

ARMED NON-STATE ACTORS IN AFRICA AND THE BAN ON ANTI-PERSONNEL LANDMINES¹

NOEL STOTT

A truly universal ban on anti-personnel mines cannot be realized without engagement of armed non-state actors and armed groups operating outside state control, including rebels and national liberation movements. Events after 9/11 have complicated engagement with organizations that can be classified as ‘terrorists’. Yet, the use of anti-personnel landmines itself can be viewed as an act of terrorism and African leaders have, on various occasions, classified the use of landmines and the presence of unexploded ordnance as engendering insecurity and a serious impediment to development. The success of a total ban ultimately depends upon ensuring that armed non-state actors act in accordance with international humanitarian law. The Geneva Call Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action (DoC) might be described as an alternative instrument to the Anti-Personnel Mine Ban Convention and can serve an important and impartial channel of communication with non-state actors. Already 18 armed groups in Africa have signed the Geneva Call DoC.

Introduction

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Anti-Personnel Mine Ban Convention) is an international agreement by states that have ratified or acceded to it. While states are not the only entities that have made use of, or which continue to use, anti-personnel landmines, the Anti-Personnel Mine Ban Convention has no mechanism to allow for armed non-state actors (ANSAs) to adhere to its provisions.

The aim of achieving a truly universal ban on anti-personnel mines cannot, however, be realised without controlling the activities of non-state actors and similar armed groups operating outside state control. The necessity to engage ANSAs with the aim of securing their commitment to respect the highest standards of international humanitarian norms, such as that established by the convention, needs to be recognised and encouraged.

This article briefly reflects on the importance of engaging with ANSAs in order to truly universalise the Anti-Personnel Mine Ban Convention and to establish the non-use of anti-personnel landmines as the international standard. It outlines one of the most innovative civil society mechanisms created to do this and argues that it is the responsibility of both civil society and governments to engage with ANSAs, with the aim of facilitating global cooperation to stop all use of anti-personnel mines. The article further contends that the Common African Defence and Security Policy (CADSP) and the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (AU) provide useful contexts for such engagement with African ANSAs.

Defining armed non-state actors

For the purposes of this article the neutral term ‘armed non-state actors’ (ANSAs) is used to

cover 'rebels', 'guerrillas', 'separatists', 'national liberation movements' and *de facto* governing authorities. In other words, the term encompasses an enormous array of groups—groups with varying goals and objectives but who have some form of articulated political-economic and social programmes and which operate primarily within state borders. It is, however, important to bear in mind that many ANSAs regularly move across state borders or operate from other national territories, and often receive backing from powerful external sponsors, with broader regional or international agendas.

Since February 2001, the war on terrorism instigated by the United States has resulted in some of these groups being classified as 'terrorists', and any discussion of the presence of ANSAs in a country or the need to engage them constructively is regarded as a hypersensitive 'national security' issue; however, engaging ANSAs on the use of anti-personnel landmines does not mean sympathy with the aims of armed opposition groups. On the contrary, the global campaign against anti-personnel landmines is a single-issue humanitarian campaign, albeit located in the context of peace building and sustainable development. It is located within an open, transparent and humanitarian agenda.

The truth is that some who have in the past been members of such ANSAs are now involved in 'legitimate' political parties, either in government or as opposition in multiparty democracies. While many people have been victims of ANSAs' tactics and strategies, such groups have also liberated others from economic oppression and political tyranny.

ANSAs and terrorism in Africa

The Organisation of African Unity (OAU)/AU Convention on the Prevention and Combating of Terrorism is clear that while member states are deeply concerned about the scope and seriousness of the phenomenon of terrorism and the dangers it poses to the stability and security of states, it also reaffirms the legitimate right of peoples for self-determination and independence, pursuant to the principles of inter-

national law and the provisions of the Charters of the AU, the United Nations (UN) as well as the African Charter on Human and Peoples' Rights. This is in line with international jurisprudence, which affirms that the struggle for national liberation does not in itself constitute a terrorist act.

While this convention does not define 'terrorism', it does spell out what a 'terrorist act' is, namely:

- a. any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:
 - i. intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or
 - ii. disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
 - iii. create general insurrection in a State.

Terrorist acts are thus characterised by indiscriminate violence against civilians and the disregard for humanitarian values.

Anti-personnel landmines and terrorism

The use of anti-personnel landmines has been widespread in the colonial, inter-state and intra-state wars that have plagued much of Africa for the past three decades. During this period, many thousands of landmines were imported into the region, while a smaller number were locally manufactured. Today, it is often civilians, international and African peacekeepers and outside observers who bear the brunt of these weapons in such countries as the Democratic Republic of Congo (DRC), Burundi, Sudan, Mozambique and Angola, as well as along the border between Ethiopia and

Eritrea.

