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## Bulletin

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### INSIDE

<b>Arms Proliferation and Threats to Security</b>	<b>1</b>
<b>The War on Terror and the Human Rights Conundrum</b>	<b>9</b>
<b>The Question of Popular Consent in the Governance of EAC</b>	<b>18</b>
<b>A Case Study of Participatory Democracy in Kenya</b>	<b>27</b>

### About the HORN Institute

The HORN International Institute for Strategic Studies is an independent, applied research and policy think tank based in Nairobi (Kenya). Its mission is to contribute to informed, objective, home-grown, definitive research and analytical inquiry that shape national, regional, and international policies, primarily in the greater Horn of Africa region. Its vision is a progressive Horn of Africa region served by informed, objective, and domestically produced, evidence-based policy research and analysis that positively inform scholarship, policy, and practice, regionally and globally.

## Arms Proliferation and Threats to Security: Why Kenya Should Join the Arms Trade Treaty (ATT)

By Singo Stephen Mwachofi

### Abstract

This article makes a case for joining the Arms Trade Treaty (ATT). The ATT which came into force in December 2014, is one of the most remarkable international instruments that has been developed by the community of nations under the auspices of the United Nations with the sole purpose of reducing human suffering through regulating the hitherto uncontrolled trade in conventional arms worldwide. Using State and Human-centric theoretical approaches, the article argues that states around the world have pursued power enhancing strategies as well as cooperation initiatives to curb security threats whether directed at the states or individuals. The ATT is one such strategy through which states can curb diversion of arms to the wrong hands. The article notes the imperative of Kenya joining the ATT emphasizing demonstrated link between the complementary role of the ATT and that of the UN Sustainable Development Goals (SDGs). The ATT can help the Kenyan state achieve its stated development objectives under the Big Four Agenda, and the overall benefits of the SDGs through membership and implementation of ATT. Further, it will enhance national stability, and contribute to the stability of the Eastern African Region. More importantly, through ATT, Kenya will enhance its efforts in dealing with the increasing threat of terrorism and violent extremism, while at the same time strengthen its leadership role in conflict resolution efforts in South Sudan, Somalia, DR Congo and elsewhere in the region.



*A pile of 5,250 illegal weapons are burned by Kenyan police in Ngong, near Nairobi (Kenya) on November 15, 2016.  
(Photo Credit: Ben Curtis)*

## Introduction

The Arms Trade Treaty (ATT) was negotiated by United Nations Member States in a process that lasted almost 10 years, culminating into the signing of the Treaty on March 27, 2013 at the United Nations Headquarters in New York, USA. It came into force in December 2014 after attaining the requisite number of state signatories. The ATT came hot on the heels of the UN Programme of Action, an international political and non-legal instrument designed to fight the proliferation of illicit small arms and light weapons (UNPoA, 2000). It underlines the shared understanding and acknowledgment of the devastating human cost of armed conflict and war around the world whose common denominator is the use of conventional weapons, the circulation of which is made possible by their unregulated trade.

The ATT process began around 2005, underpinned by a growing concern with human cost of armed conflict in various parts of the world, especially Iraq, Afghanistan, Sri Lanka, and Liberia. The ICRC has noted that, in 2006, the UN General Assembly recognized that the absence of common international standards for the transfer of conventional arms contributes to armed conflict, displacement of people, crime and terrorism, and that these, in turn, undermine peace, reconciliation, safety, security, stability and sustainable social and economic

development, (ICRC, 2016). The ICRC further notes that "...in establishing for the first time a global norm for responsible arms transfers, the ATT represents a historic achievement" (ICRC, 2016, para. 1).

ATT aims to establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms; and prevent and eradicate the illicit trade in conventional arms. ATT also aims to prevent their diversion for the purpose of contributing to international and regional peace, security and stability; reducing human suffering; and promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties (Arms Trade Treaty, 2013, p. 3).

According to the ICRC, the widespread and uncontrolled availability of arms and ammunition facilitates International Humanitarian Law Violations (IHL) violations, hampers the delivery of humanitarian assistance, and contributes to prolonging the duration of armed conflicts and to maintaining high levels of insecurity and violence even after armed conflicts have ended (ICRC, 1995). The ATT covers key aspects of conventional arms trade including diversion, imports and exports, gender-based violence, reporting, ammunition, brokering, record keeping and

international cooperation and assistance. It outlines concrete ways in which states can take action to ensure arms are not utilized to cause human suffering.

### Conceptual and Theoretical Perspectives

Both state and human-centric approaches to security underline the notions of safeguarding the core interest of the state defined in terms of self-preservation for the state and that of the individual. Neorealists and liberals contend that states can achieve prosperity at the national and international levels through expanding the limits of inter-state cooperation in issues that guarantee mutual benefits for all. (Waltz, 1959). Others argue that stability at the international system level is depended heavily on the capacity (and desire) of the system's constituent parts to work interdependently (Rosenau, 1984). According to Rosenau, cooperation in one functional area inevitably results in cooperation in another related area. The ATT process is a clear example of the desire of the community of states to build peace through cooperation to regulate the trade in conventional weapons.

Keohane and Nye (2012), while contributing to the debate about the possibilities of world peace, support Waltz's views on the prerequisites for international system's

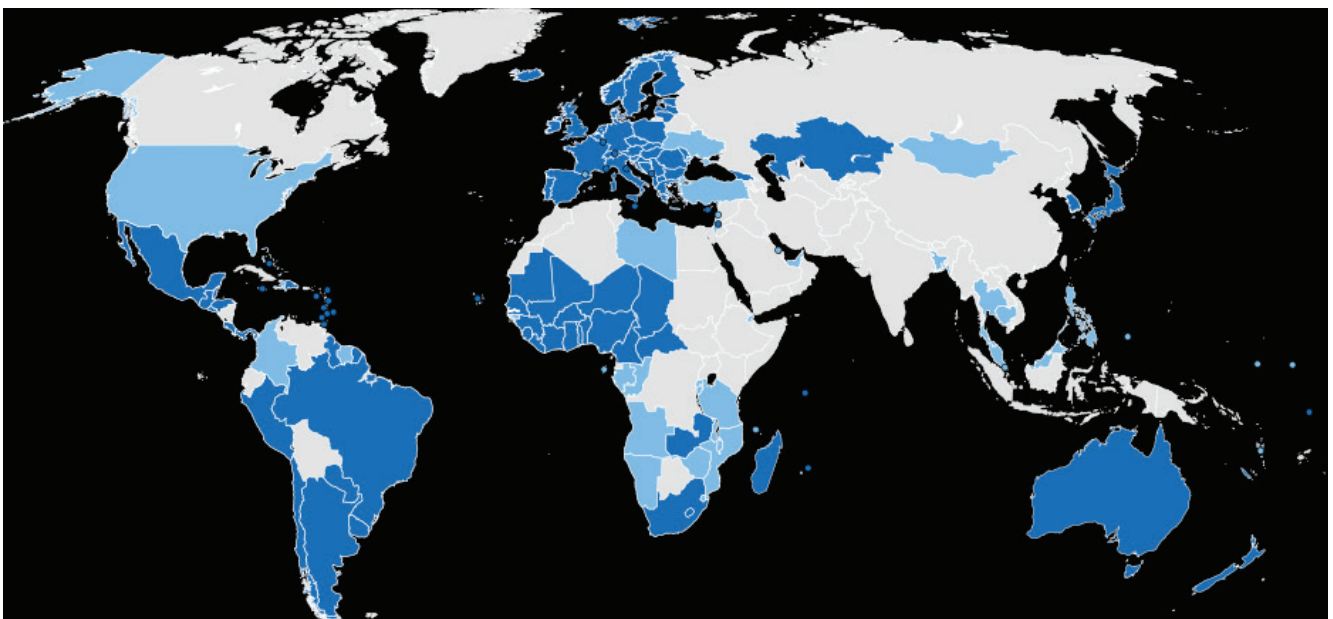
stability but add that mutual interdependence of states and other actors (such as multinational organizations) are a key factor in determining whether a state should or should not join a multilateral arrangement. In the case of the Arms Trade Treaty, most Western European and West African states have ratified the treaty and remain the most active advocates for its implementation. It is no wonder, therefore, that these regions are two of the most integrated in the world.

Human centric security proponents contend that security should be understood more in terms of what it means for the individual to be secure. The Human Security approach emphasizes security as human development, freedom from fear and want, highlighting the need for measures to prevent and eradicate human rights abuses, whether by state and non-state actors. It also emphasizes on human development whose attainment is impossible where human suffering is present (UNDP Human Development Report, 1994). The Arms Trade Treaty objective of reducing human suffering through a regulated conventional arms trade regime aligns with the Human Security approach's call for a new understanding of security away from the state-centric viewpoint emphasized by realists.

### Status of the Arms Trade Treaty (ATT) Before January 2019

By January 9, 2019, the ATT had 100 State parties, 35 Signatories that had not yet become state parties, and 59 non-members. The map below shows the status of the treaty. The countries shown in blue are state parties while those in light blue are signatories. Those that are not colored have not yet joined the treaty.

Figure 1 Status of ATT Participation



Source: Arms Trade Treaty



The table below shows the status of the ATT per region as of January 9, 2019.

<b>100 State Parties</b>		<b>35 Signatories that are not yet State Parties</b>		<b>59 States that have not yet joined the Treaty</b>	
Africa	25	Africa	14	Africa	15
Asia	6	Asia	12	Asia	30
Europe	39	Europe	2	Europe	2
Americas	26	Americas	3	Americas	6
Oceania	4	Oceania	4	Oceania	6

## Why Kenya Should Join the ATT

Despite Kenya having been one of the states which sponsored the Arms Trade Treaty during the initial phase of the treaty's negotiations, it has neither signed, nor ratified the treaty. Kenya is, therefore, currently classified under the 59 states that have not yet joined the treaty. There are a number of reasons for which Kenya should make joining ATT a priority.

### *Prevention of Proliferation of Small Arms and Light Weapons in the Region*

The Arms Trade Treaty seeks to regulate trade in conventional weapons including small arms and light weapons and ammunition. These weapons have for decades fueled conflict around the world including in several of Kenya's neighbors. In South Sudan, arms fueled conflicts have killed thousands of people and displaced hundreds of thousands of others from their homes. The continuing fighting has killed over 10,000 and displaced 1.5 million people from their homes while a humanitarian crisis threatens many more. The worst fighting has taken place in the oil-rich town of Bentiu in Unity State, where hundreds of unarmed civilians have been murdered and their properties either destroyed or looted. Adding to these tragedies is growing insecurity nationwide (Deng, 2018).

The collapse of the Somali state has allowed lawlessness to thrive, terrorists to take control of large parts of the country, and resulted in the deaths and displacement of thousands of people. Kenya plays host to more than 300,000 refugees, most of them from Somalia and South Sudan. According to a 2018 Human Rights Watch report, one million people were newly displaced in 2017, bringing the total internally displaced persons (IDP) to slightly over two million. Many faced dire living conditions, with limited assistance, and faced a range of

abuses, including indiscriminate killings, forced evictions, and sexual violence. Between November and May 2018, at least 60,000 people were forcibly evicted, including by government forces. Hundreds of refugees returning from Kenya due to restrictions on asylum space became IDPs (Human Rights Watch, 2018). These examples highlight serious security concerns that Kenya has to contend with on account of the civil wars raging within her neighbors.

