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The Razor's Edge:
Bad Fences, Good Neighbors, and Managing Maritime Conflicts in Africa

By Prof. Makumi Mwagiru, Ph.D.

Abstract

The theme of this article is the core issue of proper management methods of maritime conflicts in Africa. Given the African re-discovery of the maritime domain, that is now underway, many complex political and foreign policy issues come to contend. The article argues that proper identity of these maritime issues is conflicts and not disputes; and that the legal mechanisms, because of their world view of dispute settlement couched in "rights" are not the proper venues for resolving maritime conflicts, whose world view is couched in "values". These maritime conflicts will increasingly leave parties "standing at the frontiers of a razor's edge, on which hang suspended issues of war and peace." The article concludes that since these maritime conflicts raise serious foreign policy, security and survival issues, the best venue for their management is through political processes contained in the tools and instruments of diplomacy.

Introduction

The territories of the modern African state had an inauspicious beginning. They were imagined by European 19th Century powers at Berlin in 1884-5. The Berlin Conference, under whose auspices the borders were imagined, did three things that the Europeans thought important. They responded to the emerging balances of power in European international relations. They brought into Africa the outlines of the Westphalian state system. And in so doing, they

A masked pirate stands near a Taiwanese fishing vessel that washed ashore in Hobyo, Somalia in 2012 after the pirates were paid a ransom and released the crew. (Photo Credit: AP)

partitioned Africa into many new entities. The first was a diplomatic engagement in which European statesmen thought themselves peerless. The second was a response to new readings of the international relations system based on the ideas borrowed from Charles Darwin and Herbert Spencer. And the third, was an effort to reproduce themselves in order to survive in that system.

The 1884-5 African borders were shifted from time to time to reflect changing balances of European international relations. They shifted after the First World War and after the Second World War (or what has otherwise been called the European civil wars). These shifted territorial borders were inherited by African states at independence. The new African states inherited the problems associated with these borders. They inherited partitioned citizens. These were dispersed and partitioned by the territorial borders that had not taken cognizance of geographical, cultural or any other features. They certainly did not take into account the seas and oceans. They inherited political and social problems of a human yearning to be together with kith and kin. And they inherited the geo-political problems and constant threats of the domino of secession of these kith and kin.

These realities portended many problems for the new African states. Many of these problems are still being grappled with. They have created a growth industry in the west of a political science of Africa, of a continent full of conflicts and disorder. They, in particular, affected African diplomacy. They also complicated African border diplomacy. They ensured the real possibility of border conflicts among and between the new African states. And they further complicated this border diplomacy because it exists at two fronts – on land territorial borders, as well as maritime territorial borders.

African institutions, especially the Organization of African Unity (OAU) addressed these problems of border diplomacy and its resulting effects through its Cairo Resolution of 1964. That resolution stated that the new states should respect the colonial borders they inherited at independence. However, even though that resolution has been largely successful, it has never really been able to come to terms with the continued problem of divided ethnic communities. The African Union (AU) has taken over managing this problem and has created the AU Border Programme. By this, African states are expected to delineate and demarcate their territorial borders. The Program encompasses both land and maritime borders. If not watched carefully, it is a brewing ground for territorial conflicts in the continent. How these conflicts, especially the maritime ones, may best be managed is the theme of this article.

A Framework for Analysis

The centre-piece of the framework for analysis of this article is that the *law settles disputes*. It does *not resolve*

conflicts. It is unable to do so because of its whole world view, and the structures of dispute settlement that it has created. Territorial contestations are indeed not disputes, they are conflicts that are manifested at different stages in the life cycle of conflict. This is the case with maritime conflicts. Increasingly, these will leave the parties concerned, in Lord Curzon's words, "standing at the frontiers of a razors edge, on which hang suspended issues of war and peace."

African states seem only now to be awakening to their maritime domains and their maritime security. It is true that there have been low-level conflicts (unfortunately also known as disputes) about maritime territory and the sharing of maritime borders since independence. But these have been precisely that: conflicts at the low, dispute level. Contemporary knowledge and science have, however, complicated the issue because now, the maritime domain has been discovered to be rich in wealth and natural resources. This element will increasingly escalate the low level conflicts to high level and complex conflicts.

The emerging maritime conflicts have become a function of three complicating issues: territory, resources, and third parties. This function of territory, resources and the involvement of third parties have begun to transform erstwhile low level conflicts (disputes) into the venue of conflicts – and of peace and war. The international law system of managing maritime disputes has been established for a long time. Its international customary law domain has developed for over three centuries (Rhee, 1982). The treaty domain has developed since the Geneva Conventions of 1958, and comprehensively with the UN Convention on the Law of the Sea (1982). But they are good for disputes; they cannot deal properly with conflicts where sovereign territory is involved.

An interesting suggestion has been made about why maritime conflicts are going to take over from the disputes. So far, 'land-wardness' has been privileged over the maritime environment because "the presence of an landward culture within the African states outlook [is] reinforced by a perception of maritime threats not endangering regime security" (Vreÿ, 2013, p.1). Put in a strategic perspective, "maritime strategy ideally ties operations at sea to events on land as the former rarely makes sense if its' relationship with or impact on land is ignored" (Vreÿ, 2013, p.1).

This strategic connection between the maritime and land environment is a major component accounting for the increasing re-discovery of maritime territory and security. And so is the engagement of foreign entities in the processes of this re-discovery. This – and the associated resource dimension - has introduced serious issues of territorial sovereignty. The association of maritime security with land security has added another mixture that in essence has transformed – and is transforming – erstwhile disputes into conflicts. The maritime *conflict* between Kenya and Somalia is the exemplar of things to come in conflicts regarding the maritime domain in the continent.

These conflicts are not susceptible to management through the domain of law. International law – especially the Charter of the United Nations – realize the truth of this proposition, by suggesting the diplomatic approaches contained in Article 30. But that whole framework still requires an eventual return to legal prescriptions. International law's understanding of diplomatic mechanisms like negotiation and mediation still sees them as part of the legal procedural process. These diplomatic processes are the only means by which maritime conflicts will ever be resolved, provided they are not interfered with by the legal procedures whose world view does not reflect that of diplomatic processes and mechanisms. It has been well said that:

instead of spending years and expending scarce resources in seeking direct delimitation or rushing to the ICJ or ITLOS – which processes may be tedious, costly and time consuming and even further strain relations between states and exacerbate conflicts – African countries should…voluntarily [seek] negotiated joint development agreements. UNCLOS provisions and whatever may be the outcome in the ICJ definitely would not take the place of peaceful settlement, negotiation and agreement (Okonkwo, 2017, p. 55).

Territorial contestations are indeed not disputes, they are conflicts that are manifested at different stages in the life cycle of conflict.

Sovereignty, Disputes, and Territory in Africa

There have over time been a number of border disputes in Africa. These have happened in all parts of the continent. But this list is only indicative. There are currently about 800,000 kms of borders in Africa, but only about 30% of these have been demarcated. The disputes/conflicts that have happened or may happen belong to the remaining 70%. This suggests the extent of the problems faced for border diplomacy in the continent (Okonkwo, 2017). A not very comprehensive indication of these, which include both land and maritime ones include:

West African Boundaries and Border Disputes

- Cameroon v Nigeria [2002 ICJ 303]: land & maritime dispute
- Ghana v Cote d'Ivoire [case No. 23, ITLOS, 2014]: land & maritime dispute
- Gabon v Equatorial Guinea: over a small group of islands that potentially have oil rich offshore waters: [agreed on a UN mediator]
- Burkina Faso v Niger: frontier dispute [52 ILM 1215 92013]
- Benin v Niger; frontier dispute

East Africa Boundaries and Border Disputes

- South Sudan v Kenya: over Elemi Triangle
- Kenya v Sudan: over Nadapal Boundary [a border point that is vital for trade between Kenya & South Sudan]
- Kenya v Uganda: over Migingo Island [claimed by Uganda in 2008 until May 2009 when Museveni conceded the island is Kenya's; but argued Kenyan fishermen were illegally fishing in Uganda waters which lies 500 metres to west of Migingo]
- Ethiopia v Eritrea: territorial dispute over Badme [resolved 2019]
- Djibouti v Eritrea Border Dispute, 2008
- Sudan v South Sudan: border disputes [agreement on borders & natural resources reached on September 26, 2012 where security & oil deals were reached
- Tanzania v Malawi: over Lake Malawi (aka lake Nyasa: an African great lake located between Malawi, Mozambique & Tanzania].
- Kenya v Somalia – maritime border conflict

Southern Africa Boundaries & Border Disputes

- DRC v Angola: over maritime boundary
- Namibia v South Africa: over the Orange Delta [one of the oldest boundary disputes in the world – 120 years.
- Botswana v Namibia: over Namibia's exploitation of Okavango River
- Namibia, Zimbabwe & Zambia borders: unresolved boundary disputes

Central Africa Boundaries & Border Disputes

- Republic of Congo v DRC: on location of the boundary in the broad River Congo
- Uganda v DRC: over the Rukanzi island in Lake Albert [there is hydrocarbon potential]
- Uganda v DRC : over other areas on the Semliki River [there is hydrocarbon potential]

North Africa Boundaries & Border Disputes

- Moroccan claims over Spanish territories of Ceuta & Melila

West Africa and East and Central Africa appear to have a preponderance of these disputes. A good number of them are about land territorial disputes. This reflects the landward culture that has been predominant in the

> The Djibouti/Eritrea dispute is an important milestone because it highlighted the structural differences in methodology and technique between judicial and diplomatic processes

Foreign Affairs Ministers, Amb. Monica Juma, Kenya (L) and Amb. Ahmad Issa, Somalia (R) in April 2019 in Nairobi when they held talks to normalize diplomatic relations (Photo Credit: Somaliland)

continent so far. Some of the disputes are, and have been, about rivers and lakes in the continent. Many of these disputes have been protracted. Except for some like Ethiopia/Eritrea that led to war between them, they have not exacerbated into armed conflict. A useful lesson about the way forward in the management of land border disputes was demonstrated in the Djibouti/Eritrea border dispute. The dispute was resolved through negotiation; in particular, the mediation of the government of Qatar. That mediation took two years to resolve – a short time for this kind of dispute. Nevertheless, it was a much faster method than judicial processes. In the Djibouti/Eritrea dispute, there were two key elements surrounding it, as well as its resolution. First, there was the actual border dispute. And second, the methods and range of the negotiation/mediation process. In the dispute, Djibouti preferred international and/or regional mediation, while Eritrea preferred to "open up the process by bringing in broader issues of its dispute with Ethiopia" (Frank, 2015, p. 1).

The Djibouti/Eritrea dispute is an important milestone because it highlighted the structural differences in methodology and technique between judicial and diplomatic processes. The theories that were arrived at to explain the positive outcome of the process were derived from mediation theory and practice, and particularly the notion of ripe moments for mediation. In creating the ripe moment that allowed the process to eventually take off, international institutions like the United Nations came in handy. They helped generate the hurting stalemate that is a prerequisite to encourage parties to negotiate rather than continue with an expensive dispute/ conflict process. It also suggests that there is much room for individual state mediators in similar disputes/conflicts. Indeed, it contains useful lessons for the management of the maritime conflicts that look set to become the main feature of territorial disputes in Africa.

Contemporary Maritime Security in Africa

The picture that emerges in considering maritime security in Africa – and the conflicts it may incubate – is not very enchanting. The statistics paint a very gloomy frame. Africa has 38 coastal countries, and 16 are landlocked. Internationally, there are 400 potential and actual boundaries, of which 180 were settled between 1993 and 2005 (Anderson, 2006). On the African coastal states, there has been weakness in managing threats posed by non-state actors, mostly pirates. There has been, as a result, an "enormous militarization of African waters by foreign naval forces, western and non-western" (Rao, 2014). This militarization of the waterways means that the philosophy of maritime security, that has become entrenched, is a military one. It also means that what should essentially be political – and foreign policy – issues have accordingly become militarized. This clearly removes these maritime security issues from the realm of the competence of judicial tribunals and mechanisms. Being political and

foreign policy issues, they require different management approaches, particularly – and indeed only – diplomatic.

Piracy is one of the realities that transforms maritime domain issues into conflicts rather than disputes. The strategic map of the actors involved or engaged in various issues points to this conflict dimension. There are coastal states themselves; the neighboring states with whom there may be contestations (that is, conflicts) about control of the maritime domain; their populations who make a living from the marine domain; state enterprises and infrastructure engaged in various aspects of the management of the domain (however weak the structures are); the pirates who are a primary actor; and the foreign states, and their naval forces which are engaged in protecting commercial and other national maritime interests. And all these have allies, friends and supporters who have developed interests as actors in the unfolding maritime conflict system.

The dynamics of piracy – as conflicts – is very complex indeed. It has accounted for trade loss amounting to $250 billion. And given that 90% of Africa's imports and exports are conducted by sea, it is clear to see the matrix of losses that African states have suffered, among the other actors. At the same time, it is estimated that $100 billion worth of oil has gone missing since 1960, while transatlantic drug trade has grown and thrived. Indeed, Africa has emerged as a hub for contraband smuggling. All these issues "threaten the existence of governments and state economies" (Okonkwo, 2017, p. 67).

