

Unearthing the flaws in the Board of Inquiry report on the murder of Michael Sharp & Zaida Catalan

In sequence to the [violent upsurge in the Democratic Republic of the Congo's \(DRC\) Kasai region](#) since late 2016, the UN Security Council-mandated Group of Experts on the DRC (GoE) began investigating violations of International Humanitarian Law in the concerned region. During their field investigations, Zaida Catalan and Michael Sharp, two GoE members, fell victim to a premeditated assassination on 12 March 2017, near Bunkonde. As per UN procedures, this triggered the establishment of a UN Board of Inquiry ('Board'). In August 2017, it submitted its final report. While it is confidential – a leak quickly found its way out of Turtle Bay's top floors. A careful exegesis of the Board's report reveals a series of blatant mistakes and assumptions. While this represents an obstacle to a more professional investigation of the events, it also is a posthumous insult to two experienced, dedicated UN investigators, whose professionalism and dedication are undermined by unfounded claims conflated with the Board's otherwise porous basis of research and evidence. The following is a revised version of an analysis produced in August 2017, focusing on the report's main failures.

Main inaccuracies and mistakes in the Board of Inquiry report

Appointed by an Undersecretary-General, the Board of Inquiry investigated the circumstances of the murder of Michael Sharp and Zaida Catalan. In its report, which is confidential but was quickly leaked, it provides a number of contextual and logistic-administrative observations surrounding the event. While some interesting conclusions are made by the Board regarding the general situation of UN expert panels and their working environments within the UN and on the ground, most if not all of the conclusions the Board presents with regards to the local situation and the circumstances of the murder appear to be misleading and neither based on rigorous investigative work nor in-depth political and context knowledge of the DRC. Moreover, the Board misrepresents and/or voluntarily omits material evidence, key witness statements and has proactively refused testimony by some of the most seasoned experts on the Kasai situation. Given the quality standards usually associated to such Boards, this is highly alarming. In order to protect the renown of senior UN bodies and configurations such as Boards and Commissions of Inquiry, it would thus be wise to retract the report in view of minimizing reputational damage. The key shortcomings and mistakes of the Board's report are presented below.

General insufficiencies of the Board's report and working methods

- In its report, the Board claims a field visit to the murder site and other key locations was 'not feasible', while making unsustainable claims about the incident. Most of the report therefore hinges on non-triangulated and unverified assumptions from secondary and tertiary sources.
- The Board's summary assertion that Michael Sharp and Zaida Catalan were killed by the militia group whose representatives they had met a day before are void of investigative value, since no trace of proof nor any analytical reasoning is provided by the Board underpinning such claim.
- In its analysis of the Kasai context in the wake of the Kamuina Nsapu insurrection, the Board makes a number of erratic assumptions, including off-context mentions of natural resources, instead of providing a detailed analysis of the governance patterns and political networks influencing local dynamics. The Board also exhibits a striking lack of knowledge regarding current affairs in the DRC.
- In its context analysis, the Board seems to entirely rely on MONUSCO reports, indicating its failure to have consulted local and other expert sources, even though many of such were available.
- In its reconstruction of the incidents leading to the murder on 12 March 2017, the Board draws from early reports and sources available as early as the very week after the murder, many of which have later been proven as inaccurate by UN and other sources. The Board does not appear to have attempted at any deeper investigation, rendering its overall conclusions speculative at best.

- The Board also fails to mention the access constraints for MONUSCO's search-and-rescue-efforts on at least one occasion, and does not provide a satisfying rationale as to this omission.
- While the Board made numerous observations as to the murder of Michael Sharp and Zaida Catalan, its report is tainted by the number and gravity of factual mistakes, contextual weakness, single source reliance, a number of logical *petitio principii* errors and cases of *non-sequitur*. To illustrate the latter, this roughly equals to someone claiming that 'Congolese are rapists, Jean-Paul is a Congolese, therefore Jean-Paul is a rapist.' This adds up to significant methodological concerns, both with regards to criminological as well as scientific basic standards of reliability and proof.