One of the major ways in which arms find their way into conflict zones is through diversion of legitimate arms into the wrong hands. In addressing diversion, Article 11.1 and 11.3 of the Arms trade treaty provides thus:

Each State Party involved in the transfer of conventional arms covered under Article 2 (1) shall take measures to prevent their diversion.... Importing, transit, trans-shipment and exporting States Parties shall cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion of the transfer of conventional arms covered under Article 2 (p. 1).

There is no doubt that Kenya's security and that of her neighbors will benefit greatly if these states were to join the ATT. An immediate benefit would be enhanced cooperation and assistance as stipulated in Article 11.5 of the treaty: "...States Parties are encouraged to share relevant information with one another on effective measures to address diversion. Such information may include information on illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion" (Arms Trade Treaty, 2013, p. 1).



Carl Fredrik Reuterswärd's 'Non Violence' sculpture outside the UN in New York. The ATT sets out robust global rules to stop the flow of weapons and munitions to countries at risk

### Kenya's Special Role in the Restoration of Peace and Conflict in the Region

For a country that has been in the forefront of regional and continental conflict resolution efforts, particularly in Mozambique, Ivory Coast, South Sudan, Somalia, Democratic Republic of Congo, it is incomprehensible that the Kenyan state has not taken advantage of the numerous benefits that it can accrue from joining the ATT. Speaking on February 20 at a public function in Kisii county, Kenya's President Uhuru Kenyatta highlighted the great premium his administration places in regional stability, noting that Kenya will continue to work toward ensuring stability within its neighbors, particularly South Sudan and Somalia. He reiterated that stability in neighboring states is key to peace and prosperity within Kenya. He noted thus "We should remember that if our brothers in Somalia prosper, we prosper, if they are safe, so are we. It has been our policy, then, to help them regain the peace and prosperity they once knew" ('Kenya Will Continue Supporting Regional Stability,' 2019, para. 5).

Kenya is a signatory to a host of regional instruments that seek to promote peace, security, stability, and development in the region. For instance, Kenya is a member of the East African Community (EAC), the International Conference on the Great Lakes Region (ICGLR), InterGovernmental Authority on Development

(IGAD), and is host to the Regional Centre on Small Arms (RECISA), a regional body created to implement the Nairobi protocol for the prevention, control and reduction of Small Arms. Each one of these regional organizations has a program devoted to fighting the proliferation of illicit small arms and light weapons. There is no doubt that the ATT would be an enabler of these programs if it were to be implemented by all state parties to the regional mechanisms mentioned above.

### Kenya's Regional Hegemony

Of the African countries that are party to the ATT, two of Africa's leading political and economic powerhouses stand out – South Africa and Nigeria. South Africa is Southern Africa's hegemony and the continent's wealthiest country per capita. Statistics released in 2018 by the International Monetary Fund (IMF) for 2017 reveals Nigeria and South Africa are the largest economies in Africa with a combined GDP of around \$750 billion. According to the IMF, Nigeria tops as continent as the largest economy in Africa with a GDP of USD 376.284 billion, followed closely by South Africa with a GDP of USD 349.299 (Olumide, 2019). In West Africa, Nigeria's hegemonic role is not in doubt. Other significant countries that are state parties include Ghana, Senegal, and Cameroun which joined the treaty in June 2018. Yet, Kenya, being arguably East and Central Africa's hegemony, a regional political and economic powerhouse, is yet to join the ATT. It begs

## ATT aims to establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms; and prevent and eradicate the illicit trade in conventional arms.

the question why? What could possibly be keeping Kenya away from the treaty when key democracies in the continent are implementing it? Joining the ATT would demonstrate Kenya's leadership position in the region, and would most likely encourage others to join. It would dispel any fears others may have of the consequences of joining the treaty.

As demonstrated in West Africa where most states are members of the treaty, there is everything to gain from being an ATT member state. Ghana, Cameroon, and Liberia have who have joined the ATT have benefitted variously from international assistance. Ghana and Liberia have developed national control lists in accordance with the treaty through support extended under the ATT Voluntary Trust Fund. Within East Africa, only Rwanda and Burundi have signed the ATT, but are yet to ratify it. Kenya's entry into the ATT would set a precedent for the rest of her East African neighbors. Implementation of the ATT in the region would greatly benefit from the momentum established by the existing regional economic and political arrangements.

### ATT – Big Four Agenda Linkage

The ATT can contribute toward the achievement of Kenya's flagship Big Four Agenda, and the overall Vision 2030 blueprint. According to research by Chatham House, armed violence or insecurity, as well as the impact of weapons on the sustainable improvement of communities, have been acknowledged within the development policy as affecting the achievement of each and every developmental goal. The availability, proliferation and excessive accumulation of arms is a contributor to armed violence and a serious impediment to countries' achievement of the SDGs, including those related to human development, human rights and the protection of civilians. The poorly controlled and illegal arms trade in both conflict and non-conflict settings often leads to increased levels of casualties, forcing people to leave their homes and live under a constant threat of violence. It also has a more indirect impact through the

diversion of funds from healthcare to defence, leading to increased unemployment and decreased educational opportunities as a consequence of conflicts and armed violence (Kytomaki, 2014).

Kenya has joined the community of nations in implementing the UN Sustainable Development Goals (SDGs). The Arms Trade Treaty has a direct implication on the attainment of SDGs. A case study undertaken by Control Arms and Oxfam in 2017 shows that there exists a complementary relationship on implementation of both. In a study published in the Arms Trade Treaty Monitor, the two organizations observe that "The ATT and the SDGs share a similarity of purpose – both have been negotiated with outcomes at the global level, and delegate implementation to be undertaken at the national level. Meaningful implementation of the ATT requires States Parties to rely on a number of tools and strategies put forward by the SDGs – and in turn, effective implementation of the ATT should contribute significantly to the achievement of key SDGs" (ATT Monitor, 2017, p. 1).

Kenya is at the center of regional and international efforts to counter the devastating effects of terrorism and religious extremism. Since 2011, Kenya has deployed its armed forces in Somalia, a country that has become the epicenter of the outlawed al Shabab terror group, which is responsible for numerous deadly attacks on Kenyan soil, including the 2013 attack on Westgate Mall, and the 2015 attack of Garissa University, both of which left scores of people dead. On January 14, 2019, al Shabab claimed responsibility for a deadly attack on the Dusit2 Complex in Riverside, Nairobi in which 21 people lost their lives (*The New York Times*, 2019). The common denominator in these terror attacks is illegally held firearms and ammunition including rifles and explosives. Joining the ATT can contribute towards counter-terrorism efforts through curbing arms diversion. It can also facilitate cooperation in information sharing, intelligence sharing and prosecution of suspects between Kenya and other state parties and other mechanisms outlined in the treaty.





*Heavy smoke emanating from burning cars outside the dusitD2 Hotel on 14 Riverside Drive, Westlands-Nairobi, Kenya*

## Conclusion and Recommendations

In conclusion, joining the ATT would cement Kenya's credentials as a regional leader, a country that has demonstrated commitment to regional stability and peace, and a country that is willing to play a positive role in strengthening multilateralism. The ATT is a historic instrument whose implementation has far-reaching consequences not only in reducing human suffering from the perils of armed conflict, but also on promoting development imperatives and aspirations stipulated in Kenya's flagship development policies. As research has shown, there is a direct link between Security, Peace and Development. The United Nations constantly reiterates

that there is 'no peace without development,' there is 'no development without peace,' and there is 'no peace and development without human rights (UN Office of the Special Advisor on Africa, 2018). The unregulated trade in conventional arms harms peace, security and development efforts of states throughout the world. By joining the ATT, Kenya would enhance the levels of Peace, Security and Development not only within its territory, but across the Eastern African region and beyond. This paper recommends that Kenya should prioritize joining ATT as a matter of national interest.

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# The War on Terror, Sovereignty and the Human Rights Conundrum: A Counter-Terrorism Risk Assessment

By Edmond J. Pamba

## Abstract

This article argues that the war on terror has featured violations of human rights, civil and political freedoms, human security, questions of state sovereignty, and international law, in pursuit for national and international security. Realities of the war on terror such as breaches of personal privacy, suppression of dissent, arbitrary detentions, extra-judicial killings and forced disappearances undermine human rights, the rule of law and international law. Other violations committed in theatres of the war on terror outside state borders such as indiscriminate killing of civilians, rape, torture, destruction of property and breach of state sovereignty make the war on terror untenable. Thus, the war on terror should be re-evaluated with respect to the primacy of the affected norms (customary and evolutionary) so as to promote responsibility and accountability, inter-state respect and cooperation, public support for the war on terror, and the respect for international law.

## Introduction

The 'war on terror' is largely characterized by statist or traditional approaches to national and international security. Such approaches include military-security, intelligence and criminal-legal measures that prevent, pre-empt, counter and punish terrorist activities and the support for such activities or movements, for the sake of national security. Lipmann (1994) argues that national security is when a state does not have to sacrifice its core values to avoid war and being able to protect these values with war. On the other hand, terrorism is largely perceived as a threat to the values of afflicted countries (and their societies) (Karawan, McCormack & Reynolds, 2008) and thus the 'war on terror', protection of those threatened values.

However, in practice, these measures have ramifications, both within the state and the international system, given the transnational nature of the threat of terrorism. Specifically, human rights, human security, political security, state sovereignty, and international law, are endangered in the pursuit of security through the war on terror. Baldwin (1997) breaks down this 'security dilemma' by arguing that, in pursuit of security, some values (marginal and prime) have to be sacrificed, including suspending human rights, declaring war, and disproportionately allocating resources to war. However,

terrorist rhetoric and propaganda inadvertently profit from the hazards of the war on terror, as it loses public support and provokes inter-state altercations.

Thus, normative questions arising from the conduct of the war on terror warrant re-evaluation of this type of approach to counter-terrorism because military and security operations, and criminal-legal measures are presenting serious risks in the theatres of the war on terror in Africa, the Middle East, and Asia. Such risks have in part contributed to cyclical violent extremism, terrorism and conflicts in these parts of the world as will be demonstrated in subsequent sections.

## Military Operations and Human Rights Violations

Military operations employed in the war on terror can be either defensive or offensive and involve the pursuit of terrorists beyond borders. They are carried out to pre-empt (pre-emptive neutralization and self-defence), repel or punish terrorist designs (combat operations). These operations target terrorist cells and camps, terrorist-held territories and installments, and any terrorist activities in the war zone (in case of total war).

However, due to power asymmetries, the guerrilla tactics of terrorists, amorphous battlegrounds in civilian areas, and other strategic imponderables, states face strategic and tactical challenges, which translate into security risks for civilians, while pushing the war on terror through military means. One such critical risk, due to indiscriminate violence and disproportionate use of force, is the abuse or violation of human rights through wanton destruction of property and livelihoods, arson, forced displacement of populations, torture, rape, and murder of civilians. Such violations of human rights undermine the legality and legitimacy of the war on terror, as it loses public support and creates public pressure on governments involved. Further, it can escalate violence and reverse gains made when terrorist groups exploit these grievances to radicalize communities and to recruit from them. This in turn complicates the war on terror and simply protracts it against limited objectives, resource, technical, strategic, and moral constraints.

Similar violations committed by terrorist or extremist groups are not justifiable, and all perpetrators are criminally responsible for such violations. Such atrocities violate the International Humanitarian Law, especially

the Geneva (and additional protocols) and Hague Conventions that regulate the conduct of war and protect human rights in such environments. These bodies of law protect the rights, freedoms, dignity, and safety of persons outside combat (*hors de combat*), and prisoners of war (POWs) from torture, cruel, inhuman or degrading treatment and punishment. Violations of such laws are a breach of international criminal law as captured in the Rome Statute of 1998, whose provision would criminalize certain aspects of the war on terror. The characterization of the killing of civilians through airstrikes and other means of force as 'mistakes or intelligence errors', is a technical evasion of criminal responsibility by virtue of intent as provided by Article 8, 2(b) (I, IV and V).

