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The HORN International Institute for Strategic Studies is a non-profit, applied research, and policy think-do tank based in Nairobi, Kenya. Its mission is to contribute to informed, objective, definitive research and analytical inquiry that positively informs policies of governments, intergovernmental and non-governmental organizations and spaces. Its vision is a progressive Horn of Africa served by informed, evidence-based and problem-solving policy research and analysis.

Inside the 100-Day Deadline in South Sudan: Perils and Prospects

By Kizito Sabala, Ph.D.

Abstract

This article focuses on the challenges and prospects for South Sudan in meeting the 100-day deadline that was agreed upon by President Salva Kiir and Dr. Riek Machar. This deadline, which was endorsed by the Intergovernmental Authority on Development (IGAD), is the second postponement since the signing of the Revitalized Agreement in 2018. This article argues that absence of a serious commitment from the Government of South Sudan (GoSS) and the South Sudan Liberation Movement in Opposition (SPLM-IO), little progress will be made with regard to establishing an effective and functioning Transitional Government of National Unity (TGoNU) necessary for the implementation of other benchmarks that include security arrangements, unification of forces and cantonment, and settling the number and boundaries of states within this time frame. The article recommends that IGAD member states marshal sufficient political will to compel the parties to respect the agreement, and for the US to use its political leverage to ensure compliance.

Introduction

This article contemplates the chances of establishing the Transitional Government of National Unity (TGoNU) including implementing security arrangements, uniting the forces, and cantonment and settling the number and boundaries of states between November 12, 2019 to February 22, 2020 (that is 100 days), the extension period agreed upon by South

A UN soldier looks on as South Sudanese nationals hold a village meeting. The history of constant violation of the previous agreements in South Sudan does not give hope the new deadline will be made within the 100 days. (Photo Credit: UN Photo/Isaac Billy)

Sudanese President, Salva Kiir and his former deputy, Dr. Riek Machar. The continuous violation of the various agreements aimed at resolving the conflict in South Sudan continue to be a source of concern. Since the signing of the Cessation of Hostilities (CoH) Agreement between the Government of South Sudan (GoSS) and the Sudan Peoples' Liberation Army–in Opposition (SPLM/A-IO) in January 2014, followed by the Agreement on the Resolution of the Conflict in South Sudan (ARCSS) whose goal was to restore peace, security and stability in the country in 2015, violations have become the order of the day. The later Agreement was signed between the GoSS, SPLA/M-IO, the G10 (Group of Former Detainees) and Alliance of Political Parties (23 South Sudanese political entities), civil society organizations, IGAD, and other international partners who serve as guarantors. According to this Agreement, peace, security and stability were to be achieved through sharing political positions between the warring parties, initiating institutional and structural reforms, improving security and economic management and promoting healing, reconciliation and seeking justice for past injustices through an agreed national project (ARCSS, 2015).

However, in July 2016, the ARCSS collapsed and the country slid back into civil war due to the failure by the parties to begin addressing the fundamental causes of the war; exclusion of some of the key stakeholders to the

conflict; grievances of non-combatants; and the skewed power-sharing framework that was blamed for rewarding war mongers (Provocateur, 2018). As a result, in June 2017, IGAD convened the High Level Revitalization Forum (HLRF) to revive the collapsed ARCSS.

The mandate of the HLRF was to consider concrete steps to restore a permanent ceasefire; enhance full implementation of the ARCSS; and to develop revised, realistic timelines and implementation schedules towards democratic elections at the end of the transitional period. In September 2018, efforts by the HLRF resulted in the signing of a revised agreement. The parties to the Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS) include those to the ARCSS and other new armed and unarmed groups (R-ARCSS, 2018, Article 1.1.6). However, even with the signing of the Revitalized Agreement and commitment to respect the contents contained therein, constant violation continued unabated. The last casualty in the never-ending non-implementation cycle is the Revitalized Agreement that was spearheaded by President Yoweri Museveni of Uganda, and the former Sudanese president Omar al-Bashir. Although some progress on issues such as maintaining some degree of ceasefire, the release of prisoners, and ratification of the agreement were implemented, minimal progress was recorded on important aspects such as disarmament, demobilization

and reintegration (DDR) and security sector reform (SSR), the establishment of the Transitional Government of National Unity (TGoNU). Additionally, issues relating to security for key political leaders, merger and unification of armed forces, cantonment and the number and boundaries of states had also stalled. This later became a hot issue when President Salva Kiir decreed the expansion of states from 10 to 28 against the spirit of the 2015 ARCSS.

Following lack of significant progress in the establishment of the TGoNU that heightened the fear that the country could return to war, President Yoweri Museveni and Sudan's head of Sovereign Council, Abdel Fattah Al-Burhan, convened a meeting to address the matter. During the meeting which was held in Kampala (Uganda) President Kiir and Machar agreed to a second extension largely seen as a way of deflating the growing anxiety and tension that was building in the country and the region that it could slide back into war (Malak, 2019). The first deadline that provides for a power-sharing agreement was signed in September 2018 which was extended to November 2, 2019.

Context

Although the conflict in South Sudan has its roots in the history of bad governance and leadership within the larger Sudan, the current crisis in the country broke out on December 15, 2013. Ironically, the very reasons that sparked off the long-standing civil war between the government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) in the 1950s remain at the heart of the current conflict in the country. These include several unaddressed structural challenges and grievances that entail the failure to transition from hostile rhetoric and political posturing to a practical project of nation building and statehood (Provocateur, 2018). Secondly, there is a failure by political, military, and community leaders to address the long-standing inter-community grievances, grudges, animosity and hatred including the inability to have a frank and honest dialogue on how to foster peaceful co-existence among the different nations and nationalities in the country. Thirdly, the zero-sum post-independence politics that promotes unhealthy competition and seeks absolute power among highly fragmented communities led by selfish leaders with deep mistrust toward each other has significantly contributed and continues to provide the fuel that inflames the present conflict (Provocateur, 2018).

In 2013, these issues were fueled by a divergence of opinion regarding the kind of reforms that should be instituted within the SPLM/A to enable a smooth transformation of the, hitherto liberation movement, into a political party as the country geared towards the first-ever post-independence election. While there is consensus that SPLM/A should transition from being a liberation movement to a political party, there is a disagreement on how to achieve this goal, a development that has split the movement into two camps.

Immediately after independence in 2011, cracks began to show within the SPLM/A that pitted those who wanted quick and immediate reforms against those who wanted gradual transformation. The progressive forces wanted quick reforms that will see the party get into the first post-independence election having shed off the relics of the liberation movement, while the other group wanted gradual reforms – essentially maintenance of the status quo. The impasse over efforts to reform and transform the SPLM/A from a liberation movement to a political party finally culminated in open violence that broke out on December 15, 2013. To date, efforts to resolve the conflict by the South Sudanese, the region, and the international community are yet to bear fruit.

Since 2013, efforts to end the conflict have resulted in the signing of various agreements on the Cessation of Hostilities (2014), the release of the political detainees (2018), Resolution of the Conflict in South Sudan (2015) and the Revitalized Agreement on the Resolution of the conflict in South Sudan (2018). However, the implementation of these agreements has been greatly undermined by a combination of factors among them, constant violations by the signatories, lack of political will from the main belligerents and ineffective political leverage by the mediators (Kasaija, 2015).

The lack of establishment of a TGoNU within the context of the Revitalized Agreement is partly attributed to the

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failure of the government to honor its commitment to give the balance of USD 100 million to National Pre-Transitional Committee (NPTC) for its implementation (Malak, 2019). The NPTC was formed by various members of different Parties to oversee the implementation of all activities in the pre–transitional period. These activities include developing a roadmap to guide the implementation of the political and security tasks in addition to managing the funds. According to Gabriel Changson, the deputy co-chair of the NPTC, the government paid only USD 40 million out of the USD 100 million which meant that the Committee did not have sufficient resources to support meaningful implementation of the agreement. The government of President Salva Kiir has been accused of lacking the political will to release the funds for the implementation of critical provisions of the agreement that includes unification and training of the various armed splinter groups into one united army. Other reasons for the delay in the establishment of the TGoNU include the intransigence and deep mistrust among GoSS, SPLM/A-IO and other parties outside these two.

Key Provisions of the Revitalized Agreement

According to the Revitalized Agreement on the Resolution of the Conflict in South Sudan of September 2018 that was brokered mainly by Uganda and Sudan, the period for its implementation was to take place in two phases. The first phase, also known as the Pre–Transitional Period, consists of eight months and it should be a precursor to the three years of the Transitional Government of National Unity (TGoNU). The second phase will entail preparing and holding general elections two months before the end of the Transitional Period. Accordingly, it meant that a new unity government should have been formed by November 12, 2019 to be composed of the current Transitional Government of National Unity of the Republic of South Sudan (TGoNU-led by Salva Kiir) and SPLM/A–IO led by Riek Machar. Other parties to the unity government are the South Sudan Opposition Alliance (SSOA), the Former Detainees (FDs), and Other Political Parties (OPP).

Inside the 100 Day Deadline

The count down to 100 days for South Sudan to establish a TGoNU begun on November 12, 2019 and ends on 22 February 2020. Within this period, the two main political nemeses in the country, namely; President Salva Kiir and his former deputy Riek Machar are expected to resolve a raft of issues that have continuously prevented the formation of a TGoNU. These issues are: security of the political leaders, establishment of a functioning barracks for soldiers; merging and training of the army from the various armed groups in the country as well addressing the contentious issue of the number of states in the country and their boundaries (Malak (2019). It should be noted that the lack of significant progress on these issues were the very reasons why the first postponement took place. Officials within the talks reported that out of the 59 key tasks that required implementation before the May 12 deadline, only 27 had been completed. The remaining 17 were ongoing, with 15 items that had not been evaluated (UNSC, 2018). The one million dollar question that ensues is to what extent will the parties to the Revitalized Agreement meet its key provisions within the 100 days?

Establishment of the TGoNU: Power Sharing or Position Sharing?

For some time in conflict management discourse, the notion of power or position sharing has been interpreted as rewarding the warmongers and war-lords and this is no different in South Sudan. Within the Revitalized Agreement power-sharing provisions relate to executive authority and the expansion of the number of vice presidents. From the theoretical perspective, this is supposed to bring together various parties to the conflict to participate in the decision-making process. It is meant to achieve inclusivity and diversity in the implementation of the agreement. However, the power-sharing provisions also raise critical questions relating to the effectiveness in decision making, presidential powers, and the potential for deadlock and disagreements between the parties (Klem, 2019). Within 100 days, it is highly possible that a TGoNU will be established but not without problems. It will be established because, from the perspective of the parties, it is good to show that they are making progress and they are ready to implement the agreement. Failure

to establish a TGoNU will attract the wrath of regional actors and development partners that may include serious consideration of imposing sanctions and arms embargo on targeted individuals and the country respectively.

Reforming the Security Sector

The provisions on security agreements are among some of the most important elements that need to be implemented for TGNU function effectively in the country. Decades of mistrust and animosity among the various leaders and communities in South Sudan makes the question of security arrangement very important. One of the key elements this provision is the overall restructuring and reforming of the SPLA (now South Sudan People's Defense Forces, SSPDF) that will incorporate other military factions in the country. In addition, the parties should begin to separate and have the forces report to cantonment sites. To facilitate this, the parties need to establish a joint military coordination board but more important reaffirm and adhere to the various CoH Agreements signed since 2014. Other elements are the cantonment of forces, Disarmament, Demobilization, and Reintegration (DDR) and the overall Security Sector Reform (SSR).

