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People Power: How Civil Society Blocked an Arms Shipment for Zimbabwe

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African perspectives. Global insights.

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ABSTRACT

In April 2008, a Chinese ship carrying arms destined for Zimbabwe's Defence Force attempted to offload those weapons in Durban's harbour, so that they might be transported across South African territory to land-locked Zimbabwe. South African civil society, alerted to the existence of the arms and anxious that they might be used to suppress democratic forces in the aftermath of Zimbabwe's controversial elections, undertook a number of actions to stop delivery. Among them, they obtained a court order preventing the offloading and transfer of the arms cargo and the ship then fled Durban in an attempt to find another southern African port.

But civil society in Mozambique, Namibia and Angola also demonstrated against any offload and transfer. While the ship was eventually allowed to dock in Luanda it was not allowed to discharge the arms and set off home to China with its unwanted cargo still on board.

Zimbabwe made the unlikely claim that it had received the shipment. Either way, it made no difference. The campaign was deemed to be a resounding success. The issue became a rallying point for co-ordinated, region-wide civil society mobilisation. Factors such as the strategic role of media, effective use of regional partnerships and international co-operation and that the ship represented a tangible rallying point were critical to success. And the broader geo-political context — that the region's leaders were seen to be prepared to actively facilitate Zimbabwe's lawlessness and were not maintaining a principled stance of non-intervention — helped to fuel public outrage and contribute to the impact of the campaign.

ABOUT THE AUTHOR

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INTRODUCTION

In April 2008, a Chinese ship, the MV 'An Yue Jiang', attempting to offload a consignment of arms for the Zimbabwean Defence Force, became a rallying point for civil society action in southern Africa and a focal point for world attention.

This paper describes how civil society successfully opposed the transfer of the arms across southern African territory and analyses how this rare, co-ordinated and region-wide civil society mobilisation came about. Specifically, it examines why the campaign was successful and discusses the broader geo-political context. It also attempts to identify lessons for similar efforts in future.

BACKGROUND

Presidential and parliamentary elections were held in Zimbabwe on 29 March 2008. The political opposition, the Movement for Democratic Change (MDC), had been subjected to sustained and systematic persecution by the ruling Zimbabwe African National Union–Patriotic Front (Zanu-PF) for several years, and with increasing intensity since 2000. However, it was believed that concessions by Zimbabwean authorities relating to vote counting and election monitoring, under the Southern African Development Community-sponsored mediation process,¹ offered a greater prospect of free and fair elections than had been the case for several years. This possibility provoked widespread interest. As it happened, initial results posted at ballot stations indicated that the ruling Zanu-PF had been defeated. Apparently confirming this, the posting of initial results was quickly shut down and weeks went by without official results being announced.

Instead, Zanu-PF unleashed an intensified campaign of violence against the political opposition — targeting grassroots organisers and punishing communities in which it had suffered defeat. This campaign against Zimbabwean citizens was systematically planned by army, police and Central Intelligence officials.² It was speculated in this interregnum, and subsequent events bore it out, that election results were being manipulated to deny the MDC an outright majority and to force a run-off election for president between Zanu-PF's Robert Mugabe and the MDC's Morgan Tsvangirai.³ Zanu-PF's campaign of violence was thus not only intended as retribution but as a means to intimidate voters into supporting Mugabe in the run-off poll on 27 June 2008.⁴

THE CHINESE SHIP CAMPAIGN

As Zimbabwe spiralled ever deeper into violence, the media reported on 14 April 2008 that a Chinese vessel — the MV 'An Yue Jiang' — had anchored outside Durban harbour, South Africa, ailing to discharge weapons destined for Zimbabwe's Defence Force. It wasn't hard to imagine what those weapons might be used for.

Martin Welz, editor of the investigative magazine *Noseweek*, deserves credit for the early warning: he alerted the general media to a tip-off he had received, thus sacrificing an exclusive story because he recognised that his monthly publication deadline might come too late to stop the arms transfer. Once the media started carrying reports, civil

society sprang into action — without co-ordination, at first. Religious groups and non-governmental organisations concerned about weapons proliferation demonstrated at Durban's harbour and, in a gesture that captured world attention, the South African Transport and Allied Workers Union (SATAWU) announced that it would not offload the weapons nor facilitate their transfer through South Africa.

