex with him in order to take the land and other assets, in accordance with customary law. Kahumuza's sister took the case to the ward tribunal and received her rightful property, in accordance with Tanzania's statutory law. Indeed, many stories of brothers-in-law interfering in peoples' affairs exist in Karagwe.

Nelson Audax was given a piece of land from his father's estate after his father died. The clan first began creating conflict when they asked Audax to contribute money for the services of a witch doctor, necessary, they said to prevent a hereditary disease in the family. He refused and the clan threatened to take his land away. Later, the clan gave part of Audax's land to his brother and sister. After trying to plant crops, Audax's sister uprooted and burned them. Audax continued cultivating his land that was given away until his sister complained to the clan, resulting in an uncle threatening Audax's life unless he stopped. His next step is to wait for help from WOMEDA. This story is typical in Karagwe. According to customary law, land stays within the clan, which causes problems for people who want to make decisions about their own land.

Gender Inequality in Land Rights

Given the unreliable land system described above, it is no surprise that one of Tanzanian society's most vulnerable groups, women, suffer the most. Similar to the rest of the world, women have a lower status than men in Tanzania; "For all societies the common denominator of gender is female subordination" (Momsen 2004). Although most of the domestic chores and work to produce cash crops are done by women, the woman in the household rarely has any decision-making power. Cash is typically controlled by men and women are kept dependent and vulnerable. Matilda Kasanga of The Guardian newspaper states, "One of the major causes of women's impoverishment is the lack of equal access to rights over control of economic resources with men" (Kasanga 2010). Land is the most valuable resource in Tanzania, and women's limited access to ownership leads to a great gender imbalance.

At this point it is important to define gender equality. Taken from a USAID document, gender equality "refers to the ability of men and women to have equal opportunities and life chances. It does not mean that resources are split 50-50 between men and women" (Rubin & Missokia). There were some people who acknowledged the existence of gender inequality based on the fact that men own most of the land. This is a misguided statement; gender equality in this report will refer to the limited opportunities of women compared with men.

Gender inequality is evident in Karagwe. Women often must go to court and fight for their right to own land. The most prevalent inequality uncovered by this research was a general disregard for the rights of women to own land. Out of eleven land dispute accounts received by women living in Karagwe, nine were caused by blatant disrespect of women's rights. These cases are labeled "gendered problems" because the origin of the problem lies in the perpetrator's belief that the female gender is of lower status than the male. A table of the results is below and a case study of each problem will be presented.

Gendered Problem	Total Accounts
Husband took and/ or sold land without consulting wife	4
Neighbor stole land	3
Clan interfered unnecessarily in land decisions	2

Husband Took or Sold Land Without Consulting Wife

Adelina Sebastiani became very sick in 1987 and was taken to a hospital by her brother. After receiving reports that her drunkard husband was selling

the couple's land, Sebastiani returned to find all of their land sold. Her husband sold a big expanse of land, including coffee cash crops, without her consent. The ward tribunal and district commissioner separately investigated the case, asked Sebastiani's husband why he sold the land when he was to care for a family of ten children, and judged the buyer to give back the land to the family. The buyer refused and wanted to go to court instead. Sebastiani's case was judged by a magistrate with a conflict of interest; he was friends with the buyer. Sebastiani lost and appealed up through the high court, losing each case on the basis that she is not a part of her husband's clan. At the time of this writing, she was attempting to take the case to the Court of Appeal.

Neighbor Stole Land

Praxeda Aliphonce, mentioned earlier, was nursed by her grandmother and raised by her grandparents due to the death of her parents early in her life. Aliphonce's grandfather died in 2003 when she was 21, and left his land to her in a will. She and her husband cultivated the land for six years, supporting their family. One day in 2009, Aliphonce's neighbor told her the land was his because he had only lent the land to her grandfather for a period of time. Her neighbor chased away Aliphonce's hired help when they tried to plant beans and uprooted her sisal plant boundaries. Aliphonce sought the help of the village chairperson and the ward executive officer, but the neighbor failed to attend the land inspection meetings. The neighbor continued to trespass on Aliphonce's land by cutting down some trees to harvest charcoal and cultivating the land for his own profit. With the help of WOMEDA, Aliphonce took the case to the Ward Tribunal and won. The neighbor then threatened to appeal. Aliphonce stated her belief that this problem has come to her because she is a woman; the neighbor knows her grandfather is dead and there is no male clan member to defend her.

Clan Interfered Unnecessarily in Land Decision

After marrying at the age of 17, Saada Abdala bore four children in five years. Her husband worked at a local secondary school but spent his money on alcohol and "other things." He contracted HIV/AIDS and died after six years of marriage. She continued to live on land that had been given to her husband by her father-in-law. Abdala's brother-in-laws advised her to marry one of them lest she want to be kicked off of the land. Abdala refused on practical terms, the family's preferred marriage prospect already had a wife and eight children. One day, while Abdala was gone from the house the older brother-in-law stole

everything out of the house. Feeling like there was no one to defend her right to the land, Abdala moved in with her mother and supported her children with small business. Abdala is now a financially successful owner of many businesses around Kayanga and at the time of this writing, her children were in university or secondary school. Abdala's positive ending could be attributed to her high level of education; she is the only female client I talked with who had at least a high school education.

Differing Opinions Regarding Inheritance

Much of the literature regarding women's access to land in Africa revolves around inheritance. Indeed, I sensed that there would be differing opinions concerning a widow's right to the land, so a situation was posed to many interviewees regarding a widow and land ownership. Answers were gathered from customary law authorities, youth, and land dispute officials. The question and answers received are below.

Let me give you a scenario. A man is given a large piece of land by his father. He then marries a woman and dies within some years. Who now owns that land and why?

	Custom Law Authorities	General Knowledge	WT*, Court, Land Office Officals	Total
The Widow	2	3	5	10
The Husband's clan			1	1
The children		1		1
The widow, only if she has children	1	2		3
Total	3	6	6	15

** WT refers to Ward Tribunal*
** Note: When people answered "the widow, only if she has children," they thought if there were no children the land goes back to husband's clan*

These answers seem very promising given that ten out of fifteen people said the widow owns the land; indeed, it does seem like the conditions on the ground are gradually changing. Just a few years ago, these answers probably

wouldn't have been so encouraging. Even though there is some promise, the conversations highlighted some surprising problems.

The ten people who said the widow owns the land show that many do have an understanding of women's rights and are aware of the changing traditional values. But this also means one-third of the respondents thought the widow had no right to the land on her own behalf. These five responses designate the husband's clan or the children as the rightful owners. The widow is only allowed to own the land on her children's behalf, because the children represent the ongoing life of the deceased husband and the husband's clan. Three of the respondents who ultimately said the widow owns the land, questioned whether the couple had any children. There seems to be some confusion even when the respondents knew the "correct" answer was the widow. The most surprising answer to this question came from the highest court official interviewed, Musa Gema. Gema was the only respondent to say outright that the husband's clan owns the land:

> "Land must remain in the clan. I asked, 'What happens to the widow?' He laughs. It is because the man inherited the land from his father. If the land was not inherited from the father, the woman would own it... If land does not belong to clan, woman can have access to it. Man can give land to his daughters, but sons typically get more. It depends on the person. National law is very clear- gender equality in land rights. The problem is customary law. When a woman contributes to the land, she has access to it."

It is evident that Gema adheres very closely with customary laws, which typically discriminate towards women. His answer also points to the contradiction within Tanzania's dualistic law system in which statutory and customary laws often contradict each other. The next section of this report will discuss the cause for women's land ownership problems and the differing opinions regarding women's rights.

The Cause: A Dualistic Law System

The cause of the evident confusion regarding women's right to own land is the dualistic land tenure system. Both statutory and customary laws are used for the determination of land ownership, and there are major contradictions between the two sets of laws. Looking at the Tanzanian statutory law, one would come to the conclusion that Tanzania is one of the more socially liberal countries in

Africa, which gives ample rights to women in the ownership and control of land. But Tanzanian customary rights are markedly discriminatory against women and are steeped in harmful traditional values.

Tanzania's Statutory Law

Tanzania's land reforms during the 1990s introduced major changes to the land system and prescribed equal rights between men and women. As mentioned earlier, the laws are some of the most liberal in Africa; "Tanzania… passed some of the most radical land laws in Africa in 1999" (Tripp 2004).

The National Land Policy of 1995 was the first major land reform to mandate equal rights for both genders. One of the objectives of this policy was to promote equitable distribution and access of land to all citizens" (Myenzi 2009). Paragraph four states, "In order to enhance and guarantee women's access to land and security of tenure, Women will be entitled to acquire land in their own right not only through purchase but also through allocations" (Tanzania Online 2009). This was Tanzania's first pronouncement of a woman's right to own land.

The Land Act and Village Land Act of 1999 are the monumental collection of laws that instituted radical change to benefit women's rights. The most basic support for gender equality found in the Land Act states, "Every woman has the right to acquire, hold, use and deal with land to the same extent and subject to the same restrictions treated as to the right of any man" (Rutazaa 2006). This is the current law regarding a women's right to own and control land in Tanzania. In addition to this provision, the Village Land Act also explicitly states that any customary law which denies a woman these prescribed rights is "void and inoperative" (Rutazaa 2006). These statements could lead one to believe gender equality within land rights in a reality on the ground, but this is not the case.

Tanzania's Customary Law

The discriminatory nature of customary laws has been noted by the Tanzanian government; paragraph four of the National Land Policy of 1995 states, "Under customary law, women generally have inferior land rights relative to men and their access to land is indirect and insecure." Even though the government has this information, inheritance is still largely governed by customary laws throughout the country. These inheritance laws are contained in

"a set of codified customary rules derived from various tribes" (Kasanga 2010). The exercise of standardizing and documenting traditional laws in Tanzania was undertaken by the colonial government before independence.

Unequal inheritance in Tanzania is critical, given the importance of land for survival. Customary laws deny daughters equal right to the land, because the majority of the land is designated to sons. Matilda Kasanga explains this phenomenon:

> Inheritance, according to the customary law is divided into three degrees namely first degree heirs are the first sons, in case of polygamous marriage, it is the first son of the first wife. These heirs inherit first and usually receive the biggest share of the estate. The second-degree heirs are the other sons who inherit more than the third degree heirs. Daughters, irrespective of their age, inherit the smallest share than that of male heirs unless there are no male children (2010).

Widows are also vulnerable under this system; they can only inherit the property through their children, specifically sons. This means that a widow cannot own the land in her own right, and explains the differing answers I received when I posed the situational widow question.

Although these problems exist, it does seem like the situation is gradually changing. Most people acknowledge that gender inequality still exists, but many women with land disputes are receiving their rights through the courts and most people know that Tanzanian law protects a woman's right to own land. The customary laws authorities agreed that customary laws support gender inequality. When asked what should be done about this, one authority commented on the government's amendments, while another said all customary laws should be thrown out. Indeed, further action is necessary given the unnecessary land disputes many women experience and the agreement among most Tanzanians that men and women do not share the same rights to freely own and maintain land.

Other Common Problems Linked with Land Rights

In addition to revealing the problem of women's access to land in Karagwe, this research also uncovered many other problems that are commonly linked with women's land disputes in Karagwe. These common issues are: lack of education, polygamy, corruption in courts, and mistreatment of wives. A table of these issues with mistreatment of wives disaggregated into wife beating,

alcoholism, and infidelity can be found below. The following section will show how these common issues can lead directly to a women's restricted access to land.

	Little Education*	Polygamy	Corruption	Wife Beating	Alcoholism	Infidelity
Men	4	3	1	0	0	0
Women	10	3	3	4	3	2
Total	14	6	4	4	3	2

** Sixteen total conversations were conducted with clients*
** Little Education means standard 7 and below, only primary school*

Lack of Education and Land Rights

Most of the clients interviewed had little to no education. For the purposes of this paper, a person with only primary education is labeled as one with limited education. Ten out of eleven women interviewed who had experienced a land issue had no education beyond primary school. Because of the unreliable system of land ownership in Karagwe where owners rarely have land titles and boundaries are ambiguous, people often try to take advantage of others. Perpetrators see a person's lack of education as a signal of vulnerability and feel free to impose on land they do not own.

Christian Gatege's story provides the clearest example of this link between education and land issues. Gatege, an 80-year-old man with only three years of education, began having problems when his brother died. His nephew decided to take not only his father's land, but also Gatege's. Gatege is convinced that the nephew began this vendetta due to his lack of education and the nephew's high level of education. Gatege's case has been continuing for over five years and over this time he has: (1) Been physically beaten and robbed of all of his case files, (2) Has faced corrupted judges who turn him away and tell him to return to Bukoba (an hour's travel) another day, and (3) Has experienced his nephew failing to show up to court and promising that the case will continue until Gatege finally dies. Gatege is now helping his grandchild finish his schooling because he has personally experienced the potential troubles of a person lacking adequate education.

Polygamy and Land Rights

Polygamy creates many problems in Karagwe, yet the institution is quite common. Feelings of jealousy among multiple wives are a common joke and women are judged as weak for having these feelings. More than once in Karagwe a man told me a story of miscommunication and problems with his wife and then his solution to the conflict- to take another wife. This destructive solution means instead of working on the relationship or trying to rekindle the love between the couple, another woman is chosen for new excitement. How frequently this happens is unknown, and would make for interesting further research.

Polygamy typically leads to great inequality among the wives. A man will marry another woman and the newest wife will receive more money for basic goods and more emotional care from the husband. Sometimes, a man will marry another wife and will realize that he cannot financially support both wives and sets of children. This leads to grave mistreatment of the original wife.

Of the three female clients interviewed who were in polygamous marriages, polygamy was a contributing factor to each of their land ownership problems. Margaret Gilson's land dispute was a symptom of inequality with the second wife. After nine happy years of marriage and bearing seven children, Gilson's husband took another wife and stopped caring for her. Her husband constantly beat her, chased her away from the house, and sometimes locked her and the children out of the house, forcing them to sleep outside. Gilson would engage in small business to support her and her children, which her husband did not like. The couple has since divorced, but the husband sold much of the couple's land without consulting Gilson. Land, of course, that had been cultivated by both husband and wife for over nine years.

The former, traditional system of the wife depending on the husband for sustenance is not working. There are many cases of husbands mistreating their wives in Karagwe, as seen in the high number of marital conflict cases received by WOMEDA staff. Polygamy is only contributing to the inequality between men and women by keeping women dependent on men. This becomes a problem when men decide to stop fulfilling that responsibility.

Corruption in Courts and Land Rights

Corruption was a reoccurring problem in many of the client's court cases. Four out of 16 stories heard included long court cases due to some sort of

corruption. This included obvious biased judgments in appellate courts, clients going to court only to be sent away multiple times, judges with an obvious conflict of interest ruling over cases, and the court secretary losing case files on multiple occasions as described in the next case study.

After Paskazio Pius was divorced, she moved back with her parents and started a small business. She was given a piece of land and became the head of the household when both of her parents passed away. While supporting her six younger siblings, Pius' neighbor claimed the land was his and took the case to the ward tribunal. The neighbor tried using a fake map designating the land his, brought a person who claimed he had sold the land to the neighbor, and even uprooted the sisal plants which had been planted to designate the boundary. The case went to the district court and has continued for a year. During this time the secretary of the court has lost her case files twice and her advocate has had to draft more. This is clearly corruption; Pius ended her story by saying, "My neighbor is rich, but I am struggling to keep my land." Corruption steals justice away from those without money or resources.

I posed the question, "Do you perceive corruption in Tanzanian courts of today? If so, what kind?" in the officials, general knowledge, and customary law questionnaires. Seven people responded that corruption is a problem, while one said it is not a problem, and one said he was unsure. All of the ward tribunal officials answered in the affirmative and some of the officials said corruption is a widespread problem.

An especially shocking answer was received from Silli Chelia Tiobadi, a nineteen-year-old student attending a vocational school. When asked whether she perceived corruption in Tanzania, she answered:

> "There is a lot of corruption and it oppresses women. If a woman has a case and no money to offer, then she has to offer sexual services to the magistrate. A woman must do this to win a case. It is not easy to win without a bribe of some sort."

The authority of this comment was immediately questioned; Tiobadi said she visits the local primary court in Kyaka during her breaks from school to learn how people obtain their rights. She continued by describing the kind of corruption Christian Gatege experienced when a magistrate repeatedly sends the client away and reschedules the court date.

The one person who denied the current problem of corruption is Musa Gema, the primary court magistrate. He said there is a misconception regarding

corruption and argued that magistrates are paid well these days and are no longer tempted to take bribes.

Mistreatment of Wives and Land Rights

The general mistreatment of wives is quite common in Karagwe. It would be difficult to argue that this mistreatment causes land access restriction, but the two are regularly paired together. The three problems that are covered underneath this general category are infidelity, wife beating and/or abandonment, and alcoholism. Alcoholism may not seem a good fit for this category, but in the Tanzanian context this is appropriate. In a situation of alcoholism, a woman will describe her husband as a "drunkard," meaning she has little access to cash with which to support the family and instead, money is spent on alcohol. Only two clients mentioned infidelity, but common knowledge on the ground leads one to believe the issue is more prevalent. Wife beating and abandonment is commonly manifested in a husband "chasing away" his wife because he no longer wants to care for her.

Conclusion

My research exposed many problems in Tanzania's land system. Boundary disputes, irresponsible actions by land officials, a cumbersome court system for land disputes, and clan interference are experienced by many people due to the unstable system of laws governing land in Karagwe. Gender inequality is evident regarding land access; there are many people who are capitalizing on the vulnerability of women by encroaching on their land or by selling the land without consent in the case of marital land disputes.

This inequality within land rights is a consequence of a highly patriarchal society where women are kept dependent on their male counterparts. The unequal power dynamics between men and women are causing problems because men regularly take advantage of their power by taking land that is not theirs or by selling land that is equally owned by both the man and his wife. This system of inequality is not sustainable.

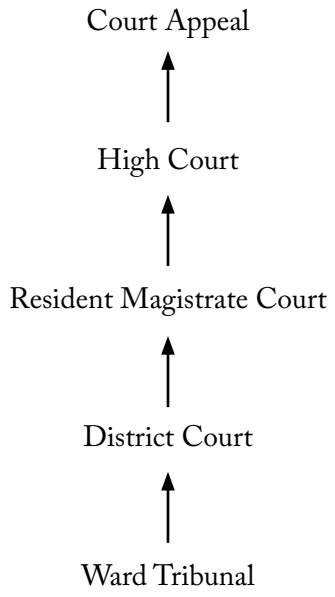
Land reform in Tanzania has been extensive since the early 1990s, and the Tanzanian Government has had the opportunity to address the question of women's access and control of land. Unfortunately this opportunity has not been taken, and women's land rights remain marginalized (Manji 1998). Although the

Tanzanian Government has readily adopted equality provisions taken from the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and has included a Bill of Rights in its constitution, enforcement has remained lacking and women continue to struggle for their right to land (Manji 1998). The government should convene a committee to address women's land rights in Tanzania. Committees in the past have been characterized by secrecy and lack of public debate (Manji 1998). The government needs to openly communicate, encourage public discourse regarding women's access and control of land, and be accountable to the Tanzanian people. Current land legislation should be amended to abolish customary laws so that a single, unified system can govern land. The current dualistic, contradictory system is impairing the most vulnerable in society.

Women's lack of political voice in Tanzania is also contributing to the gender inequality within land rights. Women are not well represented in any level of government, especially the local level where decisions are made daily by the District Council Land Department (DCLD) (Whitehead &Tsikata 2003). A study conducted in Uganda found that courts located in Masaka were "somewhat more progressive on gender issues than other local legal forums," and attributed this difference to the stipulation that one-third of the organization's members should be women (Whitehead &Tsikata 2003). The Tanzanian Government should implement a similar rule to increase the political voice of women within the local government. To date, women's organizations in Tanzania have failed to proactively critique the government's inaction regarding women's land rights (Manji 1998). Women's rights organizations like WOMEDA need to join together to press for more equality. Specifically, these organizations should analyze the present condition and present a unified memorandum to the government. Without equality in land rights, women will remain a largely untapped resource for the country's development.

Appendix A: Court System in Tanzania

An understanding of the Tanzanian court system is essential when considering land rights and gender equality in Tanzania. Land disputes are typically solved in court. The land disputes revealed in this research rarely went beyond the district court. For this reason, a lot was learned about the first three tiers of the court system, but not much about the higher courts. The following diagram describes the court system hierarchy in Tanzania. Afterwards is a short description of the role of each court.



Ward Tribunals are not quite courts; they are an initial proceeding before people go to court. Officials are composed of fellow villagers who have typically had some sort of short training and want to serve the community. There are five members: a chairperson, a secretary, and three general members. The chairperson leads the case meetings and the secretary takes minutes and announces the tribunal's judgment. A person brings a complaint against another, both are brought to the tribunal with witnesses and evidences, they tell their stories and are questioned, and then the members make a decision. Every village or ward has a ward tribunal. Ward tribunals only hear civil cases, including land disputes.

The primary court is the lowest official court. Appeals from the ward tribunal go to the primary court. Complainant and accused represent themselves, and bring witnesses to support their case. All criminal cases come straight to the primary court. Judgments are made by a Magistrate with the help of court assessors. Court assessors are local people with no formal legal training who are selected by the village council; their job is to ensure customary laws are considered. Each case is heard by two assessors.

The district court takes all of the appeals from the lower courts. This is also the location of the regional Housing and Land Tribunal, where land dispute appeals come from ward tribunals around the region.

The resident magistrate court's purpose is to lighten the load of the high court by entertaining some high level cases. Each of the 29 regions of Tanzania has a resident magistrate court.

The high court receives appeals from all lower courts. Murder cases go straight to the high court. There is one high court in Tanzania, and five branches spread throughout the country.

The Court of Appeal is the highest court in Tanzania and is located in Dar es Salaam. Each case is judged by 2-4 judges, and challenges the law itself. These cases are very rare.

References

Kasanga, Matilda. 2010. "Outmoded Inheritance Law Still Deny Women Their Rights." *The Guardian*., Accessed September 23, 2010. http://www.ippmedia.com/front.

Manji, Ambreena. 1998. "Gender and the Politics of the Land Reform Process in Tanzania." *The Journal of Modern African Studies* 36.4: 645-67. Accessed February 6, 2011.

Momsen, Janet H. 2004. *Gender and Development*. London: Routledge.

Rubin, Deborah, and Elizabeth Missokia. 2006. "Gender Audit for USAID/ Tanzania." Rep. USAID& DevTech Systems, Inc. Accessed September 14, 2010. http://pdf.usaid.gov/pdf_docs/ Pnadh239.pdf>.end/?l=15834.

Rutazaa, Aginatha. 2006. "Tanzanian Women and Access to Law- The Case of Kilimanjaro." Rep. Terry Sanford Institute of Public Policy. Accessed September 20, 2010. http://sanford.duke.edu/ centers/ civil/ papers/rutazaa.pdf.

Tanzania National Website. 2010. "National Website of the United Republic of Tanzania." Accessed Sept. 2, 2010. http://www.tanzania.go.tz/ waterf.html.

Tanzania Online. 2009. "The United Republic of Tanzania: National Land Policy." Ministry of Lands and Human Settlements Development. Accessed September 30, 2010. http://www.tzonline.org/pdf/ nationallandpolicy.pdf.

Tripp, Aili M. 2004. "Women's Movements, Customary Law, and Land Rights in Africa: The Case of Uganda." *African Studies Quarterly: The Online Journal for African Studies* 7.4. Accessed September 18, 2010. http://www.africa.ufl.edu/asq/v7/v7i4a1.htm.

Whitehead, Ann, and Dzodzi Tsikata. 2003."Policy Discourses on Women's Land Rights in Sub–Saharan Africa: The Implications of the Return to the Customary." *Journal of Agrarian Change* 3.1/2: 67-112. Accessed February 6, 2011. Doi: 10.1111/1471-0366.00051.

The Khmer Rouge Tribunal: Justice versus Impunity

Sopheada Phy
Heinz Fellow, University Center for International Studies

In memory of my father (Darin Phy, called Chhuor Eav Hai), and my mother (Sary Lim, called Lim Kim You), whose wisdom, warm hearts, and encouragement inspired me to love humanity, justice, and peace – with love and affection.

"They killed my children and my wife. Nobody had rights or freedom then. That's why now I want to find justice for the victims and the younger generation."

- Chum Mey, a Tuol Sleng prison survivor (As quoted in Launey, G.D., December 11, 2009)

"We have to punish [the former Khmer Rouge] … a matter of national responsibility … biggest case of impunity in the world and the mother of other smaller impunities in Cambodia."

- A Cambodian victim (As quoted in Lambourne, 2008)

Abstract

After more than three decades since the demise of the Khmer Rouge regime in 1979 in Cambodia, real justice for victims of the massacre still remains elusive. Some part of that justice has already been denied, even though the Khmer Rouge tribunal has been in the process of prosecuting the leaders and those most responsible. Finding justice for Cambodian victims is integral to the peace-building process in present-day Cambodia. Justice has revealed itself to be a fundamental element in healing the victims' trauma, bringing reconciliation, and building peace in Cambodia. However, the time for justice is running out. Senior Khmer Rouge leaders being held in custody are aging and some have passed away, while others believed to be involved with the Khmer Rouge have not been tried.

This paper argues that the so-called justice being served by the existing Khmer Rouge tribunal is in jeopardy due to poor tribunal design and the challenges of the trials. In addition to the three-decade delay of establishing the Khmer Rouge tribunal, the loopholes in the law of the court; the lack of competent domestic judges, prosecutors, and investigators; and the burdensome legal and political environments for the tribunal all contribute to the unfortunate reality that the injustice and trauma of the Khmer Rouge regime will likely go unanswered. Impunity will likely prevail.

In order to address the reasons why the tribunal has just been established, and how justice could be served for the sake of the Cambodian victims, the Cambodian context, including the Khmer Rouge regime, along with the role of the international community, will first be briefly described. Second, the history of the establishment of the Khmer Rouge tribunal will be documented. Third, the desire for justice from the victims will be explored. Fourth, the challenges of the court's search for justice for the victims will be examined. Finally, the balance between justice and impunity will be weighed, and some recommendations will be suggested to end the paper.

The Cambodian Context, the Role of the International Community, and the Khmer Rouge

In 1863, Cambodia became a French protectorate and then a colony. In 1953, Cambodia resumed its full independence under the effort and leadership of Prince Norodom Sihanouk. During the Sihanouk administration, Cambodia was relatively peaceful and known to be an independent, neutral country. However, this completely changed when Cambodia became drawn into the Vietnam War in the second half of the 1960s. Sihanouk allowed the North Vietnamese troops to establish bases on Cambodian soil in order to attack South Vietnam. During that time, the United States secretly began to bomb Cambodia in an effort to demolish the Vietnamese communist sanctuaries inside its territory. The origin of these covert American bombings is believed to date back to 1965 under the Johnson administration. From 1965 to 1968, it is believed that there were 2,565 sorties into Cambodia, along with 214 tons of bombs (Owen and Kiernan 2006). In addition, from 1969 to 1973, the Nixon administration dropped over 500,000 bombs and landmines on Cambodia and illegally deployed troops over its border, without notifying the US Congress (Conachy 2001). The bombings were attempts to root out North Vietnamese troops on Cambodian soil and to protect the Lon Nol regime from Cambodian communist forces. As Conachy (2001) stated, the American bombing caused more than 700,000 Cambodian deaths and

left about a third of the population homeless.

In 1970, the U.S. supported General Lon Nol to oust Sihanouk from power. While Sihanouk was on holiday abroad, the anti-Vietnamese and U.S.-backed Lon Nol government took power in Cambodia, and renamed the country the Khmer Republic. Immediately, Sihanouk forged a coalition with the so-called communist Khmer Rouge who fought a civil war with the Lon Nol government, with separated support from China and North Vietnam. China supplied weapons and food, while North Vietnam sponsored troops. The Khmer Rouge politically collaborated with Sihanouk because they believed that by utilizing the name of Sihanouk[1] , they could call for more participation from ordinary Cambodians, particularly peasants, to join the armed group. At the same time, the Khmer Rouge could be aided by China and North Vietnam.

In 1975, the United States withdrew its troops from Vietnam and Cambodia, which made the Lon Nol government vulnerable. Due to an economic slowdown in Cambodia, corruption in the government, political upheaval, and the withdrawal of U.S. forces, the Khmer Rouge guerillas overthrew the CIA-installed Lon Nol government. This coup enabled Pol Pot to gain power in Cambodia, which he ruled until 1979. He renamed Cambodia the Democratic Kampuchea. Sihanouk became the symbolic head of state, while Pol Pot consolidated all power in his own hands. Subsequently, Sihanouk resigned from being head of state, while the Khmer Rouge broke their relations with North Vietnam.[2] The Khmer Rouge transformed the country into a supposed agrarian utopia, in which all people were forced to work in rice fields, dig canals, and build dams. Therefore, all the city-dwellers were evacuated to the countryside. Money was abolished, books were burned, and banks, schools, temples, and other social institutions were closed. The Khmer Rouge abhorred the Lon Nol government. Intellectuals were accused of working for foreigners, and the rich were thought to have gained their wealth through corruption and the exploitation of peasants – individuals who were considered uneducated, poor, and hardworking by the Khmer Rouge. In this regard, all the intellectuals, doctors, lawyers, teachers, among others; the rich; those working for the U.S.-installed

1. The people living in the countryside still back Sihanouk and want him to lead the country again; Sihanouk gained popularity among those people during his effort in bringing independence from France in 1953 and during his reign between 1953 and 1970.

2. The Khmer Rouge disavowed with Sihanouk and Vietnam because Sihanouk allowed North Vietnamese troops to cross Cambodian soil to attack the South during the Vietnam War. The other reason is that the Khmer Rouge was unhappy with Sihanouk feudalist regime because they believed that only communism would be the best choice for ruling Cambodia.

Lon Nol government; and those believed to have connections with foreign governments – particularly Vietnam – were detested, targeted, and murdered. Those believed to be lazy, and those who stole the so-called common properties of the regime such as rice, vegetables, and other food stuffs were severely tortured or even executed. Additionally, family members could not live together, and children were separated from their parents. It is believed that under the Khmer Rouge reign of terror, an estimated 1.7 million people, or about a quarter of the total population, died due to starvation, overwork, disease, extra judicial killing, and execution.

Then, in 1979, Vietnam invaded Cambodia, overthrew Pol Pot and his government, and installed mid-level Khmer Rouge leaders, who defected to Vietnam in 1977 and 1978, to lead the country. Some of the installed leaders included Pen Sovann, Chan Sy, Heng Samrin, Chea Sim, and Hun Sen. Cambodia was then renamed the People's Republic of Kampuchea. Meanwhile, the Khmer Rouge escaped into the jungle along the Cambodian-Thai border and continued fighting against the Vietnamese-installed government. Moreover, Sihanouk, with supports particularly from the United States and China, fled to the forests with the Khmer Rouge guerillas and took on a new role as the global defender of the Khmer Rouge regime in exile.

In the international political arena, the Vietnamese-backed government was strongly condemned by the international community, while the Pol Pot regime was continuously supported by the United States, China, and certain European states. It was also recognized by the United Nations (UN) as the official government of Cambodia. Meanwhile, the Cold War pitted the United States and China against the Soviet Union and Vietnam. Therefore, United States and Chinese foreign policies regarding Cambodia reflected their political strategies. By continuing to sponsor the Khmer Rouge forces to fight against the Vietnamese-installed government, the U.S. and Chinese governments delayed justice for Cambodian victims of the regime in exchange for their own self-interests.

The U.S. sponsorship of the Khmer Rouge reflected its two-track foreign policy in the region. On the one hand, it was humiliated by its defeat in the Vietnam War; on the other, it sought to eliminate and contain the Soviet Union's power and expansion during the Cold War, especially since the Soviet Union supported Vietnam and the Vietnamese-backed government in Cambodia. As Colhoun (1990) mentioned, U.S. foreign policy toward Cambodia during that time was characterized by Chester Atkins, a member of the U.S. House of Representatives, as "a policy of hatred." Colhoun (1990) further claimed that "the US is directly responsible for millions of deaths in Southeast Asia over

the past thirty years. Now the US government provides support to a movement [the Khmer Rouge guerrillas], condemned by the international community as genocidal" (p. 40). Pilger (1997) proffered that "the U.S. not only helped create conditions that brought Cambodia's Khmer Rouge to power in 1975, but actively supported the genocidal force, politically and financially" (p. 5).

Moreover, Beijing's two-track foreign policy contributed to the conflict, which limited peace in Cambodia. China supported the Khmer Rouge, believed them to be well-furnished (as evidenced by the overthrow of Lon Nol), and recognized Prince Sihanouk as the leader of Cambodia (Hood, 1990). In 1984, Chinese Vice Premier Deng Xiaoping reaffirmed his support for the Khmer Rouge saying: "I do not understand why some people want to remove Pol Pot… it is true that he made some mistakes in the past but now he is leading the fight against the Vietnamese aggressors" (Chanda 1984, p. 30). Xiaoping continued to sustain the Khmer Rouge by asserting that "There are no two ways to go about solving the Kampuchea problem. The Vietnamese aggression, invasion, and occupation of Kampuchea cannot be justified or forgiven. We must fight and keep fighting the Vietnamese until they are beaten and forced to evacuate your country completely and permanently" (Prince Norodom Sihanouk 1979, p. 109).