### Fighting Boko Haram in West Africa

Serious human rights violations have been committed in the fight against Boko Haram in West Africa, a war that is led primarily by Nigeria, Niger, Chad, and Cameroon, and 'technically' supported by France and the United States. For instance, the Nigerian Army has been accused of arson, torture, rape, and destruction of property, between 2011 and 2015, in the North Eastern parts of the country



*Aftermath of the bombing by al Shabab that killed over 500 people in Mogadishu, on October 14, 2017. In the last two years, there has been a noticeable uptick in strikes targeting the insurgents in Somalia (Photo Credit: AFP)*



## ... atrocities committed by terrorist or extremist groups are not justifiable, and all perpetrators are criminally responsible for such violations

(Reuters, 2018). These atrocities constitute crimes against humanity under Article 7, 1(f) and (g), and war crimes under Article 8, 2(c) (IV) of the Rome Statute.

The spate of killings of civilians by the Nigerian Army continued through military-intelligence 'inaccuracies' and other improprieties. In January 2017, the army 'mistakenly' bombed the town of Ranna near Cameroon border killing about 52 civilians and wounding 120 (Seiff, 2017). These atrocities led to the formation of a protest group known as the *Knifar* Movement (loosely translated 'we must get justice at all cost') to oppose such abuses and to demand justice and accountability from the Nigerian military and government. This was followed by the emergence of an elite action group called the Borno Elders and Leaders of Thought's (BELT), which opposed the Nigerian Army operations in Borno state (Hassan & Pieri, 2018).

In February 2015, Niger's Army killed 36 civilians and wounded 27 others in an airstrike that hit a funeral in Abadam village. The same village was again hit by the army with an airstrike in July 2017 killing 14 civilians ("Niger air strikes", 2017).

In 2015, the Cameroonian Army's Rapid Intervention Battalion unit (BIR) was also accused of gross human rights abuses which ranged from arson, killing of civilians, torture, and arbitrary detention. This was as a result of excessive use of force in its response to Boko Haram's slaughter of about 400 civilians (Amnesty International, 2015; Thompson, 2016).

### Fighting al Shabab in the Horn of Africa

Human rights violations have also been committed in the ongoing fight against al Shabab in Somalia. In 2011, AMISOM carried out airstrikes in the city of Jilib near a refugee camp killing five civilians and wounding 45 including children (Al Jazeera, 2011). The United Nations Special Representative to Somalia has documented 74 airstrikes between January 2016 and October 2017, in which 57 civilian casualties (14 of which are blamed on the United States-led airstrikes, while 42 are blamed on AMISOM) were caused (Burke, 2018). These airstrikes have also resulted in killing of livestock, destruction of infrastructure and agriculture in the affected areas.

Alleged Ethiopian airstrikes also killed nine civilians (Ethiopians) at the Ethiopian border town of Moyale in March 2018, causing thousands of civilians to flee into neighboring Kenya. Ethiopia blamed it on erroneous intelligence reports (Reuters, 2018).

### The Islamic State of Iraq and Syria (ISIS), al Qaida, and Taliban in the Middle East (and Asia)

Similar violations committed in the war on terror have been recorded in the Middle East and Asia in the recent fight against ISIS. This has been associated more with the United States' use of drones, for their 'low' collateral damage. Drones have been seen as more precise with 'pin-point or surgical strikes'. In 2009, the first six months of President Obama's administration's approach to war on terror in Afghanistan (after extending the United States military presence from 19 months to 10 years) was characterized by airstrikes that led to the death 1,013 civilians (Bisheimer, 2015). In 2009, the United States airstrikes killed over 100 civilians in the Afghanistan province of Farah. Survivors drove dozens of corpses to the provincial capital chanting "death to America!" in agitation. The Taliban, then used these frustrations to recruit from the aggrieved province and across Afghanistan (Bisheimer, 2015; Boone, MacAskill & Tran, 2009).

In December 2017, at the time the Iraqi city of Mosul was recaptured from ISIS, the Associated Press reported more civilian deaths (by the United States-led coalition) than official United States reports (1500 to 4500), putting the figure between 5,000 and 10,000 (Oakford, 2018). The killing of civilians by the United States drones in Pakistan, in the fight against al Qaida and Taliban has been a serious security issue, and a leading factor in fuelling anti-American sentiments among Pakistani citizens. The Pakistani public and the establishment's resentment against this military strategy by the United States led Pakistan's Parliament, through *Guidelines for Revised Engagement with USA/NATO/ISAF*, to terminate drone bases and the authority for drone operations in the country in 2012 (Zenko, 2012).



## Military Incursions, Occupation and Sovereignty

Military campaigns that pursue terrorists beyond state borders into other (target) states short of their confirmed consent violate their (target state) sovereignty. It is tantamount to acts of aggression (or war) against affected states and a concomitant violation of customary international law. Article 2(4) of the United Nations (UN) Charter safeguards state sovereignty against military action by another state. However, states have the right to self-defence under Article 51 of the UN Charter. Chapter 7 of the Charter in general provides for use of force by states in the spirit of collective security rather than collective defence.

The United States' unilateral declaration of (global) war on terror and invasion of Afghanistan (in response to al Qaeda attacks in New York) in 2001 is an example of a violation of state sovereignty. The United States on its part, considered its actions as pre-emptive self-defence having invoked Article 5 of the North Atlantic Treaty. Neither the threshold for Chapter 7 nor Article 51 of the UN Charter was satisfactorily met by the United States in its invasion of Afghanistan, and much less, to respond to a non-state actor by violating national borders and sovereignty of Afghanistan. That aside, Article 5 of the North Atlantic Treaty (collective defence as opposed to collective security spirit of the post-War world order) does not bind the international community and thus the United States failed to draw legality and legitimacy of the invasion from the international community, hence considered unilateralist. The war, now 17 years old, destabilized Afghanistan as a state and created dire humanitarian conditions, warranting stabilization and reconstruction by the United States itself through United States Agency for International Development (USAID).

In the Horn of Africa, United States-backed Ethiopian troops invaded Somalia in 2006 to fight the Islamic Courts Union (ICU) and its militant faction, al Ittihad al Islamiyya (AIAI). Though this mission was successful in driving the extremists from Mogadishu, it soon boomeranged on the region's security. AIAI split into *Hizbul Islam* and al Shabab, the latter morphed into a violent extremist organization. Al Shabab whipped up nationalistic sentiment in and out of Somalia against Ethiopian occupation, recruiting fighters between 2006 and 2008, inside the country and from diaspora (Cohn, 2010). The group thus benefited from the invasion as it enriched its propaganda and nativist rhetoric which were used as tools for mobilization

and recruitment by the time of Ethiopia's exit in 2008 (Cohn, 2010). Al Shabab is now one major terrorist group in Africa and the largest in the Horn of Africa. It has carried out attacks in the neighboring countries such as Kenya, Uganda, and Ethiopia. It has also infiltrated their populations with radical rhetoric and Islamist narratives which work as tools for mobilization and recruitment from these countries.

## Drones and State Sovereignty

The Chicago Convention of 1944 on International Civil Aviation is unequivocal on states' sovereignty over their airspaces. Article 1 of the convention gives complete and exclusive sovereignty to each state over its airspace. A futuristic proviso, Article 8, was included in the Convention and ably covers the use of drones today. It stipulates that "No aircraft capable of being flown without a pilot shall be flown without a pilot over the territory of a contracting state without special authorization by that state and in accordance with the terms of such authorization." In reality, the use of drones in the war on terror has not escaped criticism and resistance on its breach of international law on the subject. The use of drones was the signature air power in the fight against ISIS, Taliban, and al Qaida, during the Obama administration since his ascendance to office in 2009 (Zenko, 2012).

The use of drones by the United States in Pakistan, Iraq, Syria, and Afghanistan was characterized by 'signature air strikes' that led to killing of civilians. Although the Pakistani government and army initially, albeit begrudgingly, supported United States drone operations in the country and even permitted establishment of their bases, it rescinded this arrangement in 2012 in the interest of the country's sovereignty (and public interest) (Zenko, 2012). This revocation undermined United States war on terror as it came with a reduction in drone operations in the country.

Continued covert and non-authorized drone operations in the country continued raising concern in the Pakistani government and Parliament, and resentment from the general public against the war on terror. The Pakistani president, Asif Ali Zardari, presented his country's rejection of the drones and intolerance for continued covert operations, at the 2012 NATO summit. He sought a permanent solution to the drone issue citing violation of his country's sovereignty and inflaming of public sentiments (Zenko, 2012). It is noteworthy that drone strikes killed the Taliban Chief Mullah, Akhtar Mansoor,



*A drone flies low in an undisclosed location. There have been increased drone strikes targeting al Shabab in Somalia since 2016*

in the tribal region of Pakistan near the border with Afghanistan, in May 2016.

In Afghanistan, one of the top military leaders, General Sher Mohammed Karimi, spoke of the drone issue saying, "In the last two months, 14 to 16 night operations have been rejected by Afghans" (Zenko, 2012, para. 12). A United States official responded by affirming that, "the Afghans are the only ones who give the final say on whether or not missions get conducted. That's how the process works now" (Zenko, 2012, par. 12). Thus, drone strikes short of target country's consent is thus an illegality according to the Chicago Convention of 1944 and aggravated killing and wounding of civilians by drone strikes undermine legitimacy of both legal and illegal drone operations.

The use of drones by the United States in Pakistan, Iraq, Syria, and Afghanistan was characterized by 'signature air strikes' that led to killing of civilians

### **Vigilantes, Sub-National Actors, Human Rights and State Sovereignty**

As an upgrade of vigilantes or community-based armed groups (CBAGs), Civilian Joint Task Force (CJTF) was formed in Northern Nigeria. It is largely made up of civilians, mainly the youth, who joined the fight against Boko Haram. However, CJTF conscripted children into the war before signing an Action Plan with UNICEF in November 2017, to stop the practice (Hassan & Pieri, 2018). The practice however, constituted a violation against the rights of children in armed conflict especially provisions of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC) of 2000, and Article 50 of the Fourth Geneva Convention relative to Protection of Civilians in times of war. Besides, this practice constitutes a war crime under Article 8, 2(b) (XXVI) of the Rome Statute. CJTF is also accused of summary executions and military-led extra-judicial killing of detainees in the war against Boko Haram which is a war crime under Article 8, 2(c) (IV) of the Rome Statute (Hassan & Pieri, 2018).

In 2012, *Yekineyen Parastina Gel* (YPG), the Kurdish armed wing of the Democratic Union Party (in Syria), formed in 2004, joined the fight against ISIS under the backing of the United States. However, the YPG (People's Protection Units) and the Women Protection Units (YPJ)





*A view of the United Nations Human Rights Council in Geneva in 2017. The Council has underscored respect for human rights and the rule of law in counter-terrorism efforts*

took advantage of Damascus' inability to control the whole of Syria's territory, given the civil war and terrorist insurgency, to mount separatist and irredentist campaigns (Oktav, Dal & Kursun, 2017). The Kurdish political and military formations declared autonomy over parts of northern Syria in 2012. They renamed the part consisting of Afrin, Jazira and Euphrates regions, the Democratic Federation of Northern Syria in 2014. YPG formed Syrian Democratic Forces (SDF) in 2015 and captured the city of Raqqa (the capital of ISIS). This group, despite helping in the war on terror, veered off to separatist campaigns that undermined Syria's sovereignty (and territorial integrity) and that of Turkey, when it supported its Turkish irredentist counterpart, the Kurdistan Workers' Party (PKK), in its separatist cause in 2015.