Cantonment

Cantonment is one of the sensitive issues within the restructuring and reforming of the defence forces program in South Sudan if the past attempt is anything to go by. For instance, following the signing of the ARCSS, in 2015, cantonment sites were a major source of tension that led to open clashes between government and opposition forces and one of the factors behind the collapse of the Transitional Government of National Unity in July 2016 (Klem, 2019). Tensions over cantonment began to emerge when Machar ordered his forces to begin forming in cantonment sites in December 2018 without reciprocal order from the government. The process of cantonment faces two major challenges. First, is to reconcile the thinking that the process will benefit the opposition more than the government and therefore the latter's' reluctance to fully support it (Klem, 2019). Secondly, the overhead cost of running a cantonment camp is enormous to be supported by a government that is already facing financial crunch therefore external

A South Sudanese refugee carries food from the World Food Program (WFP) center in Uganda on October 26, 2017. (Photo Credit: VOA)

support is crucial. However, donors are likely to be reluctant to pump resources into the process that will take care of personnel alleged to have committed serious human rights violations during the wartime (Klem, 2019). Given these perspectives on cantonment, the most likely scenario may be a repeat of 2016 whereby SPLM-IO and its allies attempt to establish cantonment in various sites, a situation that will increase tensions with government forces. Failure of cantonment will be the reason for any delays in the integration, restructuring and reforming of the forces and other military reforms. Within the orbit of the security arrangements, there is the issue of militarization. It has been observed (Klem 2019) that strategic areas such as the Presidential Palace, the airport, and the SPLA and NSS barracks will not be subject to demilitarization; a development that will undermine the whole exercise and only serve to increase tensions. From these scenarios, it is unlikely that significant progress will be made in creating effective cantonment sites within the 100 days. The only development that can happen is to initiate the process but be ready for more challenges beyond the 100 days

Merging of Armed Groups

The Agreement envisages both a merging of government and opposition forces into unified services and a reform of those forces through training. However, a full merger of government and opposition forces would reduce the dominance and control of the Dinka in the security sector since it will allow the inclusion of large numbers of personnel from other communities such as the Nuer, Shilluk, and Equatorians. In the light of fledging peace process in the country and the fear of the return to war, the government will have limited if any incentive to pursue full integration of the military forces in the country at this point in time. Furthermore, this process will be hampered by limited resources; a situation that leaves two possible scenarios on merging of armed groups' i.e. partial integration or no integration (Klem, 2019). There

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is likely hood that within the 100 days there can only be the preliminary steps that may entail for instance putting the preliminary logistics in place. Given the mistrust that pervades throughout the various military units in the country, coupled with limited resources, it is prudent to state that in the near future, the task of merging the military groups and creating a national army will remain an uphill task for unforeseeable future. Within the 100 days, there is doubt whether there will be significant process on this front.

The 28 States and Boundaries

One of the controversial issues standing between making progress in the implementation of the peace agreement in South Sudan is the question of states and their boundaries. The introduction of more states through Kiir's unilateral decision from 10 to 28 and then 32 was a significant factor in undermining the 2015 Agreement (Johnson, 2015). To date, it is still an open sore in the fledging path towards peace. The decree to create more states against the spirit and intention of the 2015 Agreement has significant negative implications on conflict dynamics.

According to the revitalized agreement and during the Pre–Transitional Period, the Technical Boundary Committee (TBC) will work and submit its findings to the IGAD Mediation team within 60 days. The TBC which brings together experts from IGAD and Troika member countries (United States, United Kingdom, and Norway) is tasked with defining and demarcating the tribal areas of South Sudan as they were on January 1, 1956. The Committees' work will feed into the Independent Boundary Commission's (IBC's) that will have 15 members shared proportionally among the Parties and supported by five nominated by the member states of the African Union High Level Ad Hoc Committee on South Sudan (South Africa, Algeria, Chad, Nigeria, and Rwanda). The IBC will look at the number and boundaries of States in South Sudan and submit its report on the same and the composition and structure of the CoS within 90 days. The Agreement provides that, in the event of continued disagreement, a referendum on the number of states should be held. In the current environment, a referendum is not feasible because it is not only an expensive exercise but it will also coincide with the end of the pre-transitional period. The implication is that the states issue will remain a grievance that exacerbates tensions and a tool to mobilize resistance against the government. Indications suggest that the government is reluctant to embrace
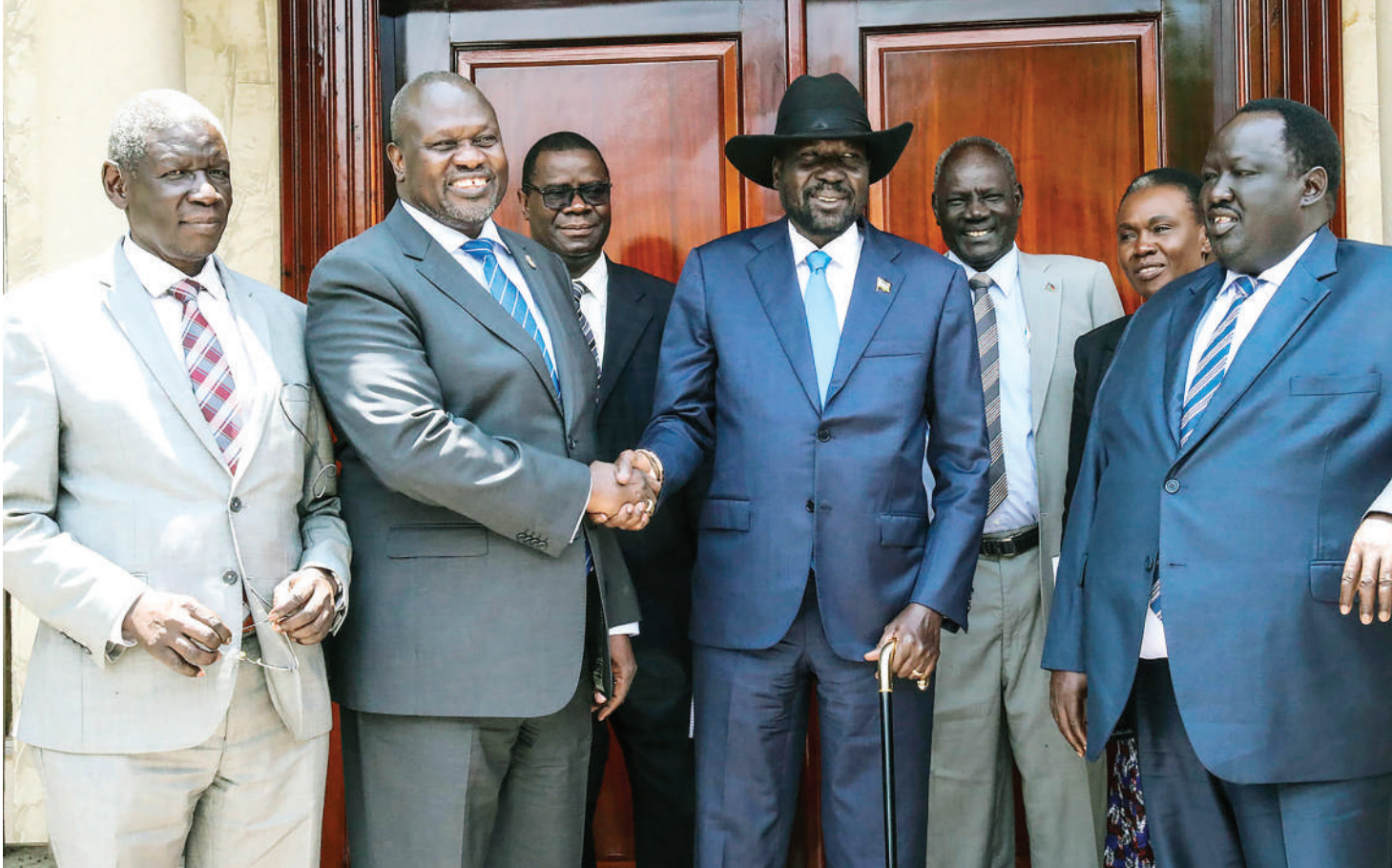
South Sudan President Salva Kiir and Riek Machar, the country's opposition leader, at the Presidential Palace in Juba, on September 11, 2019. (Photo Credit: UN Photo/Isaac Billy)

any negotiation on the issue of the 'states' despite the provision of an independent boundary commission in the Agreement. Therefore there is a high possibility that the boundary issue will remain unresolved beyond the transitional period. Within the 100 days, it can only be anticipated that limited progress will be made on this aspect. It is an issue that the parties should agree to dialogue around while the transitional government is functioning effectively.

The 100-Day Deadline: Perils and Prospects

The main provisions that are supposed to be implemented or at least set in motion within the 100 days deadline are: the establishment of the TGoNU, security arrangements, cantonment and merging of forces and settling the number of states and their boundaries. In implementing the above provisions, there will be numerous challenges that the parties will confront but that the same time some level of optimism.

Regional and International Interests in South Sudan

One of the major factors that continue to undermine peace efforts in South Sudan is the divergence interests of regional and international actors (Kuol, 2018).

These interests which have influenced and shaped the dynamics of the conflict in larger Sudan since the liberation days, continue to do so in the present-day South Sudan. According to Kuol (2018), 'these influences have had both exacerbating and stabilizing effects, adding another layer of complexity to the political calculations of any peace building efforts in the region.' The various actors and in particular the IGAD member states, the main mediator of the conflict have continued to pursue their economic, military and political interests while at the same time purporting to pursue peace and they have not been able to balance their the pursuit of national interests against the regional ones. They directly or indirectly provide financial, military, and diplomatic support to different parties to the conflict hence undermining the peace efforts. More precisely, efforts to end the conflict in South Sudan are largely a consequence of the inability of the regional and extra-regional players to take firm and collective action on a wide range of issues due to competing interests (Kuol, 2018). With the continuation of modest and sometimes completely stalled reforms and implementation process, South Sudan risks becoming a theater of increasing regional proxy wars between the various regional and international actors. According to Kuol (2018), some actors favor this situation because it serves their national interests.

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Limited Political Leverage

One of the most discussed issues regarding the IGAD mediation in the Horn of Africa is the notion of wielding sufficient political muscle on belligerents to force them into action. Structural problems, the weak resource base of the organization coupled with vested national interests of the regional actors are some of the factors that undermine IGADs efforts to manage the conflict in the sub-region (Kasaija, 2015). In this regard, South Sudan is no different.

Prospects for Peace in South Sudan

International Image

One of the motivations particularly to establish a TGoNU is an attempt at face-saving, internationally. None of the conflicting parties will want to be seen standing in the way of establishing the TGoNU less it loses the goodwill of IGAD and the development partners. It is important for each of the parties to show commitment to the peace efforts and remain in good books with those searching for peace in a country that has become a sore to its neighbors, Africa and the international community as a whole.

Targeted Sanctions, Arms Embargo and US Policy beyond the 100 Days

One of the issues that can act as a catalyst relates to sanctions and arms embargo. For some time, the issue of sanctions particularly on those who are believed to be obstructing peace efforts has been on the card for some time. For instance, the US has already warned that it will soon be imposing sanctions against those who are obstacles to peace efforts in South Sudan. At the same time, it is pushing the UNSC to impose an arms embargo on the country. Raising its reservations on the 100 days extension, the top US diplomat noted that it was not going to business as usual (Foreign Affairs, 2019).

This is in response to the persistence intransigence of the parties to the conflict and the deteriorating humanitarian situation (about 4 million that includes 2 million refugees require humanitarian support) (Kuol, 2018), in the country coupled with incessant violation of human rights by both the government-allied troops and those of the opposition. Although there is no regional support on the question of sanctions on the basis that they will hurt the civilians more than the targeted individuals, it is possible that with continued violation of the provisions of the Revitalized Agreement, limited progress in its implementation and pressure from the development partners, IGAD member states may contemplate considering sanctions.

The US has already warned that it will not be business as usual beyond the 100 days. While the option to use the UNSC is limited because of divisions over the issue of sanctions on South Sudan, the US is likely to take a unilateral decision to pressure parties to implement the Revitalized Agreement. Indications suggest that the US policy towards the country may shift to a hard stance hence providing a window of opportunity to galvanize and mobilize a unified and common position within IGAD and the international community on the revitalized peace agreement and the fate of the TGoNU.

The political leverage that the US wields on the parties in South Sudan may just be what is required at this point to instigate progress towards implementation. Given the wide range of options that the region and the international community have within the 100-day deadline, it is likely that, at the minimum, a TGoNU should be established and progress made on other aspects.

Conclusion

The history of constant violation of the previous agreements in South Sudan does not give hope that the new deadline will be met within the 100 days. Overall, it is hoped that there will be some progress on some of these milestones, if not all of them, during the 100 days.

While there will be some progress on the establishment of TGoNU, steps, albeit minimal, on other aspects will be important. This is because the parties are the same

- they both harbor deep mistrust and animosity against each other, and the context in which the conflict operates remains unchanged.