Meanwhile, in the diplomatic arena, most of the world followed the United States and China in their sponsorship of the Khmer Rouge during the 1980s. There is evidence that, in addition to the large supply of weapons, China supported the Khmer Rouge with US$100 million per annum (Kiernan 1993). From 1979 to 1986, US$85 million was given to the Khmer Rouge by the United States (Kiernan 1993). Also, from 1979 to 1991, arms and munitions were provided by the European governments, led by Great Britain (Jennar 2006). The UN agencies also followed U.S. and Chinese support for the Khmer Rouge. It is reported that aid sponsored by the United States and the international community was channeled to the Khmer Rouge through Thailand. For instance, the World Food Program passed US$12 million through Thailand to aid the Khmer Rouge (Kiernan 1993).

In the aftermath of the Khmer Rouge regime, Mysliwiec (1988) asserted that Cambodia "is the only third world country that is denied United Nations development aid" (p. 73). The international community turned a blind eye to Cambodia during the 1980s while its people were living in hunger, poverty, and fear. Humanitarian aid is a crucial factor to countries emerging from brutal war and conflict, and thus should have been provided to Cambodia at that time. Boua (1993) notes that:

> For thirteen years, from 1979 to 1992, Cambodia did not receive UN

> development aid. The reason is that the government of the State of Cambodia was not recognized by the UN or Western countries, the donors of UN funds, despite the fact that it was this government which ended the suffering and genocide perpetrated by the Khmer Rouge regime […] 8.5 million Cambodians living under the Hun Sen regime continued to be punished by the world community (p. 273).

In 1989, as the regional politics changed and were pressured by the international community, the Vietnamese troops began withdrawing from Cambodia. Cambodia was renamed the State of Cambodia. In 1991, a peace accord was signed in Paris by four Cambodian factions – the Cambodian People's Party (CPP) of the Vietnamese-installed government, the Khmer Rouge Party, the Royalist Party (FUNCINPEC), and the Buddhist Liberal Democratic Party – the representatives from 18 countries, and the UN Secretary General. Immediately after the peace agreement, the UN set up the United Nations Transitional Authority in Cambodia (UNTAC) to assist Cambodia during its transition from war to peace, and to supervise the national election of 1993. Among the four parties, only the Khmer Rouge withdrew from the election. The election resulted in a coalition government of Prince Norodom Ranariddh, Sihanouk's son and the leader of FUNCINPEC Party, and Hun Sen, the leader of pro-Vietnamese CPP. They served as co-prime ministers until 1997, when Hun Sen launched a coup d' etat against Ranariddh and continued as the sole prime minister from the 1998-election onwards.

The Journey toward the Khmer Rouge Tribunal

The Khmer Rouge Tribunal was first initiated by Vietnam and encouraged the Vietnamese-installed Cambodian government during the 1980s to try Pol Pot and his generals. This People's Revolutionary Tribunal was generally regarded as a "show trial" due to a lack of defense counsel and suitable due process. Nonetheless, it was used to prosecute Pol Pot and Ieng Sary, the prime minister and minister of foreign affairs, in absentia in August 1979. The trial ended with death penalty sentences for both. Still, in the collective memory of Cambodian survivors, the trial is regarded as unfair and unacceptable due to the fact that both its initiation and procedure were implemented by Vietnamese design.

After the Paris Peace Accord on Cambodia in October 1991, the establishment of a democratic and non-Vietnamese government in 1993, and the changing needs of the Cambodian people after a long civil war, the Cambodian

government gave political priority to peace and national reconciliation rather than justice. With this policy, the government could strengthen their own power while satisfying the desires of the people. This was reflected by the Prime Minister Hun Sen's words that "A trial would only open old wounds and lead to possible instability. We should dig a hole and bury the past and look ahead to the 21st Century with a clean state" (Beigbeder 2005, p. 131).

Four years later, however, the co-prime ministers of Cambodia, Norodom Ranariddh and Hun Sen, requested assistance from the UN and the international community to bring those involved in committing crimes in the Democratic Kampuchea to justice[3]. On 12 December 1997, the UN General Assembly adopted a resolution entitled "Situation of Human Rights in Cambodia" to provide a mandate to the UN group of experts to investigate the possibility of bringing the Khmer Rouge to justice. The group of experts was established by UN Secretary-General Kofi Anan with three major goals: "to evaluate the existing evidence and determine the nature of the crimes committed, to access the feasibility of bringing Khmer Rouge leaders to justice, and to explore options for trial before international or domestic courts" (Ratner 1999, p. 949). These experts included Sir Ninian Stephen, former Governor-General of Australia and former judge of the International Criminal Tribunal for the former Yugoslavia as chairman; Judge Rajsoomer Lallah, a longtime member of the UN Human Rights Committee and Special Rapporteur for Myanmar of the UN Commission on Human Rights; and Steven Ratner, participant in the Cambodian settlement talks and consultant to the US State Department on bringing Khmer Rouge to justice (Ratner 1999).

After their investigations, the experts concluded that the crimes committed during the Democratic Kampuchea could be regarded as genocide, crimes against humanity, and war crimes. This led to five options: "a tribunal established under Cambodian law, a United Nations tribunal, a Cambodian tribunal under the United Nations administration (through a bilateral agreement between the United Nations and Cambodia), an international tribunal established

3. The letter sent by both prime ministers reads "…We are aware of similar efforts to respond to the genocide and crimes against humanity in Rwanda and the former Yugoslavia, and ask that similar assistance [to] be given to Cambodia. Cambodia does not have the resources or expertise to conduct this very important procedure…We believe that crimes of this magnitude are of concerns to all persons in the world, as they greatly diminish respect for the most basic human rights, the right to life. We hope that the United Nations and the international community can assist the Cambodian people in establishing the truth about this period and bringing those responsible to justice. Only in this way can this tragedy be brought to a full and final conclusion…" (Klein 2006, p.555).

by multilateral treaty, and trials in states other than Cambodia."[4] The UN rejected the tribunal type – a tribunal to be established in the Cambodian court system and is fundamentally national in character – proposed by the Cambodian government, which led the Office of Legal Affairs of the UN Secretariat to end negotiations on 8 February 2002.

The UN General Assembly, in Resolution 57/228, requested the Secretary-General to resume negotiations with the Cambodian government without any postponement on 18 December 2002 after Hun Sen again requested UN assistance from the Secretary-General (Klein 2006). Resuming the previous negotiation, the UN and the Cambodian government agreed on the establishment of ad hoc Extraordinary Chambers in the Courts of Cambodia (ECCC). Ultimately, a compromise was reached between the Cambodian government and the UN on 17 March 2003, after about seven years of painstaking negotiation. The so-called March Agreement concerning the creation of the Khmer Rouge tribunal was approved by the consensus of the UN General Assembly on 13 May 2003, and officially adopted by Cambodian General Assembly in October 2004 (Klein 2006). In June 2006, the trial was successfully established to prosecute the Khmer Rouge. About three decades after the fact, the tribunal had finally been created. Meanwhile, the Cambodian survivors lived in trauma, anxiety, and injustice during this long, drawn out process.

On the Side of Justice: The Victims' Desire

"Almost the whole Cambodian population would like a tribunal."

- A female genocide survivor who is the director of Cambodian human rights NGO (as quoted in Lambourne 2004)

A number of surveys regarding justice and the Khmer Rouge tribunal have been conducted following the UNTAC intervention in settling Cambodian conflict in 1991. As evidenced in Lambourne (2004), in 1996 and 1999, the Khmer Journalists' Association and the Institute of Statistics and Research on Cambodia conducted surveys on Cambodian opinion concerning the Khmer

4. See the report of the group of experts for Cambodia established pursuant to General Assembly resolution 52/135 at http://www.unakrt-online.org/Docs/GA%20Documents/A-RES-52-135.pdf. Retrieved January 12, 2011

Rouge tribunal respectively. The results of both surveys revealed that over 80 percent of Cambodians wanted the surviving Khmer Rouge leaders to be brought to justice. In August 1999, there was a rally of 5,000 people during the visit of a UN delegation to Phnom Penh to show their desire to have a Khmer Rouge tribunal. Similarly, in 1999, a petition calling on the UN to set up an international tribunal was signed by nearly 85,000 Cambodians. This clearly illustrates that the majority of Cambodian people desire justice—a feat that only the international tribunal could provide for them.

In addition, a survey of 12,810 Cambodian victims conducted by the Khmer Institute of Democracy reported that 86 percent of those interviewed expected that the Khmer Rouge tribunal would bring justice for them (Khmer Institute of Democracy 2008). Similarly, a survey conducted by the Center for Social Development measured victims' perceptions of the national reconciliation through the Khmer Rouge Tribunal. The result indicated that 82.35 percent of participants expected that justice would be served only by the Khmer Rouge tribunal, and national reconciliation would then be encouraged to follow (Center for Social Development 2006).

Furthermore, a nationwide population-based survey conducted by the Human Rights Center at the University of California-Berkeley sought to measure the Cambodian people's perceptions of the Khmer Rouge tribunal. It reported that 82.9 percent still feel hatred toward the Khmer Rouge, while 71.5 percent want to see those criminals hurt or miserable (Pham, Vinck, Balthazard, Hean, and Stover 2009). Moreover, when specifically asked who should be held accountable, 51 percent mentioned the Khmer Rouge leaders or officials. With regard to this survey, it can be inferred that justice would be served for the victims if the perpetrators would be tried; otherwise the victims will continue living in trauma and misery. In the report, expectations from the victims run high for the tribunal to oversee severe punishments and unveil the truth about the regime, so justice can be served. More importantly, the victims hope to uncover the truth on why and how Cambodians could kill their own countrymen; it is clear that many of these wounds have not yet healed. In fact, the author of this article himself witnessed the violent riot that broke out against Khieu Samphan, former president of the Democratic Kampuchea, at his residence in Phnom Penh in November 1991[5].

5. Khieu Samphan had arrived in Phnom Penh as a Khmer Rouge representative to the Supreme National Council, which was set up under the Paris Peace Agreement signed in 1991 by the Cambodian warring factions to represent Cambodia throughout the transitional period; however, due to this intense demonstration against him, he was escorted to Bangkok, Thailand, for safety.

According to the survey on Cambodian victims' opinions on justice and national reconciliation conducted by the Center for Social Development, the majority of the victims would feel justice if the Khmer Rouge would be prosecuted. In addition, half of them would feel justice if those who paved the way for the Khmer Rouge to come to power and those who supported the Khmer Rouge following its collapse would be also tried. The survey reported that 68 percent of the participants want the Khmer Rouge to be tried, while 51 percent stated that the tribunal should try all those involved in the Khmer Rouge regime, including those who supported the Khmer Rouge during its inception and its demise (Center for Social Development 2006).

With regard to the above surveys and evidence, it is starkly clear that the victims of the genocide want the Khmer Rouge leaders, and those involved with the crimes before and after the regime to be prosecuted – so that justice will be served. However, some might question why the majority of Cambodians, who are demographically about 95 percent Buddhist, could not forgive, forget, and move on. According to the Buddhist principle of Karma, those who do bad in this life will receive bad in the next life, and those who do good in this life will receive good in the next life. To further illustrate, a Buddhist monk in the Documentation Center of Cambodia-documentary video "Khmer Rouge Rice Fields," reported by Rachana Phat and directed by Youk Chhang, restated Buddha's word that "vindictiveness ends in [non]-vindictiveness; if someone does something bad to you, and you take revenge, then vindictiveness will never end; the disagreement will keep going in the next life."

However, in spite of the important role of Buddhism in the perception of justice, the victims still think that the perpetrators, particularly the Khmer Rouge leaders, should be brought to justice. They hold that these criminals could not be pardoned even though they believe in the law of Karma (International Center for Transitional Justice 2008). This is portrayed by the angry words of a victim who said that "I would say it is a human nature and though I am one of the followers of Buddhism, I really wish to kill him [Duch] since he killed many lives; we cannot let such a perpetrator live his life."[6] In the documentary video "Khmer Rouge Rice Fields," Taing Kim, a genocide survivor, condemns the wrong doings of the Khmer Rouge soldiers towards her and her family and strongly demands that the criminals have to be executed even though she is a Buddhist. She said

6. The word of the victim was translated by the author directly from the documentary video "Duch on Trial: Time for Justice (Week 25)" produced by The Asian International Justice Initiative, collaboratively sponsored by the East West Center and UC-Berkeley War Crimes Center. Here is the link to the documentary video http://forum.eastwestcenter.org/Khmer-Rouge-Trials/

that "It is said, vindictiveness does not end by being vindictive, but I will not have closure on the past without being vindictive." She seems to be losing hope in seeking justice and continues to live in trauma, mentioning that "I don't want to remember my past since no one will be able to compensate me for my losses."

All in all, justice is strongly desired from Cambodian victims and the Khmer Rouge tribunal is expected to effectively complete this job for them. Sadly, some victims have already begun to believe that no one will be able to reveal the truth of the massacre and bring justice for them.

On the Side of Impunity: Loopholes in the Statute and the Challenges of the Khmer Rouge Tribunal

After the 1993-Cambodian election, the US actively encouraged the new government to bring those involved with the Khmer Rouge to justice, and played a leading role in developing the Cambodian Genocide Justice Act. The Act, passed in 1994, aimed to collect information regarding the crimes committed under the Democratic Kampuchea, and to encourage the establishment of a tribunal to prosecute the Khmer Rouge. However, being aware of its involvement with the Khmer Rouge, the US limited their accountability by suggesting the following statement for the Genocide Act: "Consistent with international law, it is the policy of the United States to support efforts to bring to justice members of the Khmer Rouge for their crimes against humanity committed in Cambodia between April 17, 1975 and January 7, 1979" (Chigas 2000).[7]

Encouraged by Thomas Hammarberg, the UN Secretary-General Special Representative for Human Rights in Cambodia, the co-prime ministers—Norodom Ranariddh and Hun Sen—sent a letter requesting UN assistance in creating a tribunal to Secretary General Kofi Anan. However, the enquiry was rejected and no interest was shown by China, the US, or the United Kingdom, when presented to the Security Council (Henkin 2001). The negotiation had been delayed until both parties, the Cambodian government and particularly the UN, agreed that they both would not be indicted for their involvements

7. Furthermore, not only has the US declined to be a member of the International Criminal Court (ICC), but they compelled the parties of the ICC to ratify an accord under Article 98, exempting American personnel from being sentenced. This agreement was endorsed by the Cambodian government on 3 October 2003, as negotiated by US Secretary of State Colin Powell (Fawthrop and Jarvis 2005).

with the Khmer Rouge, which is clearly stated in Article 2 of the Law on the Establishment of the ECCC that:

> Extraordinary Chambers shall be established in the existing court structure, namely the trial court and the supreme court to bring to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian laws related to crimes, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.[8]

By referencing the "senior leaders of Democratic Kampuchea and those who were most responsible…from 17 April 1975 to 6 January 1979," the court's temporal, territorial, and personal jurisdictions are not thoroughly defined. The language clearly indicates that Khmer Rouge cadres who did not hold senior positions during the established period, those directly and indirectly associated with the Khmer Rouge, as well as crimes that took place before and after the given period are not within the jurisdiction of the court.

Moreover, the tribunal is only authorized to render a judgment against the senior leaders and those "most responsible." Pol Pot (known as "Brother Number 1"), prime minister of the Democratic Kampuchea, and Ta Mok, Chief of General Staff of Revolutionary Armed Forces of Democratic Kampuchea, died in 1998 and 2006 respectively. Therefore, the prime defendants brought to trial have been Kaing Khek Iev (known as comrade "Duch"), the commander of the infamous prison Tuol Sleng prison (known as "S-21") in Phnom Penh, Khieu Samphan, former president of the Democratic Kampuchea, Nuon Chea (known as "Brother Number 2") second in command to Pol Pot, Ieng Sary, the foreign minister of the Democratic Kampuchea, and Ieng Thirith, the social affairs minister of the Democratic Kampuchea.

Taking advantage of these limitations, some figures in the current Cambodian government, Sihanouk[9], Vietnam, the US, China, and others involved

8. See the law on the establishment of the extraordinary chambers in the courts of Cambodia at http://www.eccc.gov.kh/english/law.list.aspx. Retrieved January 12, 2011

9. Sihanouk served as the head of state for the Khmer Rouge from 1975 to 1976, but was forced to be out of the office and kept under house arrest by the Khmer Rouge between 1976 and 1979. He initially and indirectly paved the way for the Khmer Rouge to come to power by allowing the North Vietnamese troops to establish bases on Cambodian soil in its fight against U.S.-backed South Viet-

with the Khmer Rouge before and after the given period, will not be tried and get away with their murderous involvements. This is clearly at odds with former UN Secretary-General Kofi Annan's statement that "impunity is unacceptable in the face of genocide and other crimes against humanity" (as cited in Beigbeder 2005, p. 131).

There is also a problem in Article 14 of Chapter V entitled "Decisions of the Extraordinary Chambers" of the Law on the Establishment of the ECCC, which is the super majority formula of the tribunal. Article 14 states that:

> The judges shall attempt to achieve unanimity in their decisions. If this is not possible, the following shall apply: a decision by the Extraordinary Chamber of the trial court shall require the affirmative vote of at least four judges; a decision by the Extraordinary Chamber of the Supreme Court shall require the affirmative vote of at least five judges. When there is no unanimity, the decision of the Extraordinary Chambers shall contain the opinions of the majority and the minority.

Chapter III, Article 9, entitled "Composition of the Extraordinary Chambers" of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, dictates that the Trial Chamber contains five judges, three Cambodian judges and two foreign judges, and the Supreme Court Chamber contains seven judges, four Cambodian judges and three foreign judges. In this model, Cambodian judges outnumber foreign judges, unlike the mixed tribunals in both East Timor and Sierra Leone, where foreign judges were in the majority. This supermajority formula might be risky to the due process of the trial, as the political manipulation of the Cambodian government may interfere with the verdict of the court. With these approved Articles, judgment based on a three-two ratio from the Trial Chamber and a four-three ratio from Supreme Court

nam. In addition, he played critical role in the first half of the 1970s up to the Khmer Rouge triumph in 1975—joining with the Khmer Rouge guerillas and urging the Cambodian people to take part in the Khmer Rouge armed group. Moreover, when the Khmer Rouge was overthrown by the invading Vietnamese troops, Sihanouk, with the supports particularly from the United States and China, fled to the forests with the Khmer Rouge guerillas and took on a new role as the global defender of the Khmer Rouge regime in exile. To further illustrate, Lao (2007, September 5), in his article "No Immunity for Sihanouk," claimed that "Many Cambodian people still believe that Sihanouk was instrumental in the Khmer Rouge's victory and was therefore also responsible for the suffering of the Cambodian people under the Khmer Rouge's rule. They also want justice and to know the truth about their horrible past history in which Sihanouk must have had a hand due to his association with the Khmer Rouge."

Chamber would result in no final decision from the ECCC; thus, the defendants may have better odds to escape punishment.

Another reason that the Khmer Rouge tribunal does not meet the international standards of justice is the scarcity of competent domestic judges, prosecutors, and investigators. Put simply, Cambodian judges, prosecutors, and investigators lack the appropriate legal education and experience in international criminal law to deal with such high level cases (Menzel 2007). The Cambodian judicial system, moreover, has been manipulated by the Cambodian government and is widely viewed as corrupt and fragile due to the close ties between Cambodian judges and the government. The Cambodia director for Human Rights Watch, Sara Colm, comments that "What you have seen is the government selecting some of the worst choices from the Cambodian judiciary. Some of those who have been appointed are notorious for presiding over show trials and have track records of acting based on political instructions instead of evidence" (Faiola 2007, February 2). In an interview conducted with Cambodian survivors, Ramji (2000) argues that:

A domestic trial obviously relies on a functioning and impartial judiciary. Cambodia has never seen an impartial and independent judiciary, and most legal experts were murdered by the Khmer…In a striking display of unanimity, everyone of the interviewees stated that a trial could not be held in Cambodia because the judiciary is too corrupt and weak (p. 141).

Justice versus Impunity

As discussed above, the jurisdiction of the tribunal was limited given that the general context of the mass atrocity and the demand of justice from the victims; impunity still prevails. This is because the mid-level Khmer Rouge leaders, if not other low-ranking leaders, and those involving in supporting and sustaining the Khmer Rouge would never be brought to justice. However, since the statute of the court was already set and it is unlikely that it would be changed due to a political agreement between the UN and Cambodian government, the only hope for the victims is that the court would not bring, due to its jurisdiction, an incomplete justice for them unless it successfully, effectively, and independently completes its current work and mandate without any interferences.

In July 2010, case 001 was decided with the verdict that the S-21 Prison Chief Kaing Guek Eav, known as Duch, was guilty of war crimes and crimes against humanity. He was sentenced to thirty years in jail; however, because he was arrested and illegally held in custody for eleven years prior, he will be jailed for only nineteen more years to bring his total prison time to thirty years.

This judgment has been bitterly contested by the victims due to the leniency of the sentence handed down to Duch, who was responsible for around 15,000 deaths of men, women, and children. They had expected the verdict to be a life imprisonment sentence, if not even a death sentence.

This verdict disappointed most of the Cambodian victims. "I think Duch should have been sentenced to life imprisonment," a victim said; "My only reparation that I need from him [Duch] is life imprisonment sentence in order to compensate with my anger and suffering that I lost my father and grandfather in the regime," another victim responded; "I'm still angry with him, but the legal decision has been made, so I cannot do anything, and I am disappointed and have to force myself to move on and forget this pain," another victim added. Yet, another victim pointed out that Duch's trial brought both justice and injustice for the victims saying: "Duch's trial brought justice to the victims in terms of revealing the truth about the real perpetrator, while talking about injustice, the Duch's sentence is so light, serving in prison for a short period of time."[10]

Case 002 involving four senior Khmer Rouge leaders, including Khieu Samphan, Nuon Chea, Ieng Sary, and Ieng Thirith, is expected to go to trial in mid-2011. This is considered to be the most important case, causing both the victims and the world to closely pay attention in the coming months. So far, most of the accused persons have been unlikely to cooperate with the tribunal. Khieu Samphan, in an interview with the Radio Voice of America in 2007 before he was arrested, said that "[during the regime] I had no power…just a symbol, a representative" (Voice of America 2007, November 13). He admitted there was killing, but provided no reason on why the killing happened; "I totally understand that almost every family was affected by the killing. That is completely true, but why did that happen?" He pointed out that the history of the Khmer Rouge regime needs more research since, with the existing ones, the historians "got things right on B-52 bombardment, but they did not get the truth about Khmer Rouge mass killings." (Voice of America 2007, November 13). In this regard, it can be inferred from Khieu Samplan's words that the mass killings during the Khmer Rouge regime were probably associated with the others, if not the Khmer Rouge. However, as a head of state, he undeniably should have known what was going on under his leadership. Meanwhile, he continued claiming that there was an expression emerged from Eastern zones along the Vietnam border that "No

10. The words of the victims were translated by the author directly from the documentary video "Duch on Trial: Time for Justice (Week 25)" produced by The Asian International Justice Initiative, collaboratively sponsored by the East West Center and UC-Berkeley War Crimes Center. Here is the link to the documentary video http://forum.eastwestcenter.org/Khmer-Rouge-Trials/

gain in Keeping, no loss in killing." He is probably inferring that this is one of the causes of the brutal atrocity in the regime.

Moreover, Noun Chea shared similar ideas with Khieu Samphan by stating in the Frontline World documentary video "Cambodia: Pol Pot's Shadow," reported by Amanda Pike, that "I would show my respect for the souls of my people who gave up their lives at that time, and I would express my condolences to the people, and I would tell them that it wasn't the Khmer Rouge that killed our people, it was the enemy—the country that was our enemy, and I don't want to name the country and destroy the alliance of friendship." In the documentary, even though Noun Chea did not specifically mention which country was the enemy of the Democratic Kampuchea and was involved with the massacres, Maguire (2005) stated that Noun Chea admits that his regime made some mistakes and blames the Vietnamese for the deaths in Tuol Sleng prison and in the killing fields. However, if Vietnam was truly involved in the Cambodian killings, it would be difficult to actually indict Vietnam because the jurisdiction of the tribunal is limited only to the crimes committed by the senior leaders and those most responsible of the Khmer Rouge regime. Therefore, if Vietnam was truly guilty as Noun Chea claimed, it would most likely escape punishment.

Cases 003/004 include allegations against five more Khmer Rouge leaders, whose names are still confidential, and are currently under investigation. However, they were not welcomed by the Cambodian government, since it is believed that the cases involved those currently working in senior positions in the Hun Sen government. It is clearly proclaimed by Prime Minister Hun Sen that he prefers to see the court fail rather than seeing Cambodia fall into conflict again. He alluded to the fact that any new investigations might spark a civil war in the country by saying "I would prefer to see this tribunal fail instead of seeing war return to my country" (Ek 2009, March 31). Further, during an official visit to Cambodia in October 2010, UN Secretary General Ban Ki-moon appealed by stressing to the Hun Sen government to "provide full cooperation and fully respect the independence of the court" (Cheang 2010, October 28). His appeal was intended to send a message to the world that the crimes committed by the Khmer Rouge will not go unpunished; however, Prime Minister Hun Sen still strongly opposed and tried to block new investigations of the tribunal.

As mentioned in the earlier section, it was the political agreement between the UN and the Cambodian government that only the senior leaders and those most responsible would be indicted. This is particularly why the Cambodian government dared to block cases 003/004, since according to Khieu Kanharith, a spokesman of the Cambodian government, Prime Minister Hun Sen believes that the newly accused persons were not senior leaders in the Khmer

Rouge (Carmichael 2010, October 27). However, even though the government is politically quite sure that those suspects were not holding senior positions in the Khmer Rouge, there may be a case that they could be considered as most responsible persons, which falls within the jurisdiction of the court. This could be the reason that the international co-prosecutor, though opposed by Cambodian co-prosecutor, has tried to launch the new cases.

Since cases 003/004 are very controversial, a vital question can be raised: Will there be a civil war as Prime Minister Hun Sen asserted if the cases are moved on? Yet if there was going to be a civil war, it would have probably already erupted since the arrests of the top surviving Khmer Rouge leaders. Therefore, it is unlikely to happen due to the extinction of the Khmer Rouge in 1998 when Pol Pot died and his commanders and soldiers disarmed for the exchange of being forgiven by the government. In this regard, it is unlikely that the Khmer Rouge soldiers would rise up and start the war with the government. What can be inferred from Hun Sen's assertion is that he is playing a two-track policy for the cases 003/004. On the one hand, he is more concerned about the internal division inside his own political party, the CPP, which is dominantly controlling the government, due in part to some of the top leaders, including Hun Sen, being former Khmer Rouge commanders. On the other hand, he could gain more popularity and support, while at the same time satisfying his people, if they view him as the leader who prioritizes and cares about peace and security in the country.

Either way, this clearly shows the political interference of the government in the tribunal's affairs, so the court is not totally independent from government influences. This allows to-be-indicted suspects get away with their murderous pasts as impunity still prevails. The report issued by the Open Society Justice Initiative (2010) reads:

> If any of these cases are dismissed, transferred, or otherwise handled in a manner that does not evince independent decision making consistent with international standards, the court will be left with a legacy of impunity rather than justice in spite of its accomplishments in other cases (p. 6).

Already, adding to the loopholes in the statute of the tribunal that those who did not hold senior positions during the Khmer Rouge regime and those involving in supporting and sustaining the Khmer Rouge are out of jurisdiction of the court, the case 001 verdict has not satisfied most of the victims, while the case 002-accused persons have denied their responsibilities for the crimes. In addition,

the Cambodian government has tried to interfere in the judicial independence by blocking cases 003/004. This is a clear sign indicating that impunity will dominate justice in Cambodia.

Conclusion

Justice being served by the Khmer Rouge tribunal is likely to fail, while impunity is likely to prevail, due to the lengthy delay in establishing the tribunal, the shortcomings of the established statute, and the challenges of the court. Some aspect of justice has already been denied, as both Pol Pot and Ta Mok died before the trials were established. Also, as the majority of victims demanded that all Khmer Rouge leaders be held accountable and half of them even wanted those at all involved with the Khmer Rouge to also be tried, it is impossible that the court will perfectly complete this task for them due to the loopholes in the statute of the establishment of the tribunal. This is because the tribunal is a political game of seeking justice for the victims. Thus, the Khmer Rouge leaders that are proved to either not be the senior or the most responsible during the regime, along with those directly and indirectly associated with the Khmer Rouge, would not be tried.

In reality, there is no justice in the world that can be fully and commonly satisfying to the collective victims, and Cambodia is no exception. However, it needs to be at least satisfactorily accepted by the majority of the victims, so justice in that sense is served. Even though a part of justice has been denied, for the status quo, what the Khmer Rouge tribunal could do is to successfully and effectively complete its current work and existing mandate to hopefully bring a symbolic justice for the victims. Since the tribunal is already underway and there is no possibility it will be launched again, the court must find the truth and seek justice for the victims through prosecuting the four senior Khmer Rouge leaders currently in custody, without mentioning the cases 003/004. Nevertheless, if the cases 003/004 were to be a reality and more suspects were to be brought to justice, the examination of the Khmer Rouge era could be broadened. This will help to calm the anger and hatred of some of the victims towards the perpetrators in part, and hopefully reveal the truth of the mass killings, so that the victims do not have to live in mystery anymore. Also, if the truth was revealed, it would help to illustrate to the Cambodian people and the outside world what exactly turned Cambodia into a brutal atrocity, just how it happened, and who were directly and indirectly involved with the Khmer Rouge that should be held accountable. All in all, while the tribunal cannot show the world that impunity does not exist, at least it hopefully helps to achieve an incomplete justice for the victims.

References

Beigbeder, Yves. 2005. *International justice against impunity*: Progress and new challenges. Netherlands: Martinus Nijhoff Publishers.

Boua, Chanthou. 1993. *Genocide and democracy in Cambodia: The Khmer Rouge, the United Nations and the international community* (Kiernan, Ben. Ed.). New Haven: Yale University Southeast Asia Studies.

Carmichael, Robert. 2010. "Cambodia premier says no more Khmer Rouge trials." Voice of America, October 27. http://www.voanews.com/english/news/Cambodian-Premier-says-No-More-Khmer-Rouge-Trials-105873293.html (accessed, January 13, 2011).

Center for Social Development. 2006. *The Khmer Rouge and National Reconciliation-Opinions from the Cambodians*. Phnom Penh: Center for Social Development.

Chanda, Nayan. 1984. Sihanouk stonewalled. *Far Eastern Economic Review*. 28-32.

Cheang, Sopheng. 2010. "UN chief appeal for more Khmer Rouge trials." The Huffington Post, October 28. http://www.huffingtonpost.com/huff-wires/20101028/as-asia-un/ (accessed January 12, 2011).

Chigas, George. 2000. The politics of defining justice after the Cambodian genocide. *Journal of Genocide Research*. 2(2). 245-265.

Cohoun, Jack. 1990. "On the side of Pol Pot: US supports Khmer Rouge". *CovertAction* 34, 37-40. http://chss.montclair.edu/english/furr/pol/polpotnus.pdf (accessed January 15, 2011).

Conachy, James. 2001. "Cambodia: Khmer Rouge trial expected by end of year." World Socialist Web Site, September 11. http://www.wsws.org/articles/2001/sep2001/camb-s11.shtml (accessed July 1, 2008).

Ek, Madra. 2009. "Cambodia PM rejects wider Khmer Rouge trials." Reuters, March 31. http://www.reuters.com/article/idUSTRE52U1IZ20090331 (accessed January 12, 2011).

Faiola, Anthony. 2007. "Victims of Cambodia's Khmer Rouge fear derailment of trials." Washington Post Foreign Service, February 2. http://www.washingtonpost.com/wp-dyn/content/article/2007/02/01/AR2007020102170.html (accessed September 19, 2008).

Fawthrop, Tom and Jarvis, Helen. 2005. *Getting away with genocide?: Elusive justice and the Khmer Rouge tribunal*. UK: Pluto Press.

Henkin, A. H. 2001. Honoring human rights: Lessons from El Salvador, Cambodia and Haiti. Netherlands : Martinus Nijhoff Publishers.

Hood, Steven J. 1990. Beijing's Cambodia gamble and the prospects for peace in Indochina: The Khmer Rouge or Sihanouk?. Asian Survey, 30(10), 977-991.

International Center for Transitional Justice. 2008. "Cambodian Diaspora Communities in Transitional Justice." Briefing paper (March). http://www.ictj.org/images/content/9/4/948.pdf (accessed January 1, 2011).

Jennar, Raoul Marc. 2006. "Cambodia: Khmer Rouge in court." Le Monde Diplomatique, October 11. http://mondediplo.com/2006/10/11cambodia (accessed January 1, 2011).

Khmer Institute of Democracy. 2008. *KID-VWP Outreach Survey on Knowledge and Interest in the ECCC*. Victim and Witness Project Standards for the ECCC and Beyond Project.

Kiernan, Ben. 1993. *Genocide and democracy in Cambodia: The Khmer Rouge, the United Nations and the international community* (Kiernan, B. Ed.). New Haven: Yale University Southeast Asia Studies.

Klein, Katheryn M. 2006. "Bringing the Khmer Rouge to justice: The challenges and risks facing the joint tribunal in Cambodia." *Northwestern Journal of International Human Rights*, 4(3), 549-566.

Lambourne, Wendy. 2008. "The Khmer Rouge Tribunal: Justice for Genocide in Cambodia?" Center for Peace and Conflict Studies, University of Sydney. http://ses.library.usyd.edu.au/bitstream/2123/4042/1/LSAANZ%20Lambourne%20Cambodia%20conf%20paper%20final.pdf (accessed January 1, 2011).