Given the above, the use of anti-personnel landmines can be viewed as an example of an act of terrorism. In fact, annexed to the AU's Convention on the Prevention and Combating of Terrorism is a list of international instruments that, as a matter of priority, should be signed and ratified or acceded to in order to combat terrorism in all its forms and manifestations: the list includes the Anti-Personnel Mine Ban Convention.

Anti-personnel landmines and Africa's security policy

The Common African Defence and Security Policy (CADSP) that was adopted by African Heads of State in Libya during 2004, lists landmines as one of the factors that engender insecurity in Africa. The adoption of the CADSP is premised on a common perception of what is required to be done collectively by African states to ensure that Africa's common defence and security interests and goals are safeguarded in the face of common threats to the continent as a whole. The use of landmines and the presence of unexploded ordnance are in this context viewed as 'common security/internal threats' which pose a danger to the common defence and security interests of the continent, and cause grave humanitarian situations.

The Protocol Relating to the Establishment of the Peace and Security Council of the AU clearly states that the problems caused by landmines constitute a serious impediment to Africa's social and economic development, and that they can only be resolved within the framework of increased and well-co-ordinated continental co-operation.²

The CADSP and the Peace and Security Council thus both offer a useful context and means to engage ANSAs in Africa.

Engaging with ANSAs on a landmine ban

Many activists in the global campaign to eradicate landmines recognise the impor-

tance for *all* states to accede to, or ratify, the Anti-Personnel Mine Ban Convention and to pass national legislation that prohibits private citizens from producing, storing or using anti-personnel landmines. However, they also believe that truly universalising the convention—to establish the non-use of anti-personnel landmines as the international norm—depends not only on governments: ANSAs must also feel obliged to adhere to the terms of the Anti-Personnel Mine Ban Convention. The success of a total ban on anti-personnel landmines and their eradication from African soil is thus dependent on all actors—both state and non-state. It is thus crucial that the education of ANSAs is prioritised in the Geneva Conventions (international humanitarian law) and in the principles of the International Committee of the Red Cross (ICRC) and the Anti-Personnel Mine Ban Convention.

Education of ANSAs

States sign and adopt UN conventions and protocols, which legally bind them to the standards of international humanitarian law. Non-state forces, however, may declare their agreement and desire to comply with them, totally or partially, by agreement with a state or unilaterally. In fact, international law foresees the possibility of 'special agreements' between governments and armed opposition groups on particular aspects and rules of the law; for example, regarding prisoners of war and child soldiers. There is no reason why such agreements cannot include the non-use of particular weapons.

There are a number of important reasons why it is imperative that a concerted and co-ordinated effort be made to educate ANSAs about the indiscriminate effects of anti-personnel landmines and why it is desirable to develop a strategy to ensure that ANSAs act in accordance with international humanitarian law, of which the ban on the use of anti-personnel landmines is now a crucial component. These reasons include the following:

- Experience has shown that ANSAs have relatively easy access and have made extensive

use of anti-personnel landmines as weapons of conflict, gravely affecting civilians.

- The campaign against landmines is also a campaign against their effects. It is a campaign for the co-ordinated and systematic clearance of mines, for the provision of medical care, and for the social and economic reintegration of landmine survivors. As such, ANSAs—which in some cases control geographical sections of particular countries—need to give access to these areas.
- ANSAs are themselves victimised by landmines and many among those killed or maimed by landmines are members of non-state actors.
- Various studies have shown that landmines have a low-level of military utility: this is true for both conventional armies and guerrilla forces.
- Non-state actors should be co-responsible for de-mining after a war.
- Landmines affect the very people that non-state actors claim to represent, and claim to be fighting on behalf of.

The use of anti-personnel mines by ANSAs in Africa

Examples of ANSAs using mines have included groups in Burundi, Sudan, the DRC and Somalia. There have also been reports of use of mines, improvised explosive devices or victim-activated booby-traps by ANSAs in Algeria.

The International Campaign to Ban Landmines' (ICBL's) *Landmine Monitor* has over the years identified a number of ANSAs in Africa that have used mines in the past or who are alleged to be using anti-personnel landmines currently. These include:

- National Union for the Total Independence of Angola (UNITA) in Angola and Namibia, and possibly also in Zambia;
- various groups in the DRC;
- the Movement of Democratic Forces of Casamance (MFDC) in Senegal;
- various factions in Somalia;
- the Sudanese People's Liberation Army (SPLA) in Sudan; and
- the Lord's Resistance Army in Uganda.