In particular, progress will be made in the establishment of a TGoNU which is important in laying the foundation upon which the other provisions to begin to take shape. This will happen even if it means some of the TGoNU members operate from outside the country until the other milestones such as that of ensuring the security of the political leaders and unifying the security forces are tackled. In the past, Machar, has stated categorically that failure to reunify security forces is one of the key milestones that will compel him and his party to join the government.

"Yes, the Intergovernmental Authority on Development stated that by the 12th of November there should be a

new government… but the aspects that are needed for establishing the government are not there", he said. *"Suppose we force it on the 12th, we know what will happen, the ceasefire that we have been enjoying will be in jeopardy"* (UNSC 2019)

Due to limited progress that will be made on these four important provisions, it is important that the region and international community carefully consider available options to prevent a relapse into civil war. These players should be prepared to embrace the minimum progress that would have been made and use it to encourage the political will that will be required to implement others. They may consider re-looking at the seemingly tight timelines and revise them into realistic schedules to ease pressure from the parties.

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The International Criminal Court (ICC) and Human Rights in Africa: Salient Shortcomings

By Edmond J. Pamba.

Abstract

This article critically examines how the toxic mix of institutional limitations at International Criminal Court (ICC) such as poor investigations, poor witness protection mechanisms, procedural failures, political challenges of non-cooperation, and threats of (and) withdrawal by African State parties and the African Union (AU) have, in part, punctured the performance of the Court with respect to African cases. Such bungled cases include those facing six Kenyan indictees, the ex-president of Ivory Coast, Laurent Gbagbo, and Congolese ex-Vice President, Jean Pierre Bemba, and the ineffectual decade-old arrest warrant against ex-president of Sudan, Omar al-Bashir. The hostile relationship between the Court and some African countries, and the underwhelming performance of the Court with respect to African cases, casts doubt for future accountability for gross human rights violations in Africa. This injures the fundamental purpose of the international criminal justice system. This article recommends, *inter alia*, better investigation techniques, witness protection mechanisms, strict adherence to established rules of the Court on the procedure, and evidence and regulations, and more regional support for the Court, for mainstreaming of human rights, and justice in Africa.

Introduction

The International Criminal Court (ICC) (hereinafter 'the Court') was established in 2002 by the Treaty of Rome of 1998 (the Rome Statute, hereinafter 'the Statute'), and became operational in 2003. This international judicial body is conceptually a court of last resort for the prosecution of serious international crimes - genocide, war crimes, and crimes against humanity, following the experience of international armed conflict and a history of lack of accountability for such gross violation of human rights and rules of war. The Court was preceded by the Nurnberg Military Tribunal of 1945, and the ad hoc tribunals for Rwanda (1994) and Yugoslavia (1993), and was expected to build on the successes of these tribunals, to entrench accountability in the international system.

Since its inception, the ICC has opened investigations into 11 situations within its jurisdiction in the Democratic Republic of Congo, Uganda, Central African Republic, Sudan, Kenya, Libya, Ivory Coast, Georgia, and Burundi. It has indicted 44 people, issued arrest warrants to 36 individuals and summonses to eight others. In terms of performance as regards the cases, 22 are ongoing, 15 are fugitives, one is under arrest, two are in pre-trial, and four in trial. Over 20 cases have been completed, two are serving sentences, four have finished their sentences, two have been acquitted, six have had the charges against them dismissed, two have had the charges against them withdrawn, one has had his case declared inadmissible, and four have died before trial.

However, the court's prosecutions have recorded more failures than successes, risking the Court's credibility and even legitimacy. For instance, about 10 cases (mostly African) were dismissed or terminated between 2005 and 2015. More interestingly, the Appeals Chamber of the Court has overturned prior convictions rendered by the Trial Chambers, as in the case of former Congolese Vice-President Jean Pierre Bemba in 2018, and former Ivorian president, Laurent Gbagbo and his co-accused, youth leader, Charles Blé Goudé, in 2019. Such performance raises questions of ICC's institutional capacity, statutory specificities, impunity, and the status of humanitarian rights and justice in Africa, as the Court 'decays' and justice retreats in the face of abiding challenges.

Dismissal and Revision of Cases

The ICC has registered a number of dismissals, at least 10 between 2005 and 2015, beginning with Okot Odhiambo

International Criminal Court (ICC) buildings in The Hague, Netherlands. (Photo Credit: UN Photo/Rick Bajornas)

and Raska Lukwiya in 2005, Calixte Mbanishimana in 2011, Saleh Jerbo in 2013. Cases facing the Kenyan suspects following post-election violence of 2007/08, also dramatically ground to a fruitless end. These cases, *inter alia*, were majorly dismissed on grounds of insufficient evidence on the part of the Court's prosecutorial department, having failed to meet the requirement of Article 66(3) of the Statute for proof of guilt beyond reasonable guilt.

Moreover, the Appeals Chamber of the Court, as sought under Articles 81, 82, and 84 of the Statute, which allows for appeal and revision and offers the right of *habeas corpus*, has been overturning some of the convictions by the Trial Chamber. Such acquittals include that of the former Vice President of the Democratic Republic of Congo, Jean Pierre Bemba and cohorts in 2018, and of former Ivorian president, Laurent Gbagbo and his co-accused, youth leader, Charles Blé Goudé, in January 2019. Laurent Gbagbo and Charles Blé Goudé had been convicted upon charges of crimes against humanity (murder, rape, other inhumane acts or – in the alternative – attempted murder and persecution) allegedly committed in the context of post-electoral violence in Côte d'Ivoire between December 16, 2010 and April 12, 2011.

On the other hand, Jean-Pierre Bemba Gombo, had been convicted in 2016, upon charges of crimes against humanity and war crimes between 2002 and 2003 in the Central African Republic, with the aid of his militia, the Mouvement de Libération du Congo (MLC).

Dismissal cases by the Pre-Trial Chamber point to insufficient evidence and failure to satisfy Article 66(3) of the Statute which stipulates that "[i]n order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt" for continuance of proceedings to (or beyond) the Trial Chamber. On the other hand, acquittals by the Appeals Chamber point out errors of fact, law and procedure, in exercise of the Trial Chamber's discretion – thereby warranting reversal of previous decisions for not having satisfied both Articles 66 (3) above, and 74 (2) and (5) of the Statute. The Statute stipulates that:

> *2. The Trial Chamber's decision shall be based on its evaluation of the evidence and the entire proceedings. The decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges. The Court may base its decision only on evidence submitted and discussed before it at the trial.*

and

> *5. The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions…*

The failure by state parties to execute arrest warrants by the ICC, and a regional organization denies the Court of moral support, raises the fundamental question of State cooperation and the limitations appertaining the Court's procedures, and amounts to (obstruction) interference with administration of justice

The worrying series of dismissal of African cases and overturning of such prior convictions by the Court undermines the credibility of ICC around it's observance of rules and procedures. Such failures vindicate the mounting criticism against the Court's performance in defense of human rights and justice.

Abeyant Arrest Warrants and the Question of State Cooperation

The Court issues summonses and arrest warrants, as might be necessary, to open proceedings on a matter before it. Accordingly, the Court cannot escalate proceedings where summonses have not been honored and may thus proceed to issue arrest warrants to custodial states under Article 59 of the Statute. For instance, arrest warrants against three other Kenyans, Walter Osapiri Barasa, Paul Gicheru, and Phillip Kipkoech Bett, were issued in 2016 by the OTP on charges of obstructing the course of justice in the Kenyan cases, through witness intimidation or corruption. The Government of Kenya (GoK) is yet to surrender the trio to the Court, further failing to honor Article 59 of the Statute, requiring a custodial state to facilitate such surrender.

Other requests for State cooperation by the Court, may arise under provisions of Article 86 of the Statute. However, the unsettling reality of state parties not executing arrest warrants issued by the Court, has led to a growing number of fugitives escaping criminal responsibility, and State parties showing indifference to applicable statutory provisions for cooperation with the Court. This leaves the Court unable to escalate proceedings and administer justice, where violations under its jurisdiction have been alleged or confirmed, at and beyond the Pre-trial stage. The total number of defendants at large has risen to 15, including the most prominent 'fugitive', Omar Bashir, the ousted president of Sudan.

In the case of Bashir's non-observance of summonses and State parties abetting his avoidance of the arrest warrants against him by the Court, Kenya, South Africa, Uganda, Jordan, Belarus, Djibouti, Qatar, Indonesia, Egypt, Bahrain, Kuwait, United Arab Emirates, India, Algeria, Saudi Arabia, China, Mauritania, South Sudan, and Ethiopia among others, abetted this nature of non-compliance. Further, the African Union Assembly of Heads of State and Government, passed a joint resolution *Assembly/AU/Dec.622 (XXVIII),* urging member states not to comply with the Court's request for Bashir's arrest, if the Court fails to grant the Assembly's earlier request to defer the cases against Bashir, Kenyatta and Ruto.

The failure by state parties to execute arrest warrants by the ICC, and a regional organization denies the Court of moral support, raises the fundamental question of state cooperation and the limitations appertaining the Court's procedures, and amounts to (obstruction) interference with the administration of justice.

Political Interference with ICC Procedures

The Court has been receiving political hostility to its processes and procedures, from State parties and regional organizations, especially when cases before it involve individuals in high capacities in governments. The Kenyan cases involving President Kenyatta and Deputy President Ruto, as well as former president of Sudan, Omar Bashir, saw national and regional political mobilization against the Court.

Charges against six Kenyans were confirmed in 2011 ahead of 2013 general elections. Cases against three of them were dismissed in 2012 and 2013, on grounds of insufficient evidence. These dismissals dealt the first blow to the OTP in the Kenyan cases, while exposing the cursory manner of investigations by the prosecutorial department of the Court, as the evidence adduced could not bear the pre-trial stage.

Resolution *Ext/Assembly/AU/Dec.1 (Oct.2013)* of the AU further prescribed deferral of both Kenyan and Sudanese cases, while expressing complete regional solidarity with such a position. Interestingly, the resolution further expressed the support of African state parties

to the Statute for the amendment of Article 121 of the statute. Later in January 2017, the Assembly passed yet another resolution, *Assembly/AU/Dec.622(XXVIII)*, urging member states to comply with its earlier decisions (of non-cooperation) on ICC's request to arrest the then president of Sudan, Omar Bashir. The expected net effect of this high-level political mobilization, was undue pressure on the Court, to yield to political advances of Kenya, Sudan and the African Union, and stay, discard or defer the cases facing the two sitting African heads of state and a deputy head of state. The pressure may have failed to achieve the desired effect, but inadvertently damaged the Court's legitimacy and integrity on the African continent, and inspired political and public hostility to the Court across Africa.

Withdrawal from the Statute by African State Parties

Proceeding from the mounting criticism of the Court as biased against Africa and undermining African states' sovereignty, a movement of withdrawal from the Statute sprouted across the continent, from 2013. Kenya lit the 'ICC exodus' flames, by canvassing in the AU and mobilizing moral support of friendly African nations such as Uganda and Namibia, in what led to widespread African indifference to the Court. Kenya might have hoped to stall the cases facing its political leaders, before the court, of crimes against humanity. However, the other three African State parties have gone the epic length of withdrawing from ICC, and these include Burundi, Gambia, and South Africa, while others such as Uganda and Namibia have threatened to exit the statutory judicial body.

Following the politically motivated violence in Burundi since April 2015, when President Pierre Nkurunziza announced his bid for a controversial 'third term', the OTP at the ICC opened investigations *proprio motu* in October 2017, into elements of crime committed from April 2015 to October 2017. Alleged crimes included murder and attempted murder, imprisonment or severe deprivation of liberty, torture, rape, enforced disappearance, and persecution. However, the OTP had expressed itself on the violence since May 8, 2015, cautioning involved parties against such actions that could lead to gross violations of human rights, crimes against humanity and war crimes. Following the OTP's caution over the violence in Burundi, the Government of Burundi launched the process of withdrawing from the Statute in October 2016, and effectively withdrew on October 27, 2017.

The second country to issue notification of withdrawal from the Statute was Gambia, under the ousted president, Yahya Jammeh, in November 2016. Yahya had ruled the country for almost 20 years by maintaining authoritarian power structures that trampled on democratic institutions, and rights and liberties of Gambians, with possible commission of gross atrocities against humanity. However, upon his removal from office through electoral defeat in December 2016, the new president, Adama Barrow, issued the notification to reverse the process of withdrawal and to submit his country to the Court and international accountability to human rights and justice.