Lambourne, Wendy. 2004. "Post-conflict peacebuilding: Meeting human needs for justice and reconciliation." *Peace, Conflict, and Development* 4, 1-24. http://www.peacestudiesjournal.org.uk/dl/PostConflictPeacebuilding.PDF (accessed January 10, 2011).

Lao, Mong Hay. 2007. "No Immunity for Sihanouk." UPI Asia.com, September 5. http://www.upiasia.com/Human_Rights/2007/09/05/commentary_no_immunity_for_sihanouk/3827/ (accessed February 1, 2011).

Launey, Guy De. 2009. "Khmer Rouge survivor feel justice denied." BBC News, December 11. http://news.bbc.co.uk/2/hi/8406427.stm (accessed January 11, 2011).

Maguire, Peter H. 2005. *Facing Death in Cambodia*. NY: Columbia University Press.

Menzel, Jorg. 2007. "Justice delayed or too late for justice? The Khmer Rouge tribunal and the Cambodian "genocide" 1975-79." *Journal of Genocide Research*. 9(2), 215-233.

Mysliwiec, Eva. 1988. *Punishing the poor: The international isolation of Kampuchea*. Oxford: Oxfam.

Prince Norodom Sihanouk. 1979. *War and hope: the case for Cambodia?* USA: Random House, Inc.

Open Society Justice Initiative. 2010. "Salvaging Judicial Independence: The Need for a Principled Completion Plan for the Extraordinary Chambers in the Courts of Cambodia." Open Society Foundations, November. http://www.soros.org/initiatives/justice/focus/international_justice/articles_publications/publications/khmer-rouge-tribunal-20101110/cambodia-khmer-rouge-20101110.pdf (accessed January 10, 2011).

Owen, Taylor and Kiernan, Ben. 2006. "Bombs over Cambodia." The Walrus Magazine, October. http://www.walrusmagazine.com/articles/2006.10-history-bombing-cambodia/ (accessed July 1, 2008).

Pilger, John. 1997. "The Long Secret Alliance: Uncle Sam and Pol Pot." CovertAction 62, 5-9. http://chss.montclair.edu/english/furr/pol/pilgerpolpotnus.pdf (accessed January 15, 2011).

Pham, Phuong; Vinck, Patrick; Balthazard, Mychelle; Hean, Sokhom and Stover, Eric. 2009. *So We Will Never Forget: A Population-based Survey on Attitudes about Social Reconstruction and the Extraordinary Chambers in the Courts of Cambodia*. CA: Human Rights Center, University of California, Berkeley.

Ramji, Jaya. 2000. "Reclaiming Cambodian history: The case for a truth commission." Fletcher F. World Aff., 24, 137-139.

Ratner, Steven. R. 1999. "The United Nations group of experts for Cambodia." *The American Journal of International Law*, 93(4), 948-953.

Voice of America 2007. "Khieu Samphan "Fine" After Apparent Stroke, Family Claims." Voice of America, November 13. http://www.voanews.com/khmer-english/news/a-40-2007-11-13-voa1-90147637.html (part 1) and http://www.voanews.com/khmer-english/news/a-40-2007-11-15-voa3-90148082.html (part 3) (accessed January 12, 2011)

The Animal Enterprise Terrorism Act: Legislation in Need of Revision

Joumana King
MPIA, Human Security

Michael Ratner, a human rights lawyer and president of the Center for Constitutional Rights states that the Animal Enterprise Terrorism Act (AETA) and its precursors, including the Animal Enterprise Protection Act (AEPA), are "a unique form of legislation, the vagueness of which sweep within them basically every environmental and animal-rights organization in the country" (Charman 2003). Despite recent allegations by the Federal Bureau of Investigation that eco-terrorism is the most pressing domestic terrorism threat, prosecutors have scarcely invoked the AETA and AEPA because of the problematic vagueness of the statutes (Fox News 2008). Examining the legislative history of the AEPA and AETA reveals the constitutional challenges of too vague and broad a statute and the problems the lawmaker's failed to address that were inherent in the AEPA's revisions. To withstand the constitutional challenges, a revised Act with narrower terms is required.

The Animal Enterprise Protection Act

The Animal Enterprise Protection Act (AEPA), formerly 18 U.S.C. §43, was signed into law in 1992 to protect animal enterprises. The AEPA created a new federal crime of animal enterprise terrorism, and applied to anyone who caused a physical disruption to the function of an animal enterprise which resulted in damages in excess of $10,000 (AEPA 18 U.S.C. §43, §2(a)). This law was unlike similar terrorist bills for arson and like crimes, which punished defendants for crimes that resulted solely in property destruction. The AEPA prohibited any activity that "intentionally causes physical disruption to the functioning of an animal enterprise by intentionally stealing, damaging, or causing the loss of, any property … and thereby causes economic damage" [emphasis added] (AEPA 18 U.S.C. §43, §2(a)). The AEPA defined an animal enterprise broadly to encompass any "commercial or academic enterprise that uses

animals for food or fiber production, agriculture, research or testing," including any "lawful competitive animal event" or event "intended to advance agricultural arts and sciences" (AEPA 18 U.S.C. §43, §2(a)).

The AEPA was now designed to punish activities that caused economic damage, a nebulous concept that became difficult for prosecutors to interpret and apply. The act was largely ineffective in the sixteen years it was applicable law, and it was only used twice in the successful conviction of animal enterprise terrorists (Potter 2010). The reason for this was not the lack of "eco-extremist" activities; it was difficult for prosecutors to prove the causal link between property damage and economic disruption. Even when prosecutors could provide evidence showing economic disruption resulted from an eco-terroristic act, the sentencing provisions provided such inadequate penalties that prosecutors were more likely deterred from applying AEPA in favor of the applicable state or federal tort laws. The AEPA offered substantial imprisonment only for serious bodily injury or offenses resulting in death (with a maximum sentence of ten years in prison for serious bodily injury), and provided comparatively little penalties for the remainder of the crimes (AEPA 18 U.S.C. §43, §2(a)). In instances where no bodily harm resulted, but economic damages exceeded $10,000, the punishment provided by the AEPA was fines and/or a maximum of one year in prison (AEPA 18 U.S.C. §43, §2(a)). Under the AEPA, an eco-terrorist may have caused millions of dollars in damage but only have paid misdemeanor-level punishment (Grubbs 2010, 358).

The AEPA was first successfully invoked in 1998 when a federal grand jury in Wisconsin indicted activists Peter Daniel Young and Justin Clayton Samuel for animal enterprise terrorism. The indictment alleged their connection to a raid of fur farms throughout the Midwest, with an estimated 10,000 mink released (Goodman 2008, 837). Samuel pled guilty to two misdemeanor offenses under the AEPA and was sentenced to two years imprisonment and was ordered to pay $360,000 (Potter 2006). After seven years of fleeing officials, Young was arrested in 2005 and despite evading arrest for years, he received a lighter sentence in exchange for becoming an undercover agent in the animal rights movement. Young received only a two-year sentence and was ordered to pay $254,000 in restitution (Goodman 2008, 838).

Even after the conviction of Samuel, industry groups argued that the AEPA was ineffective due to the limited penalties available and its sparse application. Congress reacted to the persuasive lobbying efforts from animal-testing and pharmaceutical companies, and revised the AEPA in 2002. Several changes to the statute faced strong opposition. While the requirement that physical disruption must be evidenced to cause economic disruption was not

eliminated, the threshold amount of $10,000 and the penalties associated with economic damage were drastically altered to provide harsher penalties for perpetrators. The requirement that economic damage to an animal enterprise must exceed $10,000 before the AEPA could be invoked was eliminated; there was now a federal cause of action for any economic loss or disruption, regardless of the amount (AEPA 18 U.S.C. §43(b)(1)). The Act also tripled the sentence previously permitted for economic damages that exceeded $10,000 to an animal enterprise, and included a category for restitution that was applicable "for any other economic damage resulting from the offense" (AEPA 18 U.S.C. §43(b)(2)).

The second, and only other occasion, the AEPA was used to convict animal terrorism was in the prosecution of Stop Huntingdon Animal Cruelty (SHAC 7). SHAC 7 is the notorious eco-terroristic group that was prosecuted under the AEPA for their activities in 2000 – 2001. The group was indicted on grounds of conspiracy after being accused of running a website that organized, orchestrated, and publicized illegal activities against various targets, including the international animal testing laboratory, Huntingdon Life Sciences. Although the members of SHAC 7 never directly participated in any of the terrorist attacks, and despite never aiding terroristic activities by providing financial support, SHAC 7's website was deemed sufficient means of involvement to provide economic disruption to the plaintiffs, who included not only Huntingdon Life Sciences, a research laboratory, but the insurers, investors, and suppliers affiliated with Huntingdon Life Sciences operation. After conviction, the defendants appealed, challenging the constitutionality of the AEPA. The Third Circuit upheld the constitutionality of the act against challenges for vagueness, and dismissed the overbreadth challenge as moot. (United States v. Fullmer, 584 F.3d 132 (3d. Cir. 2009)). The defendants further challenged the constitutionality of the act, arguing that it violated their First Amendment rights because their actions constituted political speech. The Court rejected this argument, finding that the website communications went far beyond regular political speech and instead rose to the level of inciting threatening activity (Grubbs 2010, 359). The members of SHAC 7 were given prison sentences of between fifteen months and six years for their acts of conspiracy (Weaver 2010) and they were ordered to pay $1,000,001 in restitution to Huntingdon Life Sciences (Goodman 2008, 843).

The 2002 AEPA revisions increased the scope and penalties applicable to prosecuting SHAC 7. The fact that the accused did not participate physically in any of the terroristic actions was inconsequential to the Court; the plaintiffs could not identify any of the members of SHAC 7, but the jury still ruled in their favor (Goodman 2008, 842). Furthermore, the prosecution provided evidence that the "tertiary targets," the investors, insurers, and suppliers of Huntingdon

Life Sciences, were financially damaged by SHAC 7's alleged terrorism, and the Court awarded restitution for all of these plaintiffs (Best & Kahn 2004, 17). The expanded scope of the AEPA therefore seemed to permit anyone affiliated with an animal enterprise (investors, insurers, even family members of the company targeted) to prevail under federal statute by evidencing that the threatening act resulted in any amount of economic disruption.

The Animal Enterprise Terrorism Act

In 2004, industry groups urged the Senate to expand the scope of the AEPA once more to shield their interest from eco-terrorists (Goodman 2008, 844). William Green, Senior Vice President and General Counsel of the biotechnology corporation, Chiron Corporation, had contracted with Huntingdon Life Sciences and was one of the parties awarded by the restitution of SHAC 7. At a 2004 hearing, Green urged Congress to adopt stricter means to prosecute animal rights activists, stating that "[a]s the law presently stands, tools are insufficient" (Hearing 2004, Green).

In response to the persuasion of corporate entities urging for reform, Senator James Inhofe (R-OK) and Representative Thomas Petri (R-WI) introduced amendments to the AEPA in 2005 that later transitioned into early versions of the Animal Enterprise Terrorism Act (AETA) (Press Release 2005). During the first session of the 109th Congress in 2005, the legislation drafted the AETA, but no action was taken on the bill during that session other than referral to committee (Berger 2007, 300).

Upon review by legal scholars, the adoption of any amendments to increase the penalties and expand the scope of the AEPA was unnecessary (Goodman 2008, 844). The prosecution of SHAC 7 portrayed the expansive scope of the law, and the "claim that existing federal legislation was insufficient to prosecute those who demonstrate against secondary targets" was illogical because the SHAC 7 was prosecuted for eco-terrorist acts against tertiary targets that included investors, insurers, and suppliers to Huntingdon Life Sciences (Goodman 2008, 844). Civil rights organizations opposed the further expansion of the AEPA and the newly formulated AETA, stating that the AETA contained overly broad and vague language, infringing on First Amendment rights as well as "constitutionally protected forms of activism such as demonstrations, leafleting, undercover investigations, and boycotts" (Fredrickson 2006).

The American Civil Liberties Union (ACLU) opposed the bill as it was first drafted, and instead suggested several changes to the AETA. First, the ACLU proposed that the bill should more clearly define property to solely

refer to tangible property. The ACLU suggested that the bill specify that it "does not include damage or loss resulting from a boycott, protest, demonstration, investigation, whistleblowing, reporting of animal mistreatment, or any public, governmental, or business reaction to the disclosure of information concerning animal enterprises" (Fredrickson 2006). By this amendment, the AETA would not penalize otherwise legitimate and legal activity that results in loss of profits. The ACLU also desired that a provision be revised and more clearly written, to no longer penalize actions of conspiracy where no cause reasonable fear of bodily harm and no actual injury resulted (Frederickson 2006). These changes were not adapted into the Act however. Instead, all of these concerns by civil rights organizations were dismissed and with little or no dissent throughout the proceedings, the AETA was signed into law by President Bush on November 27, 2006 (Goodman 2008, 847).

The AETA has broadened the scope of the offenses section, criminalizing much more than the AEPA was originally designed to protect. The AEPA required that an individual have the purpose of "intentionally caus[ing] physical disruption to the functioning of an animal enterprise by intentionally stealing, damaging, or causing the loss of, any property" for conduct to constitute a violation (AEPA, 18 U.S.C. §43, §2(a)). The AETA revises the AEPA's limitation of "physical disruption" and proscribes all conduct engaged in "for the purpose of damaging or interfering with the operations of an animal enterprise" (AETA, 18 U.S.C. §43(a)(1)). Furthermore, the AETA extends the AEPA's requirement that a physical disruption result in an "economic disruption" by proscribing not only physical and economic disruption, but prohibiting acts which "intentionally place a person in reasonable fear" of death or serious bodily injury to that person, a member of their immediate family, or their partner, "by course of a conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation" (AETA, 18 U.S.C. §43(a)(2)(B)).

In addition to altering the offense section to encompass nearly any foreseeable action, Congress expanded the numbers of individuals and entities protected by the Act. The AETA now broadly redefined the term "animal enterprise" to include essentially any industry company that is involved directly or indirectly in the exploitation of animals. Furthermore, the idea of allowing "tertiary targets" to bring and prevail in claims against eco-terrorists, once a novel application of the AEPA when it was first applied in the indictment of the defendants in the SHAC 7 case, is now explicitly included within the scope of the AETA, thereby "expanding the protections of the legislation far beyond those that fall within the definition of an animal enterprise" (Goodman 2008, 848). The "tertiary targets" are included in the expanded definition of "animal enterprises"

and insurers, investors, and suppliers are within the scope of foreseeable plaintiffs. The AETA is now directed at a larger class of people and proscribes a broader range of conduct.

The penalties and restitutions sections of the AETA were also amended to provide stricter results. Whereas the AEPA did not provide for any penalty in the absence of economic damage, and created a maximum of six months imprisonment for causing damage not exceeding $10,000 (AEPA, 18 U.S.C. §43(b)(1) as amended in 2002), the AETA provides punishment for a violation of the Act if the economic damage results in nothing at all or does not exceed $10,000. The punishment for this violation of the AETA, or attempt or conspiracy to violate the Act, is either a fine, imprisonment up to one year, or both depending on whether the offense instilled in another reasonable fear of serious bodily injury or death (AETA, 18 U.S.C. §43(d)(3)). Imprisonment of up to five years, a fine, or both, may be awarded for violations that result in no bodily injury as long as the offense results in economic damage between $10,000 and $100,000 (AETA, 18 U.S.C. §43(d)(3)).

A Revised Statute

Legal scholars, lawmakers, and certain legislators have all criticized the AETA for its infringement of First Amendment rights. Examining the challenges to the AETA suggests the necessity of a revised bill that is more clearly written to withstand challenges on "vagueness" grounds (McCoy 2007, 60), while also providing an eco-terrorist legislation that will take into account the Brandenburg standards of providing expansive protection of free speech (Bradenburg v. Ohio, 396 U.S. 444 (1969)).

Constitutional Challenges: Void for Vagueness

Constitutional due process states that for laws to be effective, the language used must be clear and unambiguous, giving individuals notice as to what conduct will trigger prosecution (Connally v. General Construction Co., 269 U.S. 385, 391 (1926)). The vagueness doctrine states that a statute is unconstitutional and must be struck down if it fails to specify a standard of conduct such that "men of common intelligence must necessarily guess at its meaning" (Coates v. City of Cincinnati, 402 U.S. 611, 614 (1971) (quoting Connally, 269 U.S. at 391). The AETA's constitutionality is challenged under the vagueness doctrine on grounds that it is impermissibly overly broad and

based entirely on lawmaker's viewpoint, failing to give fair warning and a precise definition of the prohibited conduct.

Constitutional Challenges: First Amendment Protection

The First Amendment provides that "Congress shall make no law … abridging the freedom of speech" (US Const. Amend. I). The protection afforded by the First Amendment is not absolute, however, and is regulated when speech is "of such slight social value as a step of truth that any benefit that may be derived from [it] is clearly outweighed by the social interest in order and morality" (Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942) as quoted in Goodman, 854). One boundary of the protection of free speech recognized by the Supreme Court is where speech is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action" (Bradenburg v. Ohio, 396 U.S. 444, 447 (1969)).

In the application of AETA, it is not required that the speaker subjectively intends to carry out the threatened action for the speech to be punishable; all speech, directed to produce imminent lawless action is punishable under the AETA. For the freedom of speech to remain protected by the First Amendment, and not rise to the level of inciting threatening behavior, Courts examine the subjective intent of the speaker. For the speech to be punishable under a showing of "subjective intent," it is not required that a speaker subjectively intended to carry out the threatened action, rather it is merely sufficient to show that the speaker intended to threaten the individual or group alleging complaint (United States v. Cassel, 408 F.3d 622, 631 (9th Cir. 2005) emphasis added). This prohibition is not only designed to protect individuals and groups from the possibility that the threatened violence will transpire, but also from the "fear of violence and disruption that fear engenders" Virginia v. Black, 538 U.S. 343, 360 (2003). Therefore, the revisions in the AETA reflect society's interest in protecting threatening speech as "secondary to that of maintaining a system of order and civility" (Goodman 2008, 855). However, the AETA produces a chilling effect on the right to free speech, because the threshold is so low as long as the standard is subjective intent to threaten.

Suggestions For A Revised Act

For the AETA to provide adequate protection to animal enterprises from eco-terrorists, the Act needs to be revised in order to account for constitutional First Amendment challenges and misinterpretation on vagueness grounds. To

prevent the AETA from being stricken on "vagueness" grounds, several terms in the Act need to be defined in a separate definition section that is easily accessible with the body and content of the offenses section of the AETA. Including a "Definitions" section will enable individuals to know exactly what actions are prohibited.

The AETA proscribes all conduct engaged "for the purpose of damaging or interfering with the operations of an animal enterprise" (AETA, 18 U.S.C. §43(a)(1)). The term "interfering" is never defined in the Act; the AETA has left it vague and the potential for lawmaker's to provide it with a definition that infringes on First Amendment rights is foreseeable as cases arise. Without limiting construction of this term, lawmaker's have too broad a power to interpret the Act as they prosecute. Without a definition of "interference," it is unreasonable for even a prudent person to be expected to understand exactly what conduct is prohibited.

In addition to "interference," the term "property" needs to be included in the "Definitions" section. As noted earlier, the ACLU sought (unsuccessfully) to revise the AETA before President Bush enacted the Act in 2006. Among the ACLU's concerns was the AETA's failure to distinguish between tangible and intangible property. The ACLU suggested that the bill specify that it "does not include damage or loss resulting from a boycott, protest, demonstration, investigation, whistleblowing, reporting of animal mistreatment, or any public, governmental, or business reaction to the disclosure of information concerning animal enterprises" (Fredrickson 2006). The ACLU reasoned that such losses should be exempt from the definition of "property."

"Animal enterprise" must be defined more narrowly than the AETA presently permits. The AETA currently defines "animal enterprise" as any entity that is a "commercial or academic enterprise," "zoo, aquarium, animal shelter, pet store, breeder, furrier, circus, or rodeo, or other lawful competitive animal event," and any event "intended to advance agricultural arts and sciences" (AETA U.S.C. §43(d)(1)). This definition, coupled with the fact that tertiary targets like insurers, investors, and suppliers, are also included in the definition, effectively means anyone with any connection to a business that engages animals in any means is afforded special protection by the AETA. The definition needs to be narrowed, not simply because of its seeming absurdity of breadth, but its unconstitutionality. With such a broad definition of "animal enterprise," the Act is prohibiting protected conduct and under the overbreadth doctrine, if a statute forbids the sort of expressions that may not legally be regulated, it is considered overbroad, and therefore, void (McCoy 2007, 62). The term "animal enterprise" may be interpreted to include lawful as well as unlawful animal industries. The AETA has

failed to clarify that interference with only lawful animal enterprises triggers the Act. For example, a person who interferes and rescues an animal from an illegal animal enterprise may still be charged as a terrorist under the AETA. To prevent the overbreadth doctrine from being raised, the broadness of the definition of "animal enterprise" must be narrowed so that only lawful enterprises trigger the Act.

Conclusion

The Federal Bureau of Investigation (FBI) deputy assistant director and top official in charge of domestic terrorism, John Lewis, stated in 2005 that "eco-terrorism" and specifically "animal terrorism" was the "No. 1 domestic terrorism threat" (Schuster 2005). In response to this statement, the Southern Poverty Law Center (SPLC), an organization that monitors hate crimes and extremist activity, stated that labeling animal rights advocates as the "No. 1 threat" to the American public was "simply ludicrous" (Schuster 2005). Yet a few years later, in a Fox News article, FBI Special Agent Richard Kolko reportedly stated that eco-terrorism "remains what we probably consider the No. 1 domestic terrorism threat, because they have successfully continued to conduct different types of attacks in and around the country" (Fox News 2008). The FBI defines "eco-terrorism" as "the use or threatened use of violence of a criminal nature against innocent victims or property by an environmentally oriented, subnational group for environmental-political reasons, or aimed at an audience beyond the target, often of a symbolic nature" (Fox News 2008).

Regardless of whether eco-terrorism is the No. 1 domestic terrorism threat, the debate on whether a revised Act is needed to correct the unconstitutionality is less divided. Including a definitions section and narrowing the terms of the Act would eliminate the First Amendment the constitutional questions raised by the void for vagueness and overbreadth doctrines. An Act that is so vague in its terms that individuals of ordinary intelligence must guess at the meaning necessarily violates the due process of law. The AETA is one such Act, and unless it is revised and narrowed, it will continue to be only sparingly procedurally used by prosecutors.

References

Animal Enterprise Protection Act, codified at 18 U.S.C. §43 (amended 1996, 2002, & 2006).

Animal Enterprise Terrorism Act, codified at 18 U.S.C. §43 (2006).

Berger, Marjorie A., ed., 2006 Legislative Review, 13 Animal L. 299, 301 (2007).

Best, Steven and Richard Kahn, "Trial By Fire: The SHAC 7, Globalization, and the Future of Democracy," *Animal Liberation Philosophy and Policy Journal*, 16 (2004): 1 – 20.

Bradenburg v. Ohio, 396 U.S. 444 (1969).

Chaplinsky v. New Hampshire, 315 U.S. 568 (1942).

Charman, Karen, "Environmentalists = Terrorists," May 8, 2003, http://www.tompaine.com/Archive/scontent/7748.html

Coates v. City of Cincinnati, 402 U.S. 611 (1971).

Connally v. General Construction Co., 269 U.S. 385 (1926).

"FBI: Eco-Terrorism Remains No. 1 Domestic Terror Threat" *Fox News*, Mar. 31, 2008, http://www.foxnews.com/story/0,2933,343768,00.html

Fredrickson, Caroline and Lisa Graves, "An Open Letter to Congress" *American Civil Liberties Union*, Mar. 6, 2006, http://www.aclu.org/freespeech/gen/25620leg20060306.html

Goodman, Jared S., "Shielding Corporate Interests From Public Dissent: An Examination of the Undesirability and Unconstitutionality of 'Eco-Terrorism' Legislation" *Journal of Law and Policy*, 16 (2008): 823 – 874.

Gubbs, Kevin, "Saving Lives or Spreading Fear: The Terroristic Nature of Eco-Extremism" *Animal Law Review*, 16 (2010): 351 – 370.

Hearing Before the S. Judiciary Comm., 108th Cong. (2004) (statement of Sen. Patrick Leahy, Vt.), http://judiciary.senate.gov/member_ statement.cfm?id=1196&wit_id=2629

Hearing Before the S. Judiciary Comm., 108th Cong. (2004) (testimony of William Green, Senior V.P. and General Counsel, Chiron Corporation), http:// judiciary.senate.gov/testimony.cfm?id=1196&wit_id=3462

McCoy, Kimberly E., "Subverting Justice: An Indictment of the Animal Enterprise Terrorism Act" *Animal Law Review* 14 (2007): 53 – 70.

Potter, Will, "The Animal Enterprise Terrorism Act," *Center for Constitutional Rights*, July 3, 2010, http://ccrjustice.org/learn-more/faqs/factsheet%3A-animal-enterprise-terrorism-act-%28aeta%29

Press Release, "U.S. Senate Committee on Environment & Public Works, Inhofe Introduces Animal Enterprise Terrorism Act" Oct. 28, 2005, http://epw.senate.gov/pressitem.cfm?party=rep&id=247941

Schuster, Henry, "Domestic Terror: Who's Most Dangerous? Eco-terrorists Are Now above Ultra-right Extremists on the FBI Charts" Aug. 24, 2005, http://www.cnn.com/2005/US/08/24/schuster.column/

United States Constitution, Amendment I

United States v. Cassel, 408 F.3d 622 (9th Cir. 2005).

United States v. Fullmer, 584 F.3d 132 (3d. Cir. 2009).

Virginia v. Black, 538 U.S. 343, 360 (2003).

Will Potter, "Animal Enterprise Protection Act," July 29, 2006, http://www.greenisthenewred.com/blog/aepa/

Weaver, Matthew, "Animal Rights Activists Jailed For Terrorising Suppliers To Huntingdon Life Sciences," *The Guardian*, Oct. 25, 2010, http://www.guardian.co.uk/science/2010/oct/25/animal-research-animal-welfare

Interview with Douglas Feith
November 19th, 2010

Erica Nurnberg (MPIA, SIS) and Lauren Ackerman (MPIA, GPE)

Forward by Erica Nurnberg

The words General Patton, "I would rather have a good plan today than a perfect plan two weeks from now," must resonate with all of those officials who served in the Bush Administration in 2001. With the unexpected and shocking attacks on the American public in New York, Virginia, and Pennsylvania, this is in many ways the motto that the Administration was forced to live by. Uncertain if the attacks of 9-11 were going to be followed by subsequent salvos, the Administration, including the Undersecretary of Defense for Policy, Douglas Feith, found itself faced with the conundrum of needing to act swiftly, not just for the purpose of punishment, but also for the purpose of prevention.

Now, I can't say that I even knew who Undersecretary Feith was when the events of the past decade began to play out following the terrorist attacks on the World Trade Center and the Pentagon on September 11, 2001—nearly 10 years ago. Just days into my senior year of high school, I was more concerned with the long process of preparing a painting and sculpture portfolio for art school admissions.

However, since this time, this man's decisions would affect my life choices and my decision to pursue public policy, politics, and foreign affairs instead of painting. Since I have learned a great deal about his actions during the post-September 11th period. His name has littered the readings I had in so many of my classes, including Strategic Intelligence; Security and Intelligence Studies; and Intelligence Collection, Analysis, and Application. Included among these readings was Mark M. Lowenthal's "Intelligence: From Secrets to Policy," which charged early on that Mr. Feith had politicized intelligence; a rather damning charge in the intelligence community.

However, it is not every day that one has the opportunity to interview the former Undersecretary of Defense for policy – and get the opportunity to

ask about those charges. During my internship this past summer, I had the opportunity to meet Douglas Feith briefly at a barbeque at my boss's house (working for the Former Deputy Assistant Secretary of Defense Frank Gaffney at the Center for Security Policy had its perks).

What I can perceive as the interviewer and also as a consumer of a copious amount of literature on Feith, the controversy with him originates from two questions. The first is whether a major event such as September 11 requires policy makers to reevaluate common wisdom. The second, and perhaps more important, is whether Feith or other members of the Administration were able to conduct policy free from passion.

To address the first question, the common wisdom, which was pervasive in Washington, DC for the decades leading up to the attacks were that terrorism was to be dealt with as a global law enforcement issue. Those who partake in an attack, whether hijacking a plane or even a cruise ship, are to be prosecuted if captured after the fact—often in the end, these vessels were not hijacked to be turned into a cruise missile, but simply to make a political statement or torture American servicemen.

The Bush administration had to face whether or not the common wisdom failed and no longer applied given the large number of casualties, damage to property, effect on the economy, and the fact that 9-11 occurred on American soil. Since the events of 9-11, the common wisdom of fighting terrorism has continued to evolve and, in essence, has become prevention. A doctrine of prevention or preemption will be the legacy of the Bush administration, and will likely continue to be part of U.S. policy when dealing with non-state actors for years to come.

However, the question of wars against states can be addressed more with the second subject. Was the Administration's decision to go to war in Iraq free from the effect of passion? I am uncertain; there are too many pieces to consider. However, I hope this interview can serve as one of the many pieces that will inform what the readers believe.

It is easy for the academy to state that decisions involving foreign affairs should be conducted free from passion. After all, the academy often tries to implement legalistic, Socratic doctrine in foreign affairs (perhaps, it has to do with the number of lawyers in government). However, foreign policy, unlike the law, must be reason filled with passion. All defenses should be conducted for things worth fighting for. That value judgment, of determining if something is worth fighting for, whether institutional or physical, is dictated by passion – for love of homeland and country.

Did we know on September 12 if another major attack was on its way? How long was it before parents let their kids take a day trip into the city, or until school field trips resumed? How long did it take policy makers to stop living on edge, thinking, what if it happens again? Is Los Angeles next? Is Chicago safe? Will it happen monthly? Weekly? What is going to happen tomorrow? I think it is important to point out that policy makers do not have the luxury of operating with just the knowns—they have to operate with the facts, and they have to fight the unknown, and they should be judged based on their responses to both.

I still feel unable to make a judgment about the harsher critics of Douglas Feith, or on whether intelligence was politicized, or if the decisions were right or wrong. Nearly 100 years of history have yet to sort out the rights and wrongs of the First World War. The War on Terror is still being fought. In the 12th hour, we should consider what we should do now; not dwell on the decisions made in the worst environment ever to face an American administration. The Bush administration never received the extra two weeks, and made plans – not perfect plans – two weeks later. Nevertheless, I would like to challenge my peers to read the newspapers and watch the news broadcasts from 9-11 in their original, undigested form and ask themselves if our response exhibited policy free from passion.

Can you explain the role of the Under Secretary of Defense for Policy?

The policy organization has essentially three tasks, three missions. The first is advising the Secretary of Defense on the strategic matters for which the Secretary provides guidance to the department. This includes the National Defense Strategy, the Quadrennial Defense Review, the policy guidance that the Secretary provides to the combatant commanders for war plans, and the peacetime guidance that he provides the department. The policy organization is responsible for all of these strategic areas and for helping the Secretary develop his strategic guidance.

The second task is the foreign relations of the department—in other words, the Department of Defense's relations with other countries and foreign organizations.

The third main task is representing the department in interagency national security policy making. At the Deputies Committee, which is the highest subcabinet level for national security policy making, I represented the department at almost all meetings. When the Secretary would go to Principals Committee or National Security Council meetings, we briefed him. If those meetings were what are called Principals Plus One, I was generally his plus one.

Could you elaborate on that role in the context of the ongoing wars in Afghanistan and Iraq?

When the administration was dealing with the question of how the U.S. government should respond to the 9-11 attack, we helped develop the U.S. strategy for the War on Terrorism and specifically for the campaigns in Afghanistan and Iraq.

What was your operational relationship with Secretary Rumsfeld like?

Over time, it became a very close relationship. I did not know him before he interviewed me for the job. I came into my job in mid-July of '01 and 9-11 then happened a few weeks later. At first, we didn't work very closely. I tell the story in my book of how I came to attend his main meeting every day, called the "Roundtable" meeting, which included the Deputy Secretary, the Chairman and the Vice Chairman of the Joint Chiefs of Staff. That was an extremely important meeting where the most significant matters were discussed first thing in the morning.

At first, the Under Secretary of Defense for Policy was not included in those meetings, and in the first days after 9-11 it became clear that I was not privy to the most important discussions that were going on in the department. This made it hard for me to have the policy organization serving the Secretary because we didn't know what his thinking was. So I made a pitch to be included in those meetings, and at the end of September, Rumsfeld started to include me in those meetings. From that point forward, the policy organization became an important part of the development of departmental thinking on national security matters. We wound up being able to serve the Secretary very effectively. But at first, as I said, we found ourselves a little bit in the dark.

This is true with any set of people: You have to work out the relationships in the beginning and find the best way to serve your boss. In some cases, you have to find out where your boss is and track his thinking. One of the things he said to me early on was, "I want you to lob a few ideas at me every day." I said, "To do that, I want to lob those in front of you, not behind you. I don't want to give you an idea that I think is being brought to you for the first time, but in fact has already been considered and rejected or considered and accepted. If I don't know where you are, I can't confidently say that I am lobbing an idea in front of you. In order to know where you are, I need to be in on these key

meetings." He understood that that was a correct argument and got us involved. From that point forward, I think we became integral to national security thinking in the department.