Specific shortcomings in the Board's report relating to individual paragraphs

- In paragraph 38, the Board guesses – without concrete sourcing or evidence – that beheadings are a typical behavior for Kamuina Nsapu. Several Kasai experts have convincingly shown the opposite.
- In paragraph 41, the Board claims to have analyzed a translation of the 11 March audio recording found on Zaida Catalan's laptop. However, its further conclusions based on this event do not suggest any of the Ciluba parts in the conversation (e.g. between the Kamuina Nsapu elders and the translators) were considered or translated at all. Combined with a wider lack of triangulation, this failure prevented the Board from understanding that two translators, at the time already identified as linked to intelligence services, had provided wrong translations of the Kamuina Nsapu elder's warnings to Michael Sharp and Zaida Catalan not to go to Bunkonde.
- In paragraph 46, the Board notes that a 'militia member' had filmed the execution. The Board, however, does not present proof, let alone anecdotal evidence for any such claim. In contrary, linguistic analysis provided by non-UN professionals, support the hypothesis that the filming individual is not a Ciluba native speaker, such as at least one other leader not appearing on the film. The Board's assertion is thus entirely unverifiable, and most likely false.
- In paragraph 77, the Board cites a MONUSCO staffer claiming that GoE members were reluctant to share information with the mission and sometimes even amongst themselves. It is questionable that one individual MONUSCO staffer would be in a position to assess with whom GoE members share information or not. Nonetheless, the Board seemed satisfied with a single tertiary source.
- In paragraph 82, the Board cites a MONUSCO security official claiming that a 'SSAFE' training was recommended to GoE members but they had never completed such. While the latter is accurate, the reason for it is that MONUSCO did not offer such training to the GoE. The cited source therefore lied to the Board, which in turn has not aimed at verifying the testimony.
- In paragraph 85, the Board commends MONUSCO's effort in the search-and-rescue of Michael Sharp and Zaida Catalan. So did the GoE in its 2017 final report. While this statement is correct, it fails to mention that individual MONUSCO officials attempted to withhold relevant information for a smoother information sharing between MONUSCO and the GoE. In specific cases, individual mission officials tried to obstruct collaborative efforts between the vast majority of committed MONUSCO staff and the GoE during the first days after the experts' disappearance.
- In paragraph 92, the Board claims that GoE members did not believe that UN security rules applied to them. This is incorrect. In fact, GoE members interviewed by the Board stated clearly that they are fully aware those rules apply to them too.
- In paragraph 93, the Board claims that GoE members wrongfully believed they had security clearance for the entire country. In fact, GoE members had, before the murder, indeed received clearance for the entire country. In the event this clearance was wrongfully given, it would therefore not be the GoE's responsibility but that of respective UN bodies issuing clearances.

- In paragraph 102, the Board hints at an alleged lack of experience of the two experts. While this is a clever shortcut to explain their murder without providing a logic chain of argumentation, it woefully misinterprets the experts proven track record in carrying out human rights and sanctions investigations, as well as their unique knowledge and experience regarding the DRC.
- In paragraphs 104-106 and elsewhere, the Board fails to understand the notion of independence. The Board rightly analyses the GoE's independence as political and report-related. In their summary criticism, however, the Board's argument is based on the idea that the GoE could function with exactly the same security rules than office-based MONUSCO staff. This fails to account for the GoE's exchanges meetings with senior Department of Safety and Security (DSS) staff in New York and the DRC to discuss specific security management procedures to harmonize the primacy of safety while assuring the GoE's freedom of movement.
- In paragraph 113, the Board insinuates that GoE members do not understand UN security management. In fact, though, the same GoE members have performed all mandatory trainings, other UN-led training such as offered for DPKO military observers, and – on numerous occasions – have consulted DSS to work out specific risk assessments. Paragraph 114 claims there was no formalized risk management within the GoE. While this in itself is untrue, the Board also fails to understand the particular context of the DRC (which is stressed in a default paragraph at the beginning of each GoE report since many years), which is extremely volatile and, hence, making additional, ad hoc security management paramount in a rapidly changing environment.
- In paragraphs 121 and 122, the Board makes relevant remarks regarding the contractual situation of the GoE. However, the Board is unable to develop its analysis without stereotyping GoE members according to age, gender and family situation. This stands exemplary for the Board's inability to argue based on facts rather than *ad hominem* accusations and unsustainable guessing.

The (persisting) need for a thorough, unbiased, and independent investigation

While a Board of Inquiry is usually not mandated to investigate the context of an incident but rather the internal UN procedures that occurred in its frame, this Board opted for a mixture between the two. In the absence of sufficient context knowledge and time, the Board has not succeeded in providing thorough and credible analysis, neither regarding the murder nor the larger Kasai situation. While its findings fail to deepen previously established information, its analysis of internal procedures exhibits a significant bias against the GoE. Given that, its report falls short of the expectations usually placed in a Board of Inquiry, as well as the minimum standards of evidence required for concomitant reports.

Given the Board lamentable output, its factual mistakes and insulting nature, a few consequences arise. On a technical level, the UN should consider retracting the report to avoid its spurious findings distorting future UN-mandated inquiries, including the current follow-up mechanism, and to avoid the memory and legacy of the murdered experts be tainted. On a broader level – the current follow-up mechanism as well as concomitant legal procedures by the Governments of the DRC, the US and Sweden notwithstanding – the shortcomings of the Board stress the need for continuously thorough, and unbiased investigations. The possibility of an independent, international investigation is but one of the available instruments, but – as recommended by the Group of Experts in paragraph 182a of its 2017 final report – should not be discarded. A year after the murder, it remains as obvious as ever that failure to establish truth, regardless through which mechanism, would create the dangerous precedent of the UN Security Council abetting the murder of two of its very own envoys fulfilling their mandate according to the Council's sanctions regime. This would, ultimately and paradoxically, also amount to UN-sponsored impunity for killing of experts on duty for the UN Security Council, including in future.