Apart from infringing on territorial integrity of Syria and Turkey, YPG committed human rights violations in its war against ISIS and other Syrian rebel groups. It recruited minors into its army until its signing of the Geneva Call Deed of Commitment in 2014 that saw it demobilize minors. Conscription of minors is a war crime under Article 8, 2(b) (XXVI) of the Rome Statute. YPG also carried out forced displacement of population from al-Hasakeh and Raqqa governorates, demolished their homes and destroyed property, which violates international law and constitute crimes against humanity under Article 7(d) of the Rome Statute.

## **Security Measures, Human Rights, and Sovereignty**

Security measures in the war on terror include intelligence services, surveillance, policing of communities, migration control, and law enforcement, within the threat-anticipating-country. They may also include covert espionage missions, extra-ordinary rendition missions and covert operations beyond such country's borders, in case of transnational threats. Despite these measures that lead to a reduction of vulnerability of a country to terrorist attacks, their excesses provoke disapproval because of their infringement of human rights, and at times, sovereignty of other countries.

For instance, Kenya's *Operation Usalama Watch* in 2014, involved detention and deportation of 'illegal' ethnic Somali migrants from Nairobi. This policy profiled a given ethnicity and subjected them to discrimination and humiliation in its war against al Shabab (Kerrow, 2014). Authorities often ignored due process in this operation, further undermining human rights and the rule of law.

Covert operations including espionage, pre-emptive strikes, and extra-ordinary rendition also violate state sovereignty. A case in point is the United States covert operation that led to the killing of al Qaeda leader, Osama Bin Laden, in Abbottabad in 2011. Pakistan



lamented the United States operation for its infringement of its sovereign borders.

## Legal Measures, Human Rights and Radicalization

Counterterrorism legislations in several countries undermine civil liberties, political freedoms, and human rights, in as much as they further national security interests. In the Horn of Africa for instance, Kenya's Security Bill 2014, and Ethiopia's Societies and Charities, and Anti-Terrorism Proclamations were internally criticized as infringing on human rights, civil liberties, and political freedoms. Ethiopia's proclamations, in part, led to civil protests and clashes that led to Prime Minister Haile Mariam Desalegn's resignation in early 2018. The Kenya Security Bill 2014 on its part suffered judicial revision when its contentious parts were suspended by the High Court in Kenya in 2015.

Such legislative regimes in the war on terror have also permitted political repression in several countries. Opposition politics (including politicians and their supporters) and dissent have been branded terrorist and those involved arrested and charged as the anti-terror laws may provide. In the United Arab Emirates (UAE), for instance, Article 15 of Terrorism Law No. 7 of 2014, sets 3 to 15 years for anyone who shows animosity or lack of allegiance to the state or regime in the UAE. It is by this law that Osama al Najer was convicted by the Federal Supreme Court of the UAE, in a matter related to his father's role in *al Islah's* attempt to overthrow the government following the Arab Spring, and the treatment of those convicted (Human Rights Watch, 2014).

## Criminal Justice, Human Rights and Radicalization

Criminal justice regimes relating to the war on terror, have tried the law enforcement and correctional measures, as regards reducing the threat of radicalization, violent extremism and terrorism. These measures act as the tail end of prevent-pursue-and-punish counterterrorism edifice. However, some aspects of criminal justice systems of affected countries have undermined basic human rights and escalated the problem of radicalization into violent extremism and terrorism. The disregard for due process, long remand-time, overcrowding of prisons, squalid prison conditions, lack of effective de-radicalization programs, lack of identification of radicalized inmates and their separation from non-radicalized ones, lack of proper monitoring, surveillance and security measures

among other laxities, create conducive environment for terror cells in detention facilities and prisons.

In Kenya, Kamiti Maximum Security Prison in Nairobi and Shimo la Tewa Prison in Mombasa have the highest number of inmates, about two hundred and forty, incarcerated for terrorist activities (Kahara, 2017). Prison conditions in these facilities, such as lack of close monitoring, effective de-radicalization programs, overcrowding (generally Kenyan prison population is more than double the capacity, holding 54,579 against a capacity of 26, 687 inmates), poor sanitary conditions among others, permit radicalization to take root among hitherto moderate inmates through radicalized inmates (Kahara, 2017). Al Shabab has thus infiltrated these Kenyan prisons for recruitment by establishing cells through terrorist inmates.

## Conclusion

The war on terror has helped secure a considerable margin of safety for states and populations under the threat of terrorism and violent extremism. It has degraded offensive and defensive capabilities of terrorist groups, reclaimed territory from such groups, mounted surveillance systems to help curb terror in its tracks and meted judicial punishment to those convicted of terror-related activities. However, the war on terror has also violated norms that put the primacy of state sovereignty, human rights, civil and political freedoms, and international law protect the stability of international order. To this extent, the war on terror presents serious human rights challenges in its pursuit of security goals. Such risks can undermine the larger counterterrorism agenda, by jeopardizing its legitimacy, legality, and effectiveness. For the war on terror to succeed, not only will military-security and criminal-legal gains count, but maintaining international legal norms is paramount.

## Recommendations

- Horn of Africa countries and the African Union Mission in Somalia (AMISOM) should develop counter-terrorism guideline/framework to regulate the conduct of the war on terror within the bounds of international law.
- Kenya Defence Forces, Kenya Police Service, Anti-Terror Police Unit, National Intelligence Service and AMISOM should develop accountability frameworks that regulate their work and boost public confidence in it.

- AMISOM and other counter terrorism agencies in the region should end or avoid practices such as torture, extra-judicial killings, illegal detention, forced disappearance, summary executions and other forms of inhumane treatment of terror suspects and civilians in the theatres of the war on terror.
- Intelligence reports and surveillance feedbacks should be thoroughly verified to ensure accuracy of information before launching pre-emptive and response measures, to avoid outrageous civilian casualties.
- Regional countries and AMISOM should develop policy standards and procedures for the use of force in counterterrorism.
- In case of vigilantes, a code of conduct should be developed to guide their operations. Additionally, they should be trained on relevant human rights issues in conflict or hostile environments.
- In case of sub-national actors, as in the case of Somalia's fight against al Shabab, AMISOM should ensure proper control of their operations and capabilities, and ensure they act within human rights obligations.
- Sovereignty of other states should be respected in the context of transnational threats such as terrorism so as to encourage rather than undermine international cooperation.
- Regime security should not be tied with national security in legislations on terrorism to allow safeguards for civil liberties, political freedoms, human rights and the rule of law.
- Criminal Justice systems in Kenya and the region should introduce de-radicalization programs in prison, mount proper surveillance systems, separate radicalized terrorists (or terror convicts) from the rest, improve sanitation and expand prison facilities to accommodate inmate population.

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# The Question of Popular Consent in the Governance of the East African Community Organization

By Winnie Rugutt

## Abstract

Democratic deficit in regional governance processes has been blamed for the failure of some regional organizations. African governments, however, seem more determined to forge stronger regional links as they continue to pursue various regional agreements especially those related to trade. This article looks into the governance structure of the East African Community (EAC) by examining the nature of public participation in policy-making and implementation. Using existing literature on EAC to understand the extent to which this organization has accommodated the interest of the public when making crucial decisions, this article notes that public participation in the governance process of EAC is limited to organized private sector and civil society groups who engage governments on key issue areas. Even though they are involved in the governance of the regional organization, their role and impact is limited and controlled by technocrats and government officials. This may lead to further disengagement of the wider public on issues related to regional integration, hence the need to better understand how East African governments can achieve meaningful public participation in the policy-making and implementation process in the EAC.

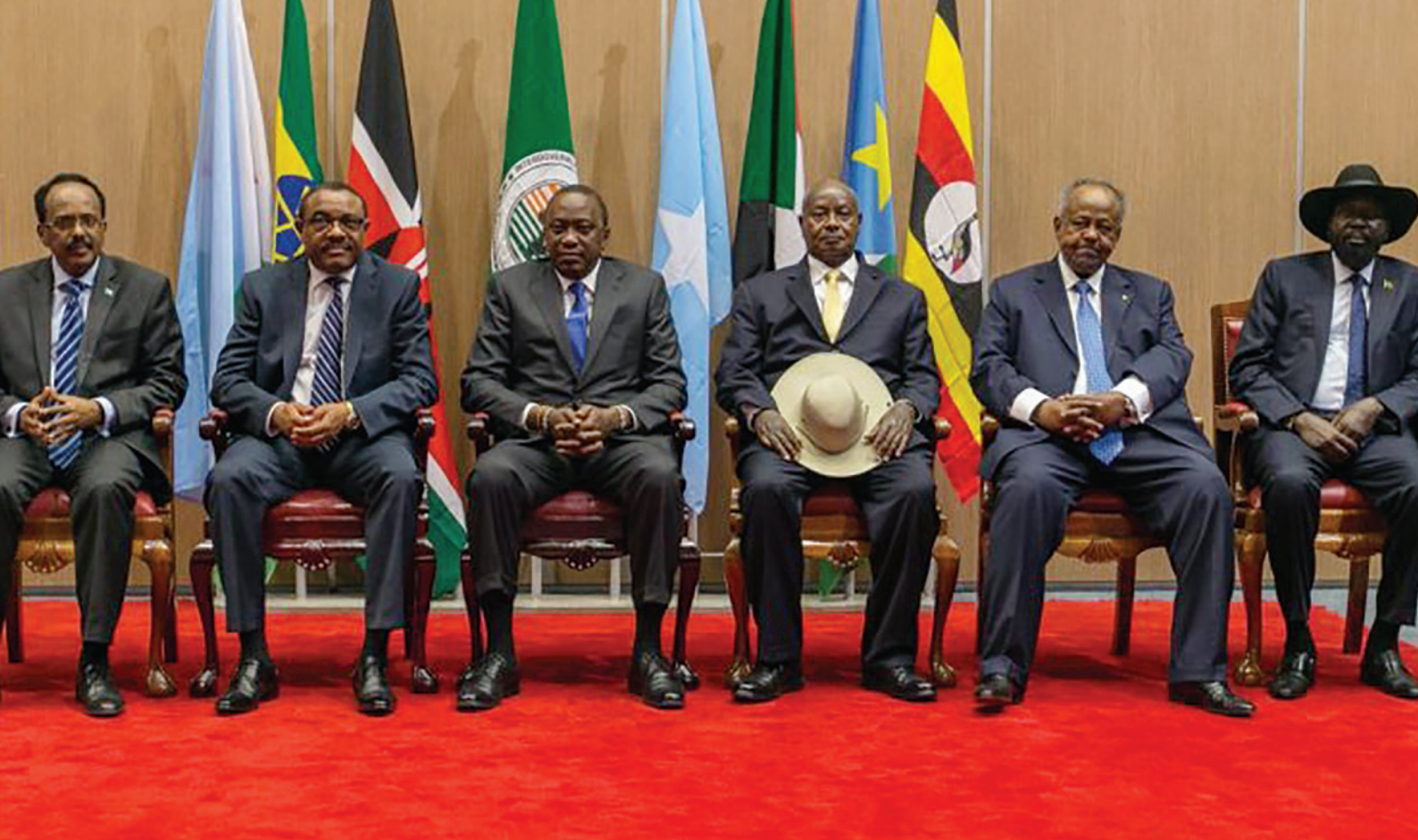
## Introduction

As African states gained independence, a majority opted to join regional multilateral bodies to facilitate common interest. In 1963, the newly independent African countries signed the charter of the Organization of African Unity (OAU) in Addis Ababa, Ethiopia. This was a culmination of African efforts to free the continent from the burden of colonialism, racial prejudice and discrimination, and bring the African people much closer together. At the turn of the new century, members of OAU decided to restructure the organization because of its poor performance and failure to deal with the issues of integration in Africa. It was, consequently, resolved in July 2001 to officially transform OAU to the African Union (AU). This marked a shift in the process of regional cooperation and reignited the fight against underdevelopment in Africa (Kimunguyi, 2006).