Local and international media investigations revealed that the ship was owned by a Chinese parastatal, the Chinese Ocean Shipping Company. It had been at Durban harbour's outer anchorage from 10 April 2008. It was carrying cases of weapons and ammunition in six containers. The delivery address was the Zimbabwe Defence Force, Causeway, Harare. The point of origin on the cargo manifest was Beijing, China.

Within days of the first reports, at a media briefing on 17 April 2008, the South African government's communications head, Themba Maseko, said: 'We are not in a position to act unilaterally and interfere in a trade deal between two countries. South Africa is not at all involved in the arrangement; it's a matter between two countries. It would be possible, but very difficult, for South Africa to start intervening and say that we will not allow the vessel through.' He added that all that South African authorities could do was 'to make sure that all proper administrative processes' were followed.⁵

This explanation proved disingenuous. It was soon established that South Africa's National Conventional Arms Control Committee had issued a permit authorising the transfer of the weapons across South African territory to land-locked Zimbabwe. The Government's disturbing response — consistent with its general approach to the Zimbabwe crisis⁶ — made it clear that legal action to challenge the grant of the permit would have to be initiated.⁷

As a matter of urgency, the Southern Africa Litigation Centre (SALC) helped assemble a legal team,⁸ strategise with them on how best to bring the challenge and assemble the documentation, much of it confidential, that formed the basis for the application. The Anglican Bishop of KwaZulu-Natal, Rubin Phillip, and former head of the religious organisation Diakonia, Paddy Kearney, were cited as applicants,⁹ acting in the public interest.

Zimbabwe's post-election crisis — and South Africa's own legal obligations — made it particularly alarming that a permit to transfer the arms had been granted. It suggested that, far from merely standing by as Zimbabwean authorities committed atrocities — a much-criticised stance anyway — South Africa appeared prepared to actively facilitate such crimes. As Advocate Max du Plessis, one of the legal experts involved in the case has written, the legal action 'was intended to stop those arms being transported across South Africa to Zimbabwe at a time when the volatile situation in that country suggested that they might be used to maintain the illegitimate rule of the Mugabe regime in Zimbabwe, defeat the legitimate aspirations of the Zimbabwean people as reflected in the recent election, and be used to oppress the people of Zimbabwe.'¹⁰

South Africa's National Conventional Arms Control Act of 2002 requires that anyone involved in conveying conventional weapons through or over the Republic or its territorial waters to any destination outside the country, whether or not the arms are offloaded, must have a conveyance permit issued under section 14(2). At the time the 'An Yue Jiang' entered South African territorial waters it did not have such a permit. Moreover, the legal challenge argued that, when the permit was eventually issued, it was illegal. The Act requires the issuing committee to avoid contributing to internal repression, including the

systematic violation or suppression of human rights and fundamental freedoms, and to avoid transfers of conventional arms to governments that do so.¹¹

On 18 April 2008, SALC notified the media that an urgent application would be brought seeking the suspension of the transfer permit and the surrender of the arms consignment to South African port authorities. Later that afternoon Judge Kate Pillay of the KwaZulu-Natal High Court in Durban issued an interim order:

- Suspending the operation of the conveyance permit issued ... under the National Conventional Arms Control Act 41 of 2002 as read with the Regulations promulgated on 28 May 2004 in Government Gazette No R 634, authorising the conveyance of six containers of arms discharged from the MV 'An Yue Jiang';
- Ordering that the [freight forwarding company] is prohibited from in any manner whatsoever taking delivery of and/or conveying the consignment of goods contained aboard the MV 'An Yue Jiang' and described in the Arrival Notification dated 10 April 2008 ...; and
- Ordering that the [Port Captain for Durban] and [the National Port Authority] are prohibited from in any manner whatsoever permitting the consignment of goods ... from being removed from the precincts of Durban Harbour.

But even as the outcome of the urgent application was being relayed to the public, and before Durban's sheriff could deliver the order to the 'An Yue Jiang', the vessel lifted anchor and left the harbour. Its last communication said it intended to sail for Maputo, Mozambique, to the northeast of South Africa.

