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Cover photo: Globe surrounded by the flags of the world, Providence, Rhode Island, United States. Kerr Photography.

EDITORIAL

BY **VASU GOUNDEN**

In the last two issues of *Conflict Trends*, I reflected on the global challenges that confront us. In this editorial, I reiterate our understanding of the complexities that face humanity and offer a platform, the Global Peace Initiative (GPI), that we conceptualised. The GPI will launch in Durban, South Africa, on 11 November 2018, exactly 100 years after the end of the First World War.

Over the past 50 years, the human population has not only doubled in size, but has also developed profound technologies that instantly and continuously link nearly 7 billion people. The globalised economic system, rooted in the interdependence of capital and resource markets, dictates that national and corporate interests often conflict with – instead of complement – efforts to redress inequality and poverty. Geopolitical and security threats epitomised by the rise of intrastate conflicts are no longer contained by geographic boundaries. Global negotiations on climate, trade and institutional reforms remain gridlocked. Millions of individuals consequently languish in a system that is ill-equipped to manage the paradoxes of converging local, national and global forces.

Managing these unprecedented challenges requires a transformative shift from competition to cooperation. Dialogue must become the foundation of any meaningful path towards an equitable and just world. National interests can be pursued through new frameworks of mutual global responsibility. The current economic and political paradigms must be examined to determine what new models can be created through a shared understanding of our current challenges and future needs.

The GPI will be a catalyst for generating new ideas to address the complex challenges we face, today and in the future. Through extensive dialogue and engagement, the GPI will stimulate discussions around the conceptualisation of a new social contract, which can manage the diverse interests that characterise society and will speak to the ambition of a better world. The GPI will underscore the basic values of freedom from fear and freedom from want, imagining the ultimate goal of reducing inequalities that are prevalent globally.

The GPI will stimulate and convene a dialogue among high-level policymakers and decision-makers in government, the private sector and civil society to stimulate the conceptualisation of a new social contract. It will convene a network of leading policymakers and decision-makers – such as politicians, businesspeople and civil society leaders – who share both our understanding of the challenges before us as well as our commitment to forging innovative solutions. This dialogue will empower and amplify the voices of like-minded individuals who believe a better world is possible.

In addition, a critical mass of youth from across the world will be called upon to articulate a vision of the world they desire. Engaging in dialogue between themselves and with current decision-makers will ensure that the leaders of tomorrow are active stakeholders in this process. Their expectations of our current leaders will be crucial for influencing the continuous recalibration of how individuals, governments and businesses work together to achieve the common goals of peace and equality. A world characterised by a rapidly growing population and shrinking resources, alongside growing inequality, marginalisation and poverty, is a recipe for continuous instability and conflict. Today, no part of our world is insulated from conflict or its manifestations. Societies that have invested in development and equality have benefited from stability and peace, showing that a social contract forged on cooperation for mutual benefit is possible.

The time is ripe for a new social contract. Existing models for governance between governments and their people, and existing social contracts (or their absence), are challenged by today's global conditions. To address these challenges, we must reframe our conceptions of the long-term challenges that confront us, as well as our approaches to building more peaceful, inclusive and prosperous societies. We need a new model for cooperation, based on dialogue. We need new ideas that will lead to new ideologies and new models to meet the challenges of our contemporary world. The GPI will be a catalyst for this new global dialogue and a vehicle for change.

Vasu Gounden is the Founder and Executive Director of ACCORD.

RESOLVING THE PROTRACTED POLITICAL CRISES IN GUINEA-BISSAU: THE NEED FOR A PEACE INFRASTRUCTURE

BY **ISAAC OLAWALE ALBERT AND CHUKWUEMEKA B. EZE**

GALLO IMAGES/ REUTERS/TIM COCKS

Background

Protracted political instability in Guinea-Bissau continues to impede the effective functioning of state institutions and undermine socio-economic development and prospects for investments. Guinea-Bissau has remained in a political dilemma over the past few decades, with recurring crises and little possibility for resolution.[1] A number of structural factors contribute to the country's political instability, underdevelopment and state fragility. These factors include poverty, illiteracy, lack of access to justice, ineffective social cohesion, corruption, illicit trade, gender-based violence, land disputes and weak state institutions. Addressing these factors requires committed action by national actors and sustained support from the international community.