The Republic of South Africa was the third African country to launch the withdrawal (from the Statute) move first in December 2016 - before it was undone by a successful court challenge by civil society. Efforts to withdraw the country from the Statute were renewed in July 2017, when the Justice Department presented the International Crimes Bill, to parliament, with provision for South Africa to repeal the implementation of the Statute of the International Criminal Court Act 2002, to enable the withdrawal. This move has since been vacated by South Africa, with the rise of Cyril Ramaphosa to power in 2018. It is noteworthy that South Africa, under President Jacob Zuma, showed non-cooperation with the Court's request for the arrest of the then Sudanese president, Omar Bashir, who had visited the country in 2015 to attend the annual AU Summit.

However, the most underwhelming event was the AU resolution *Assembly/AU/Dec.622 (XXVIII)* of January 2017 on the regional position on ICC. The resolution first emphasized non-cooperation with the Court on the arrest warrant against Omar Bashir, citing customary international law obligations of granting diplomatic immunity. The resolution, notwithstanding reservations by Benin, Botswana, Burkina Faso, Cabo Verde, Cote d'Ivoire, Gambia, Lesotho, Liberia, Madagascar, Malawi, Mozambique, Nigeria, Senegal, Tanzania, Tunisia and Zambia, further advised member states to abide by earlier decisions of the Assembly on ICC, mindful of Article 23 (2) of the Constitutive Act of the African Union, which reads:

> ....*any Member State that fails to comply with the decisions and policies of the Union may be subjected to other sanctions, such as the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the Assembly.*

However, the resolution lauded Burundi, South Africa and the Gambia, for pioneering the exit strategy from the Statute and the ICC, and affirmed that the Assembly "adopts the ICC withdrawal Strategy and calls on Member States to consider implementing its recommendations" (Assembly of the Union (AU), 2017 par. 8).

Efforts and threats to withdraw from the Statute, either from African State parties or the Assembly of the AU, fashion withdrawal as a strategy for defining Africa's relationship with the Court, while relegating justice for the victims of crimes under the Court's intervention, on the premise of bias and sovereignty. Such efforts further entrench impunity and loosen accountability for human rights violations and justice on the continent, and can be classified as a direct affront to human security in Africa as armed conflicts might thence become unbridled.

The Court, in such a hostile environment, created by African State parties and the AU, finds slim, the viability of obligations upon these States to cooperate. Thus, non-cooperation simply derails the Court's procedures and processes, and undermines its relevance upon such

obviously strained performance. On the other hand, threats of withdrawal serve as a tactical tool for influencing the Court, to yield to unjustified demands for deferral or termination of cases, notwithstanding their admissibility, the spirit of the Statute and the Court's jurisdiction over matters (already seized of by the Court). Ultimately, political duress on the judicial process at ICC, amounts to obstruction of justice and trivializes gross violations of human rights on the continent.

Limitations to Effective Performance of the Court

The performance of the Court depends mostly on the successful prosecution of its procedures and processes, with competent staff and support from the state parties upon such need. However, the Court has been registering chequered performance with the most recent cases from Africa, culminating in disappointing outcomes, which leave asymptotic, the quest for justice and accountability for gross human rights violations on the continent. However, such underwhelming performance by the Court is occasioned by a mix of factors, verging on either

Former president of Ivory Coast, Laurent Gbagbo, during his first appearance in the International Criminal Court in the The Hague in January 2016. (Photo Credit: ICC-CPI/AP Photo/Peter Dejong)

obstruction of justice or miscarriage of justice, but largely, institutional and political challenges.

Poor Investigations by the OTP

In *Prosecutor v. Bahar Idriss Abu Garda* case which began on May 18, 2009, charges were not confirmed for his alleged involvement in the war crimes and crimes against humanity during the Darfur conflict in Sudan in 2003 (ICC, 2009). Such determination and premature termination of cases at the Pre-trial level, was witnessed in the cases facing Hussein Ali and Henry Kosgey, following post-poll violence in Kenya in 2007/08 period. Such disappointing outcomes point in part to the OTP not having conducted thorough, objective and fool-proof incriminating evidence against those accused before the Court.

The other factor leading to poor investigations by the OTP, is non-cooperation by respective States, with the Court, especially on investigations and prosecution as otherwise obligated under Article 86 of the Statute. Article 86 of the Statute, on general obligation to cooperate, provides that "[s]tates Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court."

For instance, as observed in the termination of all six Kenyan cases at the Court, the OTP claimed that the Government of Kenya (GoK), which is a State party to the Statute, inadequately cooperated with the Court in the administration of justice in the cases. The OTP only received 'selective assistance' from the GoK resulting in the OTP lacking full access to documents and records that may have had probative value, thus weakening the prosecution. Thus, the alleged character of GoK around the Court process may have ground against the spirit of Articles 86 of the Statute and undermined meaningful investigations and prosecutions on the part of the OTP (OTP, 2016).

Non-Cooperation by State Parties

The sheer number of persons at large being 15, clearly demonstrates the levels of non-cooperation with the Court as otherwise provided for by the Statute in Articles 59 and 86 and other such provisions in the statute. Some African state parties take advantage of customary international law which provides immunity to high-level state officials in a foreign state, not to comply with requests for arrest of wanted persons by the Court, not least when the subject is a head of state, an equivalent or any senior government official legible for diplomatic

> The performance of the Court depends mostly on successful prosecution of its procedures and processes, with competent staff and support from the state parties upon such need

immunity. On the other hand, some cite regional declarations, resolutions and statutes in so far as non-compliance can be justified.

For instance, at least 33 countries declined to comply with the Court's request for the arrest of Omar Bashir, then president of Sudan, citing diplomatic immunity he enjoyed as a head of state. South Africa and Uganda cited international law on diplomatic immunity as important to peaceful inter-state relations and various AU resolutions urging African countries to whether the applicability of the principle of universal jurisdiction of the Court. For instance, AU resolution *Assembly/AU/Dec.243 (XIII)* of 2009, the regional body called upon "….all concerned States to respect International Law and particularly the immunity of state officials when applying the Principle of Universal Jurisdiction."

However, with regard to international criminal law, the general principles of criminal law as enshrined under Part 3, Article 27, in respect of irrelevance of official capacity, provide that:

1. *This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.*

2. *Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.*

As such, non-compliance on account of the official capacity of the subject in question, is inexcusable according to the spirit of the Rome Statute.

The Clash of Norms and Obligations: Diplomatic Immunity versus State Obligations under the Rome Statute

The Vienna Convention on Diplomatic Relations (VCDR) of 1961 codified the very principles of peaceful and friendly relations between states, expressed in the United Nations Charter. However, by codifying customary laws around diplomatic relations, the Convention in its preamble affirms its belief in "…..the purposes and principles of the Charter of the United Nations concerning the sovereign equality of states, the maintenance of international peace and security, and the promotion of friendly relations among nations " (VCDR, 1961 par. 2), and "….that an international Convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems" (VCDR, 1961 par.3).

The Convention further expresses itself on the status of 'diplomatic agents' in the receiving country. However, despite the limited definition of 'diplomatic agent' adopted in Article 1 of the VCDR focusing on staff members of a diplomatic mission in a receiving state, the head of state and government holds an inviolable diplomatic status as well. This implies that the Article 29 of the VCDR confers the same status and inviolability to heads of state and government. Article 29 of the VCDR states that, "[t]he person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving state shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity."

It is noteworthy that diplomatic immunity accorded to a head of state and/or government, proceeds from inviolable customary norms of international relations, aimed at preserving peace and security in the international system. On the other hand, norms of international criminal law are so peremptory in nature, that a clash of values and norms is inevitable, where a subject of international criminal liability is a diplomatic entity, with full diplomatic immunity due to them.

Such a clash of values and norms presents a challenge (of parallel statutory obligations) to the viability of international criminal justice system which requires cooperation from state parties and even non-state parties, in investigation and prosecution of crimes deemed under the jurisdiction of the Court. Such cooperation includes with the Court's request for arrest as stipulated under Article 59 (1) of the Statute as follows, "[a] State Party which has received a request for provisional arrest or for arrest and surrender shall immediately take steps to arrest the person in question in accordance with its laws and the provisions of Part 9." Article 59 (1) is worded in the spirit of Article 86 of the Statute, which states, as regards general obligation to cooperate, that "[s]tates Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court."

Further, the Statute complicates the applicability of international accountability for gross human rights violations, especially by ranking government officials, by acknowledging the legacy of diplomatic immunity as provided for under the international customary law. Such provisions, as regards the Court's request for arrest, include both clauses 1 and 2 of Article 98 of the Statute, on cooperation with respect to waiver of immunity and consent to surrender. Article 98 of the Statute states that:

1. *The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.*

2. *The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.*

Witness interference is a common offence against the administration of justice at the Court

Omar Hassan al-Bashir, former president of Sudan, at an African Union summit meeting in South Africa in 2015. (Photo Credit: Gianluigi Guercia/Agence France-Presse-Getty Images)

The consequence of customary diplomatic law and practice playing out in the environment requiring international accountability for criminality admissible at the Court, is replacement of obligations with discretions, for state cooperation with the Court, in respect of third states.

Poor Witness Protection Mechanisms

Witness interference is a common offence against the administration of justice at the Court. This points to a lack of fool-proof witness protection mechanisms as well as elements intent to prejudice cases at the Court. As such, several cases have been dismissed at the Pre-trial stage and terminated at the Trial stage on account of insufficient evidence, whereupon the OTP alleged witness interference.

Conclusion

The primacy of human rights and the accountability for gross violations is likely to register dismal attention in Africa due to political hostility against international judicial processes at the ICC. The AU and individual member countries of the regional body, might inadvertently create a club of impunity through resolutions and decisions which amount to non-cooperation and utter indifference against the Court. Similarly, the inherent institutional and systemic weaknesses in the international criminal justice system, enable 'African impunity' to thrive. Thus,

the following measures should be taken to restore the position of international criminal law and human rights, in socio-political realities in Africa:

- The AU should urge all African states to ratify the Statute to ensure unwavering regional moral support for the Court.

- In lieu of support for the ICC, the AU can move to fully establish and operationalize the Criminal Division of the African Court for Human and Peoples Rights or rather African Criminal Court, to mainstream continental accountability.

- The ICC should fully equip the OTP, and find effective ways to encourage respective states to oblige and offer full cooperation with the Court on investigation and prosecution of cases before ICC, for improvement of investigations by the OTP.

- The Assembly of State Parties and the United Nations Security Council, should develop mechanisms of ensuring state cooperation with the ICC in the administration of justice.

- Effective and appropriate measures should be taken to categorize and punish fugitives, escaping the ICC process. Such measures might include sanctions on travel and freezing of assets owned by individuals at large, with implications on custodial states.

The Assembly of State Parties and the United Nations Security Council, should develop mechanisms of ensuring state cooperation with the ICC in the administration of justice

- The OTP should improve its witness protection mechanisms to effectively deter witness interference, which jeopardizes some of the cases at the Court, leading prosecutorial failures.

- The ICC, especially the Pre-Trial and Trial Chambers, in its discretion, should ensure strict adherence to the Court's rules and procedures established in the Statute, to prevent mistrials and occurrence of errors fact, law and procedure, which lead to overturning of prior convictions.

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Securitization of Migration and Implications for Security in Africa: Towards Balancing State Interests and Migrants' Rights and Protection

By Millicent A. Ochieng and Mumo Nzau Ph.D.