Secretary Rumsfeld implemented many changes to make the military more agile. What was your role when he started to make these transformative reorganization and strategies?

He brought many ideas on defense transformation to the department before he ever met me. He clearly has a pretty highly developed view in certain areas of defense transformation. Where I think the Policy organization played a particularly important role was in the global defense posture realignment—which was a key element of defense transformation. What happened was quite a fascinating exercise, and I think it was unprecedented in American history. The Secretary of Defense said, "I want to look globally all at once at where US forces are postured." Taking a comprehensive look at the entire world as the proverbial chess board and asking "do I like where our pieces are" was a very bold thing to do. I don't think it was ever done before.

We were positioned in Europe where we happened to be where World War 2 ended. We were positioned in Korea where we happened to be when the Korean War ended. Likewise in Japan at the end of World War II. So those forces were not put there in the 2001 based on some rational idea, or on what the world looks like now, or on the kinds of threats we may face over the next 50 years, or on where we want to be as determined by those potential threats. We just happened to be there as a historical legacy. He was saying, "I don't want to continue being postured around the world where we simply happened to be as a historical legacy. We understand the importance of the legacy. You can't just start from scratch as if there was no history. On the other hand, it doesn't makes sense to be where we happened to be based simply because we were there 50 years ago. We have to ask ourselves, right now, starting in 2001, what are the kinds of things we are looking at in the future, as problems, opportunities, responsibilities that we may face, and that we can anticipate in broad outline. We cannot predict the future but we can anticipate broadly events that would require us to use our military forces —everything from combat to humanitarian relief. What are the kinds of things we might have to do? Where might we have to do them? Do we have the capabilities to move our forces effectively and quickly to everywhere in the world where they may be required?" That was a very large, ambitious, strategically challenging exercise. What we did in the Policy organization was to help think through the way to consider that problem and develop a strategy for

defense realignment.

Looking at the strategy in Afghanistan and the overall War on Terrorism, how would you describe the most significant changes between the Bush administration and the Obama administration?

That is a very large question and has many elements. In the War on Terrorism in general, I think the focus that Bush gave to the effort was to do everything we could, within reason, around the world to prevent the next 9-11 type attack. That was a radical departure from past American practice. No President before had ever responded to a terrorist attack by saying that the goal of the U.S. government was to prevent the next attack. Our normal response was to find the people who did it and to punish them. To do everything we can to prevent the next attack was an enormous step away from the traditional law enforcement approach, and that's what gave rise to the idea of a War on Terrorism.

It was very ambitious, very unusual and it required a global effort not only against the group that had perpetrated the 9-11 attack, but also against any other group that posed a serious threat to perpetrate that type of attack in the future. It was not just al-Qaida, it was other groups too with the potential to do large-scale terrorist attacks.

I think that remains the Obama administration's goal too. I think the Obama administration, having inherited that effort, has recognized that was the right way to formulate the strategic goal for the effort. I think they are also trying to prevent the next attack. As we've seen in recent months, there have been a number of attempted attacks—the attempted bombing in Times Square; the airplane underwear bomber in Detroit; and the Fort Hood shooting. So there are a number of cases. In some cases we have foiled the attacks and in some cases not. At the broadest level, that strategic goal remains the strategic goal of the United States, and I think that the Obama administration has carried it forward.

However, the Administration started out with positions that President Obama had taken before he was President, positions he took during the campaign. The Administration started by announcing that they were strongly antagonistic to key elements of the Bush administration's approach to terrorism. For example, the detention of people at Gitmo was condemned. The idea that we would hold people indefinitely without trial as unlawful combatants was criticized. But the Administration has apparently learned some things, now that President Obama is in office and has real responsibility. A number of the things he criticized turned out to be things that he has concluded are required.

The principle that people can be held either at Gitmo (or some other

facility) indefinitely without trial is something that his administration has asserted very strongly in the courts even though he had sharply criticized the idea before he became President. The idea that we may have to hold some of these people, not try them in our civil courts but try them in military commissions is something that he has come around to.

Also, even though he severely criticized the so-called "enhanced interrogation techniques" and announced he was against torture, that wasn't a major change of policy. President Bush had likewise announced he was against torture. They have adjusted their idea of which techniques constitute torture, but President Bush started off as a matter of principle saying that we will not torture people. We would do everything lawfully and humanely. There was a dispute among lawyers about which techniques were humane and which constituted torture but president Bush was operating on legal advice that everything that he approved was lawful and humane and not torture.

President Obama is saying that he has the same principles but he applied the principles differently to different techniques. It is interesting that as a matter of principle they actually agree. President Obama and his supporters had to embrace the decisions that the Bush administration made about surveillance, airport security, the use of the military against terrorists and also some of the trade-offs between civil liberties and public safety, once they got into office. If the rhetoric and the actual behavior of the Obama administration were compared, people would be struck by the fact that the actual behavior of the Obama administration makes it clear that a lot of their critical rhetoric against the Bush administration was not well-grounded.

So what is your evaluation of how they redesigned their strategies to deal with these different issues?

I think that they continued the strategy in a number of key respects. And in some areas where they attempted to deviate from the Bush strategy, they ultimately came around to it. For example, Obama administration officials started off announcing that the President was going to close the Guantánamo Bay detention facility immediately. They found that they didn't have the congressional support to do that. At first they thought they could push it through anyway. But now they have backed off and said that it is not as important as they earlier suggested it was. The Obama administration talked about wanting to prosecute the detainees—not only bringing them to trial, but bringing them to trial in civilian courts. Now they are backing off on that. The announcement that

they were going to try Khalid Sheik Muhammad in New York was rebuffed by various members of Congress, by the people in New York City and the State of New York. The Administration has backpedaled to the point where they now talk about maybe not prosecuting him -- not in New York, not in a civilian court, and perhaps not even in any court or military commission.

So they made a number of attempts to do things differently but they have looped around to the starting point. While some critics of the Bush administration attacked it for emphasizing the military aspects of the War on Terrorism too highly, this administration has actually increased the use of drone strikes against terrorist suspects in Pakistan and elsewhere, and has even argued that American citizens can be targeted for attack, for fatal attack. This is something that not even the Bush administration had attempted to do. It's easy to suspect that, had the Bush administration attempted to do it, virtually all of the people who are now political appointees in the Obama administration would have denounced it as something that is inconsistent with American principles. The Obama administration has come to the conclusion that not only is it ok, but it is required. So I think there is a lot more continuity in how the War on Terror is being prosecuted than one would have thought given the campaign rhetoric.

Could you also elaborate on the so-called end of combat operations in Iraq and the use of COIN techniques?

I think that is a difference between President Obama and President Bush. President Obama wanted to set deadlines where President Bush tended to emphasize that we were not going to be subject to artificial timelines,, even if there were certain things we hoped would happen on a timeline. Bush stressed that we are going to make whatever adjustments we need to do in our roles and missions in Iraq or Afghanistan based on certain circumstances on the ground. President Obama has tended to favor deadlines. I still think that president Obama will not stick to his deadlines in a strict sense if the circumstances on the ground do not justify the moves.

Again, I think this is an example of the contrast between campaign rhetoric and his behavior as president. President Obama opposed the Iraq War, opposed the surge, and said in essence that the Iraq War was a complete loss, a mistake that produced nothing but negative consequences. But when he became President, he saw that there were actually substantial accomplishments in Iraq. In his speeches about Iraq he has said that we don't want to act irresponsibly and lose what has been accomplished. That is a very stunning difference between the rhetoric before he became president and after he became president. I have a

feeling, despite Obama's deadlines, that if it would be reckless and irresponsible to change our role or withdraw our forces in Afghanistan or Iraq, he would adjust the deadline. I believe he understands that he is going to be held accountable if he fritters away the accomplishments that have been won through so much effort, cost, and investment by our armed forces.

President Obama has continued to rely on General Petraeus's COIN strategy, which President Bush had put in place. In fact, President Obama has increased his reliance on General Petraeus.

In your book War and Decision, you note that the CIA and DOD had very different ideas about the timeline in which it would take to go into Afghanistan and begin the war. The CIA often advocating a much longer entry process and the development of more contacts on the ground. Do you stand by the idea that you put out in your book, to expedite action, the same idea that Donald Rumsfeld had, that he wanted boots on the ground over covert action. Do you still think that was a good doctrine with which to engage the region?

There were different debates at different times between the Defense Department and CIA over how to proceed. At the beginning of the Afghanistan fighting, what was exasperating Secretary Rumsfeld was that the attitude of our military—not just at CENTCOM—was that they couldn't take action until the CIA came and told them, with good actionable intelligence, exactly where the terrorists were, or where the targets were. Our military said it couldn't take action until the CIA came in and established all the necessary contacts with the local Northern Alliance commanders.

Secretary Rumsfeld said that working with the intelligence community is important, and obviously we looked to the intelligence community for important inputs. But if the intelligence community says, as they did after 9-11, that they have very limited knowledge about the whereabouts of terrorists, that can not be a reason for the Defense Department, which at the time was getting a trillion dollars a year from congress, to throw its hands up in the air and say that there is nothing we can do.

Secretary Rumsfeld saw that as an unsatisfactory answer. He said the American people are spending an enormous amount of money for a defense capability and, as important as the intelligence is, if the intelligence community doesn't have specific information for us, there are still some things that the Department of Defense can do, including operations designed to produce intelligence. He told the military not to be passive waiting for the intelligence. Otherwise, if the CIA can't produce intelligence in a timely fashion, the Defense

Department has to sit with its hands folded, even after a disaster like 9-11. He said that was unsatisfactory. He wanted the military to think more creatively about not only taking action on the basis of intelligence provided by the intelligence community, but if necessary, taking sensible creative action designed to disrupt international terrorist networks and produce additional intelligence through military action that could allow us to prevent future 9-11s. He wanted the military people to think differently. He did not want them to be thinking that intelligence is entirely the preserve of the CIA and that the military has to sit, as I said, with its hands folded until the CIA gives them something to do. He said that is the wrong way to conceive our role.

Some reading on the topic, specifically about the intelligence acquisition process, characterize your office as being overly reliant on Ahmed Chalabi over perhaps the CIA-advocated Allawi when formulating the plans for the invasion of Iraq. What are your comments considering Allawi's acquisition of 90 seats in the recent parliamentary elections?

I do not think that the essential question in the debate between people in the Pentagon and people in the CIA before the Iraq war were issues of Chalabi versus Allawi. The issue was more fundamental than that. My office took seriously the President's guidance that our strategy for Iraq should be liberation, not occupation. All agencies in the U.S. government agreed that if we overthrew Saddam and set up an occupation, there would be problems that would flow from that. We should be seen as liberators, not occupiers. While we agreed on that general point, there is the question of what you should do about it.

My office said that the way you implement a liberation strategy is that you have to work with Iraqis. We proposed a series of actions that would make concrete the idea of a liberation strategy. Working with the Iraqis meant working with the externals. You couldn't work with those living under Saddam's control, but you could work with the Kurds in northern Iraq, an autonomous area, and with the exiles. Therefore, we said we should be working with the Iraqis on intelligence. We should be working Iraqis on military training. We wanted to train a few thousand Iraqis before the war so that they could participate in their own liberation -- and so that, after Saddam's overthrow, we could work with Iraqis that we knew well. We wanted to work with Iraqis on laying some of the foundations for the new government of Iraq that would take over after Saddam's removal.

What I described in my book were the fights that Defense Department people had with CIA and State Department people on all aspects of that strategy.

The CIA and the State Department were very reluctant to work with the Iraqi external groups in various respects. It wasn't just Chalabi versus Allawi, it was Chalabi, Allawi, and everybody else. For example, we in the Defense Department supported the idea of a political conference of Iraqis so they could announce the basic principles that they would want in place if they could liberate their country and replace Saddam. Because of the State Department's opposition, the conference didn't get going until December 2002 instead of early 2002. It was delayed and delayed and slow-rolled by the State Department for about 11 months. It wasn't just that they wanted the conference with Allawi and not Chalabi, they didn't want the conference at all.

Likewise, when it came to the military training of Iraqis, we wanted to train three to five thousand Iraqis. In part because of the opposition of the CIA we ultimately trained only around 73 Iraqis before the war started. There were multiple reasons for that, it was a complex question, but the opposition of the CIA was influential with CENTCOM. The combined opposition of the CIA and CENTCOM slowed it to the point where it wasn't successful, even though the training program was approved by Secretary Rumsfeld. Again, I think the key issue had to do with attitudes toward working with the externals before the war, and not so much with Chalabi versus Allawi.

How would you then define what then happened after the invasion. The de-Baathification of the country. Do you think it was a success? Should we have done it? And how would you compare it to de-Nazification, which although we did do an extensive de-Nazification program we didn't eliminate structure the same way we did in Iraq.

First, I don't think your right about not eliminating structure in Nazi Germany, I think the premise of your question may be wrong, but I believe some kind of de-Baathification was required. The Nazis ran Germany for about 12 years whereas the Baathists ran Iraq for about 30 years. I don't think its realistic to say that any kind of new government could have been created in Iraq if we had left the Baathists in place in key institutions of the country. It is worth pointing out that the Baathists represented Sunni domination of the country; the Sunni Arabs are only about 20 percent of the country. Had we not done some kind of de-Baathification to remove these key leaders of the party that created the tyranny that ran Iraq for 30 years, you would not have had Iraqis coming forward to play roles of responsibility in the new Iraq but instead you might have had an insurgency conducted by Kurds and Shiites. In other words, you might have had an insurgency conducted by the 80 percent of the country that detested the Baathists. So I think some degree of de-Baathification was required.

The actual policy that we put in place, which has been much criticized for being very Draconian, was in fact quite moderate and measured. I can describe it to you very briefly. It was a three-element policy. The Baath party membership was approximately two to two and a half million people in a country that is approximately 20 million people. So what would happen if you were in approximately the top one-and-a-half percent of the leadership of the Baathist party? Did we say you would be executed? No. Did we say we'd cut your hand off? No. Did we say that you'd be imprisoned? No. We said that you can't get a government job. This only applied to the top one-and-a-half percent of the leadership of this miserable, murderous party. So if you were in the 98th percentile of the leadership of the Baathist party you were unaffected by this. The second element of the policy was that Baathists could not hold the top jobs of the key government institutions. The third element of the policy was that there could be exceptions to the first two rules. That was the policy.

If someone says that that policy was excessively severe then they are basically saying that there shouldn't have been de-Baathification at all. I don't agree with that.

Now, there was a substantial amount of de-Baathification in Iraq that went beyond that policy. It was because people throughout the country spontaneously took action against the Baathists whom they detested. One of the things that would happen in the press reports is that you would get the description of some local Baathists getting thrown out of a school because some local people in some province or village hated the person or the Baathists in general. That would be described as an example of the excessive nature of the de-Baathification policy. But that was not a result of the de-Baathification policy. That was the spontaneous uprising of local people against members of the Baathist party that they hated and who had oppressed them.

I think it is important to distinguish between what was done across the country spontaneously by ordinary people and what the actual CPA policy was. To me, the policy seems tightly circumscribed and quite sensible. The argument that there should have been some sort of de-Baathification was correct. Had we not done de-Baathification as a matter of policy at all because we were worried about offending the Sunni Arabs, we might have wound up having the 20 percent of the country better disposed towards us, but we would might have had a revolt on our hands from the 80 percent of the country that hated the Baathist party. I think a lot of the criticism of de-Baathification is not well-grounded.

How would you define the initial "Shock and Awe" campaign in Iraq or do you think it should have included more boots on the ground and the taking of key strategic points earlier on? Moreover, how do you think we performed in the days immediately after, in things such as creating order?

I don't know anyone who thinks that the initial campaign wasn't a stunning success. We overthrew Saddam, who had a formidable military, in less time than it took to overthrow the Taliban in Afghanistan. The war started on March 19, and by April 9, the Saddam statue was toppled in Baghdad. That was a matter of days. Now there were all kinds of problems afterwards but the Shock and Awe campaign, which was designed by CENTCOM and not by people in the Pentagon, was a stunning success.

I think there were a number of errors made after Saddam was removed. I deal with some of them in my book, though I mainly focus on ones that my office was involved in. We were not doing the military and operational planning for the war, but we were focused on the planning for political transition of post-Saddam Iraq. And there I think the United States made its most serious error, in my evaluation, which was that we set up an occupation government instead of setting up the Iraqi interim authority as we had planned to do and as had been approved by the President before the war started. The CPA became an occupation government of Iraq for a protracted period, for 14 months. I think that was a big mistake. I think there were also other mistakes -- including operational mistakes, such as not doing enough to suppress the disorder in the immediate aftermath of the removal of the Saddam government.

How would you characterize the early consideration of Iraq for as a target for military action after 9-11 and how would characterize the Department of Defense Inspector General Report of February 2007?

Well it's hard to do justice to that question in the short amount of time we have left, but, first of all, on the question of Iraq rising right after 9-11, I would recommend that individuals who are really interested in this read my book. Iraq was a major national security problem for the United States throughout the 90s and in the first months of the Bush Administration before 9-11. The issues concerned what to do about Saddam, how to contain him, what to do about the UN economic sanctions, weapons inspections, and the aircraft patrolling the

no-fly zones. All of those issues together were a major national security problem for the United States, even before 9-11. Saddam's role as a pursuer of weapons of mass destruction, supporter of terrorist groups, recidivist aggressor, launcher of wars against Iran and Kuwait and attacker of Saudi Arabia and Israel and the rest of that was a major problem, even before 9-11. So, when 9-11 occurred and we were thinking in general about states supporting various terrorist groups, it was perfectly natural that people would raise the question of what should we do about Iraq. It would have been astonishing if people had not asked whether Iraq had a role in 9-11 and whether we are going to have to do something about Saddam if we are going to deal with international terrorism generally. The general answer to your question is that reasonable questions were asked about Iraq in the immediate aftermath of 9-11. I think any American president would have asked those questions under the circumstances. Had Bill Clinton been president at the time, I think he would have done so. So I don't think there was anything extraordinary in raising questions about Iraq.

Now let me say a word about the Inspector General report. The acting Inspector General did a report that answered a question from Congress as to whether people at the Pentagon in general and whether people in my office in particular did anything relating to the pre-war Iraq intelligence that was unlawful, unauthorized, or inappropriate. The acting Inspector General came to the conclusion that everything we did was lawful and authorized. But he said in his report that he thought that criticism that people in my office made about the CIA was inappropriate.

He focused on a single briefing that people in my office had done. People in my office were unhappy with the CIA's intelligence and they prepared a briefing that criticized the CIA's intelligence. That briefing was given to Secretary Rumsfeld, it was given to CIA director George Tenet, and then it was given to Steve Hadley at the White House. What the DOD Inspector General said was that it was inappropriate to give it to Steve Hadley at the White House. They did not say it was inappropriate to give it to Rumsfeld or Tenet, but only at the White House. Why? Because there was a possibility that Steve Hadley would think it was an intelligence briefing rather than a policy criticism of intelligence. But there was no chance in the world that Steve Hadley would have thought that. He knows me as a close colleague and knows that people who worked for me were policy not intelligence officials. Amazingly, the Inspector General did not interview him.

So the acting IG came to the preposterous conclusion that Stave Hadley might have mistaken this as an intelligence briefing even though it was a policy criticism of the intelligence product. Then the acting IG said what made it inappropriate is that it appeared to be an intelligence briefing and that it deviated from the consensus of the intelligence community. Well, of course it deviated from the consensus of the intelligence community—it was a criticism of the intelligence community's consensus! It was labeled as such. It talked about what was wrong with the intelligence community's consensus.

The most telling point is, when the acting Inspector General presented his findings to the Senate's Armed Services Committee, he was asked whether the Defense Department criticism of the CIA was correct in substance. The Inspector General responded that his office didn't look into that. He said that the mere fact that we criticized the CIA was inappropriate. He said they did not evaluate if the criticism was correct or incorrect substantively.

I think what the Inspector General said was preposterous. It is the role of consumers of intelligence to read that intelligence critically. The proper criticism of the policy community is not that we criticized the CIA inappropriately but that we didn't criticize the CIA enough. So what the Inspector General found was wrong made no sense. Numerous studies have been done over recent decades that have urged policy officials to read intelligence much more critically and not accept it at face value. We were doing exactly what should have been considered best practice. Knocking people at the Pentagon for criticizing the CIA without even evaluating whether the criticism was valid itself makes no sense. I strongly disagree with that conclusion even though I was happy that the IG's office recognized that everything we did was lawful and authorized. On the issue of appropriateness, the report was completely off the rails.

So in the intelligence cycle would you characterize what happened as providing feedback and not alternate analysis?

It was not alternate analysis. It was never put forward as alternate analysis. It was put forward as policy criticism of intelligence because my office was not an intelligence agency. We never acted as one. We never produced our own intelligence. The intelligence community produced the only intelligence that was being used. I think that that criticism is wrong. What made it even worse was that the press reporting about the Inspector General's report was itself wildly inaccurate. The headline in the Washington Post on their page one story about the DOD Inspector General report used phrases in quotation marks that were attributed to the Inspector General's report that were not in the Inspector

General's report. The Washington Post had to run what someone described as the "mother of all corrections" the next day. But given that they ran the inaccurate attack on me in the upper right hand corner of page one, you will never get a proper correction from the tiny print on page 2 where it was located. The whole business about how the IG came to his conclusions and how the Washington Post and news agencies around the world reported it is just a series of errors.

Do think General Abizaid's Middle Eastern background was an asset in developing strategy?

General Abizaid is a very smart man, and I think he has a lot of insight that came from study and a lot of insight that came from his own experience. The fact that part of his own experience was as an Arab American, as a guy who had been posted in the Middle East and had done work in the Middle East contributed to his understanding of things and the value he brought to the deliberations.

Well since it is time to wrap up, what would you say to GSPIA students who want to enter the field of international relations and end up perhaps in the same position you have attained, Under Secretary of Defense for Policy? Any advice?

There are various routes that people have followed to do that. I did a lot of writing about international affairs and national security policy and that was what brought me into the field. There are pros and cons about doing a lot of writing. You are allowing people to see what you think and they can criticize it. If you say things that are wrong and people can look back at your writings, they can attack you for it. It takes a certain boldness to set your views in writing. But if you do it, and you do it carefully and in a way that makes for good reading even years after the fact, it can help you establish yourself with the kind of people that may want to bring you into an administration. It's not a risk free strategy, but it is a strategy for establishing yourself as an analyst, commentator, and someone that can provide strategic advice.

Interview with Dr. Phil Williams
February 25, 2011

John Pino (MPIA, SIS) and Joshua Hoffman (MPIA, SIS)

Forward by John Pino

Now more than ever, to echo former Secretary of State Madeline Albright, the United States is "the indispensable nation." How long can the United States continue being that essential country to international peace and security? Dr. Phil Williams echoed the words of another former Secretary of State, Colin Powell, "If you break it, you own it." This was a reference to Iraq. However, one might argue that this applies to directly to the United States as well.

It is keenly ironic that Dr. Phil Williams, who is a proud Welshman, appreciates the power and the responsibility that the United States is tasked to exhibit to the world and to itself more than many Americans. What is America to the world? What are we to us? America is normally viewed in the eyes of its presidential administration by the world's citizens and how that administration interacts with each referent society. Americans, in this editor's opinion, identify ourselves in the superlative: we have the most powerful military (and are unafraid to use it); we donate the most aid (not per capita); and we arguably have the best educated and most able workforce in the world. This is now. But when will that 'now' become 'then?' In this interview, Dr. Williams attempts to answer that question by giving us a prescient analysis of America's role in international affairs. He speaks about myriad topics: the Bush administration's role in Iraq and Afghanistan; changes in the organization to the U.S. military and its efforts to combat terror network financing; the transition in strategy from the Bush to Obama administrations in the War on Terror; the end to combat operations in Iraq; and emerging threats to U.S. national security. Dr. Williams makes an important contribution to the discussion on America's role in IR by lending his intellect, expertise, and time to PPR. I am grateful for his continued dynamism and am humbled by his encouragement as a professor and mentor to the students of GSPIA.

Can you please explain your role as a professor and give us some of your history?

I've been at GSPIA for twenty one years. I started at GSPIA back in 1990 as a full professor and in 2000 went on sabbatical and did research at CERT on cyber-crime. From 2007 to 2009, I went to the Army War College as a visiting research professor, which was a lot of fun, and wrote two papers, one on the "New Dark Age" and one on Organized Crime in Iraq.

What research have you done on the Bush administration's roles in Iraq and Afghanistan?

My specific research has been on the failure in Iraq to foresee the problems that arose after a very successful military invasion in defeating the Iraqi forces on the field of battle. Unfortunately, very little preparation was done to deal with the situation afterwards, and even prior to invasion, there were far too few efforts to figure out what the U.S. might be dealing with. Secretary of State Powell warned that "If you break it, you own it" – but very few officials around the President thought through what owning the problem might mean in practice. And in the early months of the occupation, there were two big mistakes: one was allowing looting to go on unimpeded, and the second was the disbanding of the Iraqi army. I would argue that there was a third mistake that links back to both of those missteps, and that was a failure to address organized crime. What made that particularly unfortunate is that organized crime fed into the insurgency. A few observers warned that it would be like the Balkans in terms of organized crime and in summer 2003, a U.N. delegation went to Iraq and produced a very impressive report on the threat posed by organized crime in Iraq. One of the members of that delegation subsequently told that when they briefed their report to U.S. military and civilian leadership in Iraq they were met with a mixture of hostility and indifference. The military did not see organized crime as its problem while the civilian leadership led by Ambassador Bremer simply did not recognize the challenges that they were facing.

As far as Secretary Rumsfeld is concerned, what do you think about his changes in military organization?

Rumsfeld saw the need to transform what had become a legacy force structure from the Cold War, but put the emphasis on a smaller more technological force rather than a different kind of mission. The Army was good

at defeating enemy forces on the field of battle but less prepared for counter-insurgency. Ironically, Rumsfeld's emphasis on a smaller force made dealing with a complex insurgency and the duties of occupation in Iraq even more difficult. Expectations that we could just go in, change the government, and then come out again were unrealistic. As experience has shown, regime change is an extremely hard thing to do.

Another unfortunate consequence of the intervention was the impact on developments in Afghanistan. As many people have said, Afghanistan was a necessary war; the United States had to go into Afghanistan and take away Al-Qaeda's safe haven. The Iraq intervention took resources and attention away from Afghanistan, when the job wasn't finished. And I think we've been paying the price for that since. If you look, the Taliban started its resurgence in 2003, and I don't think that's purely coincidental. The tragedy is that Iraq was a war of choice. It wasn't something the U.S. had to do. While Saddam Hussein was certainly succeeding in his efforts to circumvent sanctions - he obtained a couple of billion dollars from corruption in the Oil for Food Program and made a lot more money from the oil protocols with his neighbors - a lot of this money was spent on palaces rather than weapons systems. This is not really surprising – Saddam Hussein was another dictator obsessed with self-glorification. What we also know in retrospect was that Saddam Hussein's major security concern was Iran, not the U.S. And this concern encouraged his pretense that he had developed weapons of mass destruction. This in turn fed into U.S. misconception on WMDs. In reality, the sanctions and the inspection regime had worked, and the infrastructure in Iraq had decayed significantly.

Nevertheless, the invasion of Iraq was justified largely in terms of Saddam Hussein's quest for WMDs. An important reinforcing element in the rationale was the regime's supposed links to terrorism. And here again the Administration saw this as a more serious problem than did the intelligence community. The CIA judgment that there was no symbiotic relationship between Iraq and terrorist groups was correct. Yes, Abu Nidal was in Iraq – but by this time Abu Nidal was a very minor player in the terrorist world. And if you really want to argue that a state rather than a transnational Jihadist network was culpable in some way for September 11 you have to point your finger towards Saudi Arabia. Sixteen of the nineteen hijackers were from Saudi, and a lot of at Al-Qaeda's funding came from Saudi Arabia and the Gulf states. If you want to be really dramatic you could say that in terms of responding to state support for terrorists, the U.S. invaded the wrong country.

In sum, the Bush Administration had a severely flawed assessment of the Iraqi regime and its capabilities and, perhaps even, its intentions. That is not

to suggest that this was a nice regime. Saddam Hussein was a tyrant who used terror internally on his own people. He was a very bad guy, and overall, I'm glad he's gone. But were the strategic cost and the loss of blood and treasure worth it? I'm not convinced it was, even now. The rather facile assumption that military intervention was going to be followed by an easy transition was challenged by warnings, particularly from the Bureau of Intelligence and Research (INR) at the Department of State, that there would be a lot of governance problems. As a result, INR was squeezed out of the analytic process. The other thing that was obvious from the outset was that the big winner in all of this was going to be Iran. Essentially, we were shifting the balance of power in the Middle East in favor of Iran. The other problem was that Iraq undermined the legitimacy of U.S. foreign policy. It also became a campaign theater and a training ground for Al-Qaeda. Whatever the Al-Qaeda presence in Iraq while Saddam was still there, it became much greater afterwards. The U.S. created a self-fulfilling prophecy.

Looking at the strategy for Afghanistan and the overall War on Terror, how would you describe the most significant changes from the Bush to Obama administrations?

There is a lot of continuity here, in the War on Terror and the attitudes of both the Bush and Obama administrations. President Obama has continued President Bush's approach to Afghanistan but is caught in a dilemma as he has to support a highly corrupt regime. There is a very interesting piece in a recent issue of Foreign Policy about how President Obama's relationship with Karzai is not nearly as close as was President Bush's relationship with Karzai. I think there is a lot to that. One reason is that the Obama administration has realized the level of corruption that exists within the Karzai government. The Karzai regime has become very good at extracting resources and rents and funneling them upwards and yet is very bad in terms of service provision. So we have the worst of all worlds. I think the Obama administration has realized that the corruption is feeding the insurgency and so has distanced itself from Karzai while also pressuring the government to clean up its act. But this has become a problem, with Karzai personally and with the overall Afghan-U.S. effort. The difficulty is that without such pressure, U.S. legitimacy is eroded. Ironically, although the insurgency has its roots in fundamentalism, it is funded in large part by the opium or heroin business. At the same time insurgency is fueled and inflamed by government and official corruption.

So then, would you say that the continuity is due to Obama seeing the necessity to have continuity between presidencies in this?

President Obama, being a Democratic president, has realized one of the great lessons of the last sixty years—that you don't want to be a president who loses a country. The argument that the United States lost China when it became communist, helped to fuel McCarthyism. LBJ wanted to avoid being the president who lost Vietnam. He had this ambitious, domestic social agenda and felt that it could only be implemented with conservative support. Therefore, it was essential to display resolve and commitment in Vietnam.

What is your overall evaluation of how the Obama administration redesigned the strategies to deal with the War on Terror and why did they?

Things had turned around in Iraq prior to Obama. Although this is often attributed to the surge in troop presence, it was much more the result of learning and adaptation by the army. It was also the result of AQI (Al-Qaeda in Iraq) being incredibly culturally insensitive and muscling in on the criminal activities of the Sunni tribes. The tribes then allied to the US in the Anbar Awakening. So, to a degree, we got lucky. If you go back to 2006 and look at the very gloomy prognostications for Iraq, then we've come a long way since. Are there continued problems? Yes. But we are a long way from the darkest days when it looked like a full-blown civil war was underway. So, in Iraq, I think we've ended up with a much better outcome than seemed likely a few years ago. In Afghanistan, however, we are still paying the price for taking our eye off the ball earlier.

Could you elaborate on the end of combat operations in Iraq?

One of problems was that we did not have enough manpower in Iraq. As a result, U.S. forces never fully secured many of the weapons and ammunition dumps in Iraq. As a result, it was very cheap and relatively easy for the insurgents to use those munitions against us. The other element was money. We faced an insurgency that was heavily involved in extortion. And that meant that the Iraqi contractors who were being extorted were inflating their bids for money from the U.S. for reconstruction. So, in effect, the United States was inadvertently funding the insurgency. The whole criminalization of insurgencies—that insurgencies use crime as a source of sustenance and funding – poses significant problems in both Iraq and Afghanistan.

How is the U.S. military augmenting its ability to combat the financing of terrorist/militant organizations?

In recent years, there has been considerable emphasis on what has been termed threat finance. This covers various kinds of activity and various entities including states, terrorists, and insurgents. This is probably one of the areas where the intelligence effort has been very effective and where intelligence analysts have succeeded in creating their own trans-agency network. In operational terms, it might be targeting financiers.

How would you define what happened in Iraq in terms of getting rid of the remnants of Saddam's regime after we toppled his government?

Disbanding the Iraqi military gave us 400,000 more enemies than we had previously. The Ione characteristic of the insurgency in Iraq was the mercenary element – insurgents hire people. The insurgency in a lot of ways becomes a form of employment in Iraq. And the former military were guys with skills that could hurt U.S. forces. We really should have kept these guys on our side. So, the effort to engage in fundamental, social engineering by Ambassador Bremer harmed U.S. forces.

How would you categorize the initial military intervention in Iraq?

We do it better than anyone. But the real question is what comes after. In some ways, the U.S. military was almost too successful for its own good. The U.S. defeated the Iraqi army, but, in a sense, many of them lied down and lived to fight another day. And then there was a problem with control. In relation to this, a useful addition to the Weinberger-Powell doctrine about the conditions under which to use force is that if a country is stable, do not destabilize it.

Which organizations or countries do you see as emerging threats to the national security of the United States? How is our government revamping our security forces to deal with these threats?