Peace processes and mine action

The Anti-Personnel Mine Ban Convention is not only about prohibitions; it is also about mine action. The AU's Peace and Security Council aims to promote conflict prevention and confidence-building measures and the pursuit of negotiated solutions to disputes and conflicts as important strategies for ending the demand for anti-personnel landmines, as well as to facilitate the repatriation of refugees and the return of internally displaced persons.

Mine action, in and of itself, is therefore an important vehicle to promote confidence-building measures. Peace processes in Angola, the DRC and Burundi have in recent times allowed for the initiation of new mine action programmes or have enhanced existing ones. Interestingly, some peace agreements have explicitly referred to joint mine action programmes as necessary steps in peace-building processes. Mine action therefore has a potentially significant impact on conflict resolution, peace building (including confidence building) and reconciliation in mine-affected states.

In this respect the use of anti-personnel landmines by non-state actors does NOT justify the use of anti-personnel landmines by governments. In other words, governments cannot justify their use of anti-personnel landmines by saying that they will continue using them until non-state actors give them up. After all, the use of anti-personnel landmines affects the most fundamental rights of everyone: the right to life, food, access to land, and the right to live in a peaceful and secure environment. Whoever uses anti-personnel landmines denies people these fundamental rights. The same is true for ANSAs—they can no longer justify the use of anti-personnel landmines by arguing that states use them.

The ICBL's working group on non-state actors

In mid-1999, a Working Group on Non-State Actors was established within the ICBL framework, and in March 2000 a number of ICBL national country campaigns hosted a pioneering conference in Geneva entitled 'Engaging non-state actors in a landmine ban'. Together

with mine ban activists, mine-clearance specialists and experts on international humanitarian law, a range of non-state actors from all over the world met for an exchange of views and to draw up ethical guidelines for engaging non-state actors.³

The declaration adopted at the end of the meeting indicated encouraging signs that some armed groups would be willing to enter into either unilateral declarations or bilateral agreements with respective governments on the non-use of anti-personnel landmines. Some non-state actors appeared open to supporting mine-clearance and victim assistance programmes in territories under their control. Some even issued public statements to this effect.

It was recognised that these specific undertakings, and indeed non-state actors generally, would have to be monitored. In this regard, the Geneva Call Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action (DoC) was established. The Geneva Call is an independent, international, humanitarian non-governmental organisation (NGO) for non-state actors who wish to commit themselves to a total ban on anti-personnel mines and to other humanitarian norms, and serves as a basis for their accountability. To this end, the Geneva Call can serve as an impartial channel of communication with non-state actors.

The Geneva Call Deed of Commitment

The DoC might be described as an alternative instrument to the Anti-Personnel Mine Ban Convention. It comprises three parts: a preface, an operative section; and a signatory section.

The preface begins with a recognition of the global landmine problem and its victims, underscoring a humanitarian perspective. Several clauses reflect the key principles of international humanitarian law, particularly the principles of distinction, humanity, proportionality and limitation, and the basic content or purpose of international humanitarian law, which is the protection of civilians. Additionally, it points out that international

humanitarian law and human rights apply to, and oblige, all parties to armed conflict.

The operative part of the DoC comprises 10 clauses relating to a total ban, mine action, accountability, implementation, humanitarian norms, legal status, publicity, attraction, repealing and effectivity clauses.⁴

The DoC is a four-fold mechanism for:

- adherence—to humanitarian norms;
- assistance—for compliance;
- accountability—for non-compliance; and
- participation—in norm-building.

The DoC as an accountability mechanism is perhaps its most important feature and provides for three accountability mechanisms, namely:

- compliance reports;
- independent monitoring; and
- field verification.

The first mechanism (compliance reports) involves the signatory armed group itself submitting a reporting format designed by Geneva Call, similar to the transparency measure under Article 7 of the Anti-Personnel Mine Convention. The second mechanism (independent monitoring) involves “independent international and national organisations” in existing networks already monitoring international humanitarian law or human rights on a long-term basis, or those monitoring peace processes and ceasefires for a particular period, as well as networks created specifically for landmine monitoring. The third mechanism (field verification) involves field missions by Geneva Call visiting and inspecting actual sites to verify reported or alleged serious violations of the total-ban commitment on the part of a concerned armed group, as well as to evaluate more effectively the progress of implementation.⁵

African signatories to Geneva Call Deed of Commitment

An increasing number of ANSAs have acknowledged the need to reconsider their use of landmines. Unilateral statements and bilateral agreements with clear references to mines have been made by non-state armed groups in Sudan, the Philippines, Somalia, Colombia,

Western Sahara, Kosovo/Yugoslavia and Afghanistan, among others. Some of these groups have already publicly committed themselves to a ban on landmine use. Others appear willing to support mine clearance and victim assistance programmes in areas under their control.