Abstract

Migration in Africa takes place both vertically, from the perspective of the South-North migration trends; and horizontally, in terms of inter- and intra-regional migration. Whichever form it takes, migration often occurs within the territorial jurisdictions of diverse states. Equally, the phenomenon affects populations or individuals who are entitled to many and various inalienable rights. These two realities present the crossroads that this article speaks to. Migration and particularly illegal migration has often been associated with various forms of international organized crime. The objectives of this article are twofold: first, it unpacks the concept of human migration within the context of security; and second, it provides an analysis of two predominant narratives that are gaining currency in the global discourse on migration governance. The Securitization Theory herein facilitates analysis of the delicate balance between state interests and migrant rights. Within the context of an ever-increasing need for regional integration and free movement of persons, the article recommends that states embrace prudent migration governance mechanisms including sound management of migrants' data, formulate and implement favorable bilateral migration agreements in order to effectively deal with the attendant challenges and likely opportunities associated with the management of migration while safeguarding both state and migrant interests.
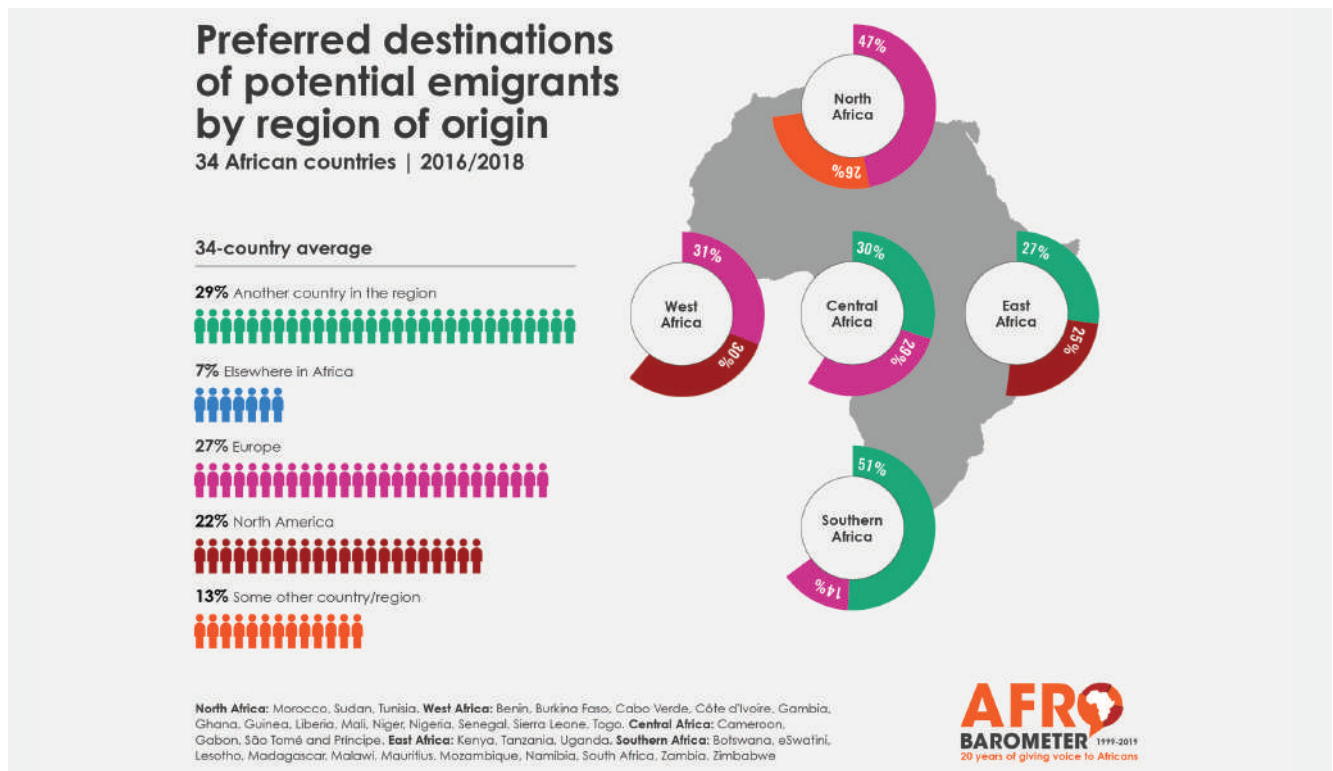
Introduction

Africa is a continent where there are regular occurrence of displacement and migration caused by violent conflict and poverty. Media images of massive refugee flows and 'boat migration' is linked to the stereotypical view of Africa as a continent of poverty and conflict. In the past decade, irregular migration from Africa to Europe has received extensive attention with popular discourses depicting an image of an exodus of desperate Africans running away from their poverty-stricken homes in search of the 'European El Dorado'.

South-North migration is also portrayed as a symptom of development failure (Bakewell, 2008). This view further holds that South-North exodus is driven by poverty and income gaps which may spin out of control, unless the rights of the immigrants are curtailed. Subsequently, a commonly proposed solution to this phenomenon is the need to stimulate development in origin countries through aid, trade, or remittances. Whereas most of the literature that espouses the above view about African migration is based on assumptions, selective observation, and journalistic impressions, as well as sound empirical evidence paints a different picture.

Surveys and interview-based studies conducted on contemporary African emigration since the 2000s point to the diversity of African migration (Lessault & Flahaux, 2013; Berriane & De Haas, 2012; Bakewell & Jonsson, 2011). According to these studies, a majority of African migration is not directed toward Europe but rather other African countries. They further indicate that in instances where such migration is outward bound, the final destination is not always Europe, but is diversified also to the Gulf countries, and the Americas.

Despite a major focus on the movement of African migrants to European countries, a survey report collected from 34 African countries by the Pan-Africa Research Network Afrobarometer indicates that more than one-third of Africans have thought about emigrating to other African countries and not outside the continent. According to the report, plurality of potential migrants expressed a preference for a destination within Africa with 29 per cent

Preferred destinations of potential emigrants by region of origin
34 African countries | 2016/2018

34-country average

29% Another country in the region

7% Elsewhere in Africa

27% Europe

22% North America

13% Some other country/region

North Africa: 47% / 26%
West Africa: 31% / 30%
Central Africa: 30% / 29%
East Africa: 27% / 25%
Southern Africa: 51% / 14%

North Africa: Morocco, Sudan, Tunisia. **West Africa:** Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo. **Central Africa:** Cameroon, Gabon, São Tomé and Príncipe. **East Africa:** Kenya, Tanzania, Uganda. **Southern Africa:** Botswana, eSwatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Zambia, Zimbabwe

AFRO BAROMETER 1999-2019
20 years of giving voice to Africans

Source: Afrobarometer

citing another country within their respective regions and seven per cent looking elsewhere on the continent (Daily Monitor, 2019). The intra-regional migration takes place mainly within the Western, Eastern, and Southern African regions, whilst the inter-regional occurs from West Africa to Southern Africa, and from Central Africa to Southern Africa and West Africa (ISS, 2019; African Union, 2016).

The other aspect of African migration pertains to internal migratory movements, in this case, rural-urban migration. Due to the rapid urban growth experienced in most African cities, massive populations have continued to shift to the urban centers thereby presenting opportunities and challenges in equal measure to the policy makers. Furthermore, in contrast to the widespread perception that movement out of Africa is often irregular, previous research has also shown that most Africans move out of their homes of origin using valid travel documents such as passports and visas (Schoorl et. al., 2000). Additionally, the motivation for such movement is often on the basis of varied reasons such as family, work, or study (Schoumaker et. al., 2015) and not always poverty or conflict as commonly portrayed. Although there is a general concurrence on the importance of conflict as a driving force of migration in Africa, varied literature emphasize that there are indeed other social processes such as the search for education, spouse, or better life that drive migration.

The Research Problem

The occurrence of illegal migration has often been associated with various positive and negative outcomes. Whilst the positive outcomes such as transfer of labor and technology do not pose a problem to states, it is the negative outcomes manifested in various forms of international crimes such as human trafficking, terrorism, smuggling and drug trafficking, that have been of major security concerns to states. Consequently, States have often formulated and implemented policies aimed at safeguarding their national security interests against the adverse effects of illegal migration. However, the implementation of such policies has often been perceived to be in contravention of the human rights of migrants who are the subjects of migration. In such cases, states find themselves in a dilemma of how to balance their national interest vis a vis protection of the rights of migrants. Are states able to find the balance? This article attempts to explore this dilemma of states.

Approaches to the Drivers of Migration

Research on migration in general, and on Africa to be specific, has developed a wide spectrum of theoretical approaches in an attempt to explain the origins, patterns and characteristics of migratory flows. Herein, this article discusses three such approaches.

'Push'-'Pull' Argument

The overriding assumption of the 'push' and 'pull' approach is that migration, in general, may be explained as a function of the economic performance of both the receiving and sending states. The first attempt at explaining the dynamics of migration is contained in Ravenstein's late 19th Century seminal work, *The Laws of Migration* (Ravenstein, 1885). His work is based on five principles of migration. The first principle relates to the relationship between migration, gender and distance, pointing out the male predominance in long-distance migration and female predominance in short distance migration. The second principle points to the fact that migration often happens in stages. In this case, migrants would first move from nearby villages towards a central point of attraction such as an urban centre. Thereafter, as commerce and industries grow, then migrants would be attracted from far distant locations as well.

Ravenstein notes the third principle of migration as stemming from the rural-urban dichotomy which provides the propensity for emigration. The fourth principle pertains to the technological advancements as well as development in infrastructure and transportation network as providing the impetus for increased migration. Ravenstein's fifth principle of migration is based on an individual's rational choice decision that is based on calculations of costs and benefits of a given movement.

The basic contention of the 'push'-'pull' approach in explaining migration is that the impetus to migrate is founded in the economic conditions of developing countries or locations of origin which operate as push or expulsion forces. On the other hand, the receiving countries or locations with greater or better economic conditions such as higher wages, employment and better welfare systems act as the pull or attraction forces in the receiving countries (Appleyard, 1989).

Furthermore, in line with the above contention, proponents of this approach posit that countries with the lowest per capita income would provide the highest differentials compared to the income in receiving nations and that such differentials would be useful in predicting the direction of migration. However, this argument does not always stand as a truism if some of the migration trends are examined. For instance, according to Gregory (1991), in the late 1970s, the income differential between the United States of America (USA) and Colombia was 10.5 to 1 respectively, yet no significant Colombian migration towards the USA took place at the time. Instead, there

was significant migration of Colombian workers towards Venezuela. The income differentials between the two countries at the time was 3.1 to 1 in favor of Venezuela. Notably, the income differential between Colombia and Venezuela was smaller compared to the USA. This case study shows that wage and income differentials do not necessarily provide sufficient evidence to sustain the hypothesis on wage and income differentials as a motivation for migration within the context of the 'push'-'pull' model.

The 'push'-'pull' argument further posits poverty as being related to migration. Estimates of poverty in Latin America in 1970 indicate that 68 per cent of rural households in Peru were below the poverty line, 75 per cent in Honduras, 73 per cent in Brazil, 54 per cent in Colombia and 49 per cent in Mexico. Yet none of these countries experienced massive emigration towards the USA within the above period and even twenty years later. This case further disproves the supposition that migration is as a direct result of poverty (Grindle, 1986).

In order to fully draw the linkage between migration and poverty within the African context, it may be important to focus on internal migration and international south-south migration as opposed to the focus by previous literature on South-North migration. The rationale for this is that the poorest families and people from the poorest areas tend to be excluded from the South-North migration spectrum, and even when they do so, they often tend to move under extremely exploitative circumstances. Most of the poorest people also tend to migrate within national borders and within rural areas or small towns, thereby often becoming invisible even to statistical data.

There is indeed evidence that the poorest tend to migrate less and also tend to benefit less from migration than the wealthiest. Empirical evidence by De Haas (2003) indicates for instance that in Morocco, the poorest rural area such as the Tata province or the Draa Valley in the South or remote areas in the Atlas Mountains witnessed much lower migration to Europe (De Haas, 2003). Furthermore, the case of Kenya's Arid and Semi-Arid Lands (ASAL) also considered among the poorest regions in the country could also serve to demonstrate that there is a weak link between poverty and migration given that very minimal outward bound migration takes place. Indeed, for the ASAL areas, the communities tend to migrate internally from one area to another depending on the status of peace and stability, as well as availability

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of water and pasture for the sustenance of their pastoral livelihood.

The Developmental Approach

From a developmental perspective, the migration transition theory posits that the relationship between migration and development is fundamentally non-linear (Zelinsky, 1971). This assertion deviates from the commonly held idea that African migration is driven by poverty. Indeed evidence from developing countries indicates that development generally leads to increased rather than decreased levels of mobility. This thought was originally put forth by Zelinsky who posits that modernization and economic development have historically led to increased rural to urban migration followed by a subsequent increase in emigration. The above position contradicts the prediction of the conventional "push-pull" models that argue that migration decreases as societies develop. In reality, most migrants do not move from the poorest to the wealthiest countries and poorer countries tend to have lower emigration levels than middle income and wealthier countries.