There will be continued threats from the usual suspects already identified, whether countries such as North Korea and Iran, terrorist organizations like Al-Qaeda, insurgencies like the Taliban, or brutally violent Mexican drug trafficking organizations. I think that strides have been made in Iraq and Afghanistan to

create a highly adaptable force that can be used for a variety of contingencies. Whether or not they will be is another matter.

What do you think will be the biggest challenge for the next POTUS in terms of national security? How should that person deal with that challenge? Do you think it's possible that they deal with it in the way you proffer?

The budget. The U.S. is entering a period of budgetary stringency that will ultimately impinge significantly on the Department of Defense and the intelligence agencies. As a result, we will see greater reluctance to get involved in military contingencies – and Secretary of Defense Gates has already articulated this impulse. Perhaps, the most positive result of scarcity is that it can lead to greater clarity about priorities. As a result, a war of choice is likely to become less appetizing in the next decade than it was in 2003. The danger is that wars of necessity might be avoided.

Ok. And our last question: what advice can you give GSPIA students who want to work in the intelligence community and in international affairs in general?

Speak truth to power. Of course, you will back the common position at times; but the main thing is this: do not tell policy makers what they want to hear, but make sure they understand what they need to hear.

Structural Adjustment Failure in Sub-Saharan Africa: The Search for Macroeconomic Stabilization & Sustained GDP Growth

Emily R. Tanner
MID, Development Planning and Environmental Sustainability

Abstract

This paper examines the causes behind the failure of structural adjustment in Sub-Saharan Africa to provide macroeconomic stabilization and sustained GDP growth. It first provides a brief review of the history of adjustment and common criticisms of conditional lending. It will define adjustments' aims and identify what it means to claim that adjustment "failed." The paper examines the implementation and outcomes of adjustment lending in Kenya, Uganda, and Zambia to provide a framework for analysis of structural adjustment failure. The paper concludes that lack of proper implementation by borrowing states, poor design and evaluation, and lack of coordinating institution and sectoral reforms provide the root causes for failure. The paper also notes that adjustment does not concern itself with poverty reduction, which has led to increasing criticism. The paper ends with a brief analysis of current lending policy in the form of Poverty Reduction Strategy Papers (PRSPs) compared with adjustment.

Introduction

Structural adjustment lending was championed in the 1980s by the developed world and the International Financial Institutions (IFIs) as a key to stabilizing the macroeconomy of poverty-stricken states, thereby promoting growth, and eventually development. Yet in the wake of structural adjustment, GDP growth rates plummeted in many countries, along with continued widespread poverty and economic struggles, even after implementing these reforms. The development orthodoxy maintains that structural adjustment failed to produce its expected outcomes, though the reason for this is still debated heavily. While some argue that structural adjustment policy is exploitative of

developing countries, the failures of structural adjustment lending instead lie in poor implementation of policies, as well as poor initial design of the programs and a lack of coordinating reforms.

It is widely acknowledged that structural adjustment did not promote development and has actually perpetuated inequality and poverty in many countries. Popular opinion regarding structural adjustment policy is littered with ideology, as propaganda paints international financial institutions and the developed world governments as evil and exploitative institutions seeking to establish dependency and perpetuate poverty in the developing world (Zack-Williams et al 2000). It is argued that adjustment is a tool to increase profits for multinational corporations (Ambrose and Nejhu 2005). The Structural Adjustment Participatory Review International Network published a 2004 report concluding that adjustment lending led to inequality and poverty, and "Western-inspired and imposed doctrines of structural adjustment and neoliberal economics must go" (SAPRI 2004, 3).

The Whirled Bank Group is an activist organization fighting the policies of the IMF and World Bank, which, it claims, perpetuate poverty. Their primary objections to adjustment lending are cuts in social services that hurt the poor and the ways in which adjustment lending was "forced" upon developing countries (WhirledBank.org 2010). These critiques of structural adjustment often consist of anecdotal evidence of how a specific sector of the economy was harmed by structural adjustment.

Yet these analyses fail to point out that the purpose of adjustment lending has never been to promote development, but instead to stabilize the economy, correct the balance-of-payments of problem, and promote economic growth in order to facilitate loan repayment. Further analysis is needed to better understand what structural adjustment actually intended to accomplish in order to better understand its outcomes and create better policies.

History of Adjustment Lending

Structural adjustment is the term used to describe the conditional-based lending practices of the International Monetary Fund and the World Bank (Zack-Williams et al 2000). In the late 1970s, the oil crisis, the debt crisis, and the international recession and resulting stagflation each contributed to a severe balance-of-payments problem in the developing world (Adepoju 1993). Exports dropped significantly, while imports continued to rise (Adepoju 1993). According to Zack-Williams et al (2000), the fall in terms of trade "led to declining revenue for their governments and, in an effort to maintain public

expenditure, many reacted by increased borrowing, thus setting off the debt trap." Import substitution policy became the norm to protect growing economies by placing heavy emphasis on the state's role in the economy through protectionism, nationalization of industries, and creating large social safety nets; this also contributed to growing debt and massive budget deficits. The combination of the global economic downturn, the debt crisis, and the inequalities in terms of trade all contributed to economic instability in the developing world.

The IFIs began implementing adjustment programs as a direct response to this instability. These institutions believed that it was irresponsible for the IMF and World Bank to continue lending money to countries that could not repay prior loans; thus, in order to secure further loans, the IFIs contended that developing countries must make changes that promote sustained economic growth through market liberalization techniques. IFIs began to practice policy-based lending; they would negotiate loans with countries on the condition that governments would implement supposedly beneficial reforms to the macroeconomy (Milward 2000). These reforms were intended to open up economies and liberalize markets; it was believed that doing so would stabilize the macroeconomy, correct trade imbalances, reduce debt, and eventually lead to growth (Milward 2000).

The use of conditional loans began as a result of previously ineffective methods of funding and advising nations, known as "policy dialogue," in which projects were funded based on a given nation's response to such advice (Zack-Williams et al 2000). Conditionality was supported because creditors believed that the only way to deal with the immensity of the debt problem and the balance-of-payments issues in the developing world was to sufficiently reform underdeveloped economies so as to promote growth (Boughton 2001). Essentially, lenders were fearful of pouring more money into the developing world unless they were assured of better results. While this is sound economic policy (no bank should continue to loan to a borrower with poor credit or sloppy spending practices), in practice this kind of lending was criticized for forcing neoliberal economic policies onto the developing world.

Developing countries planning to borrow structural adjustment loans work with the IMF to negotiate loan terms, including deciding what reforms to implement. Adjustment was comprised of two phases: first, macroeconomic stabilization, followed by market liberalization. The first phase is designed with several key reforms: allowing the free market to determine prices and wages; privatizing state resources; reducing budgets via cuts to social spending and bureaucracy; deregulating currency and removing protectionist measures to promote trade; and reorienting state institutions towards facilitating private sector

development (Zack-Williams et al 2000, Milward 2000). After these reforms took place, more long-term reforms would be implemented to facilitate deeper, more systemic liberalization. These reforms were to make structural changes in the banking sector, labor market, tax system, and trade sector, in order to solidify liberalization past the stabilization phase. However, many African states never made it to this phase, as the immediate after-effects (unemployment and cuts in social spending) made reforms highly unpopular, as evidenced by IMF riots in Africa and Latin America in the late 1980s (Milward 2000).

Implementation & Results

Adjustment lending has been implemented throughout the developing world. This paper focuses on three Sub-Saharan African countries (Kenya, Uganda, and Zambia) to examine the effects of lending on their economies. Each of these states had very different reactions to adjustment lending – positive, negative, and mixed. Analysis will describe the conditions that led to such varied reactions.

Kenya

Kenya's first period of structural adjustment in the 1980s was marked by lack of compliance and ineffective implementation by the Kenyan government (Swamy 1994). Kenya undertook a standard reform package as described above. During this time, however, GDP growth rates were volatile (see Figure 1), initially dropping and then increasing rapidly from 1983-1986, when they fell again. The balance-of-payments (see Figure 2) did increase, moving towards zero until 1983, then stagnating and falling again. Inflation (Figure 3) was also volatile. In short, none of the major indicators of economic stability and prosperity were performing consistently.

This volatility was a result of poor implementation and nonexistent monitoring by the IMF; reforms were either not implemented or done so half-heartedly (Swamy 1994). In some cases, reforms were undertaken on paper but not actually implemented; in one example, an auction market for government paper was created, but instead paper was allocated via "arrangements" (Swamy 1994). Political leaders did not have the necessary will to carry out reforms, and often "waxed and waned" in implementation efforts (Swamy, 1994). Swamy (1994) notes that the IFIs "clearly underestimated the strength of the vested interest. Perhaps they also overestimated the Bank's willingness to enforce its conditionalities…" (14).

Fiscal mismanagement remained an issue as well. Despite adjustment loans, the budget deficit in FY1991 was the same as in FY1981, as the government had not reduced spending according to loan conditions (Swamy 1994). Further, the state lacked the institutional capacity to carry out reform in a consistent manner. Swamy concludes that Kenya's inability to implement reforms indicates it should not have been a candidate for further loans compared with other adjustment borrowers, such as Ghana. Yet loans continued to be dispersed to the government despite slow progress and lack of implementation of reforms with the first loan. Both the IMF and the World Bank often continued to negotiate loans to developing countries, often with identical proposed reforms as the initial loans (Easterly 2002).

The government of Kenya began to make more serious reform efforts in the 1990s. Beginning in 1993, the state implemented reforms such as tariff reduction, privatization, liberalization in the corn market, market reduction of budgets, and shrinking the civil service (Government of Kenya 1996). The resulting effect of these reform efforts was an initial increase in GDP growth rates (Government of Kenya 1996). The Kenyan shilling was strengthened and inflation reined in (The Economist 1994). The government made sustained efforts to tighten fiscal and monetary policy, and called for coordinating reforms to help poverty reduction (Government of Kenya,1996).

Still, results were mixed. Growth (Figure 1) rose rapidly at first, but then began a pattern of rising and falling. Kenya's balance of payments deficit (Figure 2) was shrinking and approaching zero initially, which would indicate success; however, by the middle of the 1990s, the balance of payments deficit remained large and continued to grow. Inflation did appear to be under control after 1991 (Figure 3).

These mixed results indicate that adjustment was a failure at achieving its specified goals. Yet resistance to privatization among government officials remained a concern for lenders (The Economist 1994). Swamy (1994) contends that despite better efforts from the government, fiscal laxity remained a problem as the Kenyan government lacked the capacity and willingness to exert self-control in fiscal policy. The return to an electoral, multi-party system in the early 1990s may have contributed to a lack of control; despite the gains in the macro economy, the average Kenyan did not see many benefits at the micro level, leading to dissatisfaction among potential voters. The change in the valuation of the shilling actually imposed an immediate negative effect on farmers (The Economist 1994). Further, the government maintained that social services like health care and education remained inadequate and that poverty still permeated society, and corruption remained rampant in the region (Government of Kenya

1996). Fear of angry reaction and the political consequences of adjustment policies might have pushed the government away from total implementation (Ndegwa 2001).

A lack of clear property rights, and a number of legal and regulatory constraints, continued to plague private individuals and entrepreneurs. The government of Kenya acknowledged that various bureaucratic regulations were increasing transaction costs of doing business. These regulations are generally not addressed by structural adjustment, as they often are concerned with individual sectors and industries instead of with the macro economy. However, the regulatory atmosphere and property rights in the country are two key components to growth; thus, a primary failure of adjustment is its narrow focus on macro adjustment and not on the necessary reforms to facilitate growth.

Ultimately, Kenya's mixed results were the result of a number of issues: poor and inconsistent implementation, excessive bureaucratic regulations, and governance and capacity issues each contributed to the failure of adjustment to facilitate growth, stabilize the economy and balance the terms of trade.

Uganda

Uganda began the adjustment process in 1986, and has been one of the most successful cases of adjustment in all of Africa (Brett 1998). Reforms included the standard macroeconomic-level adjustments to deal with inflation, growing budgets, and the balance-of-payments crisis. Prior to reform, a heavily overvalued currency discouraged exports and effectively subsidized capital intensive imports (primarily used by wealthier individuals); in effect, this policy harmed poor export farmers while aiding the wealthy (Brett 1998). Once the currency was valued competitively, it raised exports and reduced unemployment. The government also enacted strict budget controls, stopped printing money, and improved tax collection in order to stem a fiscal crisis brought on by ongoing civil war and conflict in the region. Privatization and liberalization were also undertaken by the government.

Additionally, the SAP implemented in Uganda also placed emphasis on good governance, civil service reform, institutional reform to increase state capacity, reduction of corruption and inefficiency, and increasing political accountability and transparency (Brett 1998). These reforms were absent in many other countries.[1] Policies focused on constitutional reform, decentralization,

1 IFIs have been criticized for not making the design phase of structural adjustment transparent. It is not clear why some loans had conditions for governance while others did not.

and civil service reform, as well as on a strong commitment to democratization. Uganda had further made strides toward improving transparency by exposing corruption in the press (Brett 1998). Uganda worked towards the development of a local government system that decentralized power to districts, counties, sub-counties, and finally villages (Brett 1998). Finally, opposition to reform among political leaders was less pervasive, perhaps due to the level of political control exerted by donors (in 1992, the Minister of Finance was fired at the request of donors) (Brett 1998).

As a result, economic growth rates were high, from more than 5 percent between 1987 and 1994, and more than 7 percent between 1995 and 1997, and growth rates have remained positive since adjustment (Brett 1998). In the post-adjustment era, Uganda has seen much improvement in GDP growth (see Figure 4) and has been able to pay off large portions of their national debt. Uganda's balance of payments deficit, which had been increasing in the first half of the 1980s, actually decreased after implementation (see Figure 5). The volatility of this balance continued through the 1990s. Controlling inflation, however, was one of Uganda's greatest successes. In the early 1980s, inflation rates skyrocketed. After 1986, inflation dropped rapidly, falling to around 5% in 1995 and remaining constant.

Despite this, there are other fundamental issues within structural adjustment that may explain why Uganda continued to have a balance of payments problem. Milner (1998) notes that despite the reduction of trade barriers in Uganda, "natural" barriers still existed which hindered the effectiveness of trade liberalization. As a landlocked country with inadequate infrastructure, costs of doing business are greater in Uganda (Milner 1998). Geographical constraints increase the costs of trade because the country has less access to shipping routes, leaving Uganda disadvantaged compared with other countries on the coast. Uganda's failing infrastructure further increases trade costs as transporting goods and materials is less efficient. Bureaucratic regulations like customs barriers also play a role in increasing transaction costs of trade. Each of these played a role in limiting the effectiveness of so-called "free trade" reforms. Further, trade policies in other countries (such as agriculture subsidies in the U.S. and European Union) impeded trade, no matter how well Uganda implemented its policies. As adjustment is focused on broad reforms to combat inflation, promote growth and economic stabilization, and lessen a balance of payments deficit, the sectoral reforms needed to combat these "external" barriers to trade are overlooked.

Further, implementation problems remain in Uganda. Brett (1998) notes that "[f]ull privatization has been resisted, because the World Bank developed

an ineffective and high-cost program which only began to produce results in late 1994. The result has been subsidies, increased state debts, lower economic activity and serious costs for the poor." The primary concern over privatization was the expected layoffs, which would create dissatisfaction among the newly enfranchised public.

Finally, civil war and violent conflict as a result of the rebel movement in the North has resulted in economic crisis and massive human rights abuses. Fighting between the Lord's Resistance Army and the Ugandan Army has driven countless people from their homes and created a widespread refugee crisis. The war has therefore halted growth and industry and seriously increased poverty. The effects of the civil war have virtually reversed the positive effects of growth in recent years. This further indicates that adjustment did not "fail" in Uganda, but that structural adjustment policy is not more powerful than major crises like war or natural disaster. Uganda will continue to stagnate economically until peace is sustained.

Zambia

Zambia experienced a poor response to structural adjustment lending. Reforms began in the early 1980s, but it was a period marked by extremely poor implementation (Simutanyi 1996). Reforms that were negotiated in 1983 committed Zambia to devaluing currency, limiting wage increases, decontrolling prices of essential commodities, and adopting a foreign exchange auction system (Simutanyi 1996). A combination of poor implementation and delays in fund disbursement from the IMF and World Bank contributed to the failure of these reforms to produce any growth or stability (Simutanyi 1996). In 1986, Zambia cancelled its adjustment loans because of popular reaction to the loans; strikes and protests from unions became common as poverty deepened due to budget cuts and privatizations (Simutanyi 1996). Increased growth rates were actually recorded after the loans were cancelled, due to a bumper maize crop and favorable economic conditions. Growth rates were not sustained (see Figure 7), however, dropping considerably in 1989 and leading the government to reconsider their position on adjustment lending.

In 1991, the government became more committed to implementation of adjustment and expected better results. Reforms were standard liberalization reforms and included: deregulating agricultural prices and interest rates; liberalizing the maize market allowing the currency to float; removing exchange controls; liberalizing banking and trade; and reducing the budget via privatization, parastatal reform, and cuts to social spending (Scott 2002). This large reform

package also included some land reforms that were intended to promote property rights, which would further enable growth (Scott 2002). However, the reform package was designed by lending states that had little understanding of the prevalence of community property and the reforms failed to protect community property (Scott 2002).

The government of Zambia proved to be more effective at implementation during this period. Privatization of numerous industries was rapid, and the Bank of Zambia was able to implement banking reforms and regulations to strengthen the financial sector (IMF.org). Public service reform led to downsizing of the number of public employees, significantly reducing the budget (IMF.org). Zambia and the IMF expected the country to see a number of benefits after adjustment.

However, Zambia initially saw GDP rates plummet over 15 percent (see Figure 7). The balance of payments deficit did not see a great deal of improvement in the immediate years following reforms, and actually increased towards the end of the 1990s (see Figure 8). Scott notes that "even if many fiscal and monetary benchmarks have been met, many state industries privatized and many restrictions on the free market abandoned," adjustment still has yet to produce tangible benefits (Scott 2002, 406). Inflation, however, was brought under control, falling from over 175 percent in 1993 to under 50 percent in 1995, and has continued to fall (see Figure 9). Zambia's response to adjustment, therefore, has been extremely varied.

Why did these reforms fail to produce the results expected by the IFIs and the Zambian government? The IMF notes that during the period of implementation, Zambia suffered from terrible drought that ruined the maize crop, and was subjected to a decline in the world price for copper; both of these issues would be compounded by liberalization as market reforms do not provide a "safety net" for industries to fall back on in the event of natural disasters or price fluctuations. Creating social programs to ease the burden of such events is not part of market liberalization, so copper producers and farmers suffered extensively. Further, the HIV/AIDS crisis was ravaging Zambia, which limited productivity of workers, increasingly strained resources for families and the state, and limited the development of human capital as children are removed from school to work when parents are sick.

Adjustment was not intended to control for external factors and thus it is easy to say that Zambia's failure was not a result of adjustment lending. Yet the inability of market reforms to sufficiently cushion a country against economic downturns or provide a safety net for those who are in failing industries is a more

basic failure in the design of liberalization policies: they must be implemented alongside reforms to protect the economy from such external factors.

Analysis & Recommendations

In the case where adjustment was properly implemented and economic conditions were favorable, it did appear to produce the results that were intended by the IFIs. Uganda is a good example of relatively good implementation and did not endure many of the economic vulnerabilities seen in Zambia. Though growth was volatile, Uganda was able to stabilize its economy and repay its debts after implementing reforms. However, this posits a new challenge to proponents of adjustment who argue that adjustment, via growth and limited government, can be a stepping stone towards development: despite growth, development did not occur and violence and civil war continued to plague the country. Though certainly not attributed to adjustment, the violent conflict in Uganda and their development situation today illustrates that market liberalization may be necessary but not sufficient for sustainable development. This indicates that adjustment should be implemented alongside other reforms.

First, focus must be paid to building capacity in government for implementation. Adjustment is extremely focused on "less government" without paying adequate attention to "good governance." Many African countries are suffering from a lack of institutional capacity; staff is poorly trained and inexperienced often because government salaries cannot compete with those in the private sector or in other countries, which has led to a "brain drain" (Jaycox 1993). Cutting budgets as a part of structural adjustment only contributes to this problem. Developing world governments should be trained in implementation methods and progress should be clearly monitored. Countries that show poor progress must receive special attention to determine whether implementation problems are a result of capacity issues or a problem of political will. Training should include examining the drawbacks and challenges of adjustment, so that political leaders are prepared for problems. This can help to foster local ownership of adjustment, because policy implementers feel that they have a hand in their own development. (Jaycox 1993). Mechanisms must be in place to foster dialogue between recipient governments and lenders so that problems can be examined and solved as they come up.

Another key factor in the failure of adjustment is a lack of focus on micro-level barriers to growth. Strong property rights and a clear, consistent and easy-to-follow regulatory framework need to be developed before the economy can implement liberalization. External barriers to trade must be recognized and

steps taken to counteract extra costs that may reduce growth. Milner (1998) contends adjustment produces stabilization and growth, but that "the failure to attach sufficient importance to the coordination of trade policy reform and appropriate infrastructure and sectoral reforms may be a significant design weakness in structural adjustment programmes." At the very least, the timing and sequencing of trade, infrastructure, and sectoral reform, as well as property rights policy, should be coordinated with adjustment reforms.

The development field has reached a general agreement that prolonged, sustained development is impossible without a stable and legitimate state, and democracy is championed as the best way to achieve this legitimacy. However, sustaining democracy is a difficult task when implementing structural reforms because of the detrimental short-term effects; job losses as national industry are privatized, cuts in social spending on housing, education and health care, and shocks to entire industries are widespread. Indeed, these are the very problems that fuel the fire against the IMF and adjustment lending. This makes adjustment incredibly unpopular among the voting population, which raises a challenging question: can a structural adjustment loan be implemented in a state that is not authoritarian (Milward 2000)? From this perspective, political feasibility of adjustment is very important. If there is clear and consistent opposition to adjustment policies, government will be unlikely to act against the popular opinion despite stated commitment to adjustment.

No matter how market liberalization and reforms are carried out, improved evaluation methods are needed to monitor implementation in countries. Former World Bank economist William Easterly notes that the IMF would frequently repeat the exact same loans in some countries – even if they did not produce results the first time (2002). Easterly argues that better monitoring of results will help determine what policies to put in place next. The IMF and World Bank must insist on regular evaluations of state performance in reforms that are undertaken, and, most critically, must halt lending if reforms are not implemented properly.

Fault for poor implementation is often shared by borrower and lenders. Perhaps a new strategy of debt forgiveness could change the incentives for implementation. The IMF and World Bank could forgive debts as more reforms are enacted in developing countries; offering to lower interest rates on or partially forgive existing debt could be tied to reform actions in each country. This would allow states to escape the burden of pouring limited resources into repayment, and give them the opportunity to implement reforms at their own pace and according to specific needs, while still maintaining incentives to reform. Further, politicians in developing states are extremely willing to accept massive loans when

they realize they will not be in office when it comes time to repay the debt, or if loan conditions are poorly enforced. Debt forgiveness is an attractive alternative to loans because it changes the incentive structure for politicians to reform and does not encourage future loans (and thus, subsequent debt).

Finally, it is important not to dismiss potentially disastrous short-term effects of adjustment. As supply and demand shifts in a free market, industries expand and contract. People will lose their jobs and find it difficult to become employable without new training in the new industries. Schumpeter's so aptly named "creative destruction" is beneficial to most in the long run, but that does not mitigate the short-term pain involved. Long-term gain does not make the current situation any more bearable for those who lose their jobs, cannot afford to eat, or can no longer send their children to school. Temporary assistance should be provided to ease the suffering of those affected by these shifts, such as unemployment insurance and job training programs to help workers transition into new industries. Such assistance is necessary to placate the demands of the voting public and ensure legitimacy in government.

In some countries, such programs were implemented in the latter part of the 1980s (Stewart and van der Geest 1995). Social funding was generally limited in size and unable to adequately target those who needed most assistance, and as such the programs were unable to reach the majority of the poor (Stewart and van der Geest 1995). These programs were generally used to placate the public in the wake of unpopular adjustment reforms.

Current IMF Policy

The IFIs no longer promotes structural adjustment lending, focusing their efforts on Poverty Reduction Strategy Papers (PRSPs), which are documents that are prepared by the lenders in collaboration with developing country governments to describe the current conditions of the country and their strategic economic and development goals (IMF.org). PRSPs are three-year plans that are reviewed, revised, and renewed regularly. These documents are the basis by which the IFIs determine if countries qualify for lending or debt relief (IMF.org). The primary difference between PRSPs and structural adjustment lending is that developing countries play a participatory role in designing their own poverty reduction strategy, instead of being given a list of requirements. PRSPs are available to view on the IMF and World Bank websites, further adding to transparency. Yet despite a more participatory and transparent process, it is unclear if PRSPs address the problems inherent in structural adjustment lending.

As evidenced by the words "poverty reduction" in the name, PRSPs

certainly mark a drastic turn from adjustment lending, which focused on stabilization of the macroeconomy and ignored poverty as a major concern. Further, by allowing countries to create their own plans for poverty reduction, PRSPs create opportunity for countries to plan for the various reforms needed to enhance market liberalization policies. Proponents of adjustment lending argued that it was not the responsibility of IFIs to mandate these micro-level sectoral reforms along with the macro-level adjustment policy; IFIs do not have the mandate, nor the capacity, to carry out such reform. PRSPs have made it possible for developing country governments to design such reforms on their own terms, with guidance from IFIs.

Kenya's mixed response to structural adjustment is attributed to poor implementation (because of issues of capacity, corruption, and political will) and lack of necessary accompanying reforms (reducing bureaucratic regulation and improving property rights). By transferring the responsibility of designing an economic plan to Kenyan leaders, with IFI guidance, their poverty reduction strategy can overcome issues of political will by fostering ownership.

Kenya's strategic plan includes a proposal to improve registration and titling of property rights, and commits the government to creating "smarter" regulation that removes burdens from entrepreneurs (Kenya PRSP 2005). Several strategic goals involve reducing the number of regulations as well as stopping corruption (Kenya PRSP 2005). Finally, Kenya commits to strengthening administrative capacity of its bureaucracy and streamlining its current agencies (Kenya PRSP 2005). In this sense, Kenya is on the right track towards surpassing challenges seen during adjustment. Yet reducing corruption, increasing capacity, and removing regulations can be a tricky and time consuming process, making it difficult to assess if its strategy has worked thus far.

Uganda had a relatively good response to structural adjustment; inflation plummeted and growth rates remained positive (though were somewhat volatile). Their balance of payments issues had roots in poor infrastructure (increasing the costs of trade) and bureaucratic regulation. Uganda's PRSP places infrastructure development and improving the trade atmosphere as top priorities, including the development of roads and other trade routes (Uganda PRSP 2010). These priorities will help strengthen the ability of Uganda to increase trade and improve growth levels.

Yet Uganda's more recent economic crisis was the result of civil war and poor political leadership. Such obstacles require far more attention than can be given in a poverty reduction strategy paper and must remain at the top of Uganda's priorities as it moves forward. Progress towards reducing poverty will continue to stagnate until sustained peace is achieved. Thus, it is unclear if

Uganda's PRSP has been beneficial to the region.

Zambia's poor response to adjustment lending was primarily due to external forces in export commodity markets, such as maize and copper. Price fluctuations in these markets meant that Zambia could adhere to lending conditions, yet still see plummeting GDP and soaring poverty. In its PRSP, Zambia notes that the improved performance of its economy in the early 2000s was due to favorable global economic conditions and the overall impact of liberalization efforts in the early 1990s (Zambia PRSP 2007). Therefore, Zambia's case supports the idea that adjustment's major flaw was its failure to create a "cushion" for the Zambian people in the event of poor economic conditions. While external market forces cannot be controlled, the PRSP created by the Zambian government in partnership with IFIs outlines a plan for social safety nets in the event of such fluctuations (Zambia PRSP 2007). Zambia also includes strategies for improving capacity and strengthening democratic governance institutions, both of which will enable this strategic plan to continue towards fulfillment (Zambia PRSP 2007).

Difficulties in implementing these reforms will remain in any country that lacks resources or political will to carry them out. In Kenya, Uganda, and Zambia, it appears that PRSPs are a significant improvement to structural adjustment lending in that they allow each country to tailor their strategic plan to their own unique needs; it remains to be seen if each state will be able to adequately implement these plans.

Conclusion

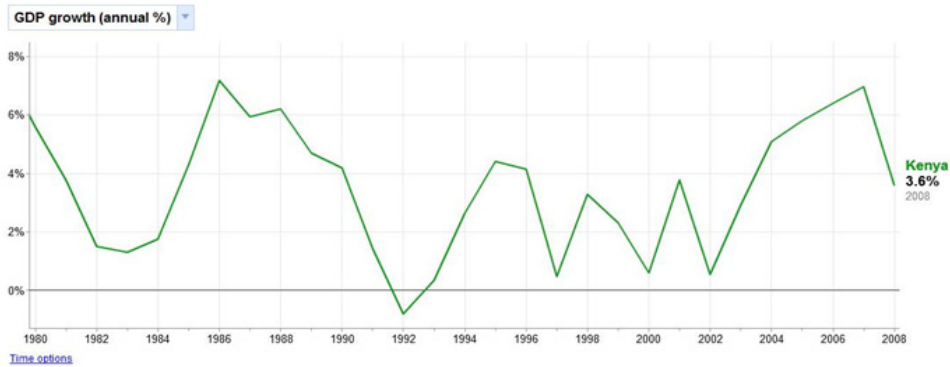
Adjustment lending was relatively successful in stabilizing the economies of countries whose governments were able to implement the policies properly. However, it failed to produce results in areas where external factors, or factors over which the IMF had no control (such as poor infrastructure, various barriers to trade, global market fluctuations, geographical constraints, or civil war), hindered stability and growth. Thus, the primary failure of adjustment lending is that it did not coordinate macro-level economic reforms with policies to assist in implementation (capacity building), trade and sectoral reforms, infrastructure development, improvement in property rights, and safety nets to help businesses and people as they transition in the new economy.

In response to criticism from the international community and developing world governments, structural adjustment lending has been phased out and replaced by poverty reduction strategy papers which attempt to coordinate structural reforms with targeted poverty reduction (IMF.org).

This new policy is a step forward for the developing world because it allows developing countries to collaborate with IFIs in the design of an economic plan that includes the unique reforms necessary to each country to promote growth under market liberalization. It remains to be seen if PRSPs will be an effective long-term strategy for reducing poverty and promoting growth, yet evidence thus far demonstrates that it is a marked improvement from structural adjustment lending.

Data and Figures

Figure 1 – GDP growth (annual %) Kenya

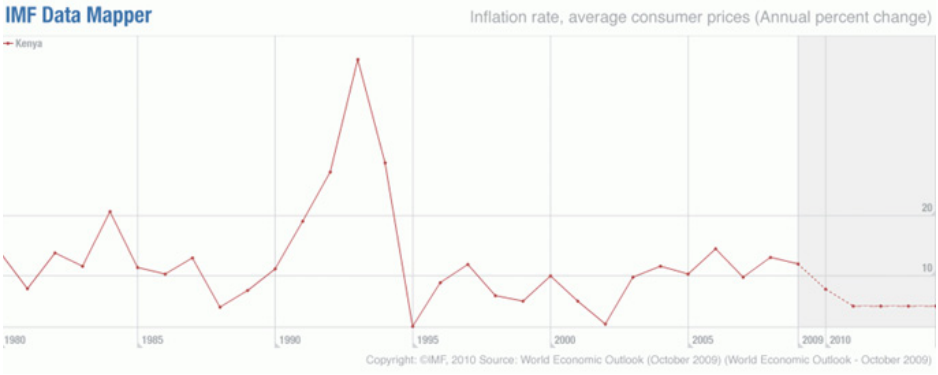


Graph created using Google Public Data

Figure 2 – Balance of Payments (annual) Kenya

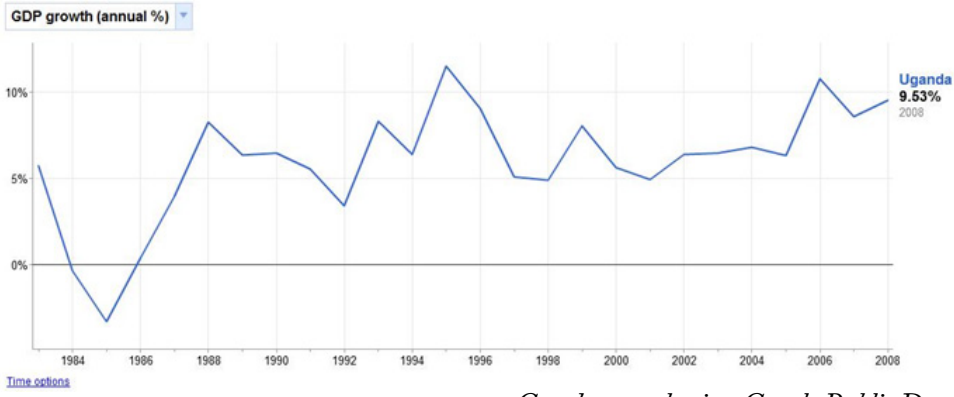
Graph created using IMF Data Mapper

Figure 3 – Inflation rate (annual % change) Kenya



Graph created using IMF Data Mapper

Figure 4 – GDP growth (annual %) Uganda



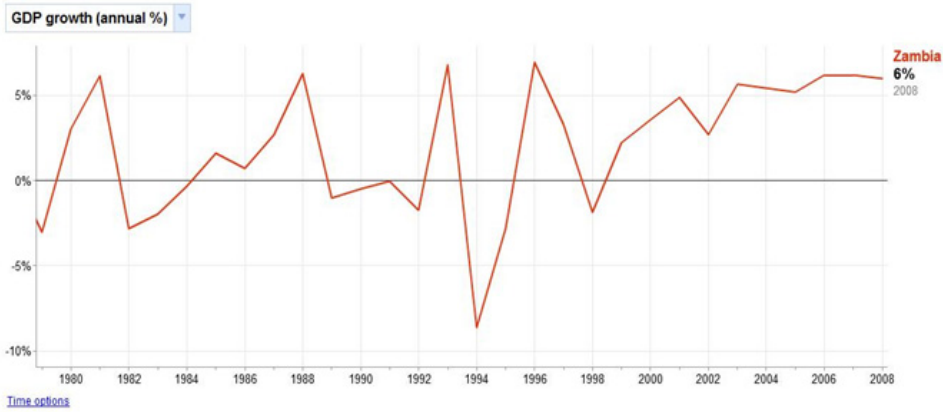
Graph created using Google Public Data

Figure 5 – Balance of Payments (annual) Uganda

Graph created using IMF Data Mapper

Figure 6 – Inflation rate (annual % change) Uganda

Figure 7 – Growth (annual %) Zambia



Graph created using Google Public Data

Figure 8 – Balance of Payments (annual) Zambia

Graph created using IMF Data Mapper

Figure 9 – Inflation rate (annual % change) Zambia

Graph created using IMF Data Mapper

References

Adepoju, Aderanti. ed. 1993. *The Impact of Structural Adjustment on the Popultion of Africa*. London: United Nations Population Fund.