These regional arrangements characterize African states' foreign relations as they work toward common political, social, and economic goals in an increasingly globalized world. African states take regional integration as a key component of their development strategies. These regional groupings are primarily motivated by economic

rationale of dealing with global challenges. A number of pan-African organizations are working toward deepening cooperation in Africa. These include Economic Community of West African States (ECOWAS), East African Community (EAC), Southern Africa Development Community (SADC), and Intergovernmental Authority on Development (IGAD), Arab Maghreb Union (AMU), and Common Market for East and Southern Africa (COMESA), United Nations Economic Commission in Africa (UNECA, 2018).

Regional Economic Communities (RECs) are the building blocks of the African Union (AU). The work of the various African regional economic communities are founded on treaties, protocols, conventions and other formal agreements entered into by sovereign states, and thus, are binding under international law (UNECA, 2018). The 1980 Lagos Plan of Action for the Development of Africa and the Abuja Treaty of 1991 that established the African Economic Community provides the framework for Africa's overall economic integration (African Commission on Human and People's Rights (ACPHR), 2015). The Lagos Plan of Action is an agreement between African states



*A section of Intergovernmental Authority on Development (IGAD) Heads of States pose for a photograph in June 2018. Among other objectives, IGAD seeks to promote peace and stability*

with the view of enabling the continent to be more self-sufficient. It works toward establishing an African social and economic order that is based on utilizing to the fullest regional resources in order to attain self-sufficiency.

Regional Economic Communities (RECs) are not only the key building blocks for economic cooperation, but are also important actors in the establishment of peace and security in their regions. RECs are essential to the implementation of various development programs including the African Union's Agenda 2063 which sets out general and specific objectives each member state is expected to achieve. RECs are highly crucial and instrumental for the effective implementation, financing, monitoring and evaluation of Agenda 2063 and its flagship programmes, particularly at the regional levels (UN Office of the Special Adviser on Africa (OSAA), 2018).

For public participation, African RECs are, more often than not, perceived as elitist and based on government-to-government cooperation. This is partly because of lack of participation from the citizenry of member States (CUTS International, 2015). Public participation in policy-making and implementation process of these regional bodies in Africa is seen to be at a minimal level. A majority of key policies are passed through collaboration between technocrats and political leaders. This has led to the establishment of weak regional governance institutions in Africa which lacks political legitimacy from its people.

The problem of non-participation of citizens in the policy making and implementation process is not unique to African regional organizations. This has become a common feature of most global and regional governance bodies around the world. Even the United Nations has been accused of not meeting the current standards of representability, consent, judicial accountability, and therefore, lacking political legitimacy. This is an acute problem because international organizations play an increasingly important and intrusive role in people's lives (Thakur, 2012). Scholte (2001, p. 1) in his paper, *Civil Society and Democracy in Global Governance*, argues that the democratic deficit in global governance processes is the reason for the failure of these systems. Lack of awareness and ownership by citizens on issues of global relevance has led to sidelining of critical agreements by the political class. The policy making and implementation procedures in multilateral institutions is, in a great part, fully controlled by government and technocrats. Limited responsiveness to civil society and private sector leads to delays in the implementation of key protocols and agreements that could have an impact on the greater good of humanity (Bexwell et al., 2008, p. 2).

According to a report by the African Commission on Human and People's Rights (2015), the low level of literacy and exposure among African citizens has resulted in minimal active participation in RECs. Ordinary



African citizens have little knowledge on the role and functions of global and regional institutions, and thus, are unable to participate in the governance process of these institutions. Civil society and organized private sector groups have, however, taken a keener interest in the activities of regional organizations around the world. These groups are today identified as transnational actors because they are able to forge alliances with other non-state actors when pushing for a common agenda. According to Uhlin (2009, p. 1), transnational actors (TNAs) are argued to be the solution to the democratic deficit being witnessed in global governance structures. Their participation in global and regional policy making is seen as a means to democratize global governance. The term 'Transnational Actor' denotes the broad range of private actors that organize and operate across state borders, including non-governmental organizations (NGOs), advocacy networks, social movements, party associations, philanthropic foundations, civil society groups and transnational corporations (Bexwell et al., 2008, p.2).

This article delves deeper into the structure and institutional formation of the EAC to further understand the public participation framework in this regional body. It will particularly look at the legal and institutional structures that facilitate the engagement between the organization and other citizens of the community.

## Public Participation in the East African Regional Block

The East African Community (EAC) is a regional block consisting of Kenya, Uganda, Tanzania, Rwanda, Burundi, and South Sudan. Colonial Kenya and Uganda formed a customs union in 1917, which Tanzania (then Tanganyika) joined in 1927. After independence, cooperation continued under the East African Common Services Organization. An East African Community was created in 1967, but collapsed in 1977 as a result of political differences. Following efforts to re-integrate in the 1990s, the present EAC was established in 2000 (Baylis & Smith, 2008). The EAC customs union formally came into effect



*A section of African leaders at the 32nd Africa Union (AU) Summit in January 2019. AU, formerly Organization of African Unity (OAU), was established in 2002 to promote unity and solidarity of African states, and to spur economic development*



in 2005, followed by a customs market in 2010 and a monetary union in 2014. The ultimate goal of integration for the community is a political federation (EAC Website, 2018).

Regional integration is rooted in state power and sovereignty, and therefore, a political process. EAC is so far the only Regional Economic Community on the African continent that has the objective of attaining a political federation as its ultimate goal. The pursuit of federation was a post-independence venture by the initial three member states of EAC that is Kenya, Uganda and Tanzania (Waffubwa, 2012). The EAC's integration system is, therefore, unique in nature as it is not only aimed towards economic cooperation but also social, cultural, and eventually, political cooperation. This is especially unique as compared to other regional blocks in Africa like that of Southern Africa Development Community (SADC) and Economic Community of West African States (ECOWAS) which have mainly concentrated on cooperation in regards to their economic and social framework.

The EAC integration process is guided by the Treaty establishing the Community, which entered into force on July 7, 2000. The Treaty is a culmination of regional efforts to resurrect cooperation in the planning and implementation of regional programs for integrated development. The Treaty establishing the EAC has the hallmarks of a constitution including a preamble that highlights the historical and political context, the aspirations of the people and the fundamental principles and rules that define the powers of the various organs of the Community (Kamanyi, 2006). The vision of EAC is to have a prosperous, competitive, secure, and politically united Eastern Africa. The objective according to Article 5 (1) of the Treaty, is to develop policies and programs aimed at widening and deepening cooperation among the Partner States in political, economic, social, and cultural fields, research, technology, defense, security, legal and judicial affairs for mutual benefit (African Development Bank, 2010).

The Treaty establishing the EAC recognizes the critical role of integrating the key stakeholders in the development agenda of the Community with the intention of empowering effective participation of the citizenry in matters of economic development and creating a conducive environment for effective participation (EAC Secretariat, 2005). The Treaty is guided by the principle of 'Subsidiarity'. This principle emphasizes the importance of participation and involvement of a wide range of

stakeholders in the process of integration. This implies that all actors in the region should be availed space to influence development in the integration process. In order to promote the role of the key stakeholders in regional integration, the treaty recognizes the importance of various associations, networks, and strategic alliances. These modalities of collaboration are designed to enable the various actors to exchange information and organize their participation in shaping the integration process (EAC Secretariat, 2005).

## Democracy versus Technocracy in the EAC

The historical origins of the East African Community (EAC) integration process themselves are not very democratic. The building blocks, to what later evolved into the EAC, were laid by a succession of social and economic integration measures undertaken by the British colonial authorities, and by the immediate post-colonial independent governments, with little consultation on the feelings of the majority of the indigenous inhabitants of the East African region (Citizen, 2015). The limited participation of citizens in the regional process of the first EAC together with political difference between leaders is thought to be one of the main reasons for its collapse and failure in 1977 (Mngomezulu, 2013).

Discussions on the East African Regional integration today have mainly focused on the formal structures and institutions of regional governance. Little attention has been given to the democratization of the organs and bodies of the EAC (Friedrich Ebert Stiftung, 2012). One of the main uncharted waters in the EAC integration process is the involvement of the ordinary citizenry in the progress. According to the former EAC Secretary General, Amb. Mwapachu, it is evident that much needs to be done in getting the ordinary folks to understand and appreciate the purpose of regional integration and why

In **1963**, the newly independent African countries signed the charter of the Organization of African Unity (OAU) in Addis Ababa, Ethiopia

## Despite the provision of participation avenues by the EAC, there is still limited meaningful contribution by non-state actors. The sustainability of CSOs involved in regional issues is at stake due to minimal financial support

the federation idea is of such paramount importance. At the end of the day, it is the people who ultimately matter over decisions of great political importance like that of a political federation (Mwapachu, 2012).

Technical experts and political leaders are seen as the main decision making actors in the regional integration process today. Technical expertise has been instrumental in the implementation of the Treaty for Establishment of the EAC. Each member state through the direction of the EAC Secretariat has a government ministry that is solely responsible for the coordination of EAC matters in their respective countries. These ministries have the mandate to steer regional integration agenda in accordance with the objectives of the Treaty for Establishment of East African Community within the member states. They are fully run by technocrats who influence policy and negotiate on various terms within the context of the EAC integration process (EAC Secretariat, 2005).

According to Kurki (2011), as much as technocrats have embraced democracy in the 21<sup>st</sup> Century, its meaning tends to be interpreted in a minimal (procedural) sense, and legitimization for policies is still sought through reference to other policy frameworks rather than any direct reference to democratic publics. In the context of the EAC, it is mainly the government officials, donor agencies and elite civil society that influence policy at the regional level in regard to the integration process. It is, therefore, not surprising that there is still little popular support for a political federation at this stage of integration among ordinary folks.

A study conducted by *Vision East African Forum*, a regional civil society think tank has noted that the citizens in the region which includes; politicians in political parties, state bureaucrats, business executives, farmers, pastoralists, women, youth, students etc., feel that the governance structures set up to implement the 1999 EAC treaty is weak and undemocratic. The report noted that the citizens of the region ought to be made aware of the processes and issues around the EAC and thus should be allowed full participation. It was proposed

through the study that the use of non-state actors like Civil Society Organizations (CSOs) and Private Sector Organizations (PSOs) could be the link that helps in raising the awareness level of citizens on the EAC issues (Lwaitama et. al., 2013). In many cases these non-state actors have been instrumental in intervening on behalf of ordinary citizens in representing their interest in regional bodies. These entities often collaborate with state actors and they act as a bridge between the ordinary citizens and the larger regional block. For example, the Eastern African Sub-regional Initiative for the Advancement of Women (EASSI) is a regional CSO that links 16 national women's associations in eight countries in North and Eastern Africa, has organized regional civil society forums on different issues related to the advancement of Women bringing together policy makers and other relevant stakeholders in the region (Godsäter, & Söderbaum, 2011).