Furthermore, the 'push' and 'pull' debate, ignore another aspect of reality which is that people will only migrate if they harbor certain ambitions and have the resources to make their exit possible. In such instances, migration thus becomes a function of people's ambitions, aspirations and capabilities (De Haas, 2014). Although it is not a given that an increase in migration capabilities automatically causes people to migrate, this can only happen if the people aspire to do so and if they gauge that their aspirations can be better fulfilled if they move to a different location.

Development and its attendant benefits have the potential to increase people's access to resources, education, knowledge and social networks. Development indicators such as infrastructural development and advancements in transportation and technology, make travelling less

costly and risky, thereby enabling people to migrate over increased distances. Thus, when development occurs in poor or marginal areas, people's capabilities and equally their aspirations grow. This would, therefore, explain the paradoxical phenomenon of development driven emigration.

Less well-resourced persons or poor people with lower aspirations and capabilities tend to have reduced levels of migration and even when they do, the same is usually over shorter distances. The wealthier and highly skilled on the other hand often tend to migrate more and over large distances. In this regard, it is, therefore, misleading to rely on the conventional 'push' and 'pull' models as the only explanation to current migration trends in Africa. Such explanations tend to posit that the current wave of large-scale migration in the continent will cease once equilibrium, based on the resolution of these factors, is achieved. This does not necessarily hold as a truism.

In general, African countries with comparatively higher levels of development such as in the Maghreb or coastal West Africa equally have high levels of extra-continental migration. The poorest countries, on the other hand, especially most of the landlocked sub-Saharan countries, have lower levels of emigration and if any of these occur, then they only happen to be short-distance migration to nearby countries. This evidence supports the migration transition theory which posits that economic development and concomitant social transformation initially coincide with increasing levels and a larger geographical reach of emigration.

State Centric Approaches

The formation of nation-states can lead to an increase in migration through conflict, infrastructures and implementation of policies that encourage emigration. The flipside of this approach is that authoritarian regimes may attempt to restrict emigration on the basis of fear of brain drain and also to restrict an influx of the immigration of foreigners. Such a situation has previously been witnessed in countries such as Algeria, Egypt, and Cote d'Ivoire (Natter, 2014).

Previous accounts of African migration have tended to ignore the role of the states in the migration processes leaning broadly on the receiving country bias and not the origin states (Vezzoli et. al., 2014). At the onset, colonial occupation and practices such as slave trade and the systematic use of forced labor shaped contemporary migration patterns within and from the continent. The

conflicts that characterized the period of colonialism and liberation resulted in increased mobility as individuals fled from the undesirable violent conditions that typified most states in the continent at the time. In addition, in the aftermath of the colonial period, as state formation processes took effect, efforts to instill national unity in the most ethnically diverse African societies led to the emergence of internal tensions that turned into violent conflicts that eventually led to the movements of persons away from the states that were in the formation stages.

For instance, the apartheid regime in South Africa prioritized the containment of mobility from other African states in the wider southern Africa sub-region. Thence, the states' policies were not open to African migration. However, over time and particularly after the end of the Cold War and the demise of the apartheid regime in the early 1990s, the region has become more open to African citizens (Bilger & Kraler, 2005).

State formation processes and policies further have an effect on migration by impacting on the trends and patterns. For instance, where a state has put in place immigration policies that restrict mobility, especially inward, then the following four substitution effects hypothesized by De Haas (2011) may undermine the effectiveness of such restrictive policies. For instance, potential migrants may divert the target destination of their migration to another country through an effect known as spatial distribution. Commonly also, there have been cases where potential migrants reorient their migration channels because of given policies. In such instances, they may opt for illegal migration channels such as using cut lines or unregulated border areas to gain entry. This effect is known as the categorical substitution. The third effect is the inter-temporal substitution which affects the timing of migration such as 'now or never" migration in the expectation of future tightening of policies. Such an effect has been behind the life-threatening journeys made across the Sahel region through the Mediterranean Sea into Europe. The fourth effect is the reverse flow substitution whereby immigration policies reduce circulation and these push migrants into permanent settlements in the destination countries (De Haas, 2011).

An armed Libyan coast guard stands on a boat after the interception of 147 migrants attempting to reach Europe near the coastal town of Zawiyah, Libya on June 27, 2017. (Photo Credit: Taha Jawashi/AFP Via Getty Images)

Securitization Theory

The rise of the Securitization Theory can be attributed to the emergence of contestations about the concept of security that typified the end of the Cold War period. On the one hand, the concept of security was deemed to be only about military and political stability for the United States and the Soviet Union at the time. However, on the other hand, there was a growing viewpoint that sought to include other non-military threats that affected people rather than states. According to proponents of this viewpoint, security was not universal but was rather context and subject dependent. Such an approach led to the rise of new terms within the realm of security including human security and regional security (Fierke, 2015).

The concept of securitization was first brought into the agenda of security studies by the Copenhagen School represented in the writings of Barry Buzan, Ole Waever, and Jaap de Wilde. The trio in their respective writings responded to the post Cold War call to reframe security and examine its dynamics and distinctive character. By so doing, they sought to move away from the purely state centric, military leaning understanding of security to suggest that the state is not the only referent object for security. Thus, through the concept of securitization, The Copenhagen School proposed a constructivist approach to the term security which presented a paradigm shift from an overemphasis on the military sector to the inclusion of economic, environmental, societal and political sectors within the realm of security.

Therefore, Securitization Theory developed out of the need to widen the scope of security to include other referent objects other than the state. A referent object, which is the central idea in securitization, is the thing that is threatened and therefore needs to be protected. Emphasis made to the referent object entails questions about security for whom? Security from what? And security by who? (Waever, 1995). For instance, in the context of the 'Global War on Terror', an Arab would be looked at with suspicion and presumed to be dangerous because they fit a certain profile related to terrorism. In this regard, surveillance then becomes a security apparatus of control and a source of insecurity for one who needs to be protected.

Furthermore, the theory points out that it would be misplaced to talk about certain issues such as terrorism as if they concern everyone around the world equally. In addition, according to the securitization theory, national security policy is not always a given but rather is often carefully designated by politicians and decision makers. Therefore, security issues are usually not just out there but rather occur when a securitizing actor, such as a politician, who has the social and institutional power to label the issue as threatening or alarming does so.

Securitization and Governance of Migration in Africa: Between State Interests and Migrants' Rights

The securitization of migration has been given greater impetus by the security concerns around the issues of migration. In light of this, migrants are often associated with crime, terrorism and social unrest, all of which undermine a country's state of security. Furthermore, the securitization of migration implies dealing with the question of how migration has developed into a security issue. From the onset, the emergence of migration as a security threat has been attributed to the occurrence of the terrorist attacks of September 11, 2001. Although hitherto, there had been a correlation between migration and security particularly in the western societies, this was considered mainly to be a threat to social security such as access to jobs and welfare goods and services. However, after the events of 9/11, the discourse on the securitization of migration was amplified thereby reinforcing the link between migration and security globally.

Stemming from its securitization, migration thus becomes a process that is viewed to pose a threat to the political and societal wellbeing of a nation or a state. A people's political and social identification as well as its way of life develops as a result of its response to an existential threat (Huysmans, 2000). The people would define what they consider to be the good life through the reification of figures of societal danger such as the criminal or the invading enemy. Subsequently, discourses of danger and security policy and practices derive their political significance from their capacity to stimulate people to contract into a political community and to ground political authority on the basis of reifying dangers or threats (Ibid.). Thus far, it follows that migration is one process that is also reified as an internal and external danger to a nation or to state and this therefore contributes to the exclusion of migrants from the normal fabric of a society where they are viewed not just as aliens but also as aliens who are dangerous to the state's overall well being.

Stemming from its securitization, migration thus becomes a process that is viewed to pose a threat to the political and societal wellbeing of a nation or a state...

Besides the above aspects of belonging and identity, access to social and economic rights is also seen to be critical in the state's governance matrix. This brings to the fore the question about who has a legitimate right to welfare provisions. In this case, migration features in the contemporary struggle about who deserves what within the state. Particularly, immigrants, asylum seekers and refugees are often viewed as having no legitimate claim to the distribution of certain social goods. For instance, scarcity and the struggle over the distribution of social goods such as housing, healthcare, unemployment benefits, jobs and other social services have become so competitive thereby making immigrants' rivals and competitors to national citizens in the labor market and in the distribution of social goods.

In this case, the securitization of migration is also embedded in the struggle for political legitimacy. Thus the political class comes up with the brand welfare chauvinism through which migrants are socio-economically stigmatized (Huysmans, 2000). This is a strategy that the political elite employs to protect the social and economic rights of the citizens. It is also a political strategy in which migrants are constructed as a scapegoat to remedy declining political legitimacy, in the context of framing migration as a financial and economic burden to states and governments.

In the African continent, the emergence of migration as a security issue is closely related to the fact that the African continent is embroiled in a multiplicity of challenges to its social and political mechanisms. These include the rise of poverty, deterioration of the population's living conditions, the revival of xenophobic attacks and the estrangement of the electorate. Within such a context, migration has increasingly been presented as a danger to public order, domestic and labor market stability; thus in essence migration has been securitized. The securitization of migration in Africa results from a powerful political and societal dynamic that reifies migration as a force which endangers the good life in the African societies.

Given the security concerns that have been raised around migration, it has therefore become imperative that

states, regional and continental bodies engage in the discourse on how the phenomenon could be addressed. This has given rise to the need for migration governance in the African Continent. The International Organization on Migration (IOM) defines migration governance as the traditions and institutions by which authority on migration, mobility and nationality in a country are exercised, including the capacity of the government to effectively formulate and implement sound policies in these areas (IOM, 2015). Since migration is unavoidable, it is important that it is better governed in an integrated manner by bringing together comprehensive, human rights-based and gender-responsive migration strategies and policies. Furthermore, because migration intersects with several other sectors at the national and international levels, these strategies and policies should be embraced by all the agencies as well as national and international authorities in the relevant sectors.

One of the key strategies that pertain to the governance of migration includes the ratification and adoption of multilateral protocols or conventions as well as the subsequent formulation and implementation of national policies in line with these protocols and conventions. One such strategy is The African Union Strategy for Enhancing Border Management in Africa which provides the framework upon which African countries are expected to enhance the security of their borders. The strategy is built on the understanding that African countries have not sufficiently secured their borders to prevent the occurrence of crime. Through this strategy, the AU supports its member states to enhance the management of their borders in a manner that promotes peace, security and development.

The strategic objectives of border governance mechanisms would include the provision of international standard travel documents through well-structured registration and issuance systems that facilitate regular migration. The same should be gender-responsive to allow women to have equal and independent access to travel documents to facilitate border crossings. Furthermore, the other objective pertains to the need to, inter alia, control the movement of prohibitive and

The 782nd meeting of the Peace and Security Council of the African Union held on June 27, 2018 to discuss the security and migration situation in Africa. (Photo Credit: AU)

restrictive goods such as drugs and weapons, movement of persons to guard against illegal border movements, human trafficking and smuggling and the effective use or implementation of import and export permits and quotas.

Another important instrument prescribing the AU border management perspective is the Migration Policy Framework for Africa, adopted by the continental body in 2006. This policy points out that effective border management is a key element in any national migration system. It outlines the strategic goals of border security as the control of movement of prohibitive and restrictive goods including drugs, weapons; the movement of persons to eliminate illegal border crossings, human trafficking and smuggling; the appropriate use of import and export permits and the illegal smuggling of goods. The Protocol on the Free Movement of Persons in Africa of 2017 aimed at facilitating the free movement of persons across Africa, also ensures that there are no inhibitions to engagements across the continent.

In line with the above frameworks, most AU member states have endeavored to put in place border management mechanisms. The justification for such securitization as provided for in the frameworks is to, inter alia, prevent smuggling, human trafficking and terrorism. The implementation of such policies has resulted in the prima facie treatment of migrants as suspected criminals

rather than people who are legitimately in need of protection or help. This is against the background that most if not all African countries have ratified Human Rights Treaties including the protocol to the African Charter on Human and Peoples Rights which bind them to the protection of human rights. This notwithstanding, the securitization of migration by African states has resulted in states formulating and implementing policies that are restrictive in nature. Such policies are aimed at securing the states' external borders, restricting immigration and are less concerned with migrant rights. Thus far, securitization has led to negative implications in terms of the human rights of migrants within the continent.