Since independence, the country and its allies have struggled to restructure its weak sociopolitical and economic systems. International actors applauded the initiative led by the Economic Community of West African States (ECOWAS) to broker peace among political actors, which led to the Six-point Roadmap and Conakry Agreement[2] of 10 September 2016 and 14 October 2016 respectively.

Above: Political instability in Guinea-Bissau continues to impede the effective functioning of state institutions and undermine development.

The international community appraised the outcomes of the mediation process as the best alternative to address the political impasse, but implementation stalled due to a lack of commitment and national ownership.

Guinea-Bissau lacks effective social and political platforms for participation and space for citizens to voice their interests and concerns. This increases their vulnerability to violent demonstrations, crime and civil unrest and is further reinforced by poor support for local initiatives that foster peacebuilding mechanisms. Recent demonstrations, led by youth groups to express their frustration over the current political landscape and denial of channels for redress, were clamped down by the state. Therefore, an inclusive and coordinated infrastructure for peace seems to be the missing link in ongoing peacebuilding efforts in Guinea-Bissau.

Societies resilient to violent conflict are those with opportunities for inclusive, constructive engagement. This has motivated states to adopt more systematic and institutionalised ways to manage conflict and build peace. These institutions, mechanisms, resources and skills, through which conflicts can be resolved and peace sustained within a society, can be described as infrastructures for peace. Such initiatives include enhancing the coordination of local, national and regional peace groups; providing advice and support to government and institutions responsible for national peacebuilding, dialogue and mediation; and assisting governments to design policies and regulations that support the establishment of peace infrastructures.[3]

A typical community in Guinea-Bissau, whether urban or rural, is composed of various institutions such as traditional leadership, a council of chiefs, elders, youth associations, community development associations, women's groups and religious organisations. Bringing these units together under the umbrella of an infrastructure for peace increases opportunities for consensus-building and joint problem-solving. The current peace and security architecture and structures in Guinea-Bissau have not emerged organically and lack the requisite skills, capacities, coordination, legislation and operating structures to deliver sustainable peace and development.

GALLO IMAGES/ REUTERS/TIM COCKS

The Economic Community of West African States (ECOWAS) led initiatives to broker peace among political actors in Guinea-Bissau.

The impetus for the establishment of a national infrastructure for peace in Guinea-Bissau is provided in a declaration by ECOWAS member states in Accra, Ghana on 9 September 2013, and further echoed through the communique of its 45th ordinary session, held in Accra on 14 July 2014 (Article 51), approving the establishment of national early warning and response mechanisms in member states.[4]

Existing Peace Initiatives and Structures: Strengths and Limitations

It is important that existing initiatives and structures which support and sustain peace at the macro and micro levels be analysed. The strength and weaknesses of each will inform the elements and composition of a comprehensive peace infrastructure. The existing structures are as follows:

- ***Voz di Paz:*** At the request of the United Nations (UN) Integrated Peacebuilding Office in Guinea-Bissau, Interpeace partnered with the Instituto Nacional de Estudos e Pesquisa (INEP)/National Institute for Studies and Research in 2005 to investigate the situation in the country and evaluate the potential for creating a local initiative aimed at promoting sustainable peace. As a result of this research, the *Voz di Paz* programme was created in 2007, with a mandate to assist in creating and broadening dialogue on key obstacles hindering peace in the country and supporting local, national and regional actors to participate in the prevention of future conflict.[5] The group consists of 15 respected community peace actors, who mediate among disputing parties and ensure peaceful coexistence. *Voz di Paz* also works on participatory conflict analysis through a nationwide consultation process with a broad range of stakeholders – this is referred to as peace-mapping. The group recently received a grant from the UN through the Peacebuilding Fund to integrate and increase the participation of women in peace processes under this platform.
- ***The early warning system of the West Africa Network for Peacebuilding (WANEP):*** This is an integral part of WANEP's conflict prevention and community peace processes. It works to enhance human security in Guinea-Bissau by reporting sociopolitical situations that could degenerate into destructive conflicts. Like other WANEP national offices across West Africa, WANEP Guinea-Bissau has a well-established National Early Warning System (NEWS) with community monitors throughout the country. This early warning system, which is also linked to the ECOWAS Early Warning and Response Mechanism (ECOWARN), ensures the collation and analysis of conflict early warning data, with a view to alerting policymakers on the implications of actions taken or not taken. The WANEP early warning system

can be leveraged to provide information for the peace infrastructure. Monitors at the community, district and regional level report threats and incidents of violence to peace committees for timely responses.