### Institutional Structures and Avenues for Participation

Political parties at the national level serve as a bridge between the people and this regional organization. The EAC Treaty provides one formal avenue through which political parties can participate in the integration process. Article 9 (1) (f) of the treaty establishes the East African Legislative Assembly (EALA). Members of EALA are nominated politicians from the different political parties in the region (Lwaitama et al., 2012). They are members of political parties who are not members of parliament. EALA is the legislative organ of the organization and, therefore, has decision making powers.

Ideally, this EALA should be the link between the people and the regional body. However, this organ cannot claim to have direct popular mandate similar to the national parliaments of member countries where members are elected by their constituencies. The level of participation of the citizens within political parties is limited, therefore, EALA is not a true representation of the interest of individuals in the region. According to Adar (2011), democracy enlargement cannot be realized in the EAC

unless East Africans are empowered by the treaty to participate directly in electing EALA representatives, a process which will legitimize the citizen's ownership of the regional process.

Other than representation from political parties through EALA, the EAC treaty specifies two ways in which non-state actors can be involved in the East African integration process. The first is by seeking observer status. This observer status is only granted to some specific states and non-state actors. The second involvement can be through consultative forums that include a broader array of stakeholders such as private sector and different interest groups (EAC Secretariat, 2002; Lwaitama, 2013:44). The EAC Consultative Dialogue Framework (CDF) serves to establish regular and continuous dialogue between EAC Secretariat, Partner States, CSOs, PSOs and other interest groups both at national and regional-levels. At the regional-level, CSOs and PSOs are respectively represented and coordinated by their regional umbrella apex bodies: The East African Civil Society Organizations Forum (EACSOF) and the East Africa Business Council (EABC). At national-level, EACSOF has National Chapters while EABC has National Focal Points (NFPs).

The main avenue for engagement of these non-state actors through the EAC CDF is the Secretary General's Forum, an annual meeting convened by the Secretary General of the EAC based on an agenda prepared in advance by a Regional Dialogue Committee consisting of representatives of all the dialogue parties (CUTS International, 2015). This forum that began in 2005 continues to link the non-state actors of the region with the EAC secretariat to strengthen participatory integration efforts. The secretary general is tasked with the responsibility of forwarding the recommendations for consideration and implementation to relevant organs and institutions in the EAC. The significance of this forum is attested to by the increasing number of civil society participants in the annual forum. These consultations, however, need to be conducted at the sub-regional level of each member state (Otondi, 2018).

Despite the provision of participation avenues by the EAC, there is still limited meaningful contribution by non-state actors. The sustainability of CSOs involved in regional issues is at stake due to minimal financial support. This has greatly affected their ability to deliver and be fully engaged in EAC regional affairs. There has



*President Kagame in a group photo with Members of the East African Legislative Assembly and other officials at Parliament Building in Kigali on March 7, 2017 (Photo Credit: The New Times)*



The level of awareness of the aims and functions of the EAC in the five member countries is low and it is hoped this institution will bridge the gap between the regional body and its citizenry

also been hesitation about popularizing the idea of regional integration by political representatives (Booth, 2007: 8). There seems to be an authoritarian mindset amongst government leaders who have not appreciated the extent to which the democratic ground has shifted over the past two decades (CUTS International, 2015). The lack of knowledge and information on the current regional process is also another inhibiting factor. An effort by media agencies to popularize the process has been noted a necessary step towards encouraging participation in regional integration processes (Booth, 2007: 8).

## Conclusion

The greatest challenge to African regional organizations is recognizing the importance of non-governmental actors in maximizing regional integration efforts. The place of non-state actors in conventional approaches to regional integration is yet to be fully established as civil society groups and private sector organizations work towards

contributing to the regional process. The East African Community has legal and institutional frameworks for the participation of citizens. The Treaty for the Establishment of the EAC advocates for people-driven and people-centered development. Public participation in the governance process of the EAC is, however, limited to organized private sector and select civil society groups who engage governments on key issue areas. Although they are involved in the governance of the regional organization their role and impact is limited and tends to be controlled by technocrats and government leaders.

To ensure EAC harnesses its full potential, it is important the organization facilitates participation of both state and non-state actors as stipulated in articles 127, 128, and 129 of the EAC treaty that focusses on the creation of an enabling environment for strengthening cooperation. A reformation of EAC policies and institutions is needed to accommodate a more participatory organization. A special democratic institution that will involve all non-state actors in the policy-making and implementation process should be considered towards achieving a more democratic EAC. The main purpose of this institution will be to advocate the interest of private and informal actors in the EAC integration process. The level of awareness of the aims and functions of the EAC in the five member countries is low and it is hoped this institution will bridge the gap between the regional body and its citizenry. The integration objectives will be achieved once the citizens are aware they can be involved in realizing the integration goals as stipulated in the 1999 Treaty for the Establishment of the EAC.

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# Participatory Budgeting in Makueni County: A Movement toward Participatory Democratic Governance in Kenya?

By Edwin Rwigi

## Abstract

This article takes a look at the journey of participatory budgeting from Brazil in the late 1980s, where it was first applied to Kenya in Makueni in mid-2010s. Indeed, there has been growing disaffection with liberal-democratic governance and increasing post-structuralist criticisms of development in the Global South. In response, participatory democratic governance models and practices have been presented as better alternatives aspiring to a greater quality of democracy. Participatory Budgeting has emerged as one of the finer examples of practices espousing the normative ethos of participatory democratic governance. Participatory Budgeting experiments in municipalities across the world have, however, yielded as varied results as there are municipalities. The Kenyan experience of participatory experiments has not fared any better. These have so far registered mixed result in promoting citizen-centred development. It is in this context that Makueni County, in Kenya, has emerged as a unique case. Makueni has implemented its own model of participatory budgeting. This model has been numerously cited as an exemplar and a trailblazer promoting public participation in governance.

## Introduction

In 2015, the Government of Makueni County (GoMC) formally introduced Participatory Budgeting (PB) as a mechanism, inviting the citizenry involvement in the formulation and implementation of public budgets. This mechanism employs a deliberative process of decision making on public-resource distribution. PB is a form of practical participatory democratic governance, which seeks to promote key concerns in governance such as social justice through political inclusion of historically marginalized segments of society (Gaventa, 2004; Moynihan, 2007; Mullins, 2007; Wampler, 2007). It also socializes citizens into a vibrant democratic culture – by improving the democratic capacities of citizens as agents in their own governance (Cabannes, 2004; Hilmer, 2010; Wampler, 2007); and administrative efficiency – by encouraging government transparency, which could improve public sector capacities and mitigate corruption (Fung, 2006; Hilmer, 2010; Moynihan, 2007; Santos, 1998; Wampler, 2007). Consequently, PB is cited as improving service delivery and quality of life (Fung, 2006; Leal, 2010; Moynihan, 2007; Wampler, 2007, 2012). PB was invented three decades ago in the Brazilian city of Porto Alegre and has since been widely adopted across the world. Today, PB is touted as a revolutionary complement

to the flailing patrimonialist and clientelist technobureaucracies of the Global South (Fung, 2006; Santos, 1998). It is furthermore seen as a panacea for development management both as a tool and approach promoting popular democracy and good governance (Fung, 2006; Wampler & Hartz-karp, 2012). Makueni has since been lauded as having the most advanced participatory mechanism of all Kenyan counties; involving citizens in development projects design, implementation and monitoring (Muasya, 2016). It is within this context that this article reflects on the journey participatory budgeting, as a form of participatory governance, has taken from Porte Alegre in Brazil to Makueni County in Kenya. This article also looks into the design of the Makueni model for lessons on participatory governance. This analysis draws from a review of literature and primary data.

Participatory practices and PB in particular have, however, produced mixed empirical results across the world over the years (Bland, 2011; Thompson, 2008). Some studies suggest that a contextual blindness to the cultural and socio-political character of different developing societies is a contributing factor to the failure of many of such

experiments (Batliwala, 2010; Contandriopoulos, 2004; Cornwall & Shankland, 2013; Rahnama, 2010). Kenya has not fared any better in this regard having experimented with different participatory models over the years without much-recorded progress in ameliorating social and economic inequalities and underdevelopment (FES, 2012; Lakin, 2013; Mitchell, 2013). Nonetheless, through its relatively new pro-democracy legal framework, Kenya has made ardent effort in granting participatory practices the needed fiat in national and sub-national structures of governance (Gitegi & Iravo, 2016; Lakin, 2013; Mitchell, 2013; RoK, 2010, 2012). At the sub-national level, the County of Makueni makes for a curious case study having initiated its very own PB experiment in response to the said legal framework. Makueni's elaborate experiment attracts the participation of up to 350,000 citizens at different levels in its development management, thereby making it a one of a kind case in Kenya (Muasya, 2016; Musau, 2016).

### The 30-Year Journey: From Porto Alegre to Yaoundé

Having arisen from theories of participatory democracy, PB emphasizes citizens' direct involvement in decision-making in a framework of co-governance – a shift from 'techno-bureaucracies' to 'techno-democracies' (Santos, 1998). Studies suggest that there is a positive causal relationship between better governance and improving developmental outcomes. It has further been suggested that countries with participatory and transparent public budgets have better economic and social rights, and poverty reduction prospects (Fukuda-Parr, Guyer, & Lawson-Remer, 2011; Kaufmann, Kraay, & Zoido-Lobaton, 1999).

Public participation as a democratic movement is attributed to the waning confidence in liberal democratic structures of the 1970s and 1980s (Cornwall, 2007; Rowe & Frewer, 2004) animating and justifying intervention in currently existing worlds with fulsome promises of the possible. Wolfgang Sachs contends, 'development is much more than just a socio-economic endeavor; it is a perception which models reality, a myth which comforts societies, and a fantasy which unleashes passions' (1992:1. In this period, there arose what could be termed as the 'crises of liberal democracy', a perceived growing alienation of citizens from their elected representatives and centres of influence. It was to address this alienation that participatory democracy – a co-governance theory of collective decision making between citizens and

elected officials – emerged as an alternative to mere representative democracy (Aragonès & Sánchez-Pagés, 2009; Nelson Dias, 2014; Santos, 1998). PB consequently emerged as the amalgamation of practices embedded in the progressive theories of participatory democracy (Nelson Dias, 2014).

PB was first initiated as an inclusive governance experiment in 1989 in the Brazilian city of Porto Alegre in the state of Rio Grande do Sul. This was after the progressive Workers' Party won the mayoral seat in Porto Alegre. The Workers' Party ran a grassroots pro-poor campaign that sought to reform the exclusive clientelist governance structures spawned from a long legacy of totalitarian regimes in Brazil (Dutra, 2014; Matovu, 2007; Sintomer, Herzberg, Rocke, & Allegretti, 2014; Wampler, 2007). The Workers' Party promised to expand democratic participation in municipal governance with the goal of prioritizing pro-poor fiscal policies (Oliveira, 2014; Santos, 1998; Wampler, 2007).

In the first two years of the Workers' Party's tenure, the Porto Alegre PB experiment engaged not more than 1000 citizens. These numbers would, however, sharply increase to 8000 by 1992. With the re-election of the party in 1992, citizen faith in PB as a decision-making mechanism was consolidated. Thereafter, citizen participation increased to about 20,000 citizens on a yearly basis. By 1990, PB had been adopted in 12 Brazilian municipalities and proliferated globally thereafter with 300 municipalities around the world having implemented it by 2005 (Wampler, 2007).