The second issue that transforms the maritime domain into a conflict zone is the contestations between and among coastal states about control and areas of sovereignty over some of the maritime domains. These are what has wrongly been characterized as disputes. But they are essentially conflicts. And with the increasing awareness of the importance of maritime security, and the economic and resource possibilities of the maritime domains these conflicts will escalate. This escalation will transform them into inter-state peace and war zones, where the escalation from one to the other has all the potentialities of being dramatic.

There are clear consequences for seeing the zone of interaction in maritime domains as conflicts rather than disputes. Africa is only just beginning to discover the full extent of its maritime domain and territory. This pushes it back to the time warp of the *ancient* debates about the free seas and the closed seas that, in earlier times, were personified by the jurisprudential – and political – exchanges between Grotius and John Selden. It can be argued that the zoning of the seas settled this debate, and probably has. But then there are still contestations about ownership of these zones. These conflicts are about sovereignty. And sovereignty is not just a physical issue; it encompasses, within its domain, serious national, identity and psychological dimensions. It also brings into play serious issues of diplomacy and foreign policy. These again cannot be managed within the realm of the law.

But there is a larger dimension in these issues about maritime security and the dimensions of sovereignty that it encompasses. The relationship between Africa, its territory and outsiders is the same as that exposed with respect to its land territory and sovereignty in the 19th century. And the techniques used at Berlin are very much the same as are in use now. They have merely been revised to take into account the exigencies of the 21st century. As contestations on land territory continue unabated, Africa's maritime territory will keep going further and further away from African control and ownership. This is the character of the maritime conflicts that are now getting underway. And the proper venue for the management of these is evidently not legal.

Methodologies for the Delimitation of Maritime Boundaries

The methodologies for the delimitation of maritime boundaries are provided for in international law. The main source of these is the UN Convention on the Law of the Sea (UNCLOS); and also customary international law. There are four mechanisms that states may resort to. First, there are international judicial institutions. These mechanisms are compulsory where negotiations have been attempted but fail to deliver acceptable outcomes. In these mechanisms, states may resort to any of four (not counting negotiations) mechanisms: submit disputes to the International Tribunal for the Law of the Sea; submit disputes to the International Court of Justice; appoint an arbitral tribunal constituted under annex VII of UNCLOS; or appoint a special tribunal in accordance with annex VIII of UNCLOS.

... it is estimated that $100 billion worth of oil has gone missing since 1960, while transatlantic drug trade has grown and thrived

Second, states may resort to negotiations and other diplomatic measures. This approach is flexible because the states may define the diplomatic methodologies that they find most suitable. This is clearly the preferable approach, especially once the maritime contestations are identified as conflicts rather than disputes. It is a useful approach because:

> "…peaceful settlements and negotiations of maritime boundary disputes are much more likely to thrive in democratic settings than in non-democratic ones. This is true because democratic settings no matter how bad it might be, appears more acceptable and could easily make bilateral settlements of disputes more probable" (Okonkwo, 2017, p. 62).

There is some linguistic confusion in the terminology used in this statement. All the mechanisms and methods that are not 'war' are methods of peaceful management. Warlike methods also include threats of war (including threats of the use of force). The difference between peaceful management methods is that some, like judicial ones (and arbitration), are essentially coercive methods. Other methods like negotiation and mediation and others in that family are non-coercive methods. Coercive methods, while peaceful, are settlement methods. Disputes can only be settled, not resolved. Non-coercive methods are the exemplar of peaceful mechanisms. They are resolution methods. Conflicts are susceptible to resolution. When a dispute is settled, its implementation is coerced and coercive. When conflicts are resolved, their implementation is non-coercive.

There have been sustained efforts to promote the efficacy of dispute settlement methods for all disputes including maritime conflicts. Lawyers have argued for the courts as the proper venues because disputes are about interests; and interests are susceptible to the world view of judicial methodologies. This is precisely the core of the epistemological departure of this paper. Disputes are about interests, and these can be bargained about in judicial and similar processes, and settled. Conflicts are about values – like territory, nationhood and sovereignty. These cannot be subject to bargain. Settling them will still leave the parties standing at the frontiers of a razor's edge. They require resolution, not settlement. They require resolution processes like negotiation that are engrained within the diplomatic framework. Negotiation processes within that framework are vastly different from those contained in judicial processes. In the latter, the outcome of "negotiations" is encrusted in coercion, while in the former, they are non-coercive.

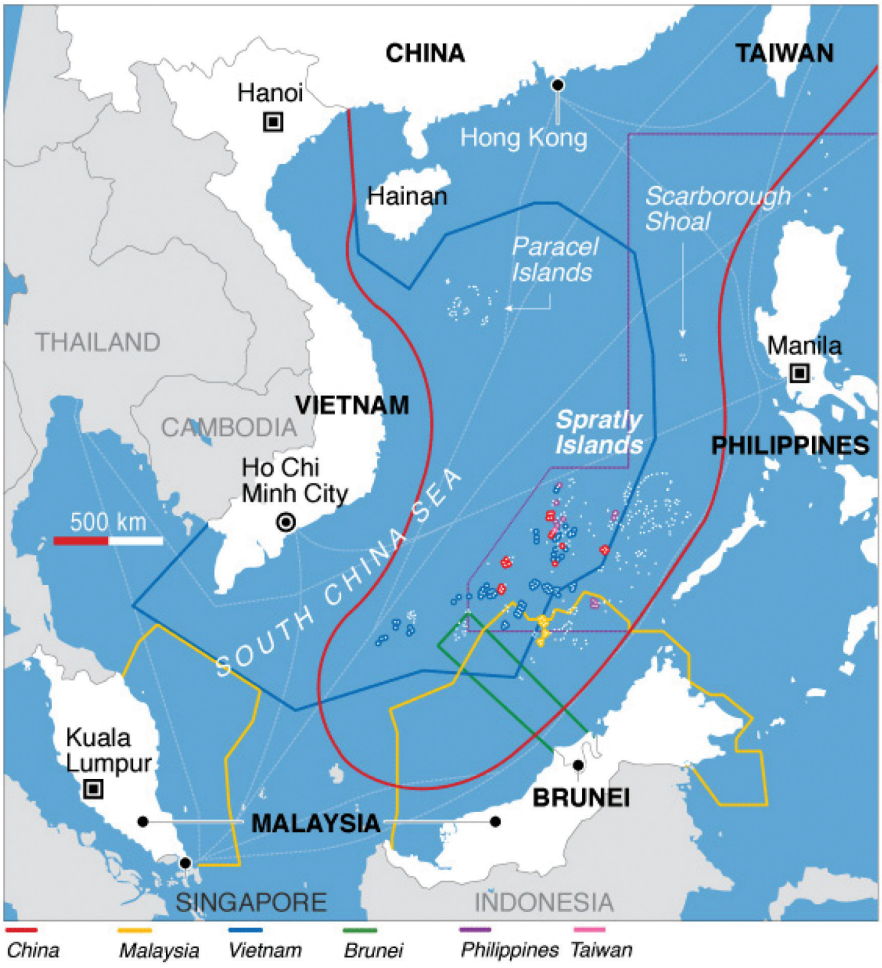
> The relationship between Africa, its territory and outsiders is the same as that exposed with respect to its land territory and sovereignty in the 19th century

Third, states may use their domestic legislation. However, it is required that the domestic legislation must conform to the provisions of the law of the Sea. Territorial domains, whether land or maritime, are usually specified in national constitutions. The problem is that the jurisdiction of national constitutions is restricted to the territory of the individual state. Hence, provisions in one state's national constitution do not bind another state. Besides, the constitutional provisions of one state may conflict with those of one another. In such cases, there would ensue protracted, deep-seated and essentially unresolvable conflicts of constitutional provisions. Being unilateral mechanisms, national constitutions are not the best way to manage any disputes, and certainly not maritime conflicts.

Lastly, states may use the processes of other judicial mechanisms – like regional courts – provided that they have jurisdiction over maritime territorial matters. As Okonkwo (2017) observes about these mechanisms:

> "resolution of disputes on delimitation of maritime boundaries on the continent has followed the UNCLOS provisions and the international Court of Justice decisions. Despite this, the physical demarcation of most African maritime boundaries is nothing to cheer home about. The process is still poor despite the legal regime of the UNCLOS and established international rules and principles governing maritime boundaries delimitation" (p. 60).

Precisely, despite the underlying conceptual infelicities of the proposition. The conceptual point is not that the physical demarcation of most African boundaries is "nothing to cheer home about" because Africans do not know about the UNCLOS regime; many have in any case ratified the UNCLOS. The conceptual point is that even with an understanding of this regime, African states have preferred not to resort to it to manage their maritime territorial boundaries. And they have not done so because of the values associated with territory of any kind. Once



A map showing the territorial claim between China and the Philippines over remote islets in the South China Sea. China did not abide by the judgment of the tribunal (Photo Credit: VOA).

this proposition is opened up in this way, it is clear that the case for non-judicial, non-coercive, value-respecting mechanisms could not be stated better.

Principles of Management of African Borders

The causes of maritime conflicts in Africa are many. Some of these, like incursions by adjacent states and overlapping entitlements in the sea zones (e.g. territorial sea, exclusive economic zones and the continental shelf), are based on zones now specified by the UNCLOS. Other causes have a more diverse heritage. These include the existence of natural resources in the maritime domain, and hence competition for their ownership and control, contested sovereignty over these and over the various zones. But there are also some more politically, geo-strategically, and foreign policy encrusted causes. These include the strategy of creating buffer zones at sea during times of conflict, the strategic desire to become regional hegemons, control of maritime areas that are resource rich, and ultimately territorial desires, compounded by the nationalistic – and jingoist – pride of sovereignty.

The OAU, and later the AU, have over time devised certain principles to be used in the management of African borders. Some of these, especially those specified by the OAU clearly had land borders in mind because in the early years of the independent continent, these were the most manifest problems and areas of contestation and conflict. Those specified by the AU – which include the OAU ones - were also informed by the rising maritime domain consciousness that had begun to germinate in the continent.

These principles are the 1964 Cairo Resolution about respect for borders inherited at independence, which is the mother of all African principles of the management of African conflicts over borders. Allied to this – because in the course of life some countries may fail to recognize the colonial borders – is the principle of negotiated border disputes (Organization of African Unity, 1986). Simply this means that in cases of conflicts about borders, states should choose negotiation rather than war. The AU also requires African states to delimit and demarcate their boundaries where this has not happened (Bamidele, 2016). This is part of the AU Border Programme. It required the delimitation and demarcation of borders to be completed by 2007. But this was ambitious, and it also did not seem to have taken into account the problems that would be associated with this process, not least the economic problem. Besides, there is still a point of view, not often stated, that although this is to be undertaken, guided by the Cairo Resolution, the whole programme is better left unimplemented. Hence, if African states do not live and let live, inspired by the Cairo Resolution, then more conflicts and secessions than the one the resolution tried to stem could follow (Mwagiru, 2019). Finally, the AU has enshrined the principle of encouraging the structural prevention of conflicts concerning the establishment of boundaries, including the outer

limits of the extended continental shelves of member states. This is intriguing, but timely. However, only the Common Market for Eastern and Southern Africa (COMESA) has a conflict early warning and response mechanism – COMWARN - addressing early warning signs of structural conflicts (Makumi, 2014).

Resolution of Maritime Border Conflicts in Africa

The Guinea/Gabon border case was resolved through mediation by the United Nations. The Cameroon/Nigeria land and maritime case was settled through an ICJ judgment. In the Burkina Faso/Niger case the ICJ gave judgment that both parties were happy with. This decision has been claimed to "demonstrate the importance of the ICJ in resolving disputes in Africa and may result in an increase in referrals of such disputes to the court in future" (Okonkwo, 2017, p.65). This may be true for disputes, but certainly not true for conflicts. It may also be true about land border conflicts and conflicts – like the Ethiopia-Eritrean one – where some inconsequential land space is involved. In that conflict, however, the declared *cassus belli* was not the intended one. In any case, it needs emphasis that in that case, while the arbitration tribunal settled the matter in accordance with its own world view, it was only through the foreign policy/diplomatic avenue that the conflict was eventually resolved. In other words, conflict diplomacy and its processes stepped in where the tribunal feared to (and could not) tread.

In the Guinea Bissau/Senegal case, both parties attempted to manage the conflict through arbitration and the ICJ. But they eventually agreed on a process that they considered more amicable. They agreed to negotiate, and in October 14, 1998, they concluded a "Management and Cooperation Agreement" that provided a framework for cooperation and for joint development and exploration and management of petroleum and fishing activities (Okafor-Yarwood, 2015). The Djibouti/Eritrea maritime boundary was resolve through mediation by Qatar.