Boughton, James. 2001. "Lending for Adjustment and Growth." In *Silent Revolution*, The International Monetary Fund. Retrieved from http://www.imf.org/external/pubs/ft/history/2001/ch13.pdf

Brett, E. 1998. Responding to Poverty in Uganda: Structures, Policies and Prospects. *Journal of International Affairs*, *52*(1), 313. Retrieved from Academic Search Premier database.

De Soto, Hernando. 2000. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York, NY: Basic Books.

Easterly, William. (2002). The Failure of Economic Development: Interview with William Easterly. *Challenge*, 45(1), 88-103.

Easterly, William. 2002. "What did Structural Adjustment Adjust? The Association of Policies and Growth with Repeated IMF and World Bank Adjustment Loans," Working Papers 11, Center for Global Development.

Google Public Data. 2010. Online: http://www.google.com/publicdata/home, Accessed April 2010.

Government of Kenya. 1996. "Economic Reforms for 1996-1998: Policy Framework Paper." Retrieved from *www.imf.org/external/np/pfp/kenya/kenya.pdf. Accessed February 2011.*

IMF.org. 2010." Policy Framework Paper – Zambia." Online: http://www.imf.org/external/np/pfp/1999/zambia/ Accessed March 2010.

IMF Data Mapper. 2010. Online: http://www.imf.org/external/datamapper/index.php, Accessed April 2010.

International Monetary Fund. 2005. "Kenya: Poverty Reduction Strategy Paper." Retreived from: http://www.imf.org/external/pubs/ft/scr/2005/cr0511.pdf

International Monetary Fund. 2010. "Uganda: Poverty Reduction Strategy Paper." Retreived from: http://www.imf.org/external/pubs/ft/scr/2010/cr10141.pdf

International Monetary Fund. 2007. "Zambia: Poverty Reduction Strategy Paper." Retreived from: http://www.imf.org/external/pubs/ft/scr/2007/cr07276.pdf

Jaycox, Edward. 1993. "Capacity Building: The Missing Link in African Development." Presentation to the African-American Institute Conference: "African Capacity Building: Effective and Enduring Partnerships" Reston, VA, 20 May 1993.

Milner, Chris. 1998. "Trade Regime Bias and the Response to Trade Liberalisation in Sub-Saharan Africa." *Kyklos*, *51*(2), 219-236. Retrieved from EconLit database.

Milward, Bob. 2000. "What Is Structural Adjustment?" In Giles, M. et al, *Structural Adjustment: Theory, practice and impacts*, New York, NY: Routledge.

Ndegwa, Stephen. 2001. *A Decade of Democracy in Africa*. Koninklijke Brill NV, Leiden.

SAPRI Report. 2004. *Structural Adjustment: The SAPRI Report.* The Structural Adjustment Participatory Review Network, New York: Zed Books.

Scott, Guy. 2002. "Zambia: structural adjustment, rural livelihoods and sustainable development." *Development Southern Africa*. 19(3). Retrieved from EconLit database.

Simutanyi, N. 1996. "The Politics of Structural Adjustment in Zambia." *Third World Quarterly*, 17(4), 825-839.

Stewart, Frances and van der Geest, William. 1995. "Adjustment and social funds: political panacea or effective poverty reduction?" In Stewart, *Adjustment and Poverty*, New York, NY: Routledge.

Swamy, Gurushri. 1994. "Structural Adjustment in the 1980s." Policy Research Working Paper 1238. The World Bank Chief Economist Office, Africa Region.

Zack-Williams, A.B. et al. 2000. "The Long Road to Adjustment." In Giles, M. et al, *Structural Adjustment: Theory, practice and impacts*, New York, NY: Routledge.

Reducing Emissions from Deforestation and Degradation: The Noel Kempff Mercado Climate Action Project

Matt Clements
MID, Development Planning and Environmental Sustainability

Introduction

The Noel Kempff Mercado Climate Action Project (NKMCAP) is a visionary development initiative that provides carbon credits and community benefits in exchange for forest conservation in the eastern lowlands of the Bolivian province of Santa Cruz. Located on the border with Brazil, the Noel Kempff National Park is one of Bolivia's most prized natural wonders. In 1996, a coalition of nongovernmental organizations and U.S. corporations came together to experiment with what would be the world's first avoided deforestation carbon credit system. Avoided deforestation, or Reduction of Emissions from Deforestation and Degradation (REDD), revolves around the preservation of natural wildlife and the marketing or sale of the carbon that is being stored in the wilderness to major international companies who are seeking to improve their "green image."

In analyzing the evolution of NKMCAP as a REDD initiative, this paper will also seek to look at the future of REDD efforts worldwide. NKMCAP has been seen with mixed success in what at this point is the pilot phase of REDD projects across the globe. NKMCAP has proven that it is possible to implement a project which provides community benefits and carbon credits in exchange for forest conservation; however NKMCAP has failed to demonstrate the existence of sound science in estimating carbon emissions and has been controversial in participating communities due to a lack of community input and participation. In examining NKMCAP, it is clear that there are several shortcomings with the current project design, however NKMCAP may provide a blueprint of successes and failures for future REDD initiatives across the globe.

The Concept of REDD

In the late 1990s, there was great momentum in the field of wildlife conservation and environmental sustainability regarding the importance of preserving rainforests not only for their natural beauty and biodiversity, but also because the carbon that is stored in plant life may account for seventeen percent of global greenhouse emissions (UN REDD 2008). REDD became popular among conservationists, governments and large industrial companies around the globe because REDD programs could benefit each actor in unique ways. Conservationists saw these programs as a way to preserve vast portions of the earth's wildlife, governments viewed REDD as a means to increase national revenues through payments for natural resources and large companies framed these programs as a means to decrease carbon emissions and improve their "green image."

To clarify, REDD is targeted at avoided deforestation and not simply forest conservation. Essentially, for a portion of wildlife to qualify for REDD, it must be a portion of land that is under a direct threat of deforestation or degradation. The idea of REDD is to create a financial incentive against these threats by paying for the metric tons of carbon being stored in an area that is not currently protected and faces environmental threats. This way, new tracts of land become protected and the wildlife and carbon reserves are not destroyed.

Project Overview

Among the early actors in the REDD movement, which has become increasingly popular and controversial over the years, was the Noel Kempff Mercado Climate Action Project (NKMCAP). The Noel Kempff National Park was an established national forest in the Bolivian Amazon before NKMCAP, but several key actors envisioned the park's transformation into a much larger reserve. The project area is depicted below with an arrow in image one. In 1996, under the guidance of the international NGO, The Nature Conservancy (TNC), the Bolivian government and several large energy producers collaborated in the creation of NKMCAP. The immediate goals of NKMCAP were to purchase several large portions of forest used for industrial logging on the Noel Kempff National Park's border and transform these newly purchased areas into a protected reserve. These new reserves, totaling approximately 900,000 hectares, would serve as the portions of the park marketed for carbon conservation and sale (USIJI). Since the pre-existing forest was already a protected area and the newly acquired land was previously under threat of deforestation, rather than marketing

Image 1: Map of NKMCAP within Bolivia (The Nature Conservancy 2009)

the entire park's carbon reserves for sale, NKMCAP marketed the newly acquired portions of the forest for carbon conservation. The carbon stored in these areas is then distributed to the actors involved based on their financial investments in the entire project as well as a pre-designed distribution deal.

Development of NKMCAP Project Partners and Area

NKMCAP was developed after a series of agreements following the 1992 Earth Summit in Rio de Janeiro, Brazil. Following the Earth Summit, one of the agreements developed was the concept of Joint Implementation, revolving around international partnerships in the reduction of green house gas emissions. From this initiative, the United States Initiative on Joint Implementation (USIJI) was created as a part of President Bill Clinton's Climate Change Action Plan to increase private funding in environmental sustainability efforts (USIJI 1999). It was this initiative that brought the private funders into NKMCAP and paired them with TNC and the government of Bolivia as a part of USIJI's Pilot Program. While USIJI was not formally involved in the NKMCAP project, USIJI was essential in attracting the financial support necessary to sustain the conservation efforts of NKMCAP.

During the creation of USIJI, Bolivia experienced sweeping reforms, especially with regards to environmental policy (Boyd 2003). In addition to domestic policies, Bolivia signed the UN Convention on Climate Change in 1994 and created a National Program on Climate Change (Boyd 2003). These

frameworks encouraged the Bolivian government to invest in conservation efforts, specifically in the Noel Kempff National Park and surrounding areas due to the park's environmental importance as well as the threats that existed from logging concessions around the park.

Given the momentum from the creation of the USIJI and Bolivia's environmental policies, the Noel Kempff National Park was chosen as a target area by TNC for a REDD initiative. The Bolivian government's involvement centered on its ownership of the park and TNC became involved as the project coordinator. British Petroleum (BP), Pacificorp and American Electric Power (AEP), provided funding and sought to acquire carbon credits upon the project's implementation. The specific area targeted by NKMCAP was selected based on several pre-existing logging concessions that were situated on the border of the original Noel Kempff National Park (Greenpeace 2009).

Outside of NKMCAP, TNC established what it defined as the project's buffer zone. A fifteen kilometer (km) area on the border of the newly acquired territories was monitored by TNC to ensure that NKMCAP did not experience a leakage of deforestation activities to new areas. The fifteen km zone was chosen because, "It is believed that community members, with no access to personal or public transportation, would not be likely to travel more than 15 km by foot to deforest for subsistence agriculture elsewhere" (The Nature Conservancy 2010). The buffer zone is shown as the small strip with lines in image two below. [1]

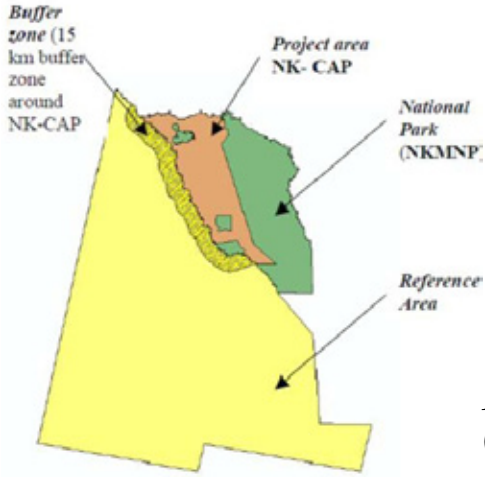


Image 2: Map of NKMCAP area (NKMCAP 2007).

1 Please note that the buffer zone is only on the park's western edge since the park's other edges border Brazil and hence Bolivia can not monitor activities in these areas.

In examining project documents is apparent that communities within the NKMCAP area were not consulted regarding their participation in the project prior to implementation (NKMCAP 2007). Instead, communities were informed of NKMCAP's goals and involved in the project once it was underway. It is likely that communities were not consulted about their willingness to work with NKMCAP because NKMCAP does not legally require communities to protect their environment, but is aimed at giving these communities economic incentives to do so. There are few formal reports by outside agencies on the effectiveness of the community development initiatives, but both Greenpeace and a research team from the Center for International Forestry Research indicate that this lack of community involvement has hindered the effectiveness of the development schemes (Asquith et al., 2002 and Greenpeace, 2009).

To give communities incentive to cooperate with NKMCAP, the project addressed several areas of community development. Initially, NKMCAP began to tackle urgent needs of the communities within the project area. These needs included: healthcare, infrastructure and general welfare support. In addition, NKMCAP improved education services through scholarships and professional training programs. Also, NKMCAP worked with local communities to guarantee legal titles to traditional lands; created La Central Indigena del Bajo Paraguá (CIBAPA), an organization that allowed different local communities to work together and organize politically; and developed a natural resource management initiative (NKMCAP 2007). There is very little evidence regarding the ability of the communities to influence development outcomes, but CIBAPA was created with the goal of giving communities an organized voice in community development. All of these community development initiatives were designed to benefit the livelihoods of local populations and encourage participation in NKMCAP through economic and social rewards.

The communities involved in the project include seven communities targeted for their close proximately within the project area: Florida, Porvenir, Piso Firme, Cachuela, Bella Vista and Esperancita de la Frontera. These are largely indigenous communities that have formed livelihoods off of subsistence agriculture and employment in the local timber industries. Prior to NKMCAP, the roughly 1,000 citizens in these communities received little government assistance and a limited amount of social and infrastructure services, such as healthcare and roads that were provided by the timber concessions operating in the region (The Nature Conservancy 2009).

Project Goals and Challenges

On a day-to-day basis, TNC and a newly created Bolivian NGO, Fundación Amigos de la Naturaleza (FAN), were, and still are, responsible for several key aspects of the park's monitoring and preservation. The project partners set goals regarding community benefits, additionality, leakage, and permanence. Each of these aspects is important to the project's overall goals of reducing deforestation and degradation in the project area, evaluating and distributing carbon credits, and promoting sustainable livelihoods for the people who utilize the park for their daily needs.

Additionality is a term used in forestry management that refers to the amount of carbon that is stored as the result of a REDD project in comparison to what would have happened without the REDD project (The Nature Conservancy 2009). Additionality relies on speculation as to what would have happened, but is nonetheless important in assessing if a REDD project is creating a difference in forest preservation. In the case of NKMCAP, additionality concerned the previous logging efforts in areas that are now under the protection of the NKMCAP. Using the history of deforestation in these areas, NKMCAP created a baseline of expected carbon emissions in these areas if business had continued as usual without NKMCAP. FAN and TNC were responsible for using previous data and current Bolivian environmental policies to estimate how much forest was being saved as a direct result of NKMCAP and in turn how much carbon was being prevented from reaching the atmosphere. After creating the initial baseline in 1999, project partners evaluated the baseline several times and currently have reduced initial estimates from around fifty three million metric tons of carbon to around five million metric tons of carbon being conserved as a result of the NKMCAP efforts (The Nature Conservancy 2009). This amount is then used as the project's contribution in carbon conservation and is represented in metric tons, which are distributed to project partners.

Leakage refers to the possibility that deforestation activities shift to another area as the result of newly created protected areas (The Nature Conservancy 2010). In NKMCAP, this referred primarily to logging and deforestation efforts shifting from activities in the now protected areas to other surrounding areas that are still unprotected. Project partners identified a fifteen km buffer zone surrounding the NKMCAP in which deforestation efforts were monitored to verify that deforestation was being reduced as opposed to simply relocated. Because REDD efforts seek to both formally protect certain areas and decrease overall environmental degradation around protected areas, activities within the buffer zone are constantly monitored to ensure that those who

contributed to deforestation have shifted away from deforestation efforts to other, ideally more environmental friendly activities.

Permanence refers to the potential of the forest to remain in tact given future changes and threats (The Nature Conservancy 2009). This is important in REDD efforts because when carbon credits are bought and sold, they are done so based on the assurance that a specific amount of carbon will not reach the atmosphere. But, if a forest fire occurs or a new government regulation allows deforestation, that carbon transaction was really an empty promise. In the case of NKMCAP, maintaining the park's legal status within Bolivia and the creation of a carbon buffer account are important challenges. While NKMCAP is confident that the Bolivian government will preserve the forest in the future, project partners withheld five percent of the carbon credits available for distribution with the intent of using these credits to make up for any unforeseen deforestation or forest fires (Greenpeace 2009). In the long run, NKMCAP has also established an endowment fund that will provide for long term forest management after the project is set to terminate in 2026 (FAN 2009).

Community benefits and development were the final important aspect for NKMCAP. NKMCAP deemed community development important because these communities lived in areas that were now part of an international REDD effort, and also because community improvements and the promotion of sustainable livelihoods would prevent forest inhabitants from contributing to deforestation in efforts to support their families. Project partners identified seven communities who lived in the park and worked with these communities to evaluate specific needs. NKMCAP funds and services were then used to improve many public services to these communities such as healthcare, education and transportation. With regards to providing services, several community members received scholarships to study topics such as education and medicine with the intent of serving their traditional communities upon graduation. On top of improving services, NKMCAP worked with the indigenous communities to guarantee their legal status and their claims to the lands that they inhabited. A final aspect of community development was the employment of local citizens as both park rangers and tour guides in several recently created tourism lodges that expected to bring a new wave of money into the park (The Nature Conservancy 2009).

NKMCAP and, primarily, FAN have worked extensively on project monitoring of additionality, leakage and permanence, while implementing community development projects and overseeing the general status of the park. Given the overall goal of conserving forest and marketing the carbon stores held within protected areas, it has been important that NKMCAP not only

scientifically monitor emissions, but also work within the local setting to ensure that a culture of conservation is adapted to ensure the long term preservation of the Noel Kempff National Park and surrounding areas.

Project Management

From a management perspective, the project financers and the Bolivian government had little impact on project development. Instead, FAN and TNC assumed most of the management responsibilities and impact on project development. While TNC has served as the project's administrative arm, FAN has acted as NKMCAP's logistical coordinator and several other organizations have been influential in the project's development.

Since, 1995, the entire Noel Kempff National Park area has been administered by FAN (NKMCAP 2007). In this way, the government of Bolivia has reduced its management capacity of the park and project area by contracting out the services to FAN. With the creation of NKMCAP, FAN assumed the majority of on-the-ground duties associated with the project ranging from forest protection, baseline estimation, and the monitoring of general park activities (NKMCAP 2007). Additionally, FAN is responsible for monitoring and implementing a wide range of efforts associated with community development.

The other primary project manager, TNC, has been in charge of the project finances and oversight. TNC has performed a number of economic analyses of the project area in order to further understand local livelihoods and the drivers of deforestation. TNC's primary function has been to allocate funds to FAN for specific project goals as well as to market and commercialize the sale of carbon credits generated by NKMCAP.

A final role of TNC has been to coordinate and manage various contractors who carry out project goals. These organizations include: the Bajo Paragua Indigenous Organization (CIBAPA), the National Service of Protected Areas (SERNAP), the National Institute of Agrarian Reform (INRA), the National Program on Climate Change (PNCC) and Société Générale de Surveillance (SGS). CIBAPA represents the communities within NKMCAP and is primarily responsible for settling disputes and ensuring adherence to NKMCAP regulations by partner communities. INRA, PNCC and SERNAP are government agencies who are involved in some of the technical issues of the park management such as land titling and registration. SGS is an independent monitoring agency that has been hired to verify the amount of emissions prevented as a result of NKMCAP (NKMCAP 2007).

Primary Funders and Budget Breakdown

For this project, a total $11.35 million of was raised for the purchase of the project area, as well as to finance project activities over the project's thirty year lifespan. Funding for NKMCAP came from TNC ($2.6 million), BP ($0.8 million), AEP ($6.2 million) and Pacificorp ($1.75 million) (Greenpeace 2009). Of the $11.35 million total, $500,000 was given to the Bolivian government to provide for the park's expansion, protection and management (The Nature Conservancy 2009). The remaining $10.85 million was managed by TNC and used for both short and long term project components. Short term components were defined as a time period less than 10 years and consisted of community development, carbon accounting, and ecotourism. Long term components over 10 years included carbon monitoring, and the project endowment fund that would be used to ensure the park's long term permanence.

Below is a breakdown of how the total amount of funding has been appropriated from 1997-2006. The endowment fund, park protection and indemnification of logging concessions are all large aspects of NKMCAP and are quite grandiose in scope, so it is to be expected that these three areas would require the most spending from NKMCAP. Community development, the fourth largest spending need, is also vital to NKMCAP's development and long term stability, thus deserving a considerable amount of funding. Of the smaller portions of spending, most seem reasonable expenditures based on the structure and goals of NKMCAP.

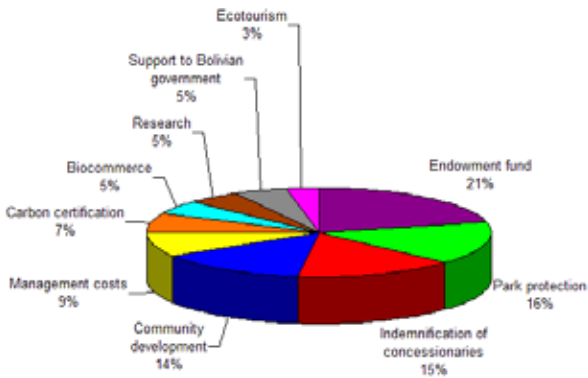


Figure I: Breakdown of NKMCAP Expenditures from 1997-2006 (The Nature Conservancy 2009).

While funding appears to be spent well on a proportional basis, it is worth noting that there are some shortcomings regarding the effectiveness of spending. Ecotourism, or using natural resources as a means of increasing local tourism, and biocommerce, or the trade of forest products, were established to generate economic returns to the area and as a means of community development. Efforts to create an eco-lodge and market forest products such as orchids were some of the initial goals of NKMCAP, but unfortunately, the remote isolation of the NKMCAP makes it difficult for tourists to reach the eco-lodge as well as prevents NKMCAP from getting forest products to market (The Nature Conservancy 2009). A total of eight percent of funding or roughly $900,000 has been spent on these two activities, which are now described as obsolete in the eyes of project evaluators (Greenpeace 2009).

Two other areas of financial concern are manifested in the endowment fund and community development efforts. While roughly $2.4 million has been spent on an endowment fund, it is still unclear how much money will be available for the park's long term sustainability after NKMCAP ends in 2026. Community development spending has also been inefficient with several complaints from community members, including reports that NKMCAP provided communities with a breed of cattle that were not suited to the park's environment (Greenpeace 2009). A TNC report admits that long term funding for both the endowment and community benefits is, "anticipated" (The Nature Conservancy 2009). While it is certainly problematic that long term issues have yet to be addressed, NKMCAP has already provided an incredible amount of long term sustainability when compared to similar REDD projects around the world (Bond et. al 2009).

As for revenue, in this case represented in carbon credits, project rewards were determined via an agreement before the implementation of NKMCAP. After discounting five percent of the total offsets that were withheld from distribution to account for forest fires and other sources of deforestation that the project may have failed to address, carbon credits were allocated to project partners. The Bolivian government was to receive forty nine percent of the total carbon offsets because of its role in providing the park's protection as well as its responsibilities in long term sustainability after 2026. The government promised to spend fifty nine percent of its revenue on community development, thirty one percent on park protection and ten percent for the development of the nation's national park system (The Nature Conservancy 2009). The remaining fifty one percent of carbon offsets were divided to BP, AEP and Pacificorp, with returns based on the proportion of initial funding provided.

How to Address NKMCAP Shortcomings

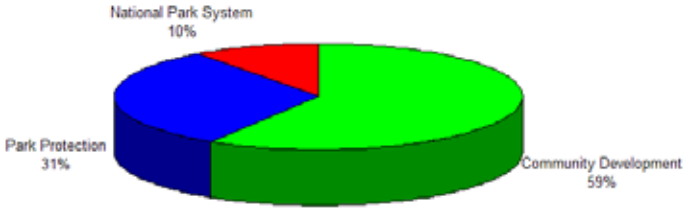


Figure 2: Breakdown of Bolivian Government Spending from Project Benefits (The Nature Conservancy 2009)

How to Address NKMCAP Shortcomings

When evaluating NKMCAP it is important to remember that REDD projects are in their infancy at this point in time and have yet to be included in the United Nations Convention on Climate Change (UNCCC). Currently, NKMCAP and other REDD projects are in experimentation phases in attempts to better understand how REDD projects can be successful if REDD is to become widely adopted by the UNCCC in its post 2012 climate policies. Therefore, it should be expected the NKMCAP and other early REDD projects have flaws in design and implementation. That being said, there are several weaknesses of NKMCAP that can be useful in evaluating how NKMCAP, and REDD projects in general, should move forward.

One of the first issues that NKMCAP seemingly failed to address was gaining the consent of the communities living within the project area. According to interviews, "many people in the communities say they were never consulted, and there is still significant resentment" toward the project (Asquith et al 2002). In any development project, it is vital that communities within the scope of a plan are consulted if they are expected to participate. NKMCAP is set up on a voluntary participation basis in theory, but FAN's constant presence and monitoring combined with the presence of federal agencies hints that in practice communities must conform to NKMCAP.

Supporting the idea that participation is not voluntary is the fact that many locals lost incomes when the timber concessions were closed, resulting in the loss of around twenty jobs in the community of Florida alone. The closure of lumberyards meant that medical, educational, transportation and infrastructure

services provided by the lumber company also disappeared. Therefore, when NKMCAP offered services in return for project participation, the impoverished local inhabitants were left with little choice. This is not to say that NKMCAP isn't better for the global environment, but rather to emphasize that the local communities were left with little choice in employment and the availability of services provided.

It is also important to look at the services that NKMCAP offers in comparison to those offered by the lumberyards. In terms of employment, nearly eighty community members have worked surveying the forest, ten have been hired as park rangers and six are employed as tour guides. Currently, data is not available regarding the employment fluctuations pre and post NKMCAP, but researchers paint a picture in which NKMCAP has failed to improve local employment (Asquith et al 2002). This is partially because timber companies not only employed a limited amount of the local population, but also supported a larger informal economy of trading and services through employees who moved to the area for employment. With regards to the infrastructure development as a result of NKMCAP, there have been some setbacks, but it does appear that infrastructure projects are being completed with success.

There have also been several disputes regarding land use within NKMCAP. Many community members have complained that traditional lands have been stolen and local authorities have banned subsistence hunting, even if federal laws protect both of these issues (Asquith et al 2002). This issue has gone so far that the international network of indigenous peoples concerned with the environment, or the Indigenous Environment Network has proclaimed, "We condemn the mechanisms of the neoliberal market, such as the REDD mechanism…which are violating the sovereignty of our peoples and their rights to free, prior and informed consent and self determination" (Lang 2010).
It is important to point out that NKMCAP and REDD projects combine elements of both conservation and development to ensure project success. While REDD projects aim to alleviate the poverty of participating communities, a study by the International Institute for Environment and Development shows that in general REDD provides, "small and modest impacts on livelihoods" (Bond et al 2009). Given the information available about NKMCAP's impact on local communities, it is fair to state that this theory holds true in the Bolivian lowlands as well.

In assessing NKMCAP's involvement in the participating communities it is apparent that project developers lacked the foresight that was needed to gain the trust and understanding of the communities involved. While NKMCAP boasts that it is improving the legal statuses of traditional lands and protecting

indigenous rights, it would have been beneficial if NKMCAP first asked the permission from the local communities to operate in their traditional areas and then give those communities a formal avenue to give input in project development. At the very least, project partners should have organized seminars and disseminated information regarding the project, fully explaining financing and goals to those involved prior to implementation. If either of these steps had been taken, it is likely that there would be a greater understanding between the communities and project partners, alleviating the current tensions regarding community development.

Additionally, greater community input could also foster more efficient community development projects and an increased understanding of local issues and relationships. In this way, the communities themselves could lead development initiatives because their greater knowledge of local problems would allow them to find the best solutions given their circumstances.

In evaluating the weaknesses of NKMCAP, much of the blame for community development shortcomings must be placed on both TNC and FAN. These are the two organizations with the most direct control on the project's implementation and as a result should have anticipated that there would be issues in implementing community development given little community input and empowerment. Thus, other project partners such as the Bolivian government and the commercial investors should have demanded more accountability for their investments and the government specifically should have seen to it that its citizens were fairly compensated for their participation in NKMCAP.
Another criticism of NKMCAP and REDD projects, in general, is that they reward those who have done the most harm to the environment by paying them to cease activities that cause deforestation and degradation. This is because there is no incentive to pay those who live in harmony with the environment, but rather an incentive to pay others to change their activities away from deforestation.
In the case of NKMCAP, this is seen in the $1.6 million paid to the logging concessions to cease activities, while the communities were allocated only $0.85 million in benefits (Asquith et al 2002). This clearly shows that those who traditionally harmed the environment were rewarded more than those who have lived in harmony with the environment for generations.

The issue of paying those who harm the environment is a complex issue that can not be easily solved. In the case of NKMCAP, it was necessary that timber companies received large payments to buy out their operations. However, it is certainly possible that future REDD initiatives would place a

greater proportional amount of funding on community development efforts for the simple reason that these communities will continue to inhabit project lands long after the project is over. It can be reasoned that a greater amount of funding spread out over a longer time would encourage participants to avoid deforestation well after any formal project efforts have come to an end.

Another shortfall has been in the estimation of emissions conserved as a result of NKMCAP. While original estimates were fifty three million metric tons, current estimates stand at only five million tons. There was clearly a large miscalculation made by project developers that needs to be reconciled and it is unclear exactly why there is such a large difference between the expected and actual emissions baselines. At this point, the science of carbon monitoring is fairly young and miscalculations are to be expected, but it is hard to understand how such a large miscalculation was made in this case.

Another critical aspect of NKMCAP is the buffer zone and the presence of leakage. While there has been scant documentation of leakage within the buffer zone, Greenpeace has attacked the fifteen km buffer zone as too narrow to accurately monitor leakage and claims that several logging concessions operate on the other side of the buffer zone to avoid monitoring (Greenpeace 2009) To draw comparison and determine if the NKMCAP buffer zone is reasonable, it is useful to look at a similar REDD project in Madagascar. The Makira Forest Protected Area in Madagascar, a project similar to NKMCAP, is a project that encompasses roughly 400,000 hectares and includes and additional 40,000 hectares of buffer zone (Crowley et al 2008). In this case, the buffer zone is roughly ten percent of the project area. In the case of NKMCAP, there is no concrete data about the size of the buffer zone in hectares, but it can be estimated that the fifteen km zone is at least ten percent of the project area. While fifteen km might seem like a thin piece of land, at this point it does seem to be a reasonable sized buffer zone given the regional scope of NKMCAP.

As we have seen, the NKMCAP buffer zone has come under tremendous scrutiny, even if it seems to be a reasonable size of land. In the future it is recommended that REDD ventures take a comprehensive evaluation of local circumstances and create a buffer zone as appropriate. In the case of NKMCAP, claims of deforestation on the border of the buffer zone should be investigated, and if necessary, the original buffer zone should be reevaluated to compensate for leakage. While there is a push for a nationwide REDD monitoring method, at this point in time it seems that REDD efforts are not established enough to achieve such a national monitoring mechanism.

Another important challenge NKMCAP faces is in the long term sustainability of the endowment fund, intended for park maintenance after 2026. According to project design documents, there is a target amount of money to be made available for this fund, but at the same time this funding has yet to be secured (The Nature Conservancy 2009). In order for the project to achieve its goal of permanence, it is vital that this funding is secured to ensure that the park is well maintained as well as to guarantee that local communities continue to receive benefits for their long term involvement in environmental sustainability.

Sustainability is one of the most important aspects of REDD efforts and needs to be addressed moving forward. With NKMCAP, it is urgent that long term funding issues are addressed. On a larger scale, it would be beneficial if there was a recognized standard in terms of how long the benefits of a REDD project should last after the project concludes. Realistically, project benefits can not be expected to last forever, but creating benchmarks for the next fifteen to twenty years would force REDD projects to fully plan out future funding and sustainability. This is not to say that the project must completely operate fifteen to twenty years after direct funding and oversight ends, but it means that there would be some resources available, such as funding or institutions, in the former project areas that stimulate a sustainable future.

REDD Moving Forward

This paper has analyzed NKMCAP while briefly touching on the progress of REDD in a global sense. Currently, there is a need for further research to be done regarding REDD and payments for environmental services in general. Another imperative issue at present is the need for enhanced global frameworks and regulations on REDD projects. The UN has several framework documents at the moment, but because REDD is not recognized by the UNCCC, there are still many gaps in these framework documents. It would be extremely useful if global institutions such as the UN were to analyze past and current REDD projects and use these initiatives as a global model to demonstrate what does and does not work in the implementation of a REDD scheme.