At this point civil society action became far more co-ordinated. Organisations such as the Open Society Initiative for Southern Africa (Osisa), SALC, the International Transport Workers Federation and their South African affiliate SATAWU, and the media were instrumental in alerting the public to the fact that the ship was heading for Mozambique. They shared information on the ship's location which became more difficult to track as it intermittently shut off its transponder. Civil society networks in Mozambique were activated and legal counsel contacted with a view to bringing a legal challenge. As in South Africa, Mozambique's transport workers union announced that it too would not offload the arms, nor facilitate their transfer. Mozambique authorities announced that they had received no request for assistance from the 'An Yue Jiang', and would not render any. In the face of this prospective reception, the ship reversed course, sailing along the South African coastline. This prompted SALC to call on the South African Defence Force to use its law enforcement powers to stop its passage through South African territorial waters, because it no longer had the requisite authorisation permit.

With no real indication as to where the ship was now headed, and amid increasing and often unhelpful speculation, the civil society groups alerted civil society partners in Namibia and Angola, in a bid to prevent offloading and transfer of the weapons. Shipping experts advised that at the very least the 'An Yue Jiang' would have to dock soon to refuel and take on supplies.

In anticipation of a possible docking in Namibia, the Legal Assistance Centre in Windhoek, Namibia prepared for a court challenge, civil society demonstrations were held and church leaders and trade unions spoke out against offloading the weapons. In Angola — Luanda was listed as the next port of call after Durban on the original manifest

— Osis's office co-ordinated efforts to obtain a court order prohibiting the ship from docking. Although this was unsuccessful, an inspection was authorised to ensure no arms were offloaded. Church leaders, trade unions and civil society again made their opposition known. Angolan authorities, in response to this pressure, allowed the ship to dock and offload a construction cargo intended for the port of Luanda and to take on fuel and supplies, but refused to allow the discharge of the arms cargo.

At about the same time, United States (US) Assistant Secretary of State for African Affairs Jendayi Frazier travelled to the region to meet her regional counterparts. It is understood that she pressed them not to allow the ship to dock.¹²

On 6 May 2008, the 'An Yue Jiang' left Luanda, travelling south along the Namibian and South African coastlines, and from there apparently returned to China.

That, however, was not the end of the tale. The media reported that the 'An Yue Jiang' had in fact offloaded its arms cargo in Angola, that South Africa facilitated the process by refuelling the ship and that Zimbabwean government authorities had confirmed receipt of the weaponry. Those reports lacked credence. They seemed to be an assemblage of speculation that had been doing the rounds for some time and contradicted known facts. It was known for instance that the ship had taken on fuel and supplies at Luanda. This would have been unnecessary if the South African navy had refueled it shortly before. Human rights inspectors confirmed that only construction cargo, not arms, was offloaded in Luanda.¹³

Although the ship could not be tracked at all times and there were reasons for suspicion, its speed and location were nonetheless recorded regularly enough to plot its course with some precision. It seems almost impossible that it sailed north of Luanda to discharge its arms cargo — in Equatorial Guinea or Congo, Brazzaville, as some reports have suggested — before returning to Luanda on the date it was known to have entered port. It also seems incredible that the ship might have offloaded its arms cargo undetected at any port south of Luanda. As for an off-shore transfer of cargo to another ship, there appears to have been no vessels nearby and capable of conveying such cargo. Such a process is notoriously difficult and time-consuming.

At the time, Zimbabwe's deputy minister of information, Bright Matonga, claimed without substantiation that Zimbabwe had received the weapons. Even if that was true, even if the arms were delivered to Zimbabwe, that would not have meant that the southern Africa-wide opposition to the transfer was for naught. The Zimbabwean government might have received weapons from a variety of unsavoury sources during this time. But the opposition action mattered because it showed solidarity with Zimbabwean people — a concern for their safety and well-being.

Even if Matonga had been able to take television cameras and crews to record the serial numbers of the weapons he alleges were received, he still could not have defeated what the ship action represented.

WHAT MADE THIS CAMPAIGN SUCCESSFUL

The Chinese ship case was remarkable for the number of actors involved and the breadth and variety of public support it elicited: from co-ordinated mass action by trade unions, to the strategic interventions of lawyers, to the individuals who attempted to track the

ship with personal telescopes. For the most part, the campaign's success depended on the confluence of a number of elements, many of them difficult to replicate. Nonetheless, there are certain features worth noting.