It has been noted that the maritime domain will have the effect of "deepening boundary uncertainties [and will have] the potential of inhibiting maritime security cooperation and causing regional instability in the continent" (Ali & Tsamenyi, 2013). Besides this, the implementation of UNCLOS is untimely because of the "complacency [sic!] of these provisions" that "is enraging African states in their attempts to appropriate maritime resources" (Moudachirou, 2016, p. 1). Increasingly, given the complex character of the marine domain and the diverse actors and interests involved, courts' decisions will result in biased outcomes, at least for some of the parties. This could lead to one party, or even both, not abiding by the courts' decisions, becoming the incubator of the use of force to implement decisions over the maritime border conflicts. Hence:

> "it is imperious [sic!] to think about a concrete way to favour negotiation on a win-win basis…[there are] some attitudes that encourage and complicate friendly neighborhood relations…[this therefore suggests] stepping forward on cooperating through joint development agreements to explore and exploit maritime resources from the disputed zones" (Moudachirou, 2016, p. 1)

The decision of China not to abide by the judgment of a tribunal over conflicts in the South China seas is an excellent basis to support the view that court mechanisms and processes are not the timeliest ones to resort to in maritime related conflicts. It is just not possible for court mechanisms and processes to resolve the serious international relations and geo-strategic issues that arise from such complex maritime conflicts. The south China sea conflicts demonstrate – if any illustration was needed – that courts and other judicial processes and world view are not tuned to manage, let alone resolve, non-negotiable matters that stand *at the frontiers of a razor's edge, and on which hang suspended issues of war and peace.*

Conclusion and Recommendations

All these suggests that given the vast possibilities of maritime resources, the involvement of many interested outside actors with big interests, and the emotional character of the nationalism of sovereignty over maritime resources, judicial processes as management venues will likely convert good neighbors to bad neighbors. And that in any case, the provisions of the law, while they may have looked innocuous in land territorial disputes will increasingly come to be seen as bad fences in the management and resolution of maritime conflicts. This complex tessellation of issues, actors, interests and the psychological dimensions of nationalism will require "alternative" methods to the coercive judicial mechanisms and processes. And such methods are anchored firmly in diplomatic rather than judicial processes and mechanisms.

This might appear to be putting Robert Frost's prescriptions in "Mending Wall" - that good fences make

good neighbors - on their head. But then the point is that the good fences cannot be provided by the law and its mechanisms. His "Mending Wall" was couched in a world view that transcends time, and that recalls the principles of *bon voisinage* – good neighborliness – that is the basis of the foundation of the venue for the resolution of all maritime conflicts in Africa and all over the world. That foundation is far removed from the prescriptions of the world view of legal processes and mechanisms, which make bad fences between otherwise good neighbors. It is instilled by the diplomatic framework and processes. It is only these that can form the bedrock of addressing the contemporary realities of the complexities of maritime domains and their potential implications for security in the continent. And so, Frost is alive; and "Mending Wall", inscribed in the DNA of diplomacy and its processes, is immortal. It is the prescription for blunting the razor's edge, and tilting the balance between peace and war on to the side of peace.

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Engaging Youth in Preventing Violent Extremism in Africa: Making a Case for Enhanced Peace Education

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Abstract

Over the past decade or so, youth in general have stood out as key actors, victims, perpetrators and targets of the repertoires, ramifications and violent manifestations of extremism around the world. Subsequently, the United Nations Global Platform for the Prevention of Violent Extremism has singled out the youth as an integral component in any recipe for the prevention of violent extremism (PVE). Yet while governments and other stakeholders have taken steps to domesticate and operationalize the global ideals and prescriptions thereof, extant literature on this subject area reflects a mixed picture of outcomes, realities, and challenges. Against this background, this article confronts the question of how to engage the youth in PVE from the vantage point of peace education. It examines the likely utility, potential and applicability of peace education in better enabling and enriching the youth's role in the 21st Century PVE agenda in Africa.

Introduction

Extremism is not a new thing to the world. Indeed, the human historical timeline is replete with extremist ideas, beliefs and value systems which need not always be negative (Elu & Price, 2015; Combs, 2017). In fact, what would pass to be extremist sets of norms, customs, values and cultural practices have been used by different societies over time and space (Romaniuk et. al, 2018). These extremist values have been used in the process of socialization in order to confer and engrain a unique social, cultural and political identity to their people for the greater societal benefit (Ogharanduku, 2017). Hence, extremist ideas and belief systems have naturally been used by human groups at different levels and settings, to cultivate and protect the existence and sustenance of the core attributes and key defining features that distinguish them from others. As such, extremism can positively help to preserve the ethos behind a society's survival and existence (Romaniuk & Durner, 2018).

Perhaps such extremist ideas and values become a source of problems due to the manner in which they are expressed. This can be a highly subjective affair. When extremist ideas become the source of violent conflicts, death, destruction and wanton human suffering, they enter the domain of 'violent extremism' and potentially, terrorism. As an expression of their nationalism, and what they claimed to be for "the good of God and country," some human groups '*terrorized*' others. This is partly the experience of the dark past associated with slavery and racism around the world. Various theatres of violent extremism and terrorism have persisted over the years and Africa has had its own share of this experience (Asongu & Nwachukwu, 2017).

Terrorist organizations such as Boko Haram, al Shabab, and the Islamic State (also known as ISIS or *Daesh*) continue to threaten peace and security in various parts of the continent. It is noteworthy, however, that while this brand of extremism is informed by Islamic fundamentalism, there are many other forms of extremism on the continent that are fuelled by negative ethnicity, power struggles and deep-seated societal differences along religious, economic and cultural lines. Terror has been commonplace in parts of eastern Democratic Republic of Congo, Northern Uganda, and Western Darfur to mention but a few, where armed militia groups have subjected local populations to torture, rape and mass murder among other atrocities. In most of these settings, the youth and young people in general have featured as victims, perpetrators, conduits and targets (Macaluso, 2016; Romaniuk & Durner, 2018). It was against this premise that in 2015, the United Nations Global Platform for the Prevention of Violent Extremism identified the youth as an integral

A group of hard-line Islamist al Shabab fighters including youth conducting a military exercise in northern Mogadishu Suqaholaha neighborhood, Somalia on January 1, 2010. (Photo Credit: AP)

component in any recipe for countering and prevention of violent extremism.

Against this background, this article examines the burning question of how to engage the youth in preventing violent extremism (PVE) in Africa by making a case for 'peace education.' It grapples with the concept of 'peace education' and examines its likely utility and applicability to the wider discourse on prevention of violent extremism and terrorism among the youth. The discussion kicks-off with an assessment of the theoretical underpinnings of the concept of 'peace education' and its place in the 'prevention of violent extremism' discourse. It then proceeds to contextualize and situate the youth in the violent extremism experience in Africa before making a case for peace education as a valuable path in as far as countering and prevention of violent extremism (CVE/PVE) is concerned.

Peace Education and PVE: A Theoretical Reflection

A number of theoretical arguments have been prescribed regarding how to prevent violent extremism. These theories interpret the problem of violent extremism in varied perspectives. Some look at it as a political issue while others view it from a security looking-glass. Others understand and account for the problem either from a social-psychological perspective while yet others approach it from a purely economic angle. To realists, for instance, extremism and especially in its more violent forms, is best countered through *hard* or rather, military means. Realism is state-centric. It maintains that states are the ultimate guarantors of their people's security and survival. Realism, therefore, encourages the more direct solutions that inform traditional counterterrorism (Screvins, 2019).

On the other hand, liberal theoretical arguments maintain that *soft* and multi-faceted means to preventing terrorism are most suitable. Scholars who prescribe to this kind of thinking contend that violent extremism is mostly the manifestation of deep-seated structural anomalies in society which require cooperative efforts, especially through non-military means (Holmes, 2017, p. 85). To them, violent extremism can only be countered and/or prevented by attacking the underlying conditions that aid the processes through which radicalization into violent extremism takes place. On their part, social-psychological approaches to terrorism maintain that extremism is a learnt phenomenon that is strongly influenced by psychological and even cognitive factors that are more often than not associated with the immediate social environment in which any particular person finds themselves in. These theories contend that human behavior can be nurtured in a direction that engenders a set of desired values and attitudes (Lopes & Scotto, 2017; Amalia, Leahy, & Nelson, 2017).

It is against this background that the concept of peace education found a place in the entire discourse of 'peace and conflict studies' and related subject areas. Peace education is not a new phenomenon. Scholars that study the history of educational philosophy and pedagogical doctrine generally contend that peace education has always been part of human society (Krueger & Maleckova, 2003). Furthermore, they hold that societies have always socialized people about the adversities of violence; and therefore, encouraged them to avoid conflict, value peace and to settle for peaceful means of resolving conflicts most of the times. In fact, in many ways, Biblical, Quranic, Buddhist and African Indigenous belief systems among others do stress and recognize the centrality of peace, and teaching people about peace and how to achieve and preserve it (Harris, 2008).

Nonetheless, as an academic concept that is relevant to the sub-field of peace and conflict studies, the idea of peace education begun to be prescribed in various platforms as intergovernmental organizations and other global and policy actors as they sought to find sound responses to situations associated with the highly protracted intra-state conflicts that accentuated not only with the Cold-War era, but also the bloody and largely ethnically fractionalized conflicts of the immediate post-Cold War period that were occasioned by the bloodletting witnessed in the former Yugoslavia, the Rwanda Genocide, as well as the civil wars in Liberia, Sierra Leone, East Timor, Somalia, South Sudan, western Darfur, Burundi and the Democratic Republic of Congo among others (Galtung, 1969; Galtung, 2009).

In this context, peace education is about imparting knowledge, values, attitudes, and skills in order to enable people to prevent conflict and to help develop a deeper understanding of the situations that lead to violent conflicts in society and how to overcome, and resolve them if and when they threaten to manifest in the form of violent conflicts (UNICEF, 1999). Peace education is meant to induce behavioral change from a premise of well-founded knowledge about the basics of social justice, respect for human rights in addition to the higher ideals of positive peace, peace building, healing and reconciliation. As such, it is supposed to induce a new structure of socio-psychological attitudes, beliefs and emotions that speak more directly to the deep causes of conflict in society (Bar-Tal & Rosen, 2009).

It is against this background that the concept of peace education was introduced into the field of Countering and Prevention of Violent Extremism (CVE/PVE). The idea of PVE or CVE also has a history to it. During the latter half of the 20th Century, this discourse was mainly dominated by the *hard* military approach that has to do with counterterrorism. Today, more than a decade and a half after the 11th September attack, the debate has evolved to include the *soft* approach which is preventive in disposition. It is this new PVE/CVE outlook that has slowly found confluence with that of peace education over this period. What the concept of peace education offers here, are straight answers to pertinent questions such as: how 'Prevention of Violent Extremism' is understood both as an academic concept as well as an area of practice; how issues involving PVE are to be holistically addressed in the educational realm; and how to further institutionalize and sustain the gains thereof especially among youth or otherwise vulnerable groups and/or actors (Naseem & Ashrad-Ayaz, 2016; Berkaman, 2016).

In fact, there is literature which speaks directly to the role of peace education in countering violent extremism. The work by Ghosh et. al (2016) undertook a global review of literature that is specific to what they termed "countering violent religious extremism.' The study shows that the idea of 'peace education for PVE' has been embraced in different contexts around the world. In Asia, countries that featured prominently included Afghanistan, Bangladesh, China, India, Indonesia, Malaysia, Pakistan and Singapore. European countries such as France, Germany, Sweden, Netherlands, and the United Kingdom have also variously sought to engrain the ideas of peace education in as far as PVE is concerned. In the Americas, the idea has featured in Canada and the United States.

One piece of literature that dedicated itself to examining the idea of preventing violent extremism through

Terror has been commonplace in parts of eastern Democratic Republic of Congo, Northern Uganda, and Western Darfur to mention but a few, where armed militia groups have subjected local populations to torture, rape and mass murder among other atrocities