- ***Commission for the Organization of the National Conference (COCN):*** The establishment of the COCN's Paths to Peace and Development, led by Father Domingos da Fonseca, is another great structure that could be useful in designing the peace architecture. The National People's Assembly reinstated the COCN in 2015 to resume the consultation work initiated in 2009 on the need to choose a national reconciliation mechanism for Guinea-Bissau. It is expected that the reconciliation and national conference will address the causes of the conflict and rewrite the common history of Bissau-Guineans, so that the country can move away from rhetoric and embrace development.
- ***Women's Mediation Network:*** The UN Integrated Peacebuilding Office in Guinea-Bissau has been supporting a Women's Mediation Network, with the mandate and vision to mobilise a critical mass of women from the community to the national level and develop their capacities in dialogue and mediation processes. Such expertise includes, but is not limited to, leadership, negotiation and decision-making, advocacy and political participation, and dialogue and mediation. The network provides a platform for women, and would be valuable in achieving inclusivity and gender equity in a peace infrastructure.

There are some sharp contrasts between the COCN, *Voz di Paz*, WANEP and the Women's Mediation Network. The COCN lacks a grassroots base, is ad hoc in nature and did not organically emerge from the community, while *Voz di Paz*, WANEP and the Women's Mediation Network lack a strong national coordination mechanism, dedicated funding and legislation. The focus of the peace infrastructure, therefore, should be to join the strengths of these structures, provide coordination and ensure local ownership and sustainability.

Justification for a Peace Infrastructure

As discussed previously, there are several existing peace structures in Guinea-Bissau. However, they lack the requisite capacity and are mostly uncoordinated, poorly structured and under-resourced. The purpose of a national infrastructure for peace in Guinea-Bissau will be to ensure a viable and inclusive process for transforming conflict, promoting peace, and managing diversities to guarantee stability and sustainable development. The infrastructure for peace should strive to develop institutional arrangements for the coordination of the various peacebuilding pillars including the conflict early warning mechanism, dialogue and mediation, security sector governance and reforms, peace education, electoral violence management, and gender mainstreaming in peace and security, as well as the coordination of a funding mechanism with development partners.

The theory of change for an infrastructure for peace in Guinea-Bissau is predicated on the conviction that "an organically developed and inclusive platform for conflict transformation with capacity for conflict early warning, dialogue and mediation, backed by legislation, will lead to social cohesion and political stability".[6] Ghana, for example, adopted this approach through a vibrant system of local peace committees and traditional mediation, which helped the country contain the fall-out from violent chieftaincy-related conflicts, election dispute management and social cohesion. Ghana has now elevated this system to the level of a National Peace Architecture embodied in the National Peace Council (NPC).

The justification for an infrastructure for peace in Guinea-Bissau, therefore, is conceived around the following key areas:

- ***The nexus between development and conflict:*** A critical analysis of the systemic causes of conflict and instability in Guinea-Bissau suggests that political tensions are only symptomatic, while the main causes centre around poverty and a lack of means of livelihood and opportunities. Therefore, it is important not to focus on the specific conflict issue, but to approach it holistically by addressing the root causes and establishing mechanisms and sustainable structures to transform the conflicts in the short and long term. The current peace structures and mechanisms for managing expectations and tensions are not adequate to deal with such tensions. A missing link in ongoing efforts to consolidate peace in Guinea-Bissau is the lack of connection between peace and economic empowerment. Conflict entrepreneurs and perpetrators of violence are usually vulnerable youth without skills, employment and opportunities. Therefore, the peace infrastructure should ensure the integration of private sector investment in peace processes, and promote economic empowerment initiatives in its strategy and structure. A model of public-private partnership for peace that guarantees the consolidation of investment of development agencies through a revolving trust fund needs to be incorporated into the peace architecture.