At present there are many concerns with NKMCAP including community benefits, funding and carbon emissions. While past performance of NKMCAP has demonstrated certain weaknesses, this paper recommends that the global community use previous REDD projects as a model moving forward. Payments for environmental services have the potential to reward those who provide services to the entire world by preserving their environments, but will not likely lead to large scale poverty alleviation. One of the pressing issues our

society faces is the challenge of preserving our environment for future generations and maintaining a stable balance between ecological inputs and outputs. REDD efforts, when adjusted for past failures; present a means to reach this goal while providing much needed benefits to traditionally underdeveloped populations.

References

"About ISIJI." U.S. Initiative on Joint Implementation (27 September, 1999). <http://www.gcrio.org/usiji/about/whatisji.html> Accessed 1 November, 2010.

Asquith, Nigel; Vargas Rios, Maria Teresa and Joyotee Smith. "Can Forest Protection Carbon Projects Improve Rural Livelihoods: Analysis of the Noel Kempff Mercado Climate Action Project, Bolivia." Kluwer Academic Publishers (4 September, 2002). <http://www.ibcperu.org/doc/isis/10244.pdf> Accessed 3 November, 2010.

Bond, Ivan; Grieg-Gran, Maryanne; Wertz-Kanounnikoff, Sheila; Hazlewood, Peter; Wunder, Sven and Arild Angelsen. "Incentives to Sustain Forest Ecosystem Services: A Review and Lessons for REDD" International Institute for Environment and Development (UK) (2009). <http://www.iied.org/pubs/pdfs/13555IIED.pdf> Accessed 3 November, 2010.

Boyd, Emily. "Bringing Development into Carbon Sequestration: A Bottom-Up Perspective from the Noel Kempff Climate Action Project, Bolivia." 2003. <http://www.fao.org/DOCREP/ARTICLE/WFC/XII/0875-B1.HTM> Accessed 1November, 2010.

"Carbon Scam: Noel Kempff Climate Action Project and the Push for Sub-National Forest Offsets." Green Peace (2 October, 2009). <http://www.greenpeace.org/raw/-content/usa/press-center/reports4/carbon-scam-noel-kempff-clima.pdf> Accessed 10 October 2010.

Crowley, Helen; Holmes, Christopher; Ingram, Jane Carter; Meyers, David and Rac Victurine. "Case Study: Forest Carbon Financing for Biodiversity Conservation, Climate Change Mitigation and Improved Livelihoods: the Makira Forest Protected Area, Madagascar" *USAID* (August 2008).

"Framework Document." UN Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries UN-REDD (20 June, 2008). <http://www.un-redd.org/> Accessed 10 October, 2010.

Lang, Chris. "Indigenous Peoples meeting in Cochabamba condemn 'predatory REDD forest programs'." REDD Monitor (23 April, 2010). <http://www.redd-monitor.org/2010/04/23/indigenous-peoples-meeting-in-cochabamba-condemn-predatory-redd-forest-programs/> Accessed 7 November, 2010.

"Noel Kempff Mercado Climate Action Project: A Case Study in Reducing Emissions from Deforestation and Degradation." The Nature Conservancy (14 October, 2009). Accessed 1 November, 2010.

"Noel Kempff Mercado Climate Action Project: Position of Fundación Amigos de la Naturaleza on Greenpeace's Report." Fundación Amigos de la Naturaleza (2009). <http://www.fan-bo.org/common/files/pac/FAN%20position-Greenpeace%20Report.pdf> Accessed 10 October, 2010.

"Project Design Document Form for Afforestation and Reforestation Activities." Noel Kempff Mercado Climate Action Project (19 July, 2007). <http://conserveonline.org/workspaces/-climate.change/ClimateActionProjects/NoelKempff/NKPDD/PDDZip/view.html> Accessed 1 November, 2010.

"Reducing Emissions from Deforestation and Degradation (REDD): A Casebook of On-the-Ground Experience." The Nature Conservancy, Conservation International and Wildlife Conservation Society (2010). <http://www.hedon.info/docs/REDD_Casebook-TNC-CI-WCS.pdf.> Accessed 12 November, 2010.

.

"USIJI Uniform Reporting Document: Activities Implemented Jointly Under the Pilot Phase." U.S. Initiative on Joint Implementation. <http://www.gcrio.org/usiji/pdf/Bolivia-1%203-05.pdf> Accessed 3 November, 2010.

Legitimacy in Juarez: A Religious Obligation

Margaret Frances O'Brien and MPIA, Global Political Economy

Ciudad de Juarez lies on the border of the United States and yet is currently one of the most dangerous places in the world. The media has stopped reporting, the government has allied with cartels, as has the police and local businesses. The religious institutions within Juarez, predominantly the Catholic Church and Protestant churches have an obligation and unique ability to condemn the violence and offer people a source of legitimacy and opportunity outside of the cartels.

"I am here to give you strong encouragement not to be afraid to speak out clearly about human and Christian values."

-Pope Benedict XVI addressing the issue of organized crime in Sicily (Catholic 2010).

Introduction

Religion has long been the defender of those who cannot defend themselves. Christians have been active in establishing legitimacy in communities of the oppressed. Recently, the Pope travelled to Sicily to speak out against organized crime, encouraging the congregation not to be mere 'spectators against violence' (Catholic 2010). In American history, Protestant Christians have been on the forefront of the moral reforms of the early 1900s beginning with Prohibition and not limited to the Harrison Narcotics Act of 1914 (Woodiwiss 2001, 173). In Latin American history, Liberation theology provided not only a religious but also a moral response to poverty. Liberation theology is a community-based movement which began in Latin America as a reaction against social injustice. Religions have played a crucial role in directing grassroots movements and policy in states worldwide, resulting in both great opportunity and great responsibility. The Catholic Church's immense power in Mexican culture indicates not only an opportunity to influence morals but also

the obligation to provide leadership in situations that pose threats to society. Within the chaos of Juarez, it is becoming exceedingly important for churches to play a major role in condemning the drug chahartels and offering alternatives to individuals involved in cartel culture.

Brief History of Juarez

A brief overview of history of Juarez is necessary to examine the long history of religious contention unique to Juarez as well as the events that laid the groundwork for a culture susceptible to supporting drug cartels. Originally called 'El Paso Del Norte', the Mission of Nuestra Señora de Guadalupe was the first permanent Spanish development in the area now known as Ciudad Juarez. Beginning in 1598, Jesuit friars developed a community in the same territory inhabited by the Native American tribe named the Pueblo. The Pueblo coexisted peacefully with the Spanish until the 1670s when a combination of drought and European diseases made them fearful of the Spaniards (Hackett, 22). The imposed Roman Catholicism became a source of contention. The Pueblo resisted the ever-encroaching Spanish influence, and subsequently returned to their native religion (Hacket, 22). This provoked a wave of repression from, at that time, the current Franciscan missionaries (Hacket, 22). All traditional religious practices of the Pueblo were prohibited, and the missionaries made a practice of burning Pueblo religious relics and effigies, and even resorted to imprisoning Pueblo religious leaders (Sando, 61). This triggered the Pueblo's Revolt of 1680 – otherwise known as the Pope's Rebellion (Hackett, 23). The result was a decisive Pueblo victory. Despite initial Pueblo resistance, over the coming years many Pueblo would learn to integrate Catholicism into their tribal religion, eventually converting to Catholicism (Edmunds, 2006).

The region witnessed its next major conflict in the Mexican-American War, which had a devastating effect on the indigenous Pueblo population. This was the first clash that was a direct result of the United States' socio-political ideal of "manifest destiny," and many of the Anglo-American settlers saw the indigenous people as obstacles. The conflict was completed by the Treaty of Guadalupe de Hidalgo in 1848, a provision of which set the border between Mexico and the United States at the Rio Grande (Ciudad de Juarez, 2010). In 1888, El Paso Del Norte was renamed Juarez after Benito Juarez, the first president of Mexico without a military background and the first full-blooded indigenous national to lead a country in the Western Hemisphere (Ciudad de Juarez, 2010). Throughout its history, the strategic location of Juarez has forced its

population to endure religious contention, military dispute, leadership upheaval, and cultural conflict.

Juarez in the 20th Century

Economic factors play a prominent role in the problems of Juarez today. Mainly due to import substitution industrialization (ISI), Mexico enjoyed an average annual growth rate of six percent between 1945 and 1981. Import substitution industrialization is a policy which seeks to reduce the dependency on foreign products by implementing state-owned, local production. Despite the initial benefits of this method, it has been identified as the root cause of an economic crisis in 1982 as it resulted in an unproductive industrial center, because manufacturing suffered significantly (Vasconcelos, 2005). In 1992, Mexico signed the North American Free-Trade Agreement (NAFTA), and subsequently privatized much of its industry. This trade agreement brought many manufacturing jobs south of the border to take advantage of lower labor costs. As a result, Juarez obtained the highest concentration of foreign-owned factories in all of Mexico, with a total of around 350 in 1996 (Bowden, 1996). These new forms of capital investment are often called Maquiladora industries, referring to outsourced manufacturing, wherein the end product is exported out of the country where it is produced. This influx of industry resulted in massive internal migration from the rural south toward the border, because migrant workers desired to obtain manufacturing jobs (A Different Kind, 2009).

In addition to the lack of security in the Juarez region, increasingly cheap labor in countries such as India and China has caused 10,670 businesses to close in Juarez since 2008 (Lohmann, 2010); jobs are now moving across the ocean, not just across the border. Jobs have become scarce and individuals are looking toward the illicit economy to support themselves (Bowden, 1996). Tourism, which, in 1995, accounted for five percent of GDP and two million jobs, has decreased drastically due to the outbreak of swine flu in Mexico City, the global recession, and the increasing violence (A Different Kind, 2009). Violence escalated dramatically, with sixty-two homicides in 2006, growing to 2,837 in 2007, and 12,456 in 2010 (Oficial, 2010). Juarez has suffered 6,757 homicides between December 2006 and March 2010, of which 2,500 occurred in 2010 (Oficial, 2010; and Valencia, 2010). With a lack of sustainable ways to earn a living in light of a global recession, the lucrative drug trade offers an alternative to desperation and poverty. Juarez is now a battleground for warring cartels, the main surge of violence being attributed to the battle for territory between the powerful Sinaloa

and Juarez cartels.

As a reaction to the slew of killings in Juarez, Mexico's president Felipe Calderon has encouraged 'asset seizure' legislation which, if enforced properly, would drain the cartels of their cash and property (Valencia, 2010). Calderon is also advocating a reorganization of the judicial system and more intelligence gathering (Valencia, 2010). While Calderon has made significant steps toward cracking down on the cartels, violence has increased. While these measures serve as a step in the right direction, they have been largely ineffective. According to Father Mullins, a Catholic priest and prominent community figure in Juarez, "… of every 618 murders only twenty are investigated…. So any talk of investigations is really a joke" (Severson, 2010). The skepticism in the government is not unfounded, as there is evidence of widespread corruption and state involvement in illicit cartels (Torres, 2010). For example, the armed wing of the Juarez cartel is called La Linea which is largely comprised of corrupt Juarez and Chihuahua state police officers (Inquiry Indicates Police, 2009). National Public Radio reports that while the Juarez cartel appears to be supported by local officials, their main opponents, the Sinaloa cartel is supported by federal government forces (Burnett and Penaloza, 2010). When questioned, officials deny these allegations, but data show that the Sinaloa focuses its bribes on federal employees in comparison to other cartels. Additionally, the amount of federal arrests of Sinaloa is disproportionally lower when compared to other cartel arrests (Burnett and Penaloza, 2010).

Politicians, business owners, teachers, doctors and families are forced to align with cartels, blackmailed into paying protection fees. No one is excluded from the influence of the "new" big business in Juarez: the drug cartels.

Religion in Juarez

Pablo Vila, author of Border Identification, finds that for many Mexicans, Catholicism is synonymous with 'Mexican-ness.' Catholic traditions, ideals, and ceremonies are all very much a part of the majority of Mexican culture. This view is subject to regional variation, with different forms of Catholicism or different denominations entirely. For example, because of the proximity to the border, the citizens of Juarez are much more Americanized and also identify as more Protestant than much of the rest of the country. The North American Free Trade Agreement further perpetuated the expansion of American influence. The population of Juarez drastically changed with the signing of NAFTA and the opening of maquiladora industries. The mid-nineties saw not only greater American influence on Juarez culture but also a rush of migrant workers from

the southern regions of Mexico. Comparable to Juarez, the southern states of Mexico contain the highest percentages of Protestants (those states with a large indigenous population), even though they are geographically further from the U.S. (Dow, 2003). This rush resulted in cities of cardboard houses on the outskirts of Juarez and the emergence of a different culture in Juarez.

Internal migration inside Mexico was distinctive in terms of patterns of the religious affiliation of the migrants. For the minority Protestants, religious identity trumps regional differences nationwide, whereas Catholics have a clear distinction between their northern and southern origins (Vila 76). In other words, if a migrant hails from the south and is a Catholic, he or she will be considered an outsider for being a migrant in northern Mexico. However, if a migrant comes from the south and is a Protestant, he or she will most likely identify with his or her fellow Protestants. In this case of regional and religious self-identification, migrants' behavior demonstrates the tendency for minority groups to stick together. The different types of migrants created a Juarez with a diverse and distinct cultural identity.

Throughout this transitional process, Protestantism has been met with resistance. Capitalizing on the fact that only a small percent of the population of Juarez is Protestant, certain Catholic priests have declared publicly that the different sects of Protestantism threaten national sovereignty and that they present an attack on Mexican culture (Vila, 26). In many regions of Mexico, Protestantism is disliked primarily because it is seen as an Americanization of Mexican culture, which is largely defined by Catholic religion and tradition.

As denominational differences cause social and religious rifts, much of the contention lies more in perceived American influence and less in dogma. Ironically, as Protestantism has been attacked, Catholics in Juarez have also been criticized for practicing an Americanized version of Catholicism. Again focusing on geographic positioning, citizens of Juarez cite the proximity to the U.S. border as the reason that they practice a more modern, liberal kind of Catholicism (Vila, 36). Many laypeople in the vicinity of Juarez attribute the growth of Protestantism to the aid that Protestant missionaries provide to the poorest neighborhoods. Catholics see this aid as proselytizing in the form of food and clothing. Protestantism in Mexico has been traditionally more appealing to the indigenous inhabitants as well as to migrants. Considering Juarez's history, the large protestant population is expected. Despite tensions, religion remains inherent in Mexican culture, and religious institutions, even though affected by American culture, are respected.

Catholicism in Protest

In 2009, Reverend Benitez was gunned down in the street along with two potential seminarians (Llana, 2009). This marks the first time that the hit men of a cartel had purposefully targeted a clergyman. No specific motivation for the shooting was reported, and it seems the priest was brought into drug violence the way many people are – by simply living in their communities. The leadership role of the priest in small communities enables them to hear and see more than the average citizen, potentially making them more of a target. In the battle for possession of the black market, there are no rules and no one has impunity. In the past sixteen years, fifteen priests have been killed under suspicious circumstances (Severson, 2010). Priests, fearing for their lives, have typically avoided making statements about the drug trade, only recently vaguely criticizing police for their inefficiency. Victor Cortes, a religions expert at Guadalajara University, asserts that "the churches' voices in respect to organized crime have been very timid, they have spent more time on moral issues… and much less on narco-violence," (Llana, 2009).

Despite no proposed motives for the attacks on Mexican clergy, the Catholic Church has traditionally been a legitimate power-broker in national politics. For this reason alone, the attacks conducted by the drug cartels are highly suspect in terms of political motivation. During Mexico's 300-year tenure as a Spanish colony, the Catholic Church involved itself heavily in politics. Upon independence, Mexico placed severe restrictions on the involvement of the Church in the political arena. Priests were unable to vote until 1992 and are still ineligible to run for public office. The Mexican constitution continues to bar clergy from expressing partisan political views, supporting political candidates, and opposing the laws or institutions of the state (U.S. Department of State, 2010). These limitations discourage religious involvement in state matters. However, violence has proven itself to be a formidable reason for social action by the clergy. In spite of this, public opinion polls since the 1980s reveal that many Mexicans expect church leaders to take positions on important policy issues (Camp, 2009). Individual priests like Father Kevin Mullins have been vocal in criticizing the Catholic Church for its lack of meaningful action. Father Mullins has been sending people from his church into poor communities to offer church-going as an alternative life to the drug culture (Severson, 2010). Father Mullins cites the Catholic Church's proud tradition of standing up for people who cannot defend themselves, despite the risks.

Because each diocese is led by a bishop who is ultimately responsible to the Pope, many different opinions have surfaced about the Church's statements

about the drug cartels. The most unified message comes in the form of statements from the Conference of Mexican Episcopate (CEM). In early 2010, CEM issued an open letter to a group of over 1,000 priests. The letter was speaking out against organized crime (Camp, 2009). The organization also recently issued statements allowing priests to change Mass schedules in volatile areas in order to 'protect the public,' but in no case were they allowed to abandon their parishes (Barillas, 2010).

Citizens are angry at the Catholic Church's perceived hypocritical relationships to the drug cartels. An example of this might be not giving communion to a divorcee, but willingly giving it to a known drug trafficker, or the alleged acceptance of bribes, or church leadership being aware of prominent drug figures but unwilling to disclose information. In 2005, Bishop Ramon Flores publicly admitted and defended the acceptance of donations of large amounts of money from known drug traffickers, arguing that "bad money shouldn't be burned; it should be transformed," (Mexican Catholic Church, 2005). Archbishop Carlos Retes, the president of the CEM, recently alleged that priests were accepting bribes from cartels to build churches—especially in very poor towns—in an attempt to help integrate themselves (the cartels) with the people (Camp, 2009). The CEM condemns the acceptance of bribes for any reason. It is important for the Catholic Church to resist ties to the cartel culture in order that it presents an uncompromised and genuine condemnation of it.

For the majority of the Mexican Catholic population, the Church is fundamental to daily life. Because of this, the priests have a special opportunity and obligation to define morality in day-to-day life. In the state of Chihuahua where the media has suffered casualties because of their reporting on the drug wars, the Church may be the last way to inform the people and direct their reactions (Borunda, 2010). While it is true that the priests are not safe, Father Mullins (previously mentioned) states, "It could be dangerous, yes, but that element of danger is also part of if you want to live a Christian life…then in a situation like this there could be an element, a modicum of danger from time to time," (Severson, 2010).

Protestantism in Protest

Protestantism has been on a steady rise in Mexico since the 1970s. Northwestern Mexican states have reported the most accelerated growth of Protestantism in the last decade (Dow, 2003). As of the 2000 Census, eighty-eight percent of the population identifies as Catholic, leaving only twelve percent of the population divided between different sects of Protestantism including

Evangelical, Jehovah's Witness, Mormon, Presbyterian, Baptist, Mennonite, and others (U.S. Department of State, 2006). While the population of Protestants in Mexico may be small, one might argue that the political power of Protestantism comes from its ability to break links with oppressive political ideologies.

Generally speaking, Protestants in Central America tend to separate themselves from the community and resist making financial donations demanded by (Catholic) community norms or participating in events involving alcohol (Annis, 207). These traditions are intertwined not only with Catholicism, but with the entire identity of "Mexican" (Vila, 76). This life on the periphery has translated into documented incidents of discrimination against Protestants in Mexico (U.S. Department of State, 1996). While Mexican Protestants do separate themselves from the rest of society, they are still a very cohesive group among themselves (Vila, 73).

Protestant groups mainly consist of cultural outsiders, indigenous populations, and small communities (U.S. Department of State, 1996). Protestants in Mexico tend not to exist as a group but rather several factions. Because of this, they are less likely to make community-wide public statements. Protestant pastors have in some instances voiced opposition to drug-related violence, but typically they shy away from criticizing any particular group outright (Beiner, 2010). Rather, Protestants are more likely to focus on individual contributions toward the struggle. For example, Pastor Jose Antonio Gaval is an evangelical preacher who has opened a shelter for those excluded from society in Juarez. In addition to the mentally handicapped, Pastor Gaval also cares for the deviants of society: the drug addicts, prostitutes, and sometimes-violent offenders (Abernethy, 2008). Lucky Severson of PBS toured the facility, and found while his shelter was non-traditional and many of the patients were behind bars, he provided them with "the love of Jesus" and cared for them. Pastor Gaval recognizes that the violence in the city of Juarez is having a dangerous effect on people, and they are turning to hard drugs to numb the pain (Abernethy, 2008). Pastor Gaval is only one example of the social contributions made by Mexican Protestant leaders.

Faith-Based NGOs

Much of the faith-based aid in Juarez is provided by NGOs in the United States. These organizations use their funding and energy to work on the problems across the border. Both Protestant and Catholic churches within the United States send missions to Mexico in order to promote economic development, often partnering with secular development agencies. Through

online research of mission trips to Juarez, I found that the majority of these faith-based trips are led by Protestant organizations and include a proselytizing component. Most of the work that these religious organizations are participating in is short-term and part of a fragmented approach to development (Lopez, 2009). There seems to be no singular organization that is to blame for the inconsistency in development and aid projects. In the past, hundreds of church organizations offered four-to-ten-day trips to Juarez to proselytize and aid in building and repairing houses (Hall, 2011). In recent years, due to escalating violence, many churches have stopped their mission trips (Lopez, 2009). Some argue that the decrease in short-term mission trips has not been a bad thing for Juarez. "Extreme overabundance of short-term workers…has created a dependence upon them and their funds," asserts Professor Howard Culbertson of Southwestern Nazarene University (Lopez, 2009). Robert Priest, director of the intercultural doctoral program at Trinity Evangelical Divinity School, argues further that short-term missions may not have a positive impact on the communities, whereas long-term missions would thrive in Juarez. Under the right circumstances, groups can indeed bring help. The Presbyterian Church did this in Colombia, working with Witness for Peace and the Fellowship of Reconciliation, to voice support and organize community action for human rights and against drug violence (Lopez, 2009) (Furkin, 2010). Other Protestant organizations have taken up different types of missions despite the persistence of violence.

Humane Borders is a Christian organization founded in 2000 with the goal of working on immigration issues. They have controversial programs such as providing water stations to reduce the number of migrants dying in the desert and lobbying to provide legal work opportunities in the United States for migrants (About Us, 2010). While not directly related to the issue of the drug trade, the organization recognizes the lack of economic opportunities presented to Mexicans. This dearth of opportunity causes them to take perilous journeys in hopes of a better life. Humane Borders wants to make sure that these journeys are not fatal ones.

While Protestant organizations have a less distinctly defined role in Mexican culture, and therefore in the resistance to the drug cartels, they are equal to their Catholic counterparts in importance. Protestant organizations have a history of incorporating the socially alienated. Protestant missions and proselytizing can not only provide support for personal transitions out of drug cartels, they also offer fresh relationships to criminals or would-be criminals, providing an escape from the endemic violence.

Religion co-opted by Cartels

Bizarre situations arise when renowned drug lords pretend to lead normal lives in villages that they control. This includes going to Mass at the local Catholic church and taking communion, with the guise of ignorance from priests. La Familia Michoacán changes the distinction between the Mexican Church turning a blind eye on the drug trade and actually using it to justify the practice. La Familia Michoacán, known in the U.S. as simply 'The Family', is a prominent cartel in Mexico that uses fundamentalist Christianity to justify its ways. The leader of the group, El Mas Loco ('the craziest one') has written his own bible and holds prayer meetings with his minions daily (Padgett 2010). La Familia was formed in the 1980s, ironically as an anticrime vigilante group. Time reports that El Mas Loco, or Nazario Moreno Gonzalez, thinks of himself as an Old Testament warrior, heading a criminal group of valiant men to protect the physical area of Michoacán (Padgett 2010). However, the practices of La Familia as it exists today have little to nothing to do with Christianity and more to do with the interpretation of the Bible written by the man who calls himself 'the craziest one.' The most threatening aspect of this is the volatile combination of religious righteousness with criminal activity. La Familia's stronghold lies in Michoacán, where an estimated 85 percent of businesses are involved in some way with the cartel (Finnegan, 2010). A local Michoacán politician describes the role of the cartel as filling the vacuum created by public distrust of the police and courts (Finnegan, 2010). La Familia depicts itself as the protector of the denizens of Michoacán (Castillo, 2010). La Familia has been noted as the fastest growing cartel and has widespread popularity in the state of Michoacán. On December 9, 2010, the leader of La Familia was shot dead during a two-day battle with federal forces. There were large marches in support for La Familia for at least three days after his death (El Paso Times, 2010). The cartel successfully uses religion, not only as a way of creating stability within the organization, but also, to justify all actions as divine justice. Recent reports from the federal government insist they have been successful in disbanding La Familia (Llana, 2010).

A Source of Legitimacy

The main reason religious institutions are so essential in Juarez today, because there are no other sources of legitimacy. Virtually all institutions – government, police, army, local business leaders, even doctors – have ties to one cartel or another. The only major institutions which have a moral obligation to be free from association with cartels are the religious institutions. Priests and pastors alike can be a vocal source of legitimacy and trust, which would be a boon to

society in such an unstable environment.

Religious organizations can be more heavily relied upon for their consistency of interest in the area. While Juarez is one of the most dangerous places in the world right now, it has not received the government aid to cope. Part of this is because of Mexico's larger problems with legitimacy and also perhaps unrealistic intent in 'solving' the problem of drug cartels. At any rate, it is a place of years of human suffering. The organizations that have been most consistently active in development projects in Juarez for the long-term have been Protestant mission groups from the United States. While the efforts are scattered and sometimes inconsistent, they are the most consistent aid that Juarenses get. In a last resort gesture in 2009, leaders of businesses in Juarez made a direct appeal to the United Nations for peacekeeping troops (Bracamontes, 2009). Their request was answered by a statement about the need to follow protocol. Juarenses continue to struggle, seemingly in vain, with instability and violence.

There are great limitations to the power of intervention that religious organizations could have in the face of the crisis. While it is evident that religious institutions standing alone will not curb the violence, they could begin to erode some of the root sources of the cartels' power. Because such a large portion of the population is Catholic, official Church condemnation of life associated with cartel culture would prove a welcome support for citizens. Many priests are also addressing the larger issue in the media; that people join forces with the cartels due to few other options. Citizens want to be able to take care of their families in legitimate ways, and when these opportunities are not available, they look to alternative methods. The impact of United States citizens traveling to Juarez on Protestant missions should not be overlooked. The information that the missionaries share about Juarez, in addition to any media coverage, brings attention to those who are forgotten. This is a catalyst in creating popular public reaction against the cartels in Juarez.

Recommendations

Because the Protestant churches have so many connections with congregations, they have great opportunity to channel some of the charity, and interest of those communities into creative solutions for Juarez. Additionally, safe places—namely, places of worship—need to be available for shelter from drug violence. Pastors and priests alike need to be firm in confronting threats and holding up the Church, whether Catholic or Protestant, as a sacred and safe place. They should also work with their network of other pastors and priests across the border to create and enforce a distinct policy against siding with a cartel or taking

bribes.

Besides developing trust and safety in a chaotic city, religious leaders have an important obligation to speak out. As seen in priests' actions in Colombia, condemnation and a vocal opposition to cartel culture are essential for the promotion of peace within a community. Standing up for human rights and peace should be second nature within Christian churches. However, it is crucial for priests and pastors, as highly valued community leaders, to be bold in asserting their beliefs.

The only real hope for long-term change in Juarez and Mexico at large would be the development of an alternative economy to the drug trade. The incentive for the people of Mexico to enter a less profitable, yet physically safer, economy can be instilled by religious leaders as a moral choice. Because Mexican cultural identity is so intrinsically linked with Christianity, it is up to the religious leaders to exhibit a firm public stance for human rights, for morality, and against the drug trade.

References

A Different Kind of Recession. 2009. *The Economist*. http://www.economist.com/node/14917758. (Accessed October, 2010).

Abernethy, Bob. 2008. "Juarez Insanity." PBS. http://www.pbs.org/wnet/religionandethics/week1208/feature.html. (Accessed October, 2010).

About Us. 2010. Youth Works. http://youthworks.com. (Accessed October, 2010).

About Us. 2010 Humane Borders. http://www.humaneborders.org/about/about_index.html. (Accessed October, 2010).

Annis, Sheldon. 1987. The Production of Christians: Catholics and Protestants in a Guatemalan Town. Austin, Texas: University of Texas Press.

Barillas, Martin. 2010. Mexico's Drug Cartels Hire Child Assassins. *Spero News*. http://www.speroforum.com/a/43259/Mexicos-drug-cartels-hire-child-assassins. (Accessed December, 2010).

Beiner, Nolan. 2010. Churches Become Havens in Violence-Plagued Ciudad de Juarez. *Deutsche Presse-Agentur*. http://www.monstersandcritics.com/news/americas/features/article_1541886.php/Churches-become-havens-in-violence-plagued-Ciudad-Juarez-Feature. (Accessed October, 2010).

Borunda, Osvaldo. 2010. An Open Letter from El Diario. *Foreign Policy*. http://www.foreignpolicy.com/articles/2010/12/08/an_open_letter_from_el_diario. (Accessed December, 2010).

Bowden, Charles. 1996 While You Were Sleeping. *Harpers Magazine*. http://dieoff.org/page77.htm. (Accessed October, 2010).

Bracamontes, Ramon. 2009. United Nations Peacekeepers Sought for Juarez: 2 Groups say Aid Needed to Stop Violence. El Paso Times. http://www.elpasotimes.com/ci_13776124. (Accessed October, 2010).

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR. 2006. Mexico. Issued by U.S. Department of State. http://www.state.gov/g/drl/rls/irf/2006/71467.htm. (Accessed October, 2010).

Burnett, J. and Penaloza, M. 2010. *Mexico's Drug War: A Rigged Fight?* National Public Radio http://www.npr.org/templates/story/story.php?storyId=126890838. (Accessed October, 2010).

Camp, Roderick. 2009. Church and Narcostate. *Foreign Policy*. http://www.foreignpolicy.com/articles/2009/08/13/of_church_and_narcostate. (Accessed October, 2010).

Castillo, Eduardo. 2010. "Mexico Cites Breakdown in La Familia Cartel." *Associated Press*. http://www.publicopiniononline.com/nationalnews/ci_16982159. (Accessed October, 2010).

Catholic Online. 2010. Pope Addressed Organized Crime in Sicily. Retrieved from Catholic Online website: http://Catholic.org. (Accessed October, 2010).

Dow, James. 2003. *The Growth of Protestant Religions in Mexico and Central America*. Oakland University. http://www.prolades.com/cra/regions/cam/Dow_sssr_2003.pdf. (Accessed October, 2010).

Edmunds, David. 2006. *The U.S.-Mexican War: A Major Watershed*. University of Texas at Dallas. http://www.pbs.org/kera/usmexicanwar/war/major_watershed.html. (Accessed October, 2010).

Finnegan, William. 2010. "Silver or Lead." *The New Yorker*. Retrieved from http://www.newyorker.com/reporting/2010/05/31/100531fa_fact_finnegan. (Accessed October, 2010).

Furkin, Bethany. 2010. Peacemakers face intimidation during Colombia visit. Presbyterian Church Press. http://www.pcusa.org/news/2010/11/11/peacemakers-face-intimidation-during-colombia-visi/.(Accessed October, 2010).

Hackett, Charles. 1942. Revolt of the Pueblo Indians of New Mexico and Hall, John. 2011. "Border Violence Prompts Decline in Mission Trips." *Associated Baptist Press*. Retrieved from http://www.abpnews.com/content/view/6115/53/. (Accessed January, 2011).

"Inquiry Indicates Police." 2004. *The Dallas Morning News*. http://www.latinamericanstudies.org/drugs/inquiry.html. (Accessed October, 2010).

Llana, Sara. 2009. Mexico's Drug War: Priests Speak Out. Christian Science Monitor. http://www.csmonitor.com/World/Americas/2009/1007/p08s04-woam.html. (Accessed October, 2010).

Llana, Sara. 2010. Mexico's La Familia cartel to government: We'll disband if you protect citizens. Christian Science Montior. Retrieved from http://www.csmonitor.com/World/Global-News/2010/1111/Mexico-s-La-Familia-cartel-to-government-We-ll-disband-if-you-protect-citizens. (Accessed October, 2010).

Lohmann, Patrick. 2010. The Secret School. Alibi. http://alibi.com/index.php?story=33055&scn=news&submit_user_comment=y. (Accessed October, 2010).

Lopez, C. L. 2009. Faith on the Frontera. Christianity Today. http://www.christianitytoday.com/ct/2009/may/5.14.html. (Accessed October, 2010).

Mexican Catholic Church Faces Controversy Regarding Allegations of Donations from Drug Cartels. 2005. Mex Economic: News and Analysis on Mexico. http://www.allbusiness.com/north-america/mexico/536250-1.html. (Accessed October, 2010).

"Oficial: Mas de 22 Mil 700 Muertos por Violencia." *2010 El Universal*. http://www.eluniversal.com.mx/notas/672485.html. (Accessed October, 2010).

Otermin's Attempted Reconquest, 1680-1682, vol. 1. . University of New Mexico Press. http://solomon.eena.alexanderstreet.com/cgi-bin/asp/philo/eena/getvolume.pl?S9063#DIV6. (Accessed January, 2011).

Padgett, Tim. 2010. "Mexico's Meth Warriors." *Time*. Retrieved from http://www.time.com/time/magazine/article/0,9171,1997449,00.html. (Accessed October, 2010).

Sando, Joe S.,1992. Pueblo Nations: Eight Centuries of Pueblo Indian History, Clear Light Publishers, Santa Fe, New Mexico. p. 61-62.