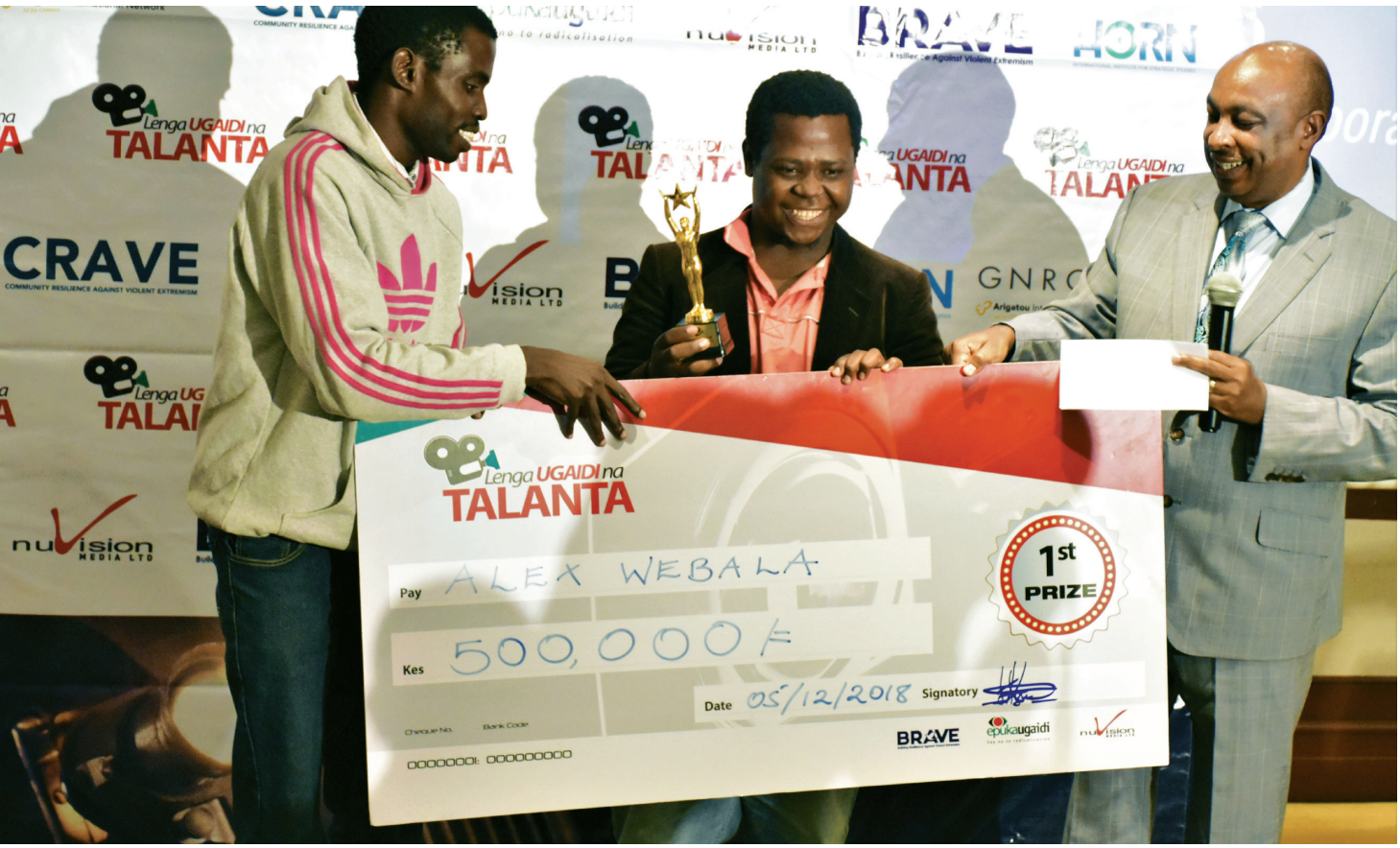
education is that by Lelo (2011). The research by Lelo revealed that peace education (both in its direct and indirect contexts) is slowly gaining acceptability in countries such as Kenya, Morocco, Egypt, and Tanzania. Lelo (2011) found that there is an actualization gap in all these settings. He, therefore, insists that education is one among several other avenues through which to counter and prevent violent extremism. He pointed out further that enhanced education in general helps the population overcome ignorance and hence open the avenues for employment and wealth creation, which in turn enables the population, especially young people to overcome the lure of extremism and radicalism, which drives to engage in terrorism. Also, schools are places where the young people can learn about extremism, negative dynamics and how to avoid and/or overcome it. Also, education is a valuable conduit not only for youth to overcome the lures of cyber terrorism, but also for security personnel in Africa to enhance their electronic and/or technical intelligence skills in the direction of combating and preventing violent extremism.

Subsequently, the main theoretical position herein is that peace education by its very nature as an academic as well as practical concept does have a potential positive role in as far as better enabling, guiding and involving the youth the processes of preventing violent extremism in Africa.

The Youth in Africa and the Prevention of Violent Extremism: Gains, Challenges and Gaps

Over the past decade or so, it has become clear to scholars and practitioners that the youth continue to feature strongly in the broad discourse around radicalization into violent extremism and terrorism. The youth in Africa, as a social segment, are the major target of violent extremism for purposes of radicalization, indoctrination and recruitment into active terrorism activities. Once in these organizations, they not only become instruments for further radicalization but also planners, perpetrators and executors of the means and ends of international terrorism in Africa (Schumiscky-Logan, 2017).

This has taken place in different forms and repertoires that involve both genders, male and female. Young men have been lured into joining terrorist organizations such as al Shabab and al-Qaeda in the Western Maghreb



Mr. Eric Kiraithe, Former Government Spokesperson, awarding the winner of Lenga Ugaidi na Talanta Competition Season 1. Lenga Ugaidi is a competition that seeks to channel youth creativity toward countering violent extremism through art. (Photo Credit: HORN Institute)

> The youth in Africa, as a social segment are the major target of violent extremism for purposes of radicalization, indoctrination and recruitment into active terrorism activities

among others. It is noteworthy for instance that *Harakat Al Shabab al Mujahideen* literally means 'striving youth.' Elsewhere, cases of young girls being recruited into groups such as Boko Haram and ISIS have been on the increase. Subsequently, suicide bombings such as the one that took place in Mosque in Maiduguri in April 2019, northern Nigeria involved young girls. In similar fashion, in Eastern Africa cases have also been cited where young girls were arrested while attempting to sneak out of countries such as Kenya to join ISIS, while others have been involved in orchestrating attacks (Sharland, Grice, & Zeigler, 2017).

At the same time, in a globalized and increasingly digitized environment epitomized by advancements in communication technology and the social media, the youth continue to fall prey to merchants of terrorism in more discrete and covert ways not witnessed before. Cases have been cited where recruitment through the internet has lured youth from locations far and wide into joining groups such as al Shabab and al-Qaeda in the Western Maghreb and Daesh among many others. It is against this background that various governmental and intergovernmental actors as well as civil society and faith-based organizations have realized that just as the youth have been key actors and players in advancing extremism and terrorism, in the same fashion too, the youth have a critical role to play in as far as the countering and preventing violent extremism on the continent is concerned (Van Zyl & Frank, 2018).

Subsequently, a number of gains have been made in the direction of positively engaging the youth in as far as their role in preventing violent extremism is concerned. Today, more young people are aware of the potentially harmful effects as well as human and socioeconomic costs of violent extremism and terrorism. Similarly, there are more organizations (governmental, intergovernmental or otherwise non-governmental) around the continent that have established programs devoted to youth transformation in the direction of countering and preventing violent extremism on the continent is concerned (Asongu et. al, 2019). In this regard, the number of youth-driven initiatives devoted to sensitization and general awareness creation aimed at cohesion-building, de-radicalization and inter-faith dialogue has markedly increased. This is particularly in the regions that have been more directly affected by violent extremism and terrorism such as the Sahel and Lake Chad Basin countries, the wider western Africa, northern Africa and eastern Africa (Watanabe, 2018; Asongu et al, 2018).

Nonetheless, challenges continue to persist. The scourge of terrorism remains real and imminent on the continent. For instance, on October 14, 2017, in one of the worst suicide attacks ever witnessed on the continent, the al Shabab detonated a truckload of Vehicle Borne Improvised Explosive Devices (VBIEDs) in Mogadishu claiming at least 500 lives. At the same time, many young people are still being recruited into terrorist organizations every day, while many others are lost to the lure of various forms of organized crime. Furthermore, the level of resilience among the youth against the lure of various forms of extremism on the continent remains far below par. Hence, there is need for much more to be done in terms of finding favorable and more importantly, subtle and more 'natural' ways of engaging the youth in as far as the prevention of violent extremism in Africa is concerned.

As Lelo (2011) contends, the current state of affairs reflects programs that are more of remote 'prescriptions' where promotion of education through funding of learning and/or training programs in vulnerable communities or communities at risk is seen to be a path towards attitude change in the direction of countering extremism. Nonetheless, very few of the peace education-oriented programs reviewed are youth-driven and/or purely youth dedicated. Further, there is a clear gap in terms of how an entire set of in-built values, attitudes and skills can be engrained naturally across cultures, faiths, traditions and cross space, that would ensure that the youth in Kenya naturally own and drive the process of countering and preventing violent extremism among the youth and society in general. Presently, the PVE agenda appears to be more of a prescribed phenomenon that is rather 'foreign' to the current mindset of the youth in Africa today. At the same time, the PVE agenda needs to be broadened to go beyond the context of Islamic fundamentalism and terrorism (though it remains at the centre of the discourse at this point in time), to encompass other settings where extremism and terrorism manifests

itself especially in Africa. Hence, there is need for a sound pedagogy behind the PVE narrative, its ramifications, interpretations and understandings (Naseem et. al, 2016).

Making a Case for Peace Education in the Prevention of Violent Extremism among the Youth in Africa

The best entry point into this discussion would perhaps be to pose the question: has peace education as a concept found any applicability in the PVE/CVE agenda in Africa as yet? More recent literature on this subject does present some evidence in this direction. UNDP (2017) for instance, observes that there is some degree of correlation between educational deprivation in terms of low literacy and education levels on one hand and the drivers and incentives associated with the spread of violent extremism in Africa on the other. Nonetheless, this discourse appears to be slowly advancing from being merely exploratory at the conceptual level towards more pragmatic action. For instance, in Nigeria the promotion of peace education is identified as one of the valuable approaches in the prevention of violent extremism. One of the civil society actors in Nigeria that attests to this fact is the Peace Initiative Network (Sodipo, 2014).

In the course of this particular research, I interviewed members of the Chaplaincy Ministries Mission in Kenya. Adventist Chaplaincy Ministries (ACM) of the Seventh Day Adventist (SDA) Church is a care and concern ministry. It was started in the year 1989 for purposes of providing for the spiritual and physical needs of communities in need and distress in Kenya. It has grown and currently has a membership of approximately 10,000 active members. Since its inception, members have contributed funds and volunteered their time and also lent their expertise, which was attained through rigorous formal training for the activities under a number of various thematic areas including prison and jail ministry, hospital ministry, schools and colleges ministry, military related ministry, destitute and street children and disaster management.

I established for instance that, since 1989, ACM has engaged in CVE through its prisons outreach programs. Chaplains in SDA churches neighbouring prisons facilities minister to them arranging weekly visits on Saturdays. Pastors nurture the inmates, instilling positive Christian

A youth-led panel discussion on understanding the youth and violent extremism moderated by Arigatou International – Nairobi that took place in October 10, 2018. (Photo Credit: Arigatou International – Nairobi)

One of the problems with the subject of countering and/or preventing violent extremism is that it comes from a background of experiences that carry stigma, fear, suspicion, and at times, deep-seated grievances and contention

values. On a quarterly basis, all other Chaplains are mobilized to visit various prisons in Nairobi and selected outlying facilities to reinforce the pastoral work. They donate toiletries and snacks during such visits. They also share testimonies with the prisoners. Applying learned principles, they provide them with social support, up to the time of their release.

One interviewee revealed that:

> Since the year 2012, ACM Nairobi Station has organized for Pastors and Elders to prepare communities to receive back ex-inmates upon completion of their sentences. They provide accommodation to them for a period of two weeks immediately after their release. Thereafter, chaplains are mobilized to escort them back to their communities. They arrange for a reception from their local churches with local administration and their families. Thereafter, they are followed up by officers from the ACM Nairobi Station.

The interviewee then further opined that:

> There is need to strengthen the institutional framework. So far it relies on volunteers 100% and chaplains also sacrifice their time and resources. The curriculum for chaplains has been developed by volunteers. It needs to be refined, and be aligned to and integrated into international CVE standards. Formal offices and training facilities also need to be constructed to facilitate training which currently takes place in different churches based on availability of space. The programme needs to be enhanced to include formal counselling for inmates which is currently done on ad hoc basis when respective prisons allow. A sustainability strategy needs to be formulated for the CVE programme. The halfway house in Gachie needs to be supported formally through provision of equipment (wood and tailoring) for ex-inmates to use during the three months they are at the facility. The concept also needs to be replicated and other halfway-houses be implemented and be managed by the ACM Nairobi Station.

These interviews drove me to the conclusion that the idea of peace education may be at play, but not in a well structured and policy-deliberate manner. Some organizations in Kenya and elsewhere around Africa may actually be conducting peace education related programs and processes in a rather unconscious and uncoordinated and/or somewhat unfocused manner. During my interviews, I posed the following question to a number of scholars and practitioners: "How can peace education be enhanced in countering violent extremism in Africa, and more so in Kenya?" One thing that emerged from these interviews was that due to the way terrorists operate and also how governmental authorities react to the real, imminent and immediate threats posed by active terrorists; this leaves behind an aura of not only tactical caution but also genuine risk aversive attitudes that border on not only tactical caution on the part of security practitioners, but also fear of the unknown among ordinary citizens, particularly those who live in terror-prone regions and/or localities, where one is never sure 'who is who' in their midst. Many of the interviewees, pointed to need to find an 'easy' and 'subtle' but effective way to cleverly manoeuvre this rather tension-ridden and/or weary environment that is associated with the terrorism and counter-radicalization subject each time it comes around, especially at the localized community levels.

As it is, quite a number of gaps still exist in the CVE/PVE agenda. Over the past four years or so, governmental actors and other stakeholders in this domain have been keen on first laying the ground for the entire agenda by first educating ordinary citizens on what PVE/CVE is all about. Nonetheless, the persistent theatres of terrorism especially in northern, western and eastern Africa point to certain loose ends when its comes to how we can fully achieve sustained preventive counter-radicalization and de-radicalization especially in the context of actual disengagement and sustained rehabilitation (Berger, 2016). I hold that the answer lies in how we package and present PVE/CVE programmes, processes and undertakings thereof. As such, calling it "peace education" and not "counter-radicalization" can make it more palatable and acceptable within less charged

For this reason, the idea of 'peace education' can provide a more subtle and palatable disposition to the PVE agenda, and hence meet its end-objectives not only with more ease, but also with greater promise for sustainability

and/or emotion-ridden or fear-arousing settings and still meet the same goal we are all aiming at: countering and preventing violent extremism.