Between March 2000 and 17 September 2004, 26 armed groups—18 in Africa, six in Asia and two in the Middle East—have signed the Geneva Call DoC. The Sudan People's Liberation Movement/Army (SPLM/A), the National Council for the Defense of Democracy – Defense Forces of Democracy (CNDD-FDD) of Burundi, as well as about 16 factions in Somalia have signed up to the DoC.

Recognition from the international community

The international community in various forums has recognised the value of ANSA engagement work to the universalisation of the ban on landmines and other humanitarian norms:

- States parties to the Anti-Personnel Mine Ban Convention first acknowledged the importance of engagement with ANSAs in 2001 and again in 2002.
- The Human Security Network in 2002 recognised the importance of ANSAs in building human security.
- The Italian Senate in 2002 and the European Parliament in both 2002 and 2004 passed resolutions supporting Geneva Call's engagement with ANSAs.
- The Bangkok Declaration issued at the end of the Fifth Meeting of States Parties to the Anti-Personnel Mine Ban Convention in 2003 affirmed that "progress to free the world of anti-personnel mines will be enhanced if non-state actors embrace the international norm established by the Convention and welcome efforts by NGOs in engaging non-state actors to this end". The declaration expressed states parties' desire for individual countries in a position to do so, to facilitate this work.
- The 55-member states of the Parliamentary

Assembly of the Organisation for Security and Co-operation in Europe (OSCE) in July 2004 noted that many ANSAs are using mines and that it is necessary to engage them in order to obtain true universalisation of the convention. They further called on OSCE participating states to "give closer attention to the problem of anti-personnel mines in relation to non-state actors and to support all efforts to commit non-state actors to the mine ban process".

This work is thus internationally accepted as an important component in achieving the humanitarian objectives of the ban on anti-personnel landmines.

Conclusion

Civil society in general, and the Geneva Call in particular, is committed to engaging non-state actors through a persuasive and inclusive process of dialogue and education as well as appealing to appropriate legal and moral reference points. This is in order that the ban on anti-personnel landmines does indeed continue to be the norm, and that landmines (whoever uses them) no longer serve as weapon against the poor and no longer exacerbates poverty and under-development—as they now do.

By engaging both governments and ANSAs, the non-use of anti-personnel landmines as the international norm can be established. African governments should also play a role by calling on all ANSAs to show their respect for the humanitarian norm established by the Anti-Personnel Mine Ban Convention by:

- stopping the use, production and trade in anti-personnel landmines;
- by providing access to mined areas under their control for de-mining purposes;
- facilitating mine risk education and victim assistance; and
- becoming signatories to the Geneva Call DoC.

Given the international support for such work—and given the CADSP and the Protocol Relating to the Establishment of the Peace and Security Council of the AU, both of which provide useful contexts for engagement with

African ANSAs—the AU and its member states need to:

- continue to support, as appropriate, mine action to assist affected populations in areas under the control of ANSAs, particularly in areas under the control of actors who have agreed to abide by the norm of non-use of anti-personnel landmines;
- continue promoting universal observance of this norm by condemning and taking appropriate steps to discourage the use, production and trade of anti-personnel mines by ANSAs;
- underscore the fact that in order to achieve the core humanitarian objectives of the convention, we need to control the activities of non-state actors operating outside state control, by facilitating engagement with them through appropriate structures with a view to securing their commitment to respect international humanitarian laws in general and the norm on non-use of anti-personnel landmines in particular;
- support the work of Geneva Call, and in particular its activities of getting as many ANSAs as possible to sign and remain accountable to its DoC.

Notes

- 1 This is an edited version of a presentation made to the Second Continental Conference of African Experts on Landmines, Addis Ababa, Ethiopia, 15–17 September 2004.
- 2 Protocol Relating to the Establishment of the Peace and Security Council of the African Union, adopted by the 1st Ordinary Session of the Assembly of the African Union, Durban, 9 July 2002.
- 3 Engaging non-state actors in a landmine ban: A pioneering conference, Geneva, 24–25 March 2000.
- 4 S M Santos, A critical reflection on the Geneva Call instrument and approach in engaging armed groups on humanitarian norms: A southern perspective, 31 October 2003.
- 5 S M Santos, Jr, Tools or instruments for non-state armed groups to adhere to a landmines ban, included in the participant's kit for, 'Looking back, looking forward', workshop on engaging non-state actors in a landmine ban, Bangkok, Thailand, 13 September 2003.