THE PURPOSE OF A NATIONAL INFRASTRUCTURE FOR PEACE IN GUINEA-BISSAU WILL BE TO ENSURE A VIABLE AND INCLUSIVE PROCESS FOR TRANSFORMING CONFLICT, PROMOTING PEACE, AND MANAGING DIVERSITIES TO GUARANTEE STABILITY AND SUSTAINABLE DEVELOPMENT

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A missing link in ongoing efforts to consolidate peace in Guinea-Bissau is the lack of connection between peace and economic empowerment.

- ***Electoral violence management:*** With ongoing internal party wrangling among and between politicians, and given the history of political instability in Guinea-Bissau, it is evident that elections will continue to be keenly contested and will be a triggering factor for unresolved and underlying systemic issues. National peace councils and local peace committees have helped to prevent or reduce violent electoral conflicts. A strong peace infrastructure in Guinea-Bissau ahead of the 2018 and 2019 parliamentary and presidential elections respectively will be an important vehicle through which electoral disputes and tensions will be prevented and addressed.
- ***Violent extremism and early warnings:*** A compelling justification to fast-track the establishment of an infrastructure for peace in Guinea-Bissau is the likelihood of increased violence and extremism and the need to curb this, or prevent it from occurring. It is axiomatic that "prevention is better than cure". There is evidence that the activities of ECOWAS and other international partners in the recent past have been a restraining factor to violence and military incursion into politics. However, recent research and analysis points to the fact that not addressing the root causes of these conflicts could trigger further violent extremism, especially given the vulnerability of the country and the activities of extremist groups around the region. As resources continue to dwindle with political stalemates in the short and long term, competition for scarce resources – especially within the context of existing grievances between groups – will amplify. Violent extremism and radicalism do not just erupt without early warning signs. Local capacities for recognising and averting violent conflicts are important. An infrastructure for peace with a robust early warning system will monitor, analyse and address these indicators at the macro and micro levels.
- ***Security sector, constitutional and institutional reforms:*** The challenges associated with institutional transformations in Guinea-Bissau, including security governance, natural resource management and constitutional reforms, need to be evaluated. Perhaps the lack of localisation of content and non-involvement of citizens has been a hindrance to thes e reforms. An inclusive platform with eminent personalities, such as the National Peace Council, could drive these reforms with local input. There is a need to approach security and institutional reforms from a local and cultural dimension, especially since Guinea-Bissau's post-colonial defence and security culture has been modelled along Western and Eastern defence and security philosophies that emerged from the cold war period. An infrastructure for peace should be proactive, participatory, inclusive, non violent, transformative and principle based,[7] and would be an important tool in driving state reforms. It is no longer feasible to adopt one universal approach to security governance and institutional reforms. The scope

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A strong peace infrastructure in Guinea-Bissau ahead of the 2018 and 2019 elections will be important to manage electoral disputes and tensions.

needs to be expanded to incorporate non-state actors and ensure local ownership within the peculiarities and cultural nuances of the state.

- ***Access to justice:*** There is a growing link between a lack of access to justice and means of redress and increased violence. A compelling need for the establishment of an infrastructure for peace is that it has the potential to provide redress to parties in conflict and improve access to justice, especially using alternative dispute resolution mechanisms. Access to justice enables citizens to vindicate their rights and/or resolve their disputes, and guarantees equal access to just outcomes. In Guinea-Bissau, like most African countries, land is critical to the well-being of individuals and communities as a means of habitation, livelihood, economic production, social cohesion and community life. With the search for, and exploitation of, natural resources and new uses of land facilitated by national and global economic development, land has become a major source of conflict in many countries.[8] An enhanced peace architecture can respond to these issues through joint problem-solving and inclusive dialogue.
- ***Coordination and sustainability:*** A key argument in favour of a national peace infrastructure is its ability to coordinate peacebuilding efforts, reduce duplication of efforts, and increase synergy and efficiency. A crucial component of such an infrastructure is to establish a platform for all peace actors and stakeholders for dialogue, consultation, cooperation and coordination. This approach acknowledges that sustainable peace needs a collaborative institutional framework between state and non state actors.[9] Analysis of current structures reveals that while there are few peace architectures, they lack harmonisation, are ad hoc in nature, and do not have legislation and capacity in many areas.