In agreement with Bar-Tal et al (2009), schools provide a conducive, legitimate and deserving place for peace education. One of the problems with the subject of countering and/or preventing violent extremism is that it comes from a background of experiences that carry stigma, fear, suspicion and at times deep-seated grievances and contention. It is a subject area that in some cases, if poorly handled can engender more controversy hitherto unintended. For this reason, the idea of 'peace education' can provide a more subtle and palatable disposition to the PVE agenda, and hence meet its end-objectives not only with more ease, but also with greater promise for sustainability. As such, this research strongly recommends that the concept of peace education be engrained in school curricula in a manner that part of the subject matter thereof shall be dedicated to sensitization and general awareness on various forms of violent extremism. This would be an application of the direct model of peace education. In this direction, it would be best undertaken right from the early childhood education (ECE) level. Nonetheless, the indirect model of peace education would also be valuable in volatile and hostile settings where the violent manifestations of violent extremism are at play.

Nonetheless, as Davies (2015) underscores, there is need to ensure that 'peace education in preventing violent extremism' truly meets that noble objective in the manner in which it is intended to. If the process is superficial and it simply becomes 'peace education for the mere sake of it' then target audiences, will fail to logically differentiate the logics between the narratives that merchants of extremism and terror tell on one hand, and the ethos of peace and co-existence that peace education proselytizes. As such, the entire collection of stakeholders in the process, especially governmental actors, ought to engender a pedagogy of peace education while collectively also mitigating the 'push' and 'pull' factors involved in the violent extremism narratives and their violent manifestations.

Hence, as African countries and stakeholders manage Boko-Haram or al Shabab returnees and rehabilitated youth who have disengaged from radical and extremist value systems and mannerisms, they ought to perfect the institutional processes and operating procedures that would speak to issues associated with transitional justice, national dialogue, healing and reconciliation, social protection and criminal justice over and above broader matters of governance that speak to the wealth creation and sustainable development opportunities open to individuals and communities in general (Guteres, 2017). As such, good governance and social justice are important intervening variables in a prescription for peace education-driven PVE.

At the same time, in as much as education and educational spaces and contexts for helping youth resist, overcome and disengage from the lures of violent extremists and terrorists, they too have been and can be used for purposes of radicalization into violent extremism (*including non-Islamic forms of radicalization that range from extremist Judaism, Christian evangelism, Sikhs, Hindus and Buddhists among others*) and terrorism among the youth. In fact, ISIS, al-Qaeda, Boko Haram and al Shabab among other international terrorism networks are *very good* educators. They too know just the '*appropriate kind*' of learning concepts and narratives to engrain in the minds of poor and uneducated youth who are genuinely looking for better education opportunities and a better quality of life and livelihood, say abroad; while the more well-off but sharper and enlightened ones are exposed to higher and deeper philosophies and ideologies that turn them into fervent and radicalized ideologues overnight, who are willing to go to any length to leave the good life and spread and further educate and radicalize other youth in similar fashion (Ghosh et al, 2016; Onyango et. al, 2017).

Conclusion and Recommendations

The point that this article has sought to make is that the manner in which the discourse on implementing PVE/CVE programmes in Africa has been undertaken so far continues to be faced with many challenges and gaps. The fact that more and more youth are falling prey to the lures of extremist narratives amidst societal settings where

communities are living amidst fear and suspicion, there is need to find more subtle, less alarmist and less tension-arousing labels around which to communicate and incrementally counter and prevent the ways and means of violent extremism. As we propose the idea of peace education for such a platform especially in the context of finding more palatable ways of manoeuvring an already stigma-laden topic of discussion at the community level. It is not easy to have a children's module in the regular primary school, Sunday school or Madrassa curricula that is titled "*how to avoid extremist thinking*;" but in a class of "peace education" certain anti-extremism values and relevant terminologies can be subtly and slowly engrained in the minds of children and young adults in a manner that would still indirectly meet the end-objectives that we desire at the policy level, in as far as violent extremism is concerned.

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At the Nexus of Peace and Justice: Imagining Transitional Justice Programs in Central African Republic

By Jules Swinkels

Abstract

This article discusses the complex relationship between the concepts of 'peace' and 'justice', and implications thereof for transitional justice programs in the Central African Republic (CAR). The complex security situation in the CAR in the aftermath of the February 2019 Peace Agreement requires a comprehensive approach to provide the most meaningful form of justice in the current political and security context. The approach should account for past and future violations of the law while recognizing the tense relationship between peace and justice. This article proposes a transitional justice program that could work for the CAR. Realizing the need for some form of justice, creating and strengthening traditional, local, alternative, and ordinary justice mechanisms, clarifying the role of the Truth, Justice, Reconciliation and Reparation Commission, and redistributing crucial positions of power are some of the steps the government of the CAR, supported by international partners, could take to solidify the process made through the February 2019 Agreement while ensuring a balance between peace and justice.

Introduction

United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) noted during the 2015 Bangui Forum on National Reconciliation that impunity and a lack of justice have led to revenge killings and recurring violence in the Central African Republic (CAR). During the Forum, citizens demanded accountability for war crimes and crimes against humanity, a position that has been strengthened in the latest February 2019 peace deal in the CAR. There are, however, several issues. First, CAR's judicial system is incapable of dealing with large numbers of suspects. Secondly, the latest peace deal, signed in February 2019 with 14 armed groups and the government, under the auspices of the African Union, is based on providing leaders of these armed groups important (cabinet) positions within the newly formed government. Several commanders of armed groups have committed human rights violations and should ideally be tried in court, but chasing justice means that they might pull back from the agreement (and Bangui) while holding on to the territory they still control in the provinces. In fact, non-state actors have called for a general amnesty, something that goes against the Forum's recommendation to create accountability mechanisms. Transitional justice, the process to address large-scale human rights violations so widespread or numerous that the normal criminal system is not able to provide an adequate response, could be a crucial element in post-conflict peace efforts in the CAR. However, there exists a complex relationship between the concepts of 'peace' and 'justice', which might hamper transitional justice programs and needs to be addressed before imagining a possible transitional justice mechanism for the CAR.

Central African Republic has seen numerous violent episodes since its independence from France in 1960. The latest ones started in 2012 when a coalition of varied rebel groups known as *Séléka* accused the government of President Francois Bozizé of violating earlier peace agreements between the government and the rebels. In March 2013, the rebel coalition seized the capital, Bangui, as President Bozizé fled the country. Rebel leader Michel Djotodia declared himself President of CAR, but fighting continued. A group of various militias called anti-*Balaka*, a largely Christian militia, took up arms against the largely Muslim *Séléka* coalition. Both factions are accused of killing thousands of civilians, and committing war crimes and crimes against humanity. In July 2014, a ceasefire agreement was signed in Brazzavile, the capital

The National Forum of Bangui during the presentation of the report on Justice and Reconciliation in the capital of the Central African Republic on May 9, 2015. (Photo Credit: Minusca-UN)

of Republic of Congo, leading to reduced violence in 2015 and a relatively peaceful general election in 2016, in which current President Faustin-Archange Touadéra was elected. However, soon after, violence once again spiralled out of control. Currently, around 615,000 people are internally displaced, while 2.5 million need life-saving humanitarian aid.

The latest round of peace talks started in the Sudanese capital (Khartoum) on January 24, 2019, lasting ten days and resulting in the signing of a peace deal between the government of CAR and 14 non-state armed actors on February 6, 2019. The talks were mediated by the Africa Initiative for Peace and Reconciliation in CAR, led by the African Union (AU), with United Nations (UN) support, and synchronizing mediation efforts from Sudan and Russia. The parties ran into several issues during the ten days of talking, one of which was the request by non-state actors for general amnesty, something President Touadéra refused under pressure from western partners. The final accord, *Accord Politique pour la Paix et la Reconciliation en Republique Centreafricaine*, seeks to "definitively eliminate" the causes of the conflict and promote national reconciliation. One of these causes is the lack of accountability for widespread and large-scale human rights violations by commanders of armed groups currently holding positions in government.

To address the lack of accountability without threatening the February 2019 peace agreement, transitional justice programs could be put in place. These programs operate at the nexus of justice and peace, which might create tension between peacebuilding efforts and calls for justice and thus need to be addressed in possible transitional arrangements.

Justice and Peace Building

There is a complex relationship between calls for justice and the process of peacebuilding and vice versa, and much debate has ensued on the exact relationship between the two. Questions about the extent to which investigating, prosecuting and punishing war crimes might hamper peacebuilding initiatives arose first in 1994-1995, when the United Nations started the Yugoslavia Tribunal (ICTY) while the conflict in Bosnia-Herzegovina was still raging (Baker & Obradovic-Wochnik, 2016). Bratt (1997) argued that in this case, the UN prioritized peace over justice because it had started to implement the Dayton Peace Agreement for Bosnia-Herzegovina despite the ICTY not having finished its work. Schuett (1997) argued that the situation posed a conflicting 'peace versus justice' situation. In Siriram's (2007) seminal work, she argues that chasing justice might generate tensions and exacerbate conflicts that have the potential to undermine

peacebuilding. Kerr (2007) on the other hand argued that the parties actually achieved 'peace through justice'.

In this contested debate, David Tolbert, former deputy chief prosecutor at the ICTY argued in 2009 that the 'peace versus justice' debate was primarily concerned with political and military leaders and commanders who might be disincentivized from making peace if they were indicted for war crimes, crimes against humanity or human rights violations, or who might demand general amnesty or impunity from prosecution before agreeing to make peace (Baker & Obradovic-Wochnik, 2016). To that extent, Oette (2010) found that looking for justice in Sudan, where former Sudanese President Omar al-Bashir was involved in cases in the International Criminal Court (ICC) for gross human rights violations and war crimes, was further limiting the willingness of al-Bashir to seek peace.

Transitional justice and peace building are closely intertwined however, with 'peace' being a central theme of transitional justice efforts, while 'justice' is a central theme in peacebuilding efforts. They cannot be seen separate from each other, or competing with one another. Baker and Obradovic-Wochnik (2016) suggested that there could not be peace without justice, and vice versa. In their argumentation, transitional justice tries to bridge the peace-justice divide by combining elements of peace building with elements from the criminal (restorative) justice system. Transitional justice would thus make an excellent mechanism to be implemented in post-conflict societies that need both accountability and justice, as well as institution and peace building efforts.

Restorative justice within the criminal justice system is based on the belief that parties to a conflict ought to be actively involved in resolving it and mitigating its negative consequences. The UN Handbook on Restorative Justice (2006) differentiates between several types of restorative justice programs, such as victim-offender mediation programs, community and family group conferencing, circle sentencing, and reparative probation. It argues that within a criminal justice system, there are four main points at which a restorative justice program can be

A genocide suspect standing trial before a 'gacaca' court in Zivu, Rwanda on March 10, 2005 (Photo Credit: AP)

successfully initiated. At the police level (pre-charge), at the prosecution level (post-charge, before trial), at the level of the court, or at the level of corrections, as an alternative to incarceration (UN, 2006).

Transitional justice arrangements take principles and practices of restorative justice beyond the criminal justice system. The International Centre for Transitional Justice (ICTJ) states that "transitional justice refers to the ways countries emerging from periods of conflict and repression address large-scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response" (2019). Depending on the context, some features of transitional justice will vary. The recognition of the dignity of the individual, the redress and acknowledgement of violations, and the aim to prevent them from happening again are constant features (ICTJ, 2019). The ICTJ lists the following complementary aims of transitional justice arrangements:

- Establishing accountable institutions and restoring confidence in them
- Making access to justice a reality for the most vulnerable in society in the aftermath of violations
- Ensuring that women and marginalized groups play an effective role in the pursuit of a just society
- Respect for the rule of law
- Facilitating peace processes and fostering durable resolution of conflicts
- Establishing a basis to address the underlying causes of conflict and marginalization
- Advancing the cause of reconciliation

Transitional justice is not the same as reconciliation. Advancing reconciliation can affect other aspects of transitional arrangements, such as the possibility to achieve justice (Daley and Sarkin, 2011), and vice versa. In fact, according to Pham, Weinstein, and Longman (2004), there is no empirical proof that judicial responses are capable of contributing substantially to the process of reconciliation. Transitional justice therefore involves more than choosing between peace or justice. It is a broader strategy to address the sources of past and potential future violence through a range of reforms and processes which are less obvious about individual accountability and justice, and more about reforming the justice and security sector. At first glance, it might look as if transitional justice is less interested in achieving accountability for past crimes than it is to prevent future crimes, but it involves a combination of the two. Some activities may or should include the following (Siriram, 2007; Baker & Obradovic-Wochnik, 2016; Poblicks, 2018; ICTJ, 2019):

- Institutional reform of judiciaries and training of judges
- Reformulation of military and security doctrines
- Reformation of security institutions themselves (i.e. mixed security units)
- Criminal prosecutions through international or national criminal courts for the most serious crimes
- Introducing alternative (traditional, local and restorative) justice mechanisms, such as Rwanda's *gacaca* courts, that are on the nexus of the informal and formal sector
- Introducing truth and reconciliation mechanisms
- Reparations

Lessons Learned from Rwanda's *Gacaca* Courts

In the aftermath of Rwanda's genocide that saw around 800,000 Tutsis and moderate Hutus killed in a period of 100 days by Hutu extremists, questions arose on how to achieve accountability, promote the rule of law, speed up the process of prosecuting those accused of genocide, and promote peace and reconciliation at the same time. Realising that the crimes committed were too serious to ignore, and that the failure to hold people accountable contributed to the genocide, the Rwandan Patriotic Front (RPF), after taking power in 1994, developed a novel court system, based loosely on a traditional Rwandan dispute resolution mechanism (Longman, 2009). *Gacaca* existed before, during, and after colonial rule, and was mostly

> Restorative justice within the criminal justice system is based on the belief that parties to a conflict ought to be actively involved in resolving it and mitigating its negative consequences

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used by local officials to settle local disputes through non-punitive but reparative measures. For many Rwandase, *gacaca* courts are a source of pride, as these not only focus on justice, but also reconciliation. Defendants are given shorter sentences in exchange for confessions and are encouraged to seek forgiveness from victims' families (ACCORD, 2014). The newly formed courts however were punitive in nature, as laid down in the *Gacaca* Laws of 2002, 2004, 2007 and 2008 (Rettig, 2008). The 2007 *Gacaca* Law stipulated for example that "those who confess fully to serve half of their sentence through community work" are forgiven part of the prison term as well, and "those who do not confess can be sentenced to life imprisonment, depending on the severity of the crime" (Rettig, 2008, p. 31).