Over the last decade, Africa has witnessed a rise in irregular migration. Migrants have increasingly been using precarious routes that render them vulnerable to abuse, smuggling and trafficking. As a result, the migrants, particularly the women and girls, have increasingly become susceptible to human trafficking, Sexual and Gender Based Violence (SGBV) and other risks (AU, 2019). Subsequently, states have tended to view irregular migration through the prism of national security, thereby leading to the generalization that all migration poses a potential security threat. Subsequently, the prevailing situation has contributed to the securitization of migration including reinforcement of border control. Often times, such reinforcements have tended to go against the

human rights of the migrants hence presenting a dilemma for states as they try to balance between their interests on the one hand and migrants' interests on the other.

Cases abound on how the implementation of policies by states to ensure their security interests and territorial integrity has clashed with the rights of migrants. A case in point may be drawn from the Sahel region which is comprised of the band of countries that lie just South of the Sahara and extend to the Atlantic. The promulgation of Niger's Law No. 2015 aimed at curbing illegal migration and its attendant activities, though noble, has in equal measure resulted in the violation of migrants' rights. Whereas the Law resulted in the tightening of security procedures, it also led to an increase in the maltreatment of migrants especially along traditional routes between Agadez and Southern Libya or Southern Algeria. This resulted in increased migrant deaths, unlawful detention, denial of humanitarian assistance, holding under inhuman conditions, kidnap for ransom and the occurrence of Sexual and Gender Based Violence (Molenaar et. al 2018).

Furthermore, in Libya, in an effort to stem migration and particularly boat departures through the North African county to Europe, Libyan authorities set up migrant detention centres in Tripoli, Misrata and Zuwara, as to hold up facilities for intercepting migrants, pending their possible return to their countries of origin. According to a Human Rights Watch Report (2019) the migrants are held under inhumane conditions including severe overcrowding, unsanitary conditions, poor nutritional provisions and water, lack of adequate healthcare, occurrence of violence, rape of women as well as children and lack of adequate child care facilities. Furthermore, such interceptions and subsequent detention are arbitrary and in contravention of international law on the rights of Migrants and Asylum seekers and are not subject to judicial review. This, therefore, worsens the plight of the migrants who are left beholden to unscrupulous smugglers and are victims of indifference or downright hostility to people in need of protection and safety.

Conclusion and Recommendations

Migration, if well managed, has the potential to yield significant benefits for both origin and destination countries. For instance, migrants can fill labor requirements in certain sectors of a destination country such as the construction and technology sectors, thereby contributing to the economic growth of the given destination country. In other instances, the feedback effects of migration can result in major economic gains for the origin countries.

These could be through knowledge and skills transfer as well as remittances. However, when migration is not properly managed, then it can have serious negative consequences for states as well as migrants' well being, including probable destabilizing effects on national and regional security. It is against such a background that the securitization of migration has gained currency.

Within the context of increased regional integration and free movement of persons, human migration is unavoidable. The numbers of migrants continue to be on the rise and this provides the impetus for states to embrace prudent migration governance mechanisms so as to aptly deal with its attendant opportunities and challenges. One such mechanism would be increased inter-state co-operation and enhanced data and security management that not only uphold the rights of the migrants but also address transnational organized crimes that arise from the migration flows. Thus, there is an emerging trend of regionalization and pluralization in the governance of migration whereby regional organizations are gradually becoming critical players in governance of migration in the continent.

Debate on the governance of migration in Africa should also deviate from the over-emphasized prescription that initiating development in the countries of origin would stem migrant flows. The non-linear correlation between development and migration provides the justification for such a shift. In this regard, it therefore follows that stirring development in migrant origin countries, cannot address migration. From the arguments presented in the development approach, development would enhance the peoples' access to knowledge and resource and elevate their aspirations and would thus result in an increase in migration, hence the need for the current approach in addressing the migration crisis to be reconsidered.

This article, therefore, proposes the need for every migration prone area to develop its own specificities

> The numbers of migrants continue to be on the rise and this provides the impetus for states to embrace prudent migration governance mechanisms so as to aptly deal with its attendant opportunities and challenges

and unique tailor-made responses as opposed to broad solutions. In this case, there is need to design schemes at either bilateral or regional levels to take care of the interests of migrants. Such frameworks would encourage migrants especially the younger ones to expand their opportunities economically, socially and culturally as they get exposed to new challenges and new ways of doing things.

One way of ensuring the protection of migrants especially labor migrants would be to design and implement Bilateral Labor Agreements (BLAs) to ensure that migratory flows are orderly. The BLAs should be aligned to the international requirements on the adequacy of social protection for migrants. With the establishment of more legal channels for the management of migration, there is likely to be a reduction in illegal migratory flows.

Finally, the implementation of security and migration policies should be done sustainably and in compliance with international law. Policy makers should understand and take into account how proposed measures affect the protection of individuals. The continent's reaction to migration should also emphasize the links that have been established between migration and local economies, dynamics of governance and security, within the context of its implications to stability and development.

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The Internet, Social Media, and Politics:
A Boon to Democracy or a National Security Risk?

By Fauzia Hussein and Edmond J. Pamba.

Abstract

Social media has emerged as a formidable sinew of political power for ordinary people, politicians, and governments across the world. On the other hand, social media can work at the expense of the citizens, politicians, mainstream media, governments, and national security. With both liberal democracies and autocracies grappling with social media, government-sanctioned Internet disruptions have become rampant, especially in Africa and Asia. This is because social media, as a form of new media, has brought significant dynamism into politics, displacing traditional gatekeepers of information – the mass media. This article examines the role of social media in politics, and the delicate balance between digitally-organized social change and national security, to help governance practices especially in Africa, better adapt to modern internet-based communication technologies and movements.

Introduction

A video of self-immolating Tarek el-Tayeb Mohamed Bouazizi on December 17, 2010, circulated through social media, inspired a rebellion that ended Tunisian President Zine el Abidine Ben Ali's 23-year rule on January 14, 2011. These events further inspired the 'Arab Spring' as 'autocratic' governments in Libya, Egypt, and Yemen lost power to rebellions. Naief Abazid's graffiti, inspired by the Arab spring, went viral on social media, and the Syrian government's harsh response to the boy's dissent brought a now-seven-year civil war in the country.

In the realization of the political power of social media, governments in Africa are increasingly resorting to Internet disruptions (shutdowns), control, surveillance, censorship, and crackdown on dissent online. Respective governments cite public safety, national security, and control of information. It begs the question, is social media, a boon to democracy, or a threat to national security? This article explores this delicate balance whose central force is communication.

Social Media and Mass Communication

The fundamental purpose of the media is to inform the public (news), provide citizens with the information needed to make thoughtful decisions about leadership and policy (issue-based journalism), act as watchdogs (investigative journalism), set the agenda for public discussion, and provide a platform for political expression. The media may also facilitate community building, helping people find common causes, identify civic groups, and work toward solutions to societal problems (Owen, 2017). However, traditionally, information has been subject to control by the state and the traditional institutionalized mass media. Such control of information, as Castells et al (2007) contend, has been a source of power throughout history.

Information dissemination has largely been dictated by the agenda-setting and gatekeeping powers of traditional mass media institutions, especially in print and television journalism. These media have been viewed as the twentieth century's 'public sphere', where political discourse takes place and public opinion is created (Livingstone & Lunt, 1994, p. 88). However, with the emergence of social media as new communication platforms, Meraz (2009) observes "…people are moving en masse away from print and TV journalism, to a new 'networked journalism', where information is received and consumed through cyberspace via the hyperlink" (p. 700-702). This can be explained by the fact that social media allows information providers to go around the traditional gatekeepers or editorial intervention, and deliver the information directly to individual consumers.

Demonstrators walk through the streets of Cairo on January 25, 2011 to demand the end of President Mubarak's presidency. (Photo Credit: AP)

According to Statista (2019), there are currently 2.9 billion social media users worldwide. This means that over a third of the population in the world is using social media to communicate. Social media has significantly revolutionized communication in terms of access to information, freedom of information, and promotion of conversations. The dynamism associated with the use of social media thus upsets political communication with unpredictability and instability (Owen, 2017) with the effect of a changing nature of citizen engagement, political processes such as elections, governance with respect to transparency and accountability, traditional journalism, and political communication for politicians.

In the broadest sense, social media refers to technologies that allow individuals to create, share, exchange, and redistribute user-generated content (Gallaugher & Ransbotham, 2010). Accessing information has become easier, especially in this era of mobile phones, tablets, computers, and other mobile devices. The Internet has become a frequent source of education, entertainment, and news. Social media, which is one of the Internet's most innovative technology, has become the most preferred destination. People are communicating all day, every day through emails, texting, and using the numerous social media platforms. The different social sites have manifested the need to share and broadcast 'our lives' to the Internet sphere and there is a growing need to share and be shared as well. Thus, social media

is an example of a technology that has seen increased usage as an information source (Pepitone, 2010).

Social Media and social movements for democratic change and popular participation

Baruah (2012) argues that social media exploits web-based and mobile technologies to turn communication into an interactive dialogue, thereby creating connectivity among people, and uniting them in a crisis. By so doing, social media extends public discourse to average citizens, thereby expanding the bounds of public participation in public affairs, to include the general public which is connected to the internet.

It also creates a common agenda among the public on public affairs and thus, creates social consensus (Sheedy, 2011; Althaus & Tewksbury, 2002). Thus, social media has occasioned a paradigm shift to what Blumler and Kavanagh (1999) term as "the presumption of mass exposure to relatively uniform political content, which has underpinned each of the three leading paradigms of political effects—agenda-setting, the spiral of silence, and the cultivation hypothesis" (1999, p. 221).

As regards political mobilization and social movements, social media combines its connective and interactive capabilities with unfiltered information, to drive public discourse. It helps build social movements in two ways:

1. It provides Internet-based communication (expression) platform as a resource for activists and organizers who suffer financial resource scarcity (Weist, 2011);

2. It provides an accessible form of citizen journalism (away from traditional journalism), which hands down an expression platform and information sources to individuals - activist and consumer, social movement founder and followers, respectively (Vaughan, 2011).

According to Owen (2017), by allowing citizens and movement leaders to use digital media tools to share updates on real events on the ground through uploading of images, messages and videos directly to the Internet, social media powerfully mobilize the masses around a given public agenda.

For instance, the 2011 video of the self-immolation of Tarek el-Tayeb Mohamed Bouazizi in Tunisia, as an act of defiance against President Zine el Abidine Ben Ali's 23-year rule, inspired a rebellion that brought Ben Ali's rule to an end, and opened way to democratic governance. In 2016, Pastor Evan Mawarire, amid harsh economic pressures and autocratic rule of President Robert Mugabe, successfully organized a general strike in Zimbabwe through his online 'This flag' campaign. On November 17, 2018, a protest movement, *The Yellow Vests*, organized on Facebook, carried out mass anti-government protests across French cities.

The movement (*The Yellow Vests*) was formed in reaction to President Emmanuel Macron's carbon tax and economic reforms, which raised fuel prices and taxes, despite pressing economic conditions such as unemployment and growing economic inequality. President Macron has since scrapped the carbon tax which had increased fuel prices, promised to raise minimum wage, and scrapped the tax hike on pensioners, to placate the violent protests of *The Yellow Vests* movement (Willsher, 2018). It is therefore clear, the role of social media, as a watchdog, as a source of information for the public, as a platform for activism against government policies and delivers victory for the people's will, and as a launchpad for revolutionary causes against autocratic governments, in the quest for democratic and politically accountable dispensations. However, while this role is politically crucial, states face the temptation of imagined or real national security threats emanating from digitally organized protest movements and radical waves of rebellion.

French nationals protest against increased taxes on gasoline and diesel in Bordeaux, France in December 2018. The 'yellow vest' movement was very active on Facebook. (Photo Credit: Caroline Blumberg EPA, via Shutterstock)

The Internet has become a frequent source of education, entertainment, and news. Social media, which is one of the Internet's most innovative technology, has become the most preferred destination

Social Media and National Security

Social media, like other media platforms, provides the opportunity for enjoyment of basic freedoms of expression, access to information, and in the context of political mobilization, facilitates the exercise of political and civil rights including the opportunity for political participation, the freedom of assembly, freedom of association, and the right to protest. However, in some instances, the exercise of the foregoing rights and freedoms falls into conflict with public order laws of the state, summoning the state to act in restoration of law, order and public peace.