Proposed Components of the Peace Infrastructure

Bissau-Guinean stakeholders will need to determine the structure and components of the peace infrastructure. However, it should take into account existing structures and mechanisms, consider the cultural nuances of Guinea-Bissau, and ensure local participation and ownership. Following best practices from other countries, the infrastructure should aim to have the following components:

- ***National, district and local peace councils:*** The peace councils – with the mandate of coordinating peace-building initiatives and responding to conflicts through reconciliation, tolerance, trust, confidence-building, mediation and dialogue at various levels – should consist of highly respected people of integrity (with consideration for gender equity, diversity and identity), who are capable of building bridges and crossing political divides. They should be the voices of reason and have impeccable characters. They should acquire requisite competence, knowledge and experience in matters relating to conflict transformation

and peace, as well as institutional reforms. The councils should be made up of a broad range of stakeholders with the mandate to promote sustainable peace and human security.

- ***Community/national early warning system:*** Conflicts in communities do not just erupt without early warning signs; therefore, local capacities for recognising and averting violent conflict are important. The infrastructure for peace should include a robust early warning programme that ensures early detection and the reporting of conflict indicators to policymakers and community responders.
- ***Peace education:*** There is a growing concern that the exposure of children and young people to violence in Guinea-Bissau has led to a pool of vulnerable youth whose world view has been shaped and influenced by a culture of intolerance, radicalism and violence, with grave implications for the future stability of the country. Recognising that a culture of non-violence and community resilience is imperative for sustainable peace in the country, the peace infrastructure should have a component of peace education, with a focus on influencing the youth. Peace education is a pedagogical approach aimed at promoting a culture of peaceful coexistence and a culture of peace.
- ***Government unit on peacebuilding and legislation:*** A unit of the government should develop the overall policy on peacebuilding, together with the National Peace Council and the National Peace Forum, and drive its implementation. This unit should liaise and cooperate with other ministries with related policies on peace, justice, defence, foreign affairs, social cohesion, conflict resolution in schools, environment, and social and economic development, and should ensure that these critical areas are reflected in the peace architecture.
- ***National capacities and peace forum:*** A think tank platform for consultation, collaboration, cooperation and the coordination of peace issues by all peace actors and stakeholders should be established. This component of the infrastructure should be responsible for the capacity of peacebuilding institutions, government agencies, peace councils and others, including civil society groups. Broad-based skills training in peacebuilding and conflict management – including conflict analysis, conflict early warning and response, conflict resolution and supporting dialogue processes – should be offered to members of the peace council, public servants and civil society groups. A pool or network of trained mediators who can assist the national and local peace councils should also be created.
- ***Traditional perspectives on conflict resolution:*** Traditional perspectives and solutions to conflict should be integrated into the peace infrastructure. These traditional mechanisms could be strengthened to promote and sustain a shared vision of society and a culture of peace. Values of reconciliation, tolerance, trust, confidence-building, mediation and dialogue as responses to conflict should be highlighted. With an expected increase in the diversity of citizens within the country, the promotion of social inclusion and cohesion is more important than ever.
- ***Funding mechanism and donor coordination*:** Peacebuilding and conflict management strategies require long-term funding by governments, donors, non-governmental organisations and communities. It is important to have a component of the peace infrastructure to coordinate fundraising and ensure synergy of purpose. This component should promote a coordinated funding mechanism for peace activities in the country and avoid duplication of efforts.