The courts are usually split up in three levels, cells, sector, and appeals, all dealing with different severity of crimes To that extent, there are three categories of crimes for the courts. The first category deals with leaders of the genocide and those accused of committing acts of rape or sexual torture. The second category deals with notorious killers, torturers or people who committed dehumanizing acts on dead bodies, ordinary killers, and accomplices to these acts. The third category is for property offenders. Typically, *gacaca* courts only dealt with the second and third category, redirecting first category offenses to ordinary national and international courts.

Scholars differ on the net effects of the *gacaca* courts (Sriram, 2007; Rettig, 2008; Longman, 2009; Wielenga & Harris, 2011). On the one hand, the courts have held more individuals accountable than the International Criminal Tribunal for Rwanda (ICTR), transnational and ordinary Rwandan courts combined, allowed communities to develop full accounts of past events, and encouraged dialogue about what exactly went wrong in 1994 (Longman, 2009; Wielenga & Harris, 2011).

On the other hand, there have been concerns that communities were intimidated into accepting confessed perpetrators by the large presence of their family members at *gacaca* sessions, that the courts have enforced ethnic divisions and resentment while excluding crimes committed by the RPF from *gacaca* sessions, that the courts have been used by the government to assert its authority, that attendance to *gacaca* sessions is an obligation by law, and that *gacaca*'s punitive model raised the stakes of participation and provided the opportunity for individuals to get personal revenge (Rettig, 2008; Longman, 2009).

The following lessons can be extracted from reviewing Rwanda's *gacaca* courts:

- Create the courts in a non-punitive reparative nature, and direct serious crimes (in the first category) to ordinary courts or special military tribunals
- Do not let community elders be the judges. Instead, elect judges within the community based on integrity, making sure the judge has not committed any crimes
- Do not provide any kind of compensation for serving in the courts
- Establish different levels of judgement (cell, sector and appeals) that deal with different levels of crimes
- Keep the process grass-roots based instead of centralizing it through strict government control
- Also process crimes committed by government and national army forces
- Reduce sentences early in the process
- Narrow the definition of 'accomplice' and decriminalize failure to assist
- Create a several-month window in which all accusations have to be made
- Allow prisoners that confess and already served for the length of time equivalent to their sentence to return home

Transitional Justice for the Central African Republic

The February 2019 Peace Agreement already stipulates three significant elements for transitional justice (Accord Politique pour la Paix et la Reconciliation en Republique Centreafricaine [The Agreement], 2019). First, the President committed to have an 'inclusive government', meaning that armed group commanders and members would be able to acquire (important) government positions in the newly formed government, a highly unpopular feat among Central Africans (Human Rights Watch [HRW], 2019).

Secondly, the Agreement notes the possibility of legal sanctions against perpetrators of future violence and rejects calls of impunity (International Crisis Group [ICG], 2019). However, the agreement does not stipulate exact steps on how to ensure post-conflict justice and does not mention specific judicial processes or future efforts to promote justice for past and future events. In fact, the country has no functioning justice system. The Special Criminal Court (SCC), created in mid-2015 to deal with serious crimes, is still formulating its investigation procedures, while officially it began operations in late-2018. The SCC complements two ongoing ICC investigations in CAR and is similar to hybrid courts in Sierra Leone, Bosnia and Herzegovina, and Cambodia, where domestic and foreign prosecutors and judges work together to strengthen capacity of domestic judiciaries while prosecuting violators of domestic legislation. Complicating the matter is the demands by armed groups of a general amnesty. On January 29, during the peace talks leading up to the February 2019 agreement, Abakar Saboun, the spokesman for one of the armed groups, the Popular Front for the Renaissance in CAR (*Front Populaire pour la Renaissance de la Centrafrique*, FPRC), told journalists, "If we want peace, we need to give amnesty to certain persons… I ask the Central African people… to accept an apology from those who have committed crimes, a sincere apology. We must have amnesty to have peace" (HRW, 2019).

Third, and arguably the agreement's most innovative approach to the complicated security situation in the country, is the creation of Mixed Special Security Units (MSSU). These units will include both non-state armed actors and government forces, under the command of the latter (ICG, 2019). Combined with a comprehensive Disarmament, Demobilization, Reintegration and Repatriation (DDRR) program, the UN hopes that thousands will return to civilian life. The creation of fully functioning MSSU has however experienced significant problems, predominantly the unwillingness of armed actors to lay down their weapons and demobilise. Additionally, armed group commanders retain de facto control over their forces, "raising the possibility that they will continue to prey on civilians, only now in army uniforms" (ICG, 2019).

The three elements as stipulated in the February 2019 Agreement are a step towards achieving peace and justice, but fall significantly short with regards to creating a comprehensive transitional justice program capable of dealing with the question of accountability while also building peace. For such an arrangement to succeed, and reflecting the realities on the ground, the following recommendations need to be incorporated:

Redistribute government positions

When President Touadéra announced in February 2019 that of the 37 ministerial positions, none would be given to armed groups or civil society representatives, armed groups threatened to abandon the agreement, set up roadblocks, and refused to take up their positions within the new government. Faced with immense critique, Touadéra released several presidential degrees at the end of March 2019, handing 12 of the 39 ministerial positions to armed groups, and 12 other high-level positions in the office of the President and Prime Minister. Other positions included the overseeing of the MSSU process, two prefect and five sub-prefect positions (ICG, 2019). Additionally, some crucial posts were handed to armed group leaders not of Central African origin. Central African officials and citizens were furious, criticizing the lack of transparency, the lack of concessions from armed groups, and the local legitimacy armed actors gained through the handing of prefect positions, even though they realised the need for concessions.

The Special Criminal Court (SCC), created in mid-2015 to deal with serious crimes, is still formulating its investigation procedures, while officially it began operations in late-2018

President of the Central African Republic, Faustin Archange Touadera, speaks during the General Debate of the General Assembly of the United Nations at United Nations Headquarters in New York on September 26, 2018. (Photo Credit: EPA-EFE/Peter Foley)

A strong transitional arrangement needs to heed their critique and redistribute positions of power. Especially the prefect positions and the position of overseeing the MSSU process need to be redistributed, as both give armed groups unnecessary amounts of legitimacy and power. Additionally, the government needs to be transparent on how and why armed groups were able to secure such important positions in what is characterized as an unprecedented turnaround in the formulation process of the new government.

Improve, strengthen and support SCC

The SCC is a remarkable feat, combining foreign and domestic judges in one hybrid court under the jurisdiction of CAR law. The creation and operationalising of the SCC took almost three years because its architects did not want the legal body to succumb to internal conflicts and corruption. Crucially, victims have an important role to play in the court. Victims can join the criminal proceedings as civil party, meaning they may take measures such as making submissions to the case file, requesting that an investigation be initiated and that steps be taken to advance the investigation, and examining witnesses. The centrality of victims in the judicial process could, next to bringing accountability, also work towards reconciliation.

The SCC is however, far from perfect. The government's inability to control vast swaths of its own territory raises almost insurmountable operational challenges for the SCC in 2019. Enforcing a judicial system in areas not under the state's control, or trying to bring to justice armed group leaders central to the new government, can create tensions that could significantly hamper reconciliation and peacebuilding efforts. Structurally, the CAR government and parliament have not yet passed the Rules of Procedure and Evidence of the SCC, without which procedures cannot start. Finally, there are difficulties to find experienced and willing foreign (international) judges to join the hybrid court.

Despite its shortcomings, the SCC represents hope for a functioning judicial system. HRW (2018) reported after conducting several interviews that human rights defenders, lawyers, CAR officials, victims and ordinary citizens that the SCC is seen as a crucial national initiative to bring accountability to the CAR. Both the government and the international community need to do everything in their power to make sure that the SCC is able to keep fully operational and curb impunity. This entails the adoption of the Rules of Procedure and Evidence of the SCC, increasing efforts of filling empty vacancies for foreign judges, renegotiate the possibility and benefits of accountability with armed actors, and sustain (donor) funding for the court.

Introduce alternative justice mechanisms (*gacaca*)

The 2015 Bangui Forum already called for the adoption of local or traditional justice mechanisms as a way of ensuring accountability and redress for victims. Learning lessons from the *gacaca* courts in Rwanda, such local mechanisms need to, most of all, stay independent of government justice efforts, be grass-roots based, elect local community leaders as judges based on integrity, and create the courts in a non-punitive manner, referring serious cases to the SCC and ICC.

Strengthen and clarify the role of the established Truth, Justice, Reconciliation and Reparation Commission (TJRRC)

Though not mentioned that way in the February 2019 Agreement, armed groups have assumed that the creation of a TJRRC means that amnesty has been granted. In that sense, the TJRRC would serve as an alternative to accountability, rather than being complementary to accountability efforts. The government and its international partners should make it crystal clear that a TJRRC does not equal amnesty by providing unconditional support for the various judiciary systems. The establishment of a TJRRC does not in any way prevent national and international judicial systems from doing their work (Mudge, 2019). That being said, the TJRRC does fulfil a crucial role with regards to peacebuilding through reconciling victims and perpetrators with a violent past. The CAR is in dire need to bridge its growing sectarian divide, and earlier reconciliation efforts have proven capable mechanisms for doing so. "There is a common saying emerging in the CAR that, ultimately, the country needs disarmament of the heart. Many argue that meaningful peace can only emerge if communities listen deeply to each other's stories with empathy" (Poblicks, 2018).

Reformation of security institutions (i.e. mixed security units)

The MSSU are a good initiative but need calibration, starting top down with the individual who oversees the process. That person should not be an armed group leader, as is the case now, but should instead come from the national army and have a clean track record. Additionally, the mixed units should be balanced between various armed groups, and ideally pave the way for Disarmament, Demobilization, and Reintegration programs to take hold. Finally, there should be enough funding and political will to establish the units, making sure they receive adequate training before being deployed. A lack of funding and training runs the risk of creating rogue elements, capable of harassing or hurting civilians in army uniforms.

Conclusion

Peace in the Central African Republic is hanging on a thread. Some argue that the current decline in violence is mostly due to the heavy rainy season, while others argue that it is a result of the February 2019 Agreement. Either way, there is little reason to believe that without a comprehensive transitional system CAR would live happily ever after because there are too many challenges, uncertainties and complexities that have not been dealt with. Additionally, there is the ongoing threat of armed groups leaving the agreement and going back to their strongholds, a real option considering that Hassan Bouba, the political coordinator for Union for Peace in the Central African Republic (UPC), told Human Rights Watch (2019) "If the government arrests a member of an armed group, then there is no more accord."

CAR thus finds itself on a precarious path towards peace. On the one hand, the country desperately needs justice and accountability, as it is commonly acknowledged that a lack thereof is the cause of cyclical violence, revenge, and retribution in the Central African Republic. On the other hand, the realities on the ground force officials, policymakers and security services to strike a balance between chasing justice and building peace. A comprehensive transitional justice arrangement sits right on the nexus of peace and justice, entailing traditional, local, alternative and ordinary justice mechanisms, TJRR commissions, and security and judicial sector reforms. Transitional justice is not a way to fix everything that is wrong with society. However, it is an attempt to provide the most meaningful justice in the political and security context of the time, accounting for past and future violations of the law, while recognizing the tense relationship between peace and justice.

Recommendations

To solidify the process made through the February 2019 Agreement and ensure a balance between peace and justice, the Central African Government needs to:

- Abandon the idea of general amnesty and realise the dire need for some form of justice.
- Clarify to armed groups that the February Agreement does NOT provide general amnesty.