PB had made its way through most of the world by the time it was inaugurated in Sub Saharan Africa in the early 2000s. In that decade, about 1269 to 2778 PB programmes had been legally mandated in the Americas, Europe and Asia (Oliveira, 2014; Sintomer et al., 2014). At the turn of the century, some rural communities in Senegal and Mozambique were practicing some experimental variants of PB with the help of some local Non-

PB was first initiated as an inclusive governance experiment in 1989 in the Brazilian city of Porto Alegre in the state of Rio Grande do Sul



*Porto Alegre Municipal Market in Brazil. Positive participatory budgeting has resulted in improved facilities. (Photo Credit: PPS)*

Governmental Organizations (NGOs) (Oliveira, 2014). PB was formally introduced on the continent in 2003 at the third Africities Summit of Africa's municipalities in Yaoundé, Cameroon. A number of local authorities went on to implement PB experiments in over 160 Africa municipalities in the same decade (Oliveira, 2014). With the growing interests and impetus from international institutions such as the World Bank and the United Nations, PB and its various forms has since experienced an ardent thrust into many Sub Saharan Africa countries (Sintomer et al., 2014).

## Participatory Budgeting and Decentralization in Kenya

Taking lessons from the Latin American experience of PB, Bland (2011) underscores political decentralization and local access to resources as determining factors in the success of PB programmes. Analogously, the rise of PB in Kenya is inherently tied to the evolution of decentralized governance in Kenya. By bringing the government closer to its citizens, decentralization policies arguably promote public participation (Gitegi & Iravo, 2016).

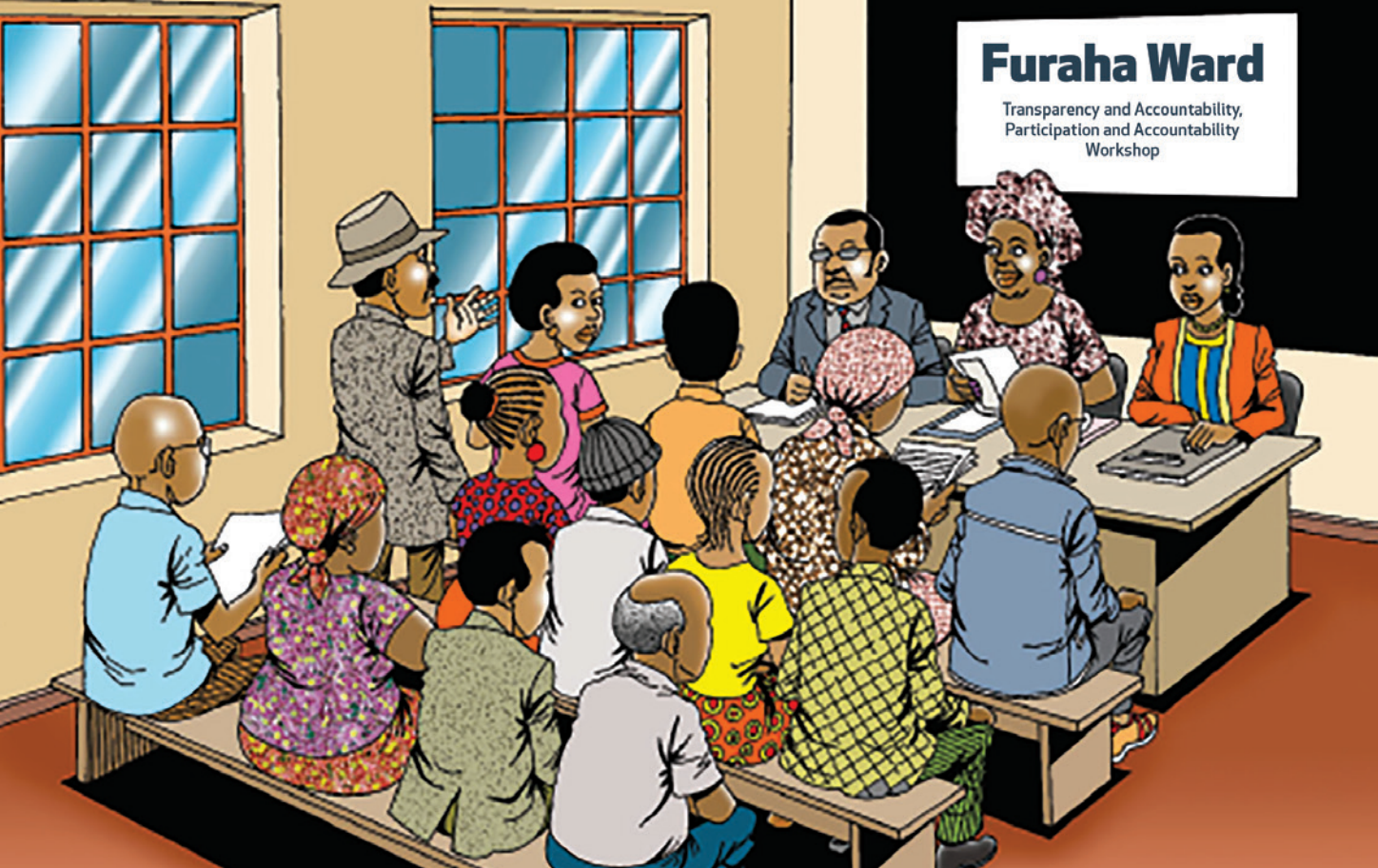
Kenya's earliest efforts in decentralization were through the politically negotiated independence constitution of 1963. This constitution provided for Majimbo, a form of federalism. These provisions were however short-lived following constitutional amendments soon after (Anderson, 2005; Maxon, 2016). Regionalism was revisited in the latter half of the 1960s at the behest of

Kenya's international development partners. The Special Rural Development Programme (SRDP) was introduced in 1967 as an attempt at designing a "horizontally oriented" model of administration and development planning (Barkan & Chege, 1989). Fourteen pilot areas were selected, and six of these areas were engaged for the experiment's first phase. The experiment was a failure on account of its slow implementation resulting from lack of political goodwill. By 1977 the experiment had been phased out in its entirety having failed to achieve the degree of integrated local development and planning that it had envisioned in the grassroots and rural areas (Livingstone, 1976; Rutten, 1990).

Notwithstanding the challenges and failures of the SRDP, the experiment succeeded in bringing attention back to decentralization as an approach to administration and planning for rural development. As a result of the SRDP, District Development Committees were constituted alongside their corresponding civil service bodies. This marked the initial steps in broad participation beyond government in Kenya. These committees would later provide the institutional structures needed for District Focus for Rural Development (DFRD) a decade later (Barkan & Chege, 1989; Rutten, 1990).

The DFRD was unveiled in 1983 as a bottom-up approach to development. The DFRD's major assumption was that development was much more efficient and relevant to the rural communities when state and rural populations shared the policy formulation and implementation space





*Public participation, accountability and transparency as key principles in democratic governance as embedded in the legal framework of Kenya's constitution (Illustration Credit: Creco)*

– in this scenario, the national objectives of the state and grassroots' needs and interests not only intersect but as well align (Barkan & Chege, 1989; Gitegi & Iravo, 2016).

Following a regime change, the Local Authority Service Delivery Action Plan (LASDAP) was unveiled in 2000. LASDAP sought to promote public participation in the design, implementation and monitoring of local services and resources (Gitegi & Iravo, 2016; Mitchell, 2013). Following the promulgation of Kenya's constitution in 2010, public participation in budgeting processes came to formally enjoy legal fiat under the country's new devolved system through county governments (Muriu, Mbai, Lakin, & Flynn, 2014; Wampler & Hartz-karp, 2012).

Public participation, accountability and transparency are key principles of democratic governance embedded in the legal framework of Kenya's constitution. These principles undergird the operative institutional arrangements and processes of government that promote efficiency, equity, inclusivity, and service delivery (Finch & Omolo, 2015).

The Constitution coupled with the PFM Act 2012 requires the creation of public participation mechanism in the County budgeting cycles (Gitegi & Iravo, 2016; Lakin, 2013; Mitchell, 2013; RoK, 2010, 2012). However, contrasted to the now-defunct LASDAP (whose structures and procedures for local budget participation were well articulated), the current legal public participation

requirements are characteristically unclear (Lakin, 2013). Efforts are, however, underway to have a comprehensive national public participation policy. On February 15, 2017, the Senate House had a first reading of The Public Participation Bill 2016. The bill provides guidelines for public participation for all public bodies and governance processes. These guidelines broadly address matters of inclusive decision-making, and further, give criteria for determining reasonable and meaningful opportunities for public participation. The criteria highlight the following considerations: nature of legislation or decision to be made; importance of the legislation or decision; and the intensity of the impact of the legislation or decision on the public. Before any public engagement is conducted, the bill suggests that some factors such as the purpose of the public participation; level of public participation required; and urgency of the matter, should also be considered. Unfortunately, the bill does not articulate the mentioned considerations and factors any further (KAM, n.d.; RoK, 2018). The bill has also been criticized for adopting a broad "cookie cutter approach," and a narrow vision of citizen engagement, "participation as an event, with a venue" (Ghai, 2017). Civil Society has also called upon Senate to collaborate in this process with the Department of Justice, under the Office of the Attorney General, who too are working on a national public participation policy (TISA, 2018).

## Participatory Budgeting in Makueni County

Makueni instituted its own public participation frameworks and mechanisms shortly after its inaugural county government took office in 2013. The county government is said to have made deliberate provisions for the public, Civil Society Organizations (CSOs) and other stakeholders to participate in decision-making for development planning and management. According to literature, Makueni County's PB is designed as a six-levelled process, which attracts the participation of up to 350,000 citizens at the village, ward, sub-county and county levels (Muasya, 2016; Musau, 2016). Additionally Makueni through the County Executive Committee's (CEC) office of Public Participation Coordinator (PPC) runs County civic education exercises aimed at promoting citizens capacities in effective public participation (Oduor, Wanjiru, & Kisamwa, 2015). Makueni is today hailed as a trailblazer in public participation in Kenya. Public participation structures in development management in Makueni County are reported to be the most advanced of any county, involving citizen in project design, implementation and monitoring (Muasya, 2016).

A literature review of Makueni County's PB mechanisms suggests that Makueni shares several salient features with the early Porto Alegre experiment, these being: an executive-initiated citizen mobilization process; collaborative relationship between government and civil society actors; an arguably politically insulated participatory mechanism; and access to resources (Cabannes, 2004; Goldfrank, 2007; Muasya, 2016; Mullins, 2007; Musau, 2016; Wampler, 2007).

The Government of Makueni County (GoMC) defines public participation as "a structured way of consulting with persons, groups and entities before decisions are made." Through the mantra "O kila nyumba kalila," which loosely

means equity and fair distribution of resources to all citizens, the GoMC has championed for participatory approaches in development planning and management (GoMC 2016a). The Makueni County PB framework comprises a six-level process of public participation: Village people's forum, Cluster people's forum, Sub Ward people's forum, Ward people's forum, Sub County people's forum, and the County people's forum. Citizens at each level of participation nominate 11 of their own to a Development Committee (DC). A DC is tasked with the duty of representing the interests of its nominating people's forum at the subsequent level of participation. At the first four-levels, the DC negotiates and deliberates with other DCs on how resources are to be invested across the Ward. The Ward, as a unit of administration, is the primary focus of all PB efforts. PB in Makueni is in this sense a mechanism for redistributing resources earmarked for the Ward's development. In the subsequent two levels, Sub County and County, the DCs merely represent their nominating DCs in the verification and validation of their proposals as identified through the PB process in all 30 Wards of Makueni. The participatory forums at whatever level are open to all who wish to attend, but the nominated 11 DC members bear the responsibility of representing their fellow citizens in decision-making in these public forums.