THE MEDIA

For the most part, the media were vital partners from the start. SALC press releases issued on the day the legal application was brought, when SALC called on the South African National Defence Force to stop the transfer of arms, and updates on developments in Mozambique, Namibia and Angola, were widely publicised.

Widespread publicity helped catalyse a strong and vocal public opposition which, in turn, was crucial in prompting regional authorities to disavow publicly any intention to assist the arms transfer. The media were also important in sharing information relating to the ship's movements and possible destinations and in tracking down relevant actors, such as government officials.

However, at some point after the 'An Yue Jiang' docked in Luanda, the media, prompted by tremendous public interest, appeared unprepared to relinquish the story. Speculation was printed as fact — for instance, that the ship had discharged its cargo off the coast of Equatorial Guinea or Congo, Brazzaville. This created confusion among the civil society actors taking the lead in this campaign, as to where best to direct their efforts and engage strategically.

TANGIBLE FOCAL POINT

It is difficult anywhere in the world to rouse the public enough to demonstrate solidarity with victims of human rights abuses perpetrated elsewhere. It is particularly difficult in the southern African context, where the average person faces socio-economic challenges and where domestic human rights violations often exhaust public sympathy. Human rights abuses committed in other parts of the world seem too abstract and distant for them to be able to affect outcomes meaningfully. The ship — a moving rallying point — altered things. Civil society and the public in various countries in the region came to recognise that their actions could demonstrably affect outcomes in Zimbabwe. Moreover, while they signaled concern as to what Zimbabwean authorities intended to do with the weapons, their actions were principally directed at their own governments; governments they could hold accountable, to ensure that no assistance was given to offload and transfer the arms in their own countries.

That a tangible rallying point, such as the 'An Yue Jiang', can be a powerful catalyst was starkly illustrated a few weeks after the ship had departed Luanda, when organisations such as SALC and Osisa attempted to build on the enormous public response generated by staging a 'Stand Up for Zimbabwe' campaign throughout the region.

Held on 25 May 2008, traditionally commemorated as Africa Day, events were planned in South Africa, Lesotho, Botswana, Namibia and elsewhere. The plan was to encourage church congregations and audiences at sporting and music events to stand for a few minutes to demonstrate solidarity with the people of Zimbabwe — a call to the region and

the world to act decisively to end the violence there and resolve the political crisis.

While many participated, the result didn't begin to approximate — in size or force — the campaign waged against the offload and transfer of weapons from the 'An Yue Jiang'.

REGIONAL PARTNERSHIPS AND INTERNATIONAL CO-OPERATION

Essential to the success of the region-wide campaign was the existence of established regional networks. People and institutions that could take the lead in co-ordinating activity in their jurisdictions — such as the Legal Assistance Centre in Namibia and the Botswana Civil Society Solidarity Coalition for Zimbabwe — could be identified and approached immediately. Legal counsel in their areas were identified and briefed to prepare papers in anticipation of a possible docking.

SALC, an organisation established to support human rights and public interest litigation in southern Africa, was able to employ its legal networks to support the campaign. Osisa, a grant-making foundation which uses public advocacy to promote open society ideals, activated its vast, region-wide network. Its office in Angola took the lead in co-ordinating initiatives there. Their success testified to the importance of local, on-the-ground partners working for similar ideals, and similarly intent on stopping the arms shipment. Such networks could not have been created overnight simply to stop the shipment.

Other actors, such as the International Transport Workers Federation (ITF), and the International Action Network on Small Arms (IANSA) activated their own networks to support the campaign. With no experience of working together, there was no attempt at joint action with organisations like SALC and Osisa. However, regular consultation and co-operation continued throughout the campaign.

International pressure played a role. A number of state actors sought to lobby regional states not to accept the offload and transfer of the weapons. The US State Department's top Africa official, Jendayi Frazier, met regional counterparts and, it was reported, US diplomats pressed authorities in regional states not to allow the ship to dock. Certainly, the US State Department was unequivocal, stating: 'Given Zimbabwe's current electoral crisis, we do share the concerns ... that these arms could be used against individuals who are merely trying to freely express their political will.'¹⁴

The effect of US pressure is unknown but it is understood to have been fairly critical in securing the positions of Mozambique's and Angola's authorities. Sadly, even some within civil society have suggested that the campaign was instigated by the US, that it represented an expression of the US agenda in the region, and that those sectors of civil society which participated had been co-opted. Such an assessment undermines the power of civil society in the region and the agency of those who initiated and drove this campaign. To the extent that state actors such as the US participated, they did so having been rallied by the efforts and outrage of the region's civil society and general public. It was not the reverse.