Transitional justice is not a way to fix everything that is wrong with society. However, it is an attempt to provide the most meaningful justice in the political and security context of the time, accounting for past and future violations of the law, while recognizing the tense relationship between peace and justice

- Strengthen the procedural capabilities of the SCC adopting the Rules of Procedure and Evidence, increasing efforts of filling empty vacancies for national and international experts, renegotiate the possibility and benefits of accountability with armed actors, and sustain (donor) funding for the court.
- Develop traditional and local justice mechanisms shaped after and learning lessons from the Rwandan *gacaca* courts. Such arrangements should be non-punitive in nature, be grass-roots based, stay independent of the government, and focus on reparative justice, through reparations and/or victim-offender mediation.
- Clarify the role of and relationship between the Truth, Justice, Reconciliation, and Reparation Commission and other forms of justice, such as the SCC or newly developed *gacaca*-style courts.
- Involve the populace and civil society in reformulating military and legal doctrines, and in reforming security units, most notably the Mixed Special Security Units (MSSU).
- Redistribute certain crucial positions of power, most notably the head of the MSSU, the two prefect, and the five sub-prefect positions, and prevent armed groups from claiming these posts. Additionally, the government could impose a deadline after which armed groups would lose their positions of power in the government if there is no improvement in the country's stability and security situation.
- Explain to the public and the international community how and why certain strategic concessions have been made to armed groups to increase transparency.
- Prevent the misuse of the special mixed units by armed commanders who might regain de facto control over their troops, only now in army uniforms.

To support the government of the Central African Republic in its efforts to bring peace and justice, the international donor community, the United Nations and the African Union, need to:

- Sustain financial, logistic, and structural support for the Special Criminal Courts (SCC) and assist in the operations of the court.
- Strengthen and increase MINUSCA's presence in the country.
- Sustain its aid to the February 2019 Agreement, particularly by extracting concessions from armed groups.

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Electoral Democracy in Africa and the Dearth of Its Dividend: Reflections on the Paradox

By Kisiangani Emmanuel, Ph.D.

Abstract

This article examines the question of electoral democracy in Africa and whether or not it is adding value. The key is that electoral democracy on the continent is struggling to catch up with the demand for its dividends. This, to some extent, is because the assumption of multi-party politics in many African countries was not accompanied by fundamental constitutional and institutional changes that would help nature accountable and inclusive systems of governance. The situation has been compounded by a perpetual focus on the electioneering process in Africa rather than on what happens in-between elections. The consequence is that electoral democracy has not fashioned accountable, inclusive and participatory processes or the mechanisms of delegation and accountability that help to restrain and make responsive those in political office and thus add value in between elections.

"When citizens go to the polls and cast their votes, they aspire not only to elect their leaders, but to choose a direction for their nation.

Kofi Annan,
March 4, 2013

Introduction

The regularity of elections in Africa suggests that the practice of voting is becoming routine on the continent. Most of Africa's 54 countries have, since the advent of multiparty politics, had several circles of elections with varying degrees of competitiveness. The question, however, is whether or not these elections are adding value? Are they contributing to the strengthening of systems of governance and the promotion of the democratic dividend?

While the continent has witnessed a reduction in absolute rule and improvements in the quality of elections in countries such as South Africa, Botswana and Sierra Leone, among others, in other cases such as Guinea, Mauritania, Mali, Madagascar, Niger, among others, electoral democracy has, at different points, suffered reversals with unconstitutional changes in governments (Kisiangani, 2014). Broadly, electoral democracy across the continent is struggling to catch up with the demand for its dividend. The upshot has been frustration and disillusionment that, as demonstrated in the above cases, led to disruptive and violent behaviour.

This study looks at the relationship between electoral democracy in Africa and the promotion of the democratic dividend. The main argument of the study is that electoral democracy in Africa has not consolidated the anticipated democratic dividend because the focus has been on electoral processes rather than on nurturing of the democratic delegation chain or the regime of delegation and accountability that defines what happens in-between elections. It is this regime of delegation and accountability that adds value in-between elections and helps to consolidate the democratic dividend

The study's treatment of the democratic dividend is limited to its political aspects. In other words, while the democratic dividend can have an economic scope, there is also the argument that economic growth can actually emerge from certain forms of developmental dictatorship. Indeed, it is debatable whether or not a society needs electoral democracy to be freed from poverty and ignorance (Tochukwu, 2014). That said, a growing body of evidence suggests that at a minimum, authoritarian regimes in general do not grow faster in per capita income compared to democracies (Diamond, 1997).

This study is largely conceptual in nature, anchored on personal reflections and secondary datasets.

Africa and Electoral Democracy in Context

Africa's move from the one party system of governance to multi-party electoral politics in the early 1990s was exciting and occasioned high expectations. Many of the citizens expected everything that was absent during the one party system: accountability between citizens and politicians/policy makers, political freedoms, responsive governments, revitalization of institutions, the revamping of the economy and a general improvement in the quality of life. The enthusiasm was amplified especially in countries where previous regimes were repressive. However, with time, the exuberance and popular support for electoral democracy has increasingly dissipated as political life reverts to familiar patterns (Bratton, 2004, p. 147).

While there is no doubt that the advent of multiparty politics led to the expansion of political space across the continent by bringing to an end the personal rule of the likes of Mobutu Sese Seko in then Zaire, Hastings Kamuzu Banda in Malawi, Ely Ould Mohamed Vall in Mauritania, among others, the value and contribution of electoral democracy in promoting political participation, representativeness and accountability in places like Cameroon, Uganda, Nigeria, Central African Republic and Madagascar, among many others, remains contested.

There are a number of studies that explain why the experiment of electoral democracy in Africa is stuck in contradictions that undermine the democratic dividend. Adetula (2011) questions why the democratisation wave that swept across the world in the 1990s has recorded less impressive accomplishments in Africa than in countries in Eastern Europe and other parts of the world. To him, this is largely because elections in Africa have often produced fraudulent leadership which ends up contributing to the erosion of legitimacy.

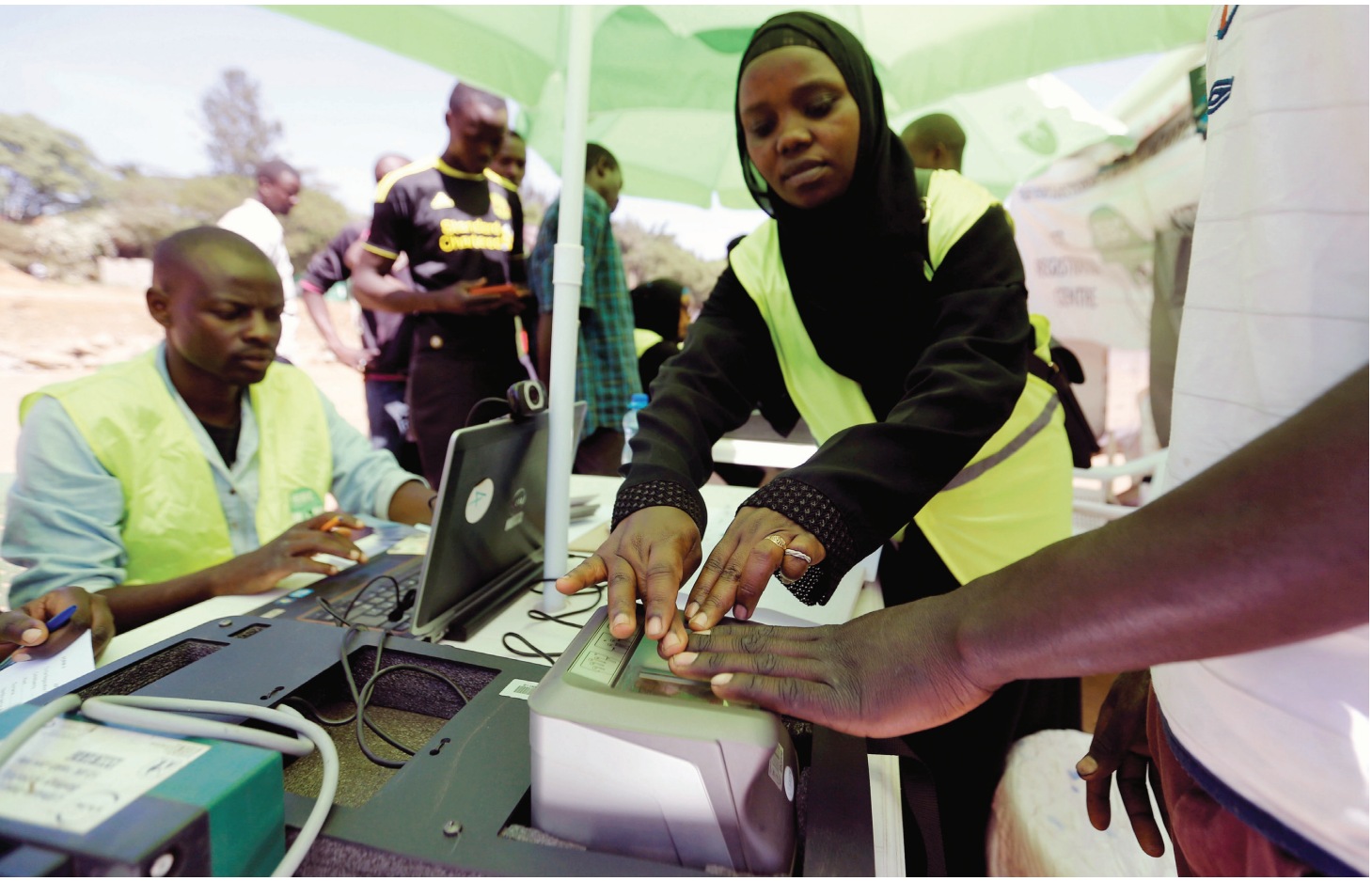
Indeed, despite recording significant growth in the number of elections and elected governments, most of the African countries have had elections that have

Democratic Republic of Congo's Former President, Joseph Kabila, casts his vote at a polling station in Kinshasa. (Photo credit: Reuters)

produced spurious outcomes. In instances, such as Cameroon and Uganda, electoral democracy has served as a breeding ground for autocratic regimes. In these and many other African countries, in between elections, state power and resources continue to be usurped for the benefit of a few in power, leading to a breakdown in the philosophical idea that people consent to be governed.

Wonbin (2009) underscores the continued pattern of one-party dominance in Africa, which to him reinforces the argument that elections in Africa are not fully developed as instruments of democracy. He states, "while the continent has undergone a series of multiparty elections and a significant number of countries experienced power alternations as a result of their founding election, alternations have in fact become a relatively infrequent occurrence" largely because of the continued dominance of ruling parties. Giliomee and Simkins (1999) adds that there is a fundamental tension between dominant party rule and democracy, and that whereas party dominance can pave the way to competitive democracy, in others it can lead to façade democracy or barely concealed authoritarianism.

In other words, the pattern of one-party dominance can, under the guise of electoral democracy, still perpetuates the same contradictions that multiparty sought to address. Some of the transitions toward multi-party democracy in Africa only saw military regimes transforming themselves into political parties and contesting elections without undertaking any other structural or institutional changes. This resulted in the retention of the pervasive dominance of the executive branch in many African states. In reality, despite the wave of elections that to some, "has underlined a trend where voting is becoming a frequent exercise in Africa," (Vorrath, 2011), majority of the African countries still reflect centralized power with multiparty elections often failing to produce working parliaments or other institutions capable of holding the executive in check. With the exception of a handful of countries such as Botswana, Mauritius and South Africa, legislative assemblies in Africa neither serve as an agency for restraining the executive nor a public arena for the mobilization of popular participation. The legislature often does little to shape government decision-making processes with presidents across the continent habitually making important decisions without even consulting



Officials from the Independent Electoral and Boundaries Commission (IEBC) records fingerprints of a man as they collect data from the electorate during the launch of the 2017 general elections voter registration exercise within Kibera slums in Kenya's capital Nairobi, on January 16, 2017. (Photo Credit: Reuters)

it. All these continue to work against the emergence of democratic dividend in Africa.

Besley and Burgess (2002, p. 1415) note that one reason why the advent of electoral democracy in Africa may be insufficient to improve governance and accountability is that voters typically do not observe the actions of politicians and may be uninformed about their behaviour or their preferences. This information asymmetry leaves room for politicians to act opportunistically, to shirk their duties, and to ignore the needs or preferences of the citizenry, even in an electoral democracy.

On her part, Ottaway (2000) underlines the renewed skepticism in democracy broadly noting, "the compounding skepticism about democracy is the fact that many formally democratic governments have done very little for their citizens." To her, the reasons for this failure are multiple and vary from country to country but overall include poor leadership, corruption, and the enormity of the problems many countries face after decades of mismanagement. Bratton (1998, p. 51) and Chabal and Daloz (1999) conclude that these realities are consistent with the skeptics who warned that elections would be an insufficient corrective to patterns of neo-patrimonial politics overseen by an all-powerful chief executive.

Khadiagala (2011) concludes that it is not democracy or elections that are so dangerous to Africa's progress, "but rather the chaos and mayhem that sitting regimes are capable of fomenting" (p. 187) during elections "in their efforts to squeeze the most out of eroding power monopolies." He adds "democratisation on the cheap has engendered weak participatory systems that have fortified local power imbalances, particularly by emboldening regimes that have only feeble stakes in participation and accountable systems of power" (2011, p. 187).