Severson, Lucky. 2010. Juarez Drug Wars. PBS. http://www.pbs.org/wnet/religionandethics/episodes/march-26-2010/juarez-drug-wars/5950/. (Accessed October, 2010).

"Some Mexicans March for 3rd Day for Slain Drug Lord." 2010. *El Paso Times*. http://www.elpasotimes.com/ci_16847712?source=rss_viewed. (Accessed December, 2010).

Torres, Olivia. 2010. "Family's Triple Tragedy Highlights Mexico Impunity." *Associated Press*. http://news.yahoo.com/s/ap/20101222/ap_on_re_la_am_ca/lt_mexico_mother_killed_3. (Accessed October, 2010).

Valencia, Nick. 2010. In Juarez Drug War, Priest is on the Front Lines. CNN. R http://articles.cnn.com/2010-02-03/world/juarez.violence.priest_1_juarez-cartel-priest-city-of-ciudad-juarez?_s=PM:WORLD. (Accessed October, 2010).

Vasconcelos, Gerardo. 2005. Desemeno Historico 1914-2004. Cemex Mexico. http://web.archive.org/web/20070314202223/http://www.imef.org.mx/NR/rdonlyres/F722BEDD-A8DE-49BA-AF4F-1A00889CE618/1192/CAPITULOI1.pdf. (Accessed October, 2010).

Vila, Pablo. 2005. Border Identifications. Austin, TX: University of Texas Press.

Woodiwiss, Michael. 2001. Organized Crime and Power. http://books.google.com/books?id=6AxEiRiWMeoC&pg=PA170&lpg=PA170&dq=anglo+saxon+protestant+organized+crime&source=bl&ots=DQQ_I4tMFic&sig=Y7JoPaJr5_8Lk9gwQnz07mObXUs&hl=en&ei=ZW3sTI2hHMb_lgfKxL2WAQ&sa=X&oi=book_result&ct=result&resnum=2&ved=0CCQQ6AEwAQ#v=snippet&q=protestant&f=false. (Accessed October, 2010).

The Transformation of Philanthropy in Sub-Saharan Africa: From Traditional Practices to the Establishment of Grantmaking Foundations

Julie B. Savane
MID, NGOs and Civil Society

Introduction

When one thinks of big players on the African aid scene, names like the World Bank, USAID, and United Nations Development Programme come to mind. However, Africans are increasingly establishing their own funding sources in the form of foundations. In light of the growing number of nongovernmental, nonprofit organizations working in Africa, foundations form an important source of support for local development work. Drawing on African philanthropic traditions, private, corporate and community foundations invest in their communities. They analyze the challenges of their societies from a holistic perspective, serving as a catalyst and convener for community dialogue. However, even when directed by Africans, foundations still face challenges in autonomy as well as misunderstandings in African attitudes toward institutions. However, many successes are evident, both in terms of the amount of money raised and initiatives supported. Despite their recent establishment and relatively small funding compared to other development actors, African foundations may be more effective in development over the long-term because of their cultural and geographic proximity to the problems they address.

African Giving Traditions

In North America, philanthropy is often associated with foundations or the initiatives of very affluent individuals. However, philanthropy "consists of the voluntary means that any culture or social group uses to redistribute financial and other resources for the purposes of promoting the collective good" (Copeland-Carson 2005). As such, African philanthropy has been practiced since the pre-colonial era. However, few scholars have addressed the topic. Therefore, the

following section relies heavily on the work of historian and social anthropologist, Steven Feierman,

Giving patterns were primarily based on reciprocity, in which both parties reinforced relationships by giving gifts at different times. The social bonds that were formed ensured the well-being of most community members (Feierman 1998). Reciprocity constituted "a form of exchange within which the rich were led to care for the poor" (Feierman 1998). While it is not certain that every African culture supported reciprocal giving, it has been observed in different regions over time. For example, proverbs from the Kikuyu people of Kenya emphasized reciprocity as even more important than alms giving (Clark 1980, Feierman 1998). Also, an anthropological report from 1938 to 1939 showed that household budgets in southeastern Nigeria included payments to relatives in need (Feierman 1998). These gifts were repaid at a later time when the initial giver was also in need (Feierman 1998).

Due to the importance of ancestral spirits in many African cultures, protecting others was a way to increase one's status and the likelihood that one would become an ancestral spirit after his/her death (Feierman 1998). Therefore, Africans were willing to find or create a family relationship with those in need. Maintaining kinship networks was also a way to protect against harm during times of war or famine (Feierman 1998). Therefore, calling on distant relatives in far-away places could ensure Africans' survival.

When Africans were unable to rely on kinship networks for protection, they found other sources of refuge in sanctuaries, shrines, and healing associations. In the Shambaa kingdom of Tanzania, the king could grant sanctuary, and this act was seen as an expression of power (Feierman 1998, Vaughan 1994). Alternatively, the Lozi kingdom of Zambia had a sanctuary that was kept apart from the power of the king and was a place where people were safe from even his jurisdiction (Feierman 1998, Bunimovitz and Faust 2001).

In some African societies, shrines played a role that mirrored the function of civil society in a democratic context. Their mediums were allowed to criticize authorities, especially if their actions "endanger[ed] prosperity, reproduction, or survival" (Feierman 1998). Nyabingi mediums in southwestern Uganda helped childless women, the hungry, and those who had no cattle (Feierman 1998). Some shrines provided protection to those who were escaping slavery or were in danger of being sold into slavery (Feierman 1998). The people seeking refuge would repay the priest with their own labor and the large number of workers contributed to the priest's prestige (Feierman 1998).

Associations, based on illness, age, occupation, or gender, have served as social networks beyond the family and provide a safety net in times of need.

People suffering for a common illness could find a type of kinship through healing associations. Those who were healed could also gain status as a healer for others (Feierman 1998). Women's groups and occupational groups often instituted financial mechanisms that were similar to foundation structures. At regularly scheduled meetings, the members would contribute a particular sum that would be gathered and then given to one member, on a rotating basis (Copeland-Carson 2005). Having access to this capital enabled individuals to advance "community social projects, political efforts, or the economic betterment of … their families" (Copeland-Carson 2005).

The alms-giving traditions of Islam and Christianity also constituted an aspect of African philanthropy in the pre-colonial era. In these religious traditions, the act of giving extended beyond kinship groups and created a wider spiritual community (Feierman 1998). In some regions, Muslims would provide contributions to an imam, who would then redistribute the funds to those in need (Feierman 1998). In major Islamic centers such as Timbuktu, Djenné, and Masina, "permanent charitable endowments called waqf" were established (Feierman 1998). In Ethiopian Christianity, churches and monasteries served as a refuge for those who had no family, were disabled, or lived in poverty (Feierman 1998). Those who were sick sought "the healing powers of Christian holy men" (Feierman 1998).

African patterns of protection and reciprocity illustrate a contradiction that is also present in Western philanthropy. In order to give protection and basic necessities to others, those in power had to defend their privilege and wealth, so that they could give goods and services to the marginalized members of their societies (Feierman 1998). Although these acts of philanthropy were costly in monetary terms, it was through providing protection and gifts to others that the givers increased their own power and prestige (Feierman 1998). The Lemba healing association of equatorial Africa understood this dynamic. Its leaders cajoled the most prominent merchants, judges, and chiefs to become members in order to support its ongoing work (Feierman 1998). Ethiopian monasteries were also able to flourish and provide services to those in need because of their political power and dominion over large tracts of land (Feierman 1998). Since the monasteries were entitled to the labor of the peasants who lived on these tracts, they could therefore increase their prosperity by exploiting the production of those with a lower social status (Feierman 1998).

Jairos Jiri – An African Philanthropist

During the colonial period, notable Zimbabwean philanthropist Jairos Jiri initiated self-help programs for people with disabilities in his country. His work aligned with the African traditions outlined above, with some variation. The self-help nature of his programs enabled participants to produce tangible goods to sell or give as gifts. The ability to do productive work may have enabled individuals with disabilities to participate more fully in reciprocal giving relationships within kinship networks. Though he did not have wealth or prestige in his community, Jiri relied on kinship networks to engage support for his program and, in this way, secured volunteers to train program participants (Devlieger 1995). However, in breaking from the African tradition, the Jairos Jiri Association conducted fundraising using a Western model of giving to charitable causes. Funding drives often corresponded with social and religious events such as Christmas parties among the white and Indian communities in colonial Rhodesia (Devlieger 1995).

Patrick Devlieger argues that Jiri's greatest contribution was his concern for other human beings (Devlieger 1995). He exemplified a broader definition of philanthropy as "the goodness one person does to another person without assuming any direct gain" (Devlieger 1995). Based on this definition, the social norm of making financial charitable contributions is more prevalent in Western countries, but philanthropy itself is not necessarily practiced to a greater degree in the West. Undocumented acts of generosity and concern take place daily on a personal level in various regions of the world, unmitigated by formal institutional structures. The concept of philanthropy as goodness towards other human beings without expectation of reward is empowering, because it is not based on financial resources. In fact, Jiri himself had only minimal education and experience in unskilled, low-paying jobs; however, through his persistence and ability to engage the support of others, he was able to provide training and protected work environments for people with disabilities.

Foundations and the Nonprofit Sector

African philanthropy has taken many forms over time and across cultures. In recent years, it has manifested in the establishment of foundations. Foundations are institutions created to provide funding to nonprofit organizations and programs for the realization of certain objectives relating to the public good (Fleishman 2007). They can be established to distribute the wealth of one family, to garner resources for the well-being of a particular community,

or to carry out the social responsibility plan of a corporation. While foundations' objectives can vary widely, they generally include the improvement of quality of life and can focus specifically on issues as diverse as women's empowerment, environmental protection, the arts, and education. Some of the better-known foundations were established in the early 20th century in the United States, including those set up by business moguls and philanthropists such as Andrew Carnegie and John D. Rockefeller (Roelofs 2003). Their foundations established endowments so that their funds could be granted in perpetuity (Fleishman 2007). However, not all have followed this example. Some foundations, particularly private foundations, have set life spans or will spend down their assets within their namesake's lifetime (Fleishman 2007).

Today, private, community, and corporate foundations are all active in philanthropy, and the foundation concept has spread worldwide, with most African foundations established just since the 1990s (Sacks 2009). National and regional organizations promote philanthropy and support the work of foundations through research and convening on best practices in grantmaking.

The role of foundations in African development cannot be examined without first addressing the importance of nonprofit organizations. While African civil society has long existed in many forms, including burial societies, hunting societies, and women's savings groups, it is increasingly composed of nonprofit organizations or NGOs. Wallace, Bornstein, and Chapman (2007) note a "massive rise in the number and size of NGOs in the north and south" in the last two decades. For example, in Kenya alone, the nonprofit sector increased from approximately 500 organizations in 1990 to nearly 3,200 organizations by 2004 (Gugerty 2010). This shift reflects a trend to privatize aid, which the Bretton Woods institutions embraced in the mid-1990s (Wallace, Bornstein and and Chapman 2006). To avoid inefficiencies in cumbersome government administrations, donors encouraged economic growth through privatization and market liberalization (Wallace, Bornstein and and Chapman 2006). At the same time, development funders embraced NGOs as the new providers of social services, believing them to be more cost-effective than governments and better able to serve those in poverty (Ebrahim 2003). The availability of donor funding for NGOs further encouraged their growth, while creating tensions with governments who, due to the allocation of donor funds, were now increasingly dependent on NGOs to ensure social service delivery (Gugerty 2010).

International development donors have identified a variety of benefits to working through NGOs. Major donor agencies value the perspective of nonprofit organizations, because they are "perceived to be working at the grassroots level" and to understand the local context better than governments or official donors

(Wallace, Bornstein and and Chapman 2006). In recent years, as the focus in development funding has shifted towards sector-wide support and empowering governments, the development community has identified new strengths in the role of nongovernmental organizations (Wallace, Bornstein and and Chapman 2006). These include engaging low-income people in policy development, holding governments accountable "for their actions and the use of aid," and acting as advocates for low-income people at the national and international levels (Wallace, Bornstein and and Chapman 2006). While these watchdog roles have earned many NGOs a seat at the table among the most influential donors, research has not yet confirmed that African civil society will serve as the vanguard in anti-corruption efforts, since organizations are often either thwarted by the government or by discord among their own members (Wallace, Bornstein and and Chapman 2006).

While most nonprofit organizations receive individual donations, government funding, or official development aid, they also depend on foundations as an important source of budgetary support. In countries such as the United States, foundations play catalytic roles in the nonprofit sector, providing start-up funding for new nonprofits, convening policymakers on key social issues, and assisting nonprofits with organizational strategy and planning (Fleishman 2007). Therefore, as the number and scope of nonprofit organizations in Africa continues to grow, local foundations could serve a similar role to ensure that they are supported and sustained.

The Challenge of International Funding

Although African organizations have benefited from the financial support of many Western governmental and nongovernmental aid organizations, this funding is not without its drawbacks. One primary concern is the accountability relationship between international funders and their African partner organizations and beneficiaries. Another concern is the ability of international funders to respond promptly and appropriately to local communities.

African nonprofit organizations, like others throughout the world, participate in an array of accountability relationships with stakeholders, including beneficiaries, staff members, donors, and regulatory bodies. Compared to for-profit corporations who are accountable primarily to customers as both their source of income and their consumers, nonprofit organizations face a division of accountability between the donors who funded their projects and the people or causes they seek to serve (Brown and Moore 2001). When an organization is

accountable to multiple stakeholders, the relationships are often skewed in favor of the most powerful stakeholder, such as a donor (Ebrahim 2003).

Donor organizations, with their guidelines and funding stipulations, hold some power over African civil society. In fact, some have referred to this situation as "the new colonialism" (Wallace, Bornstein and and Chapman 2006). While funders often describe their collaborations with local nonprofit organizations as partnerships, they can also be understood as principal – agent relationships. Because the local nonprofit organizations carry out projects in accordance with the donor's intent, the donor serves in the role of the principal, while the local nonprofit is the agent (Ebrahim 2003). Donors set funding priorities, and African NGOs, which are in need of resources, have a direct interest in buying in to the "dominant paradigm … of manag[ing] development" (Wallace, Bornstein and and Chapman 2006). In the struggle to acquire funding, African NGOs can become so involved in "[i]mplementing projects and meeting reporting deadlines" that little time is left for reflection, planning, or engaging the participation of low-income people (Wallace, Bornstein and and Chapman 2006). Accountability to beneficiaries may be sacrificed in favor of accountability to donors.

Despite their global reach and sectoral expertise, even the most successful international donors face the difficulty of responding to field level challenges. This difficulty is particularly relevant to an examination of alternative sources of funding for African development. Since donors are often located in another country and rarely visit the recipient, the project proposal and evaluation documents are sometimes the only communications that they receive from the NGO (Wallace, Bornstein and and Chapman 2006). Because donors do not operate in local languages, standardized forms must be written in English or another foreign language and do not allow the flexibility for field workers to demonstrate other skills or describe qualitative outcomes (Wallace, Bornstein and and Chapman 2006).

Based on these shortcomings, it is likely that African foundations could respond more effectively to changes in community needs. African-based funders would receive better information on projects as a result of site visits and in-person meetings conducted in local languages. They would also have the opportunity to meet with the people targeted by community initiatives to verify whether the programs were improving their quality of life.

The Establishment of African Foundations

As Africans seek to support their own community development, they have established foundations to channel and amplify financial resources.

Community foundations are operating in at least six different countries in sub-Saharan Africa, and private and corporate foundations are leaving their mark throughout the continent (Sacks 2009). Several of these African foundations reported that their aims in establishment were to address issues of dependency on donors and sustainability of funding sources. They wished to enable communities to "determine and take charge of their own local needs (Sacks 2009).

At least fifteen community foundations have been established in sub-Saharan Africa since 1997 (2008 Community Foundation Global Status Report Overview n.d.). These are located in Ghana, Kenya, South Africa, Tanzania, Uganda, and Zimbabwe. Community foundations are organizations whose goal is to "improv[e] the quality of life in their area" (Council on Foundations 2009). They serve as a vehicle for investment and grantmaking, but also play a role in convening community actors and tackling social problems (Council on Foundations 2009). These African community foundations address a variety of issues, including health, peace and reconciliation, and food security (Sacks 2009, Worldwide Initiatives for Grantmaker Support 2010).

Many community foundations in Africa were established at the suggestion of international donors. The World Bank, through its Community Foundation Initiative, promoted the establishment of four community foundations in Tanzania in 2007 (Sacks 2009). South African community foundations were also initiated through a pilot program of the Southern African Grantmakers' Association, the Mott Foundation, the Ford Foundation, and the Kellogg Foundation (Legodi 2002). This program planted the seeds for ten community foundations in 1998 (Legodi 2002). According to the 2010 Community Foundation Global Status Report, seven South African community foundations are currently in existence (Worldwide Initiatives for Grantmaker Support 2010). While Africans direct community foundations for their regions, the adoption of the community foundation model at the suggestion of international donors does draw into question whether these institutions can become truly indigenous. Because their funding sources continue to include major Western foundations, as well as bilateral and multilateral development agencies, it is possible that international development agendas will play out through African foundations, rather than the foundations setting the agenda.

Although similar to community foundations, private foundations differ in that they are established by groups of people who share a common interest or by financially successful individuals and families who would like to give back to their communities. In Africa, private foundations have been established in many countries, including Ghana, Mali, Senegal, and South Africa. Musicians such as Salif Keita and Youssou N'Dour are among those who have set up

private foundations. The Salif Keita Global Foundation supports the rights of people with albinism, and Fondation Youssou N'Dour seeks to improve conditions for underprivileged children (The Salif Keita Global Foundation, Inc. n.d., Youth Network for Development 2009). South African entrepreneur Mark Shuttleworth established the Shuttleworth Foundation with the goal of promoting social change that will "improv[e] education and technology use for all" (Shuttleworth Foundation n.d.). In financial year 2009, the Shuttleworth Foundation's program expenditures totaled 22,431,745 Rand (approximately US$3,092,876) in South Africa. (Shuttleworth Foundation 2009).

Two foundations that have broad missions for African quality of life are TrustAfrica and the African Women's Development Fund. TrustAfrica began as an initiative of the Ford Foundation but has become an independent foundation since 2006 (TrustAfrica n.d.). Its work includes holding workshops to promote institutional collaboration across the continent, funding major initiatives that work regionally with multiple strategies, supporting research on business investment in Africa, and providing small grants to NGOs for capacity building (TrustAfrica n.d.). Based in Dakar, Senegal, TrustAfrica also promotes civil society, religious pluralism, and regional organizations (TrustAfrica n.d.). The African Women's Development Fund (AWDF) is based in Ghana and works to realize its vision of "a world in which there is social justice, equality and respect for women's human rights" (African Women's Development Fund n.d.). It has funded more than 800 organizations in 41 African countries (African Women's Development Fund n.d.). AWDF's current endowment campaign, chaired by Liberian President Ellen Johnson-Sirleaf and former First Lady of Mozambique and South Africa Graca Machel, hopes to raise US$15 million (African Women's Development Fund). Of the money raised, US$5 million will be directed to initiatives for "HIV/AIDS, violence against women, and access to decision making" (African Women's Development Fund n.d.).

African corporations, like other corporations worldwide, are addressing the link between their success as businesses and the well-being of the communities in which they operate. Several have adopted corporate responsibility statements and participate in grantmaking. Absa Bank in South Africa seeks "to be the leading practitioner… in corporate social investment… and build strength & [sic] capabilities through collaborative partnerships" (Absa Bank Limited n.d.). In 2007, the Absa Foundation and Absa Group contributed 60,900,000 Rand (approximately US$8,286,389) to community initiatives. Their areas of focus include education, entrepreneurship, health, and the environment (Absa Bank Limited n.d.). The MTN Group, a telecommunications company operating throughout Africa and the Middle East, has established foundations

in eleven countries (Mobile Telephone Networks 2007). It mandates that a certain percentage of after-tax profits be allocated to corporate social investment programs (Mobile Telephone Networks 2007). Their funding priorities include "health, education, poverty alleviation, and arts and culture" (Mobile Telephone Networks 2007). The MTN Foundation in Nigeria has donated 100 housing units to Habitat for Humanity, while the MTN Foundation in South Africa has focused almost half of its grantmaking resources on education (Williams 2009, Mobile Telephone Networks 2007).

Some indicators of the vibrancy of African philanthropy are the two organizations that have been created to promote and support effective grantmaking. These include the East Africa Association of Grantmakers and the South Africa Community Foundation Association. In these fora, African grantmakers are gathering to collaborate in their work and to share best practices for philanthropy. The East Africa Association of Grantmakers' mission is "to nurture and enhance a culture of local giving and resource mobilization" in Kenya, Tanzania, and Uganda (East Africa Association of Grantmakers n.d.). Its members include African foundations, as well as international donors working in the region (East Africa Association of Grantmakers n.d.). The South Africa Community Foundation Association (SACOFA) was established in 2006 to support the growing number of community foundations in the country (Sacks 2009). It convenes community foundations to "share experiences, develop expertise, and gain knowledge" (Sacks 2009). Due to the unfamiliarity that most Africans have with the concept of foundations, SACOFA seeks to "promote a culture of local giving" and "increase an awareness of the community foundation network" (Sacks 2009).

Building Foundation Assets

When compared to aid from bilateral and multilateral donors, the assets of African foundations appear small indeed. Their grantmaking is dwarfed by official development assistance. Africa, as a whole, received US$44.005 billion in official development assistance in 2008 (OECD 2010). While aggregate data for foundations in sub-Saharan Africa is not available, a "back of the envelope" calculation shows that the combined grantmaking of 13 African foundations totaled US$22,069,848 in 2009. [1] For example, Kenya received US$1.36 billion in official development assistance in 2008, but Kenya's only community

1 Data in this calculation are from 2009, except for the African Women's Development Fund data from 2007-2008 and the Absa Bank Limited from 2007.

foundation granted US$500,000 (OECD n.d.). However, with stronger ties to the local communities, African foundations may prove more effective in certain areas than international donors, no matter their assets. TrustAfrica encourages indigenous philanthropy so as to decrease reliance on international donors, which "weakens Africans' ability to set their own priorities and policies for development" (TrustAfrica n.d.).

Among the fifteen African community foundations, nine have established endowments. Their assets totaled US$7,161,200 in 2009 (Worldwide Initiatives for Grantmaker Support 2010). That same year, these nine foundations made US$2,248,558 in grants to local nonprofit organizations (Worldwide Initiatives for Grantmaker Support 2010). The six other African community foundations are currently working to establish endowments and begin their grantmaking activities (Sacks 2009).

African foundations receive their assets from a variety of sources, and some funders contribute to both community and private foundations. For example, TrustAfrica (a private foundation), Kenya Community Development Foundation, Uthungulu Community Foundation, and Greater Rustenburg Community Foundation have all received funding from the Ford Foundation (TrustAfrica n.d., Sacks, 2009). Interestingly, some of the major development donors, such as the World Bank, Irish Aid, and the United Nations Development Program have contributed to African foundations (Sacks 2009). Additionally, local governments and businesses, as well as individuals, have also provided significant contributions (Sacks 2009).

In light of the low levels of funding and endowments currently available, several African foundations are adopting fundraising strategies. Among community foundations, several different approaches have been employed, most of which involve a combination of seeking local and international support. The Community Foundation for the Western Region of Zimbabwe has received 99.9 percent of its income from international grants, but lists local fundraising among its activities (Sacks 2009). On the other hand, the Morogoro Municipal Community Foundation of Tanzania generated its initial funding from 420 pledges made by district residents who attended the launching meeting (Sacks 2009). Targeting high net worth individuals, including those in the diaspora, has been a strategy of the Kenya Community Development Foundation (Sacks 2009). TrustAfrica is taking a similar approach to empower Africans in philanthropy. The foundation has set a goal of inspiring 10,000 Africans on the continent and in the diaspora to donate US$100 per year (TrustAfrica n.d.). This is a

way of balancing donations from Africans with donations from TrustAfrica's international funders, including the Ford Foundation (which laid the groundwork and resources for TrustAfrica), the International Development Research Centre in Canada, the Oak Foundation in Switzerland, and the MacArthur Foundation and the Packard Foundation in the United States (TrustAfrica n.d.).

Challenges Facing Foundations

In addition to the work of attracting resources, African foundations face several challenges, especially in their fledgling state. These include constituent perceptions, distrust of institutions, and unclear government statutes regarding nonprofit organizations. In various parts of Africa, perceptions of philanthropy vary. Despite traditions of local giving and giving within kinship networks, "giving to support community needs or investment goals" is an unfamiliar idea (Sacks 2009, Devlieger 1995). Even when communities would like to support local philanthropic initiatives, "socio-economic challenges," such as widespread unemployment, poverty, and health issues, can prevent them from making donations (Sacks 2009).

In South Africa, terminology plays an important role in conveying the intended message to prospective donors. Philanthropy is viewed as giving only "towards 'charitable' institutions" or the "'softer' social development issues" (Sacks 2009). Therefore, terms like "community giving" and "community 'help'" are better understood (Sacks 2009). Organizations like the South Africa Community Foundation Association are working to increase local awareness of community foundations (Sacks 2009).

In addition to limited awareness of community foundations, corruption has proved a barrier for foundations' fundraising initiatives. The Mwanza City Community Foundation in Tanzania reported that people are suspicious of nongovernmental organizations, because some have "not operat[ed] in a transparent and accountable manner" (Sacks 2009). Furthermore, the Arusha Municipal Community Foundation believes that corruption is causing an unfair distribution of wealth, and as corruption decreases, the "more equitable distribution" of wealth will enable more people to contribute to philanthropy (Sacks 2009). The Akuapem Community Foundation combats fears of corruption by adopting "a strict conflict of interest policy" (Sacks 2005). Furthermore, Merchant Bank Ghana Limited has given the foundation computer software that enables it to better record donations and to maintain accountability (Sacks 2005). The larger foundations, TrustAfrica and the African Women's Development Fund, produce annual reports with audited financial statements.

Tax laws are another aspect that affects the philanthropic environment. While some foundations report receiving tax-exempt status from their governments, overall, it is rare. In Kenya, corporate tax incentives for giving were recently approved, but have not yet gone into effect. Individual tax incentives do not exist (Worldwide Initiatives for Grantmaker Support 2010). In Tanzania, the Mwanza City Community Foundation has found that the business community is slow to contribute to community initiatives and has not traditionally been involved in philanthropy, perhaps due to a lack of tax incentives (Sacks 2009). However, community foundations in South Africa reported greater success in obtaining tax-exempt status. Community foundations have been declared public benefit organizations, so their income is not taxable and donors' contributions are deductible (Sacks 2009). The Greater Rustenburg Community Foundation of South Africa reported that as a public benefit organization (PBO), it can give a tax certificate that provides "a ten percent tax rebate" (Sacks 2009).

Conclusion

It is clear from the evidence above that Africans face many challenges in establishing sustainable, indigenous funding sources for community development initiatives. Misunderstandings of the foundation concept, as well as fears of corruption and generally low incomes, create barriers to effective fundraising. However, Africans have a history of philanthropy on which to draw for guidance. Some elements of traditional reciprocity, such as enabling the recipient to give back, are present in new trends like social venture philanthropy, which invests in entrepreneurial efforts. Although foundations themselves originated as Western institutions, they may present the best alternative to continued dependence on foreign aid for development. As a whole, African foundations have been able to draw on support from the public and private sectors, in addition to individual donors. The strong growth of the nonprofit sector in Africa needs to be accompanied by a strong local funding base, if it is to flourish in the long run. Many of the foundations profiled above provide inspiring proof of what Africans can accomplish together, even in a short period of time. The real test of the foundation model in Africa will be its ability to adapt to local conditions and its accomplishments in decades to come.

References

Absa Bank Limited. *Corporate Social Investment at Absa*. http://www.absa.co.za/absacoza/content.jsp?/Home/All-About-Absa/All-About-Absa/About-the-Absa-Group/CSI (accessed November 29, 2009).

African Women's Development Fund. http://www.awdf.org/ (accessed 29 November 2009).

Akuapem Community Foundation. 2009. "Report on 'Landmark Event." *Akuapem CF Newsletter Home*, 10 August. http://akuapemcf.org/newsletter/ (accessed November 30, 2009).

Brown, L. David and Mark H. Moore. 2001. "Accountability, Strategy, and International Non-Governmental Organizations." The Hauser Center for Nonprofit Organizations, Working Paper No. 7. http://www.hks.harvard.edu/hauser/PDF_XLS/workingpapers/workingpaper_7.pdf (accessed 28 February 2011).

Bunimovitz, Shlomo and Avraham Faust. 2001. "Chronological Separation, Geographical Segregation, or Ethnic Demarcation? Ethnography and the Iron Age Low Chronology." *Bulletin of the American Schools of Oriental Research*. 322:1-10.

Clark, Carolyn M. 1980. "Land and Food, Women and Power, in Nineteenth Century Kikuyu." *Africa*. 50.4: 357-370.

Copeland-Carson, Jacqueline. 2005. "Promoting Diversity in Contemporary Black Philanthropy: Toward a New Conceptual Model." *New Directions for Philanthropic Fundraising*: 77-87.

Council on Foundations. 2009. "*Community Foundation Services*." Community Foundations. http://www.cof.org/whoweserve/templates/311.cfm?ItemNumber=16057&navItemNumber=14849 (accessed November 27, 2009).

Devlieger, Patrick. 1995. "From Self-help to Charity in Disability Service: the Jairos Jiri Association in Zimbabwe." *Disability & Society* 10.1: 39-48.

East Africa Association of Grantmakers. "Our Mission, Vision and Values." http://www.eaag.org/ (accessed February 6, 2011).

Ebrahim, Alnoor. 2003. "Making Sense of Accountability: Conceptual perspectives for Northern and Southern nonprofits." *Nonprofit Management and Leadership* 14.2, 191-212.

Feierman, Steven. 1998. "Reciprocity and Assistance in Precolonial Africa." in Ilchman, Warren F., Stanley N. Katz, and Edward L. Queen II, eds. *Philanthropy in the World's Traditions*. Bloomington and Indianapolis: Indiana University Press.

Fleishman, Joel L. 2007. The Foundation. New York: Public Affairs.

Fondation Youssou N'Dour. 2009. "Fondation Youssou N'Dour Youth Network for Development." http://www.fondation-youssou-ndour.org/# (accessed November 19, 2009).

Gugerty, Mary Kay. 2010. "The Emergence of Nonprofit Self-Regulation in Africa." *Nonprofit and Voluntary Sector Quarterly*. 39.6:1087-1112.

Legodi, Max. 2002 "South Africa – Testing the community foundation model." *Alliance Online*, September 1. http://www.alliancemagazine.org/node/2561 (accessed November 29, 2009).

Mobile Telephone Networks. 2007. "MTN SA Foundation." MTN Group. http://www.mtn.co.za/ABOUTMTN/Pages/MTNSAFOUNDATION.aspx (accessed November 29, 2009).

---. 2007. "Social Sustainability." *MTN Group*. http://www.mtn.com/Sustainability/SocialResponsibility.aspx (accessed November 29, 2009).

OECD. 2010. "Development Aid at a Glance: Statistics by Region: Africa." *Development Co-operation Directorate* (DCD-DAC). http://www.oecd.org/document/11/0,3746,en_2649_34447_2002187_1_1_1_1,00.html (accessed February 6, 2011).

---. "Kenya." http://www.oecd.org/dataoecd/62/54/1877992.gif (accessed February 6, 2011).

Roelofs, Joan. 2003. *Foundations and Public Policy: The Mask of Pluralism*. Albany, NY: State University of New York Press.

Sacks, Eleanor W. 2005. *2005 Community Foundation Global Status Report*. Worldwide Initiatives for Grantmaker Support. http://www.wingsweb.org/information/publications_community.cfm (accessed October 2009).

---. 2008. *2008 Community Foundation Global Status Report*. Worldwide Initiatives for Grantmaker Support. http://www.wingsweb.org/information/publications_community_2008_main.cfm (accessed October 2009).

The Salif Keita Global Foundation, Inc. 28 November 2009. http://www.salifkeita.us/Salif_Keita_Global_Foundati.php

Shuttleworth Foundation. 2008. *2008 Annual Report of the Shuttleworth Foundation Trusts*. http://www.shuttleworthfoundation.org/about-us/financials (accessed November 19, 2009).

---. *Our Work*. http://www.shuttleworthfoundation.org/our-work (accessed November 29, 2009).

TrustAfrica. http://www.trustafrica.org/index.php?option=comfrontpage&Itemid=1&lang=en (November 29, 2009).

Vaughan, Megan. 1994. "Healing and Curing: Issues in the Social History and Anthropology of Medicine in Africa." *The Society for the Social History of Medicine*. 7.2: 283-295.

Wallace, Tina, Lisa Bornstein, and Jennifer Chapman. 2006. *The Aid Chain: Coercion and Commitment in Development NGOs*. Warwickshire, UK: Practical Action Publishing.

Williams, Sunday. 2009. "MTN foundation hands over 100 houses." *Daily Trust*, October 11. http://www.news.dailytrust.com/index.php?option=com_content&view=article&id=7571 (accessed November 29, 2009).

Worldwide Initiatives for Grantmaker Support. 2010. "Country Profiles." http://www.wings-community-foundation-report.com/gsr_2010/gsr_country-profiles/country-profiles.cfm (accessed February 5, 2011).

---. 2008. "2008 Community Foundation Global Status Report Overview." http://www.wings-community-foundation-report.com/gsr_2010/gsr_about/previous.cfm (accessed February 5, 2011).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