Figure 1: Key Features of an Infrastructure for Peace[10]

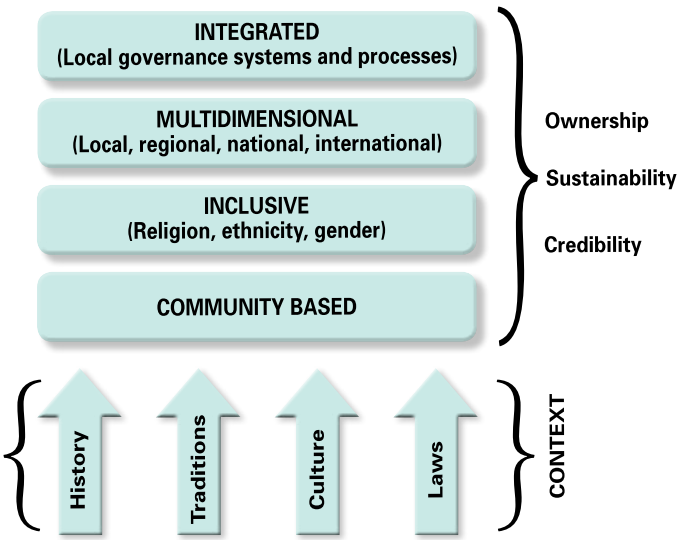

Figure 1 highlights the elements expected of the peace infrastructure to enable it to function efficiently. These include the need for an integrated structure, a multidimensional approach and an inclusive process that recognises the historical, traditional, cultural and legal context of the country.

To be effective, the infrastructure for peace in Guinea-Bissau should be:

- ***Legal:*** Parliamentary action could provide the necessary legal backing for the work of the infrastructure for peace and increase its leverage to convene conflict actors. It can also make the work of the various levels of the peace architecture visible to the community as a credible state institution. Legislation will also enable the structure to take advantage of dedicated funding from the state's statutory budget, rather than relying solely on external funding like most non-governmental organisations.
- ***Autonomous:*** Institutions and processes that will constitute infrastructures for peace should be part of the state, like the judiciary, but must be seen as free from

interference by specific parts of government or political parties.

- ***Credible:*** To be autonomous, as well as to have credibility with all parties, the infrastructure for peace should have access to reliable independent funding, and its membership should be transparently selected, based on pre-determined criteria.
- ***Skilled:*** Individuals and institutions that make up the infrastructure for peace should not officially have political affiliations, but should be seen as professional with the ability to reconcile, or to bring people together, or as having gravitas that could compel the attention of all stakeholders.
- ***Inclusive:*** Representations must include all the constituencies, not just those that are powerful and visible. Consideration should be given to gender, youth, ethnic and religious diversities.

Conclusion

The need for a comprehensive and coordinated infrastructure for peace in Guinea-Bissau, which takes cognisance of existing structures and mechanisms, cannot be overemphasised. The peace architecture should aim at collaborating with the private sector and business community to take advantage of these sectors' corporate social responsibility and access funding as well as opportunities to increase employment for the youth. Such an infrastructure will provide the country with a firm basis for the coordination and ownership of its conflict transformation initiatives. It will also help to consolidate the present piecemeal work and harmonise the often repetitive, parallel and sometimes dysfunctional efforts of the different actors in peace, conflict and development in Guinea-Bissau. The experiences of Ghana show that articulating a national infrastructure for peace provides a congenial platform for cost-saving, maximisation of input and the creation of a robust and useful conversation among critical actors, thus providing inclusive ownership and traction for peacebuilding, conflict management and sustainable development.

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JUSTICE IN TRANSITION AND THE COMPLEXITIES OF ACCESS

BY **TENDAIWO PETER MAREGERE**

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Introduction

The study of justice in transition has emerged as a central focus of scholars, practitioners and policymakers.[1] This is compounded by a general understanding within the transitional justice debate that after mass atrocities have occurred, justice has to be restored to those who were denied it during periods of volatility. Notwithstanding that the concept of justice is nebulous and highly contested, both in scholarship and in practice, and between the "collective and the individual", "reclaiming the lost and righting the wrongs" remains a critical process in societies emerging from mass violence.[2] Yet there is consensus within the transitional justice field that "justice is the foundation on which every society is built".[3]

This article delineates some of the dilemmas that societies in transition face in accessing justice after conflict. The underlying argument is that justice must be understood from the perspective of the victims. Since justice has many facets, an alternative, holistic and integrated approach to conceptualising access to justice, informed by the lived experiences of victims in transitional contexts, becomes peremptory. This article emphasises the urgent need for bespoke access to justice solutions for societies in transition, which are greatly opposed to the regular Western