Figure 1: Participatory Budgeting: Makueni's Participatory Model



Source: Adapted from the World Bank's Kenya Accountable Devolution Program, 2017

Actual PB is conducted at the first four tiers of the process, which make up public participation at the Ward level. The purpose of the last two tiers of the process is to respectively verify and validate citizen inputs as registered at the Ward processes. The County Budget and Economic

Forum (CBEF) is convened at the County level of public participation. The CBEF is a validation forum that invites the inputs of different stakeholders in the designing and implementing of the County's plans. At this point, the outcomes of all PB processes in all of Makueni's 30 Wards are aggregated and presented as part of the County budget. All county stakeholders, which includes a citizen DC representing all the Wards in Makueni, discuss all county plans and budgets at the CBEF.

Through the Ministry of Devolution and Public Service (MoDPS), in the document "*Public Participation Matrix*" the GoMC articulates the fashion in which citizens are to be engaged in public policy processes. According to this document public participation in Makueni, which includes PB, is designed to achieve two main objectives in the County: to include marginalized constituencies in decision-making, and yet still, to cement and consolidate the power and authority of the government. In other words, a mix of developmental (relating to the agency of individuals and communities) and instrumental (relating to managerial efficiency and political legitimacy) ends, as described by Burton (2009) and Richardson (1983). In addition, the GoMC, interestingly, describes Makueni's participatory mechanism as a non-partisan and non-political process. This is in contrast to both actual experiences in Makueni County and the corpus of literature in this topic, which suggest that public participation is essentially citizen engagement in political processes.

The Public Participation Matrix document considerably borrows from the parlance of Arnstein's work on public participation. A closer examination, however, reveals a clumsy and superficial employment of Arnstein's ideas in conceptualizing Makueni's participatory framework. In this document, the GoMC admittedly accommodates different Arnsteinian 'rungs' or models of public participation within their one participatory model. This would thus inadvertently suggest that the GoMC conducts a wide array of citizen engagements that ironically both promote and undermine citizens' voice in decision-making:

"The government is committed to the promotion of *consultation, placation, partnership* and *citizen control* models of participation."

An officer at the Directorate of Public Participation (DPP), however, suggests that Makueni's participatory framework, for the most part, draws from the ideas of Chamber's Rapid Rural Appraisal (1983), than from Arnstein's Participation Ladder (1969). It is at this point that this article notes that the Makueni's public participation framework departs from the progressive theoretical traditions of PB. These traditions are keen on achieving citizen power self-governance and direct involvement as an end in itself. In responding to this deviation, the officer from DPP suggested that the primary focus of Makueni's model is rural development. This officer said:

The shortcoming of the Sherry Arnstein's model is that it does not look at the whole paradigm of development. But when you combine Chambers and Arnstein, you then have a winning formula. In rationalizing public participation we have chosen to focus on poverty alleviation at the village level, rural development at the Ward level – this primarily deals with social amenities, and urban development at the Sub County and County levels.

Remarkably, in her criticism of 'ladder-typologies' in evaluating participatory engagements, Cornwall (2008) warns that different forms and qualities of participation can be found in any one participatory project. In her estimation, the degree to which power relations are transformed in favour of the citizen, as opposed to instances where power is delegated to citizens, is a better indicator of the 'genuineness' of public participation. Cornwall (2008), therefore, suggests that the context – what people are participating in – should be the focus of any evaluation of participation. In this sense, Makueni could very well achieve 'development' while involving the public, but not accomplish much in the way of redistributing power to its citizens. Going by the design of this framework, one is, therefore, forced to question whether Makueni's PB's aim is to vest just enough power to give the impression that citizens are

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In rationalizing public participation we have chosen to focus on poverty alleviation at the village level, rural development at the Ward level – this primarily deals with social amenities, and urban development at the Sub County and County levels





*Makueni County public participation forum in 2016. The County developed a framework to facilitate budget deliberations below the Ward level to include more citizens. (Photo Credit: Participedia)*

in full control of the process, but perhaps not enough to allow citizens to independently set the agenda of the PB process. Cornwall (2008) anecdotally likens this sort of participation as “choosing the color of paint for a clinic’s waiting room in the name of ‘patient involvement’ – in the absence of any involvement in decisions on what the clinic actually does...” Findings suggest that GoMC employs a top-down approach in implementing PB. Government technocrats and officers are cynical of citizen’s influence over policy processes and decision-making through PB. Citizens are thought of as inexperienced and lacking the needed competencies for public administration. These public officers are concerned that the “poor and uneducated” public could wield too much power in the governance, planning and management of development. It is believed that without “capacity building” and “guiding”, citizens are predisposed to making imprudent decisions.

## Conclusion

PB comes from the theoretical tradition which lays emphasis on citizens’ direct involvement in decision-making in a framework of co-governance – where political power is shared in the public sphere; this is contrasted to mere representative/liberal democracy. This tradition at best subverts top-down approaches in governance and the very least confounds simple bottom-up approaches. A fair examination of Makueni’s PB appreciates that Makueni

is nested in several socio-political contexts. In the context of Kenya’s political space, Makueni County is leaps and bounds ahead of its counterparts as far democratization of governance is concerned. Makueni’s PB has provided a systematized registry of citizens’ opinions in the budgeting process. The institutionalization of PB has democratised budget making, allowing Makueni citizens, to some degree, influence spending at the Ward level in line with their priorities. This sets a very good precedence for other County governments in the Country.

An examination of Makueni’s PB framework, however, suggests that the GoMC did not pay theoretical and empirical due diligence as it was designing its PB model. There is naiveté in the logic of the framework that ignores long existing traditions in participatory democratic practices whereof PB is one of such. The impression one gets from examining Makueni PB is that by happenstance, mere citizen participation in public life has evolved to produce PB. There is need for clarity on the overall objective of PB for especially government officials from the different government department who are responsible for the implementation of PB. Also, when evaluating Makueni’s PB against the democratic traditions of early PB models across the world (especially in Latin America), Makueni is found to promoting co-governance at a very basic level. Judging from the design of its model, Makueni’s PB is primarily employed in such a way as to enhance the government’s managerial efficiency and

political legitimacy in grassroots development financing. Going forward, the GoMC might need to evaluate the value of PB in development management by coming up

with a clear balance between its managerial and political needs and citizen empowerment.

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## Editor's Note

Dear our esteemed readers,

We are excited to release our sixth bi-monthly issue of the *HORN Bulletin* 2019 (Vol. II, Iss. II). We bring to you well-researched articles and analysis of topical issues and developments affecting the Horn of Africa. We welcome contributions from readers who wish to have their articles included in the *HORN Bulletin*. At *HORN*, we believe ideas are the currency of progress. Feel free to contact the Editor for more details at [info@horninstitute.org](mailto:info@horninstitute.org).

Hassan Khannenje, Ph.D.  
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# Upcoming Activity

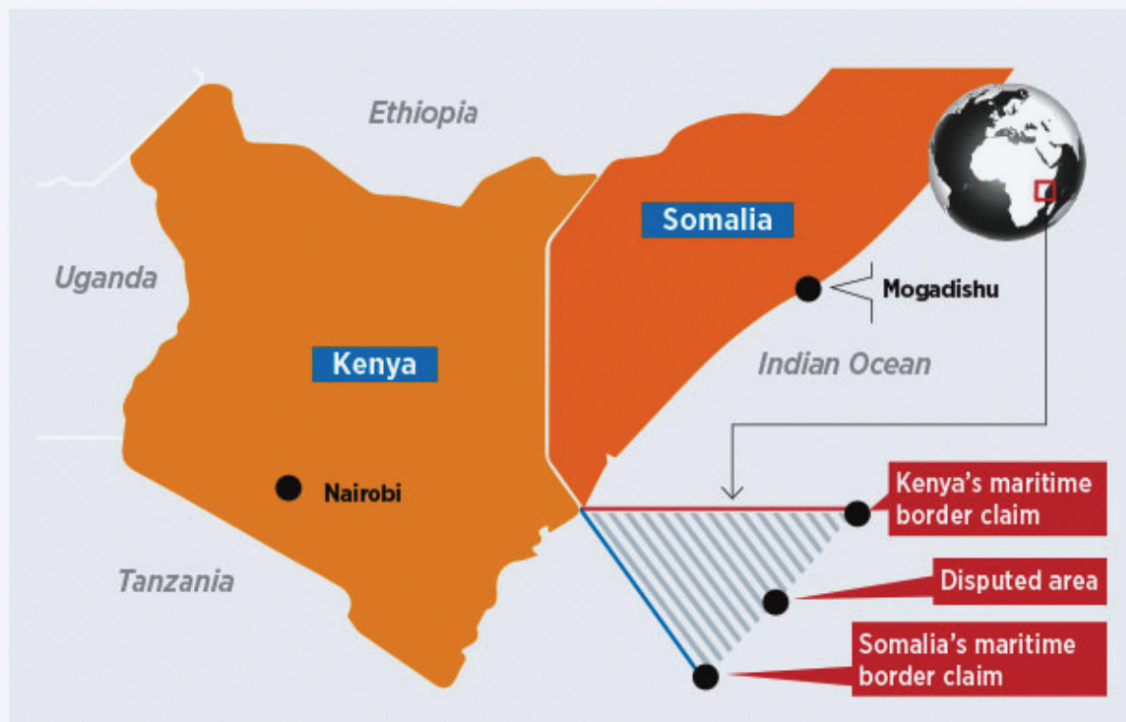
## Consultative Forum

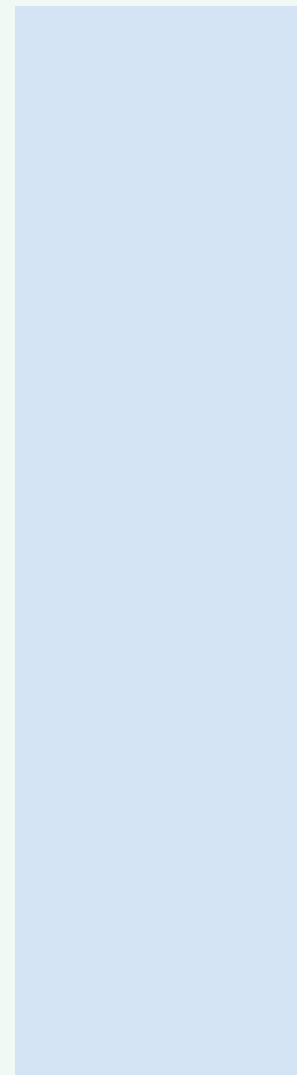
The contested claim of both Kenya and Somalia over a maritime area in the Indian Ocean resurfaced in February 2019. Following claims that Somalia had presented Kenya's maritime territory as its own and is planning to auction blocks of oil and gas to potential investors.

This development highlights the need to interrogate the Kenya-Somalia maritime dispute, and for a solution to this decades-old issue. The HORN Institute has organized a series of roundtable discussions that will take

place in March and April 2019. The first of these, a Consultative Forum, will be held on March 14, 2019, at the Institute. This will be followed by a Roundtable Discussion that will be held on March 21, 2019, at the same venue. The Extended Roundtable Discussion will be held on April 4, 2019 (the venue will be confirmed).

For more information, please contact the Institute at: [info@horninstitute.org](mailto:info@horninstitute.org) and include 'Roundtable Discussions' in the Subject of the email.





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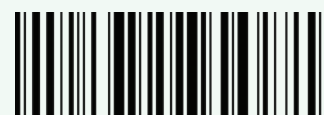
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