THE BROADER GEO-POLITICAL CONTEXT

Max du Plessis has sought to explain the significance of the Chinese ship campaign in terms of the 'responsibility to protect' doctrine.¹⁵ R2P, as it has come to be known, was

unanimously adopted at the United Nations (UN) world summit in New York in 2005. Subsequently, it was referred to by the UN Security Council in its Resolution 1674 on the protection of civilians in armed conflict and in Resolution 1706 relating to the ongoing conflict in Darfur, Sudan. R2P relies on the following principles:

- The primary responsibility to protect lies first and foremost with each individual state (in recognition of the fact that sovereignty includes not just rights, but also responsibilities).
- A recognition that, if individual states are unwilling or unable to protect their citizens from genocide, war crimes and crimes against humanity, the responsibility to protect shifts to the international community.
- The international community's responsibility is a continuum of measures, including diplomatic, humanitarian and other methods, to help protect civilian populations.
- A recognition that, if these measures are insufficient, the Security Council has the right to take action under the Charter of the UN, including enforcement action if required.¹⁶

It is clear that humanitarian intervention is contemplated as a last resort. Before that, other initiatives and efforts are envisaged. It is also apparent that responsibility rests primarily on the state in which the abuses occur; but, in the second instance, rests on those states that constitute the international community. However, as du Plessis explains in respect of the Chinese ship case, it may be that 'the norm's best and sometimes only champions will be civil society groups and individuals who insist on holding their governments accountable to the moral standards that the norm entails.'¹⁷ That is particularly so where, as with the South African government, it appeared that it would not employ its leverage with Zimbabwe to protect the civilian population, but instead sought to mollify and protect a regime widely regarded as illegitimate.

Patrick Bond and Ashwin Desai see larger implications: civil society appropriating traditional state functions in foreign policy, citing the ship case as an instance of what they term 'foreign policy, bottom up'. They say: 'The art of politics [has been] moving from trenches to a set of battlegrounds amongst which several UN global summits would feature. This was especially true in South Africa. It had taken a full half-decade of liberation for a large group of committed progressive activists to realise that there were few prospects of top-down change, given the balance of forces.'¹⁸

That civil society in the region would act in the manner it did in a situation having ramifications principally for Zimbabweans, and that it would find such overwhelming public support, was not entirely predictable. In essence, civil society's actions and the public outrage amounted to unprecedented regional condemnation of the crisis in Zimbabwe. Segments of civil society had long taken issue with the regional leadership's stance on Zimbabwe vis-à-vis the international community — essentially, a regional closing of ranks and public utterances to the effect that the situation was best dealt with regionally.¹⁹ But that stance had not been subjected to widespread public condemnation.

While the region's people appreciate and respond to human rights concerns, they are also very conscious of Africa's history of colonialism and subjugation. This history finds echoes in the inequitable structure of the current international system in which African countries are often accorded secondary status. The people relate to accusations of

hypocrisy and double standards directed at the West by their government officials. Many in the human rights community advocate a downgrading of the principle of sovereignty and non-intervention along the lines of the R2P doctrine, to bring relief to those abused by domestic tyrants. But many people in southern Africa respond to their leaders insistence that the greatest injustice lies in the vulnerability of developing, less powerful states to interference from larger, developed states. In their view, insistence on non-interference is more likely to safeguard them against opportunistic interventions and an unequal international system.

For this reason, even as they have been disturbed by the violations committed in Zimbabwe, many have not been inclined to criticise their government's policies of non-intervention.

The case of the Chinese arms ship, however, suggested to the general public in the region that a principled stance of non-intervention was not being pursued; that in fact, active assistance was being offered to the Zimbabwean regime to acquire weapons that would likely be used to suppress domestic opponents. In this context, there was no possible argument to be marshaled that global inequalities were being addressed through the arms transfer. There was clearly only one likely form of injustice to be suffered, and the public was quick to give its support to civil society actors protesting the transfer.