A key concern for local and international purveyors of electoral democracy in the Africa is their excessive emphasis on 'free and fair elections' as the key standard for democracy. The consequence is that interest in electoral democracy often wanes after the electoral hurdle has been surmounted. There is little consideration on how the value of electoral democracy can be extended beyond these formal and intermediate electioneering processes. This "trivialization of democracy has --- led to the confusion of democratic processes with democratic outcomes (Ake, 2002, p.30). In many transitional countries,

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democracy has become a formal process for selecting a government, rather than a mechanism that ensures that the policies enacted by an elected government reflect an acceptable compromise among different interest groups (Ottaway, 2000). President Barack Obama rightly observes that democracy should be more "than just holding elections. It's also about what happens between elections" (The White House Office of the Press Secretary, 2009). In Africa, the 'fallacy of electoralism' is fostering a cynical kind of expediency that owes much to elections in themselves rather than the promotion of representative and responsive governance (Karl, 1986, 1990, and 1995).

On the balance, Africa's experience with electoral democracy has been mixed: progress has been made in terms of transitions toward various levels of competitive elections, but challenges remain in terms of making elections meaningful to the lives of ordinary citizens.

Toward the Democratic Delegation Chain: What Agency?

The concern for Africa is how to make electoral democracy engender participatory and responsive systems of governance. Although the conduct of elections is part and parcel of the process of promoting participatory governance, it is not by itself sufficient to consolidate the regime of delegation and accountability that defines what happens in-between elections. It, nonetheless, offers an opportunity for countries to assert themselves in growing their democracies and incentives to chart a new inclusive and representative political dispensation. In Sierra Leone, for instance, the success of the consecutive multiparty elections after the cessation of civil war has contributed to strengthening of the country's democratic credentials (African Development Bank, 2012) although the country remains a long way in entrenching inclusive and participatory processes.

To realize the democratic dividend, calls an integral and pragmatic element of change, not only in the technical understanding of electoral democracy, but also in terms of entrenching civil liberties and institutional processes that devolve power to citizens to hold policy makers to account. Citizens also need avenues such as courts, referendums, and supranational institutions that are responsive and that can be used to determine and control their representatives. The democratic delegation chain recognizes that the people are the ultimate repository of power, and the elected and government officials and every organ of government are delegated to operate largely in line with the will of the people (Ezukanma, 2014). Larry Diamond (1997) observes that in "addition to regular, free, and fair electoral competition and universal suffrage, it calls for the elimination of 'reserved domains' of power for social and political forces that are not accountable to the electorate, directly or indirectly" (p. 12). He says, "In addition to the 'vertical' accountability of rulers to the ruled (which is secured most reliably through regular, free and fair, competitive elections), it requires 'horizontal' accountability of office-holders to one another; this constrains executive power and so helps protect constitutionalism, the rule of the law, and the deliberative process…it encompasses extensive provisions for political and civic pluralism, as well as for individual and group freedoms, so that contending interests and values may be expressed and compete through various ongoing processes of articulation and representation, beyond periodic elections" (Diamond, 1997, p. 12).

An important facet of the democratic delegation chain, therefore, is to ensure that executive power is constrained constitutionally and in fact, by the autonomous power of other government institutions such as an independent judiciary, parliament, and other mechanisms of horizontal accountability. It is important that beyond intermittent elections, citizens have multiple ongoing channels and means for the expression and representation of their interests and values. The emerging realization is that consolidating electoral democracy is more than holding elections. Maphosa (2012) maintains that "As we laud the regular conduct of elections in most of the countries in Africa, great caution should be exercised lest we fall into what Ake calls the 'democratisation of disempowerment', that is, a process whereby multi-party elections allow for the rotation of self-interested elites of various political parties while the majority of citizens remain powerless and disconnected from the political system".

The subtle but crucial aspect is the extent to which Africa's political discourse can start defining political process not as centering on elections but encompassing a much broader and more continuous play of interest articulation, representation, and contestation. The systems of checks and balances in between elections; the legislature, political parties, civil society, remain weak and this characterizes the political life of nearly all African countries. If electoral democracy is to become meaningful to ordinary citizens, then it needs to be harnessed through checks and balances into a force for real positive change in Africa. The puzzle is are there any possible pressure points that can be exerted to produce the necessary momentum to promote the democratic delegation chain?

The options to promote the democratic delegation chain can only happen as a result of internal and external policies, pressures, and expectations that reinforce the diffusion of power, democratic norms and values that promote periodic reforms and renewals. Locally, African countries need to strengthen domestic monitoring groups that can mobilise for accountability and deepening democracy. Gradually, the world community too needs to embrace a shared normative expectation that all states should manifestly govern with the consent of the governed—in essence, a right to democratic governance, as a legal entitlement (Franck, 1992, p. 46). The broad group of people and governments that constitute the "international community" needs to press for these expectations in the culture of governance.

Limits and Prospects

It is instructive that most African countries have remarkably had regular national elections yet the watershed significance of elections remains fragile. Their democratic dividend and prospects for improvement continue to elude millions, and subject many to protracted social

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violence and authoritarian governance. Electoral democracy is fortified by the aspect of representativeness and must, therefore, include the voices of majority of the citizens, particularly through the engagement of the legislature, civil society organizations and the media, and be populated by citizens who know their rights and responsibilities. In many African countries, the agitation for the democratic dividend of democracy still remains pronounced.

The question whether or not Africa can transcend the era of pseudo democracy and move into an era of constitutionalism and accountable systems of governance hinge not on hope, but on practical steps that African people need to undertake. Electoral democracy on the continent needs to be valued for its results to all citizens rather than for its inherent basic tenets and the important aspect is the socialisation of new processes that can help build responsive and reciprocal institutions between the governors and citizens. African countries need to underwrite their weak and centralized dispensations with institutional rules that can enhance checks and balances. This process has, however, to be triggered. In various African countries, there have been persistent calls for constitutional reforms. Few of the countries have entertained such reforms. Where they have, it has been more to legitimize their stay in power rather than further the national interest. Thus constitutional changes have tended to focus on creating favourable power structures rather than crafting political institutions and culture to promote the common good.

This is where African citizens must develop their organised power to bring their leaders to account and help promote inclusive and participatory processes. The problem is that active citizenship in many African countries is constrained by repressive laws, strong central authorities and lack of resources. Regardless of these constraints, it is imperative that the African citizenry cultivates its organised power to push for meaningful structural change. If this does not happen then elections organised against structural and systemic challenges will continue generating controversial processes and limited electoral dividend. Africa needs to be discouraged from the obsession with the concept of electoral democracy as being a process to establish winners and losers. Given that Africa continues to witness a number of civilian, multiparty, electoral regimes that are in principle undemocratic, there is need

Nigeria's President Muhammadu Buhari during a political rally in Lagos, Nigeria in 2019 (Photo Credit: Tolani Alli)

> In South Sudan, young people find themselves excluded from decision making at all levels, and lack exposure to the experiences and training that would enable them to participate, even when permitted

for a shift in focus toward increasing citizen competence and government responsiveness.

If meaningful democracy is to become a force for real change in Africa, then the continent has to find ways to empower ordinary people to get involved in the day-to-day decision-making of government. Where this is ignored or suppressed, it could lead to frustrations and resentments, which can easily ignite a cycle of violence. It is only where citizens demand and shape better policies, express grievances, seek justice and hold leaders to account that they can influence their government socio-economic and political choices. Critically, electoral democracy will be nothing if it cannot provide an enabling environment for socio-economic improvement in people's lives.

Conclusion and Recommendations

There is no doubt that Africa has made advances in electoral democracy since the advent of multiparty politics. Indeed, transitions toward electoral democracy were relatively easier compared to the process of building and sustaining democracy. It has been one thing in Africa to have elections and quite another to build the institutions and political foundations to provide the anticipated democratic dividend. This is why some of the initial 'model democracies' in Africa have ended up generating cynicism and antagonism largely because they have often been riddled with unethical and self-serving practices underpinned by deep seated structural problems.

This study underscores the fact that electoral democracy's key value is its potential to make government accountable, more representative and responsive to people's needs. It is the democratic delegation chain: the potential to promote institutions that allow for accountability, meaningful competition for political power; participation in the selection of leaders and policies, which is key to reinvigorating the democratic dividend or improvements in the quality of life in Africa. The effects of democratic delegation chain may not be visible in the short term but its contribution to the democratic dividend are long enduring as they do have a lasting impact on the state of governance and all other facets of national life (Inamu lHaq, nd).

Therefore, Africans and external partners need to realise that democracy should go beyond the periodic right to vote and also beyond the issue of numbers especially on a continent dominated by group polarized along ethnic and other forms of identity lines. Electoral democracy will only become meaningful and a force for real change in Africa, if the continent finds ways to promote inclusive and participatory processes. The conclusion is that there is more work to be done to maximize the public value associated with electoral democracy in Africa. This calls for continued vigilance, creating the spaces for synergy of conversations and reforms to consolidate democratic deepening especially in between elections to make it vibrant, efficient and accountable.

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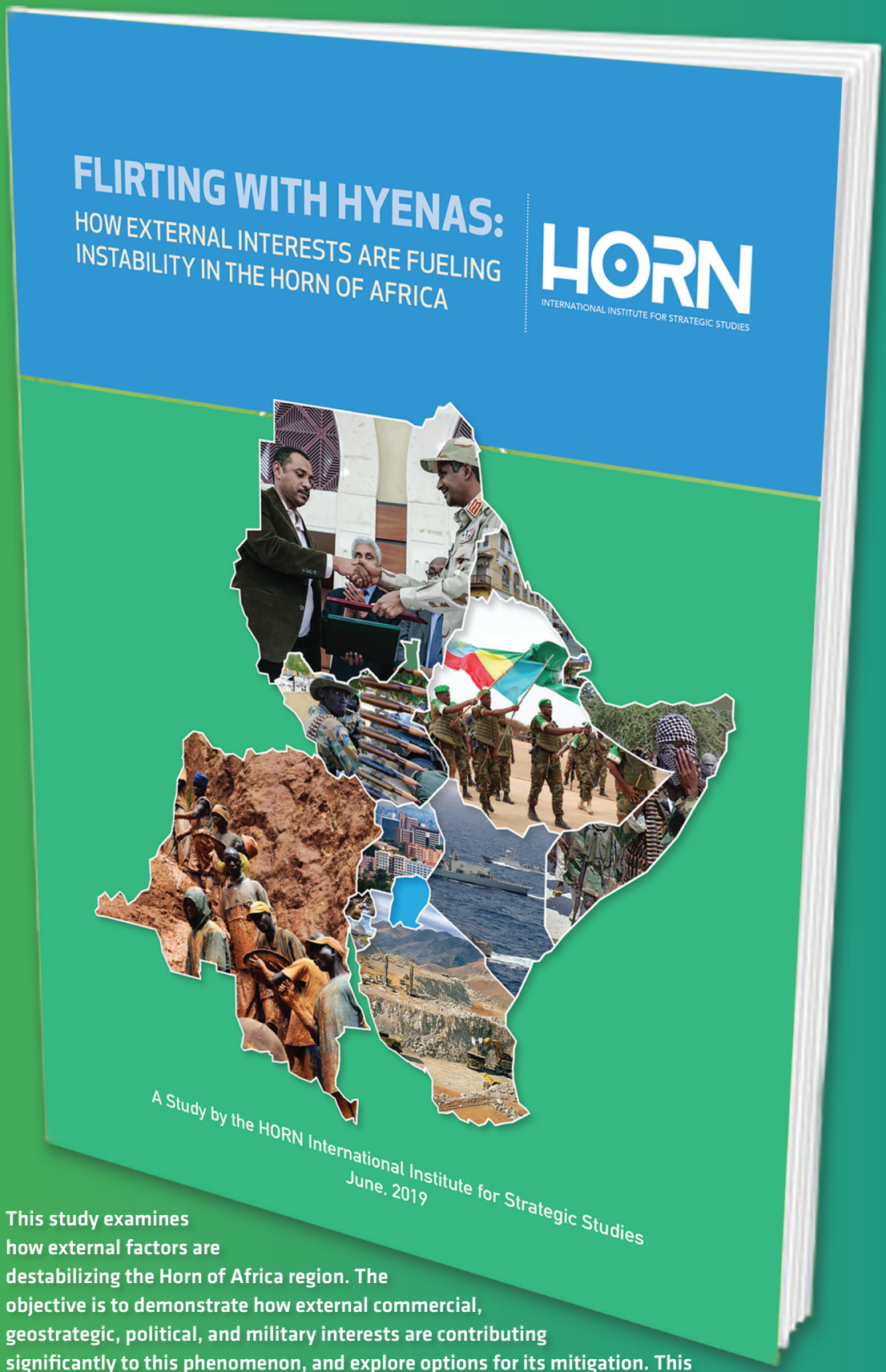
Editor's Note

Dear Reader,

We are excited to release our eighth bi-monthly issue of the HORN Bulletin 2019 (Vol. II, Iss. V). 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-in-Chief for more details at communications@horninstitute.org.

Hassan Khannenje, Ph.D.
Editor-in-Chief, The HORN Bulletin



This study examines how external factors are destabilizing the Horn of Africa region. The objective is to demonstrate how external commercial, geostrategic, political, and military interests are contributing significantly to this phenomenon, and explore options for its mitigation. This study also focuses on the dynamics of the ongoing maritime dispute between Kenya and Somalia, and how the dispute is further destabilizing the region.

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