While public order laws require protest organizers to notify the government on planned public protests, and protests to be peaceful, protect enterprise and the economy, and while all governments do not tolerate subversive political expressions, all for national security, some social and protest movements organized on social media, have fallen short of such obligations. For instance, *The Yellow Vests* movement, organized on Facebook, has carried out violent protests damaging the French economy to a tune of EUR 4.4 billion (Randall, 2018), and USD 3.4 million in damage to property and infrastructure in just two months (Hume, 2018). In Libya and Syria, such protests (social media-organized) led to armed rebellions which plunged the two countries into unending political instability and humanitarian devastation. In Egypt and Tunisia, these protests had subversive outcomes, with the governments of Hosni Mubarak and Zine el Abidine Ben Ali getting overthrown.

Further, political communication has to an extent been jeopardized by social media's citizen journalism. This is with respect to national security and military operations and assets, cabinet or government secrecy and confidentiality, and government correspondence. For instance, in March 2018, confidential presidential information regarding President Paul Biya's salary raise for soldiers deployed in the separatist English speaking region, was leaked to social media, in addition to official documents leaked by various government officials

in Cameroon in January 2018 (Kindzeka, 2018). This leaves governments on the defensive and struggling to counter scathing public opinion of government practice, thereby undermining political communication and government operations.

In 2014, members of the US's armed forces, leaked patrol times, details of sensitive visits and photos of restricted areas, details of Britain's submarines, posting videos of people and equipment in Afghanistan and operations in Libya, on Facebook and Twitter (Farmer, 2014). Such leaks not only jeopardize security operations, but also threaten national security when they turn public opinion against security and military operations, or when crucial military information is picked by foreign agents.

However, perhaps the most dangerous threat to national security posed by the use of social media, is hate messaging and radicalization into violent extremism and terrorism. On October 27, 2018, Robert D. Bowers, shot and killed about 21 Jews in a Pittsburgh synagogue. He ran an anti-semitic Facebook page with a hashtag *#jewsdid911*. A few days after the shooting, another potential hate-criminal, Cesar Sayoc Jr., was arrested for mailing explosives to top Democratic Party leaders in the US, having been radicalized by hate and partisan posts on social media and other online platforms (Frenkel et al., 2018). Hate spewed on social media, may threaten social stability, by antagonizing social groups (political, religious or ethnic), promoting persecution of certain social groups, or leading to genocidal attacks.

On the other hand, extremist rhetoric by various terrorist groups around the world have exploited social media platforms such as Facebook and Twitter, to radicalize vulnerable populations and recruit fighters across the world. Such groups also exploit social media to spread propaganda and claim legitimacy by use of 'compelling rhetoric'. Extremist groups open and run social media accounts, and also feed their extremist content and propaganda into various social media spaces. The use of social media to spread violent extremist rhetoric, to radicalize and recruit fighters, threats national security

considering the youth population forms the majority of social media subscribers, and victims of radicalization and recruitment by violent extremist groups.

The Scramble to 'Govern' Social Media

With social media emerging as a powerful platform for political mobilization, for unchecked citizen journalism, and unchecked information sharing, governments are raising national security, public peace, and law and order concerns. Hence, by the same token, governments are delicately struggling to regulate social media use, short of infringing upon fundamental rights of speech, assembly, association, protest and privacy. This dilemma confronted the 2004 Budapest Convention on Cybercrime which acknowledged that:

> [Being]Mindful of the need to ensure a proper balance between the interests of law enforcement and respect for fundamental human rights as enshrined in the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights and other applicable international human rights treaties, which reaffirm the right of everyone to hold opinions without interference, as well as the right to freedom of expression, including the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, and the rights concerning the respect for privacy..

Nonetheless, governments have found ways of domesticating the Budapest Convention on Cybercrime or finding whole new ways of regulating social media within applicable state laws. Germany, through a 2017 law (NetzDG) regulating social media to combat agitation and fake news, requires that social media companies such as Twitter and Facebook remove all hate-promoting content and pro-Nazi content online within 24 hours or risk a fine of USD 64 million (Ellyat, 2018).

However, measures for regulating social media use have been harsh in authoritarian systems than in liberal democratic ones. For instance, China blocked Facebook and Twitter entirely. Other countries such as Uganda on its part, besides Internet disruptions, has imposed a USD 0.05 tax per day on Facebook, Twitter and WhatsApp. The most worrying trends are perhaps online surveillance, online censorship and Internet shutdowns, in Africa. On

Internet shutdowns or disruptions alone, between 2016 and 2018, Asia led in these disruptions with a total of 310, followed by Africa with 46, Europe with 12, and South America with 3 Internet disruptions (Access Now, 2018). Uganda, for instance, shut down the Internet during the 2016 elections, possibly to freeze public discourse and political mobilization. In August 2018, Ethiopia shut down the Internet in its eastern region, following ethnic violence by the Oromo and Somali ethnic groups. The measure was described as an attempt to prevent the violence from spreading due to hate messages on social media ("Internet in eastern Ethiopia", 2018).

With Chinese companies' help, some African countries are carrying out online censorship against their citizens. For instance, Chinese companies have helped install surveillance and censorship equipment in Zambian networks, while in Zimbabwe, Chinese gears have been used to jam independent broadcasts (Weber, 2017). In Ethiopia, Huawei and ZTE have been contracted to develop the country's telecommunications systems, but are suspected to be helping the government acquire systems for monitoring citizens online and on other telecommunication platforms (Weber, 2017).

Risks of Social Media Regulation on Human Rights, Democracy and Economy

Regulation of social media has been through legal, surveillance, censorship and disruptive measures such as Internet shutdowns. However, such measures infringe on human rights and civil liberties, freeze democratic ideals of openness and accountability of government, and damage the economy. For instance, measures such as taxation on social media use, online censorship, surveillance, Internet shutdowns, and repressive arrest and detention of dissenting social media users, limits the use of social media to further public discourse and the enjoyment of civil liberties appertaining free speech, access to information, freedom of conscience, and the right to privacy (Joyce, 2015). By limiting public discourse and stopping political mobilization and popular agenda setting, such measures limit political participation for citizens and limit social change, when social movements cannot be formed or agitate for change, for fear of repressive crackdown or of breaking the law criminalizing such mobilization through social media.

On the other hand, regulations which control the amount, content, and the veracity of information available to the public, risk the trap of censorship (Henley, 2018).

A Tunisian citizen waves the country's national flag during a rally in the capital Tunis on January 14, 2016 to mark the 5th anniversary of the 2011 revolution. (Photo Credit: AFP Getty Images)

Governments trapped into censorship will limit access to information, government openness and political or democratic accountability against democratic principles of good governance (Voltmer, 2009).

On the economic front, the 21st Century is an information age and today's society is a network society facilitated by the revolution in information and communication technology (Castells, 1996). Our economies, to a greater extent, depend on the 'freedom of Internet'. Thus, shutting down the Internet as a measure to control social media is bound to have negative effects on the economy. For instance, Egypt lost an estimated USD 90 million in 2011 due to Internet shutdown during the Arab Spring, with a total loss of USD 2.4 billion between July 1, 2015 and June 30, 2016 globally.

Other countries incurred varied losses related to Internet such as USD 968 million in India, USD 465 million in Saudi Arabia, USD 320 million in Morocco, USD 209 million in Iraq, USD 116 million in Brazil, USD 72 million in the Republic of the Congo, USD 69 million in Pakistan, USD 69 million in Bangladesh, USD 48 million in Syria, USD 35 million in Turkey, and USD 20 million in Algeria (West, 2016). On the other hand, based on the level of Internet connectivity, the Global Network Initiative (2016) estimates that countries with high-level Internet connectivity lose about 1.9 per cent of their GDP, medium-level connectivity countries lose about 1 per cent of their GDP, while low

connectivity countries lose 0.4 per cent of their GDP daily, due to Internet disruptions such as Internet shutdowns.

The Balance between Liberty and Security: Regulating Social Media

Social media does need regulation for the threat it poses to national security, public peace and order. However, such regulation should be in keeping with democratic principles of good governance, protective of basic human rights, and sensitive to economic stability of a country. Thus, to strike a balance between Internet and individual liberty, and national security, countries venturing to regulate the use of social media should explore the following:

- Pass legislation defining cybercrimes and hate crimes, without prejudice to free speech.

- Pass laws defining acts of use of social media which threaten national security, public peace and order, and requiring tech companies or social media service providers to remove such content online, without prejudice to free speech, freedom of access to information, freedom of assembly, right to protest, and freedom of association, and without encouraging censorship.

- Practice good governance practices of transparency and accountability to promote public trust.

Nonetheless, governments have found ways of domesticating the Budapest Convention on Cybercrime or finding whole new ways of regulating social media within applicable state laws

- Find ways to counter anti-government propaganda online, which do not prejudice the right to privacy and free speech, and media freedom.

- Practice tolerance to dissent, to encourage political participation, public discourse and to free collective consciousness, good for social change.

- Address grievances and agitations of social movements, and separate criminal conduct of protesters from legitimate protest and dissent organized on social media.

- Share the responsibility of countering violent and extremist content (rhetoric and propaganda), with

the tech companies or social media providers, preferably through digital disruption.

Conclusion

Internet-based media or communication products such as social media have emerged as a powerful political force. Such media as Facebook and Twitter, provide powerful platforms for information sharing, public discourse and political mobilization in unprecedented levels, in part due to lack of traditional gate-keeping processes of the traditional mass media.

However, social media also presents serious challenges to national security when used to spread hate messages, to unduly undermine government's integrity through anti-government propaganda, to organize violent protests and create unwarranted and leaderless civil wars and unrest. Even so, government-sponsored Internet disruptions and social media-gagging laws, infringe on human rights, democratic growth and economic stability and prospects of respective countries. It is therefore imperative for countries to develop regulatory mechanisms that protect the tech enterprise, individual liberties, democratic accountability, and economic stability.

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Editor's Note

Dear Reader,

We are excited to release our eleventh bi-monthly issue of *The HORN Bulletin* (Vol. III, Iss. I, 2020). 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

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Editorial Team

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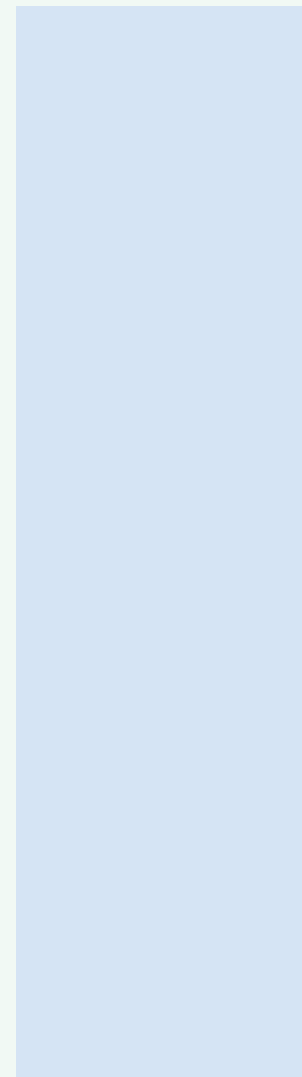**Senior Editor:** Roselyne Omondi | **Designer:** Evans Ombisa

Upcoming Event

International Conference on Africa-Middle East Relations

Shared Peace. Shared Security. Shared Prosperity

HORN International Institute for Strategic Studies will hold an *International Conference on Africa-Middle East Relations*. The Conference will be held in Nairobi (Kenya) in the first quarter of 2020, and it will provide an opportunity for scholars and experts to discuss and exchange ideas on the nature and dynamics of Africa-Middle East relations. The participants will come from Kenya, Egypt, United Arab Emirates, Qatar, Iran, Turkey, Oman, Saudi Arabia, Eritrea, Sudan, Algeria, Somalia, South Africa, Djibouti, Ethiopia, United Kingdom, Denmark, Belgium, USA, and Norway.

The Conference will address, *inter alia*, the following areas in Africa-Middle East relations: geopolitics and Africa-Middle East Relations; trade and investment between Africa and the Middle East; the role of ideology in Africa-Middle East relations; Africa-Middle East relations in a multipolar world; significance of political ties between African states and the Middle East; The Arab Spring, the Gulf Crisis and after; the politics of the proliferation of arms; terrorism and violent extremism and their ideological foundations; and effects of the above on the global oil markets.