CONCLUSION

In an article entitled 'Civil Society's Triumph in Zimbabwe', the BBC's Peter Greste wrote of the Chinese ship campaign: 'It seems civil society is taking the lead, well ahead of national leaders, on the question of Zimbabwe.'²⁰ Civil society succeeded so admirably in this instance because it carried with it the support of the public. That said, many of the elements which contributed to the success of the campaign are hard to replicate: it was one of those rare instances in which, as the poet Seamus Heaney writes, 'hope and history rhyme'. And yet, the campaign does testify to the importance of broad-based regional partnerships and networks; and to the catalytic effect of having a tangible entity, such as a ship carrying arms, around which to rally.

Still, if the success of the Chinese ship campaign had civil society actors feeling emboldened about what the region, acting in concert, could achieve, the horrendous outbreak, in the weeks afterwards, of xenophobic attacks in South Africa against foreigners principally from neighbouring states proved a sobering antidote and severely undercut grand ambitions.

ENDNOTES

- 1 Solidarity Peace Trust Report, 'Punishing dissent, silencing citizens: The Zimbabwe elections 2008', p. 10, available at <http://www.solidaritypeacetrust.org/reports/punish_and_silence.pdf>.
- 2 *Ibid.*, p. 28.
- 3 The presidential results announced by the Zimbabwean Electoral Commission on 2 May 2008 gave Morgan Tsvangirai 47.9% of the vote, Robert Mugabe 43.2% and Simba Makoni 8.3%. As

- no candidate was deemed to have achieved a majority, a run-off election for president between Tsvangirai and Mugabe was scheduled for 27 June 2008.
- 4 As it happened, extreme levels of violence directed at their supporters compelled the MDC-Tsvangirai to withdraw from the run-off elections. Mugabe got 85.5% of the vote and Tsvangirai 9.3%.
 - 5 See *The Guardian* 'Chinese ship carries arms cargo to Mugabe regime', 18 April 2008.
 - 6 Zimbabwe's crisis stems from early in the new century, characterised by disregard of the rule of law and increasing lawlessness, persecution of perceived political opponents by the ruling Zanu-PF, and increasing poverty and food shortages as a result of government mismanagement. Throughout this period, South Africa has been reluctant to expressly condemn the Zimbabwean government and has, in fact, taken measures, as in the UN's Commission on Human Rights (now the Human Rights Council) to forestall action against Zimbabwe.
 - 7 The only way to ensure that the arms cargo did not have the legal authority to be transported across South African territory was to obtain a court order. Seeking it as a matter of urgency was potentially the most time-efficient.
 - 8 Comprising advocates Max du Plessis, Angus Stewart SC and Malcolm Wallis SC (with JP Purshotam as the instructing attorney).
 - 9 As Angus Stewart and Max du Plessis, at the instigation of SALC, were preparing an application for urgent court relief, they became aware that JP Purshotam and Malcolm Wallis had been briefed by Bishop Rubin and Paddy Kearney to make a similar challenge. The legal team decided that it made tactical sense to combine forces and advised that to avoid any potential difficulties around legal standing, Bishop Rubin and Paddy Kearney should act as applicants and that SALC should continue to play a co-ordination role.
 - 10 Du Plessis M, 'Chinese arms destined for Zimbabwe over South African territory: The R2P norm and the role of civil society,' in *African Security Review*, 17, 4, 2008, Institute for Security Studies, Pretoria.
 - 11 *Ibid.*
 - 12 See Associated Press, 'US seeks to block Chinese ship from unloading', available at <<http://www.newzimbabwe.com/pages/army43.18091.html>>.
 - 13 Drawn from Angolan civil society.
 - 14 See Associated Press, *op. cit.*
 - 15 Du Plessis M, *op. cit.*
 - 16 *Ibid.*, p. 20.
 - 17 *Ibid.*, p. 18.
 - 18 Bond P & A Desai, 'Foreign policy, bottom up: A report of the Centre for Civil Society,' available at <<http://www.unp.ac.za/CCS/files/Bond%20Desai%20Foreign%20Policy%20Bottom%20Up%20July%202008.pdf>>.
 - 19 There were notable exceptions, such as Botswana's Ian Khama and Zambia's Levy Mwanawasa.
 - 20 Available at <<http://news.bbc.co.uk/2/hi/africa/7366599.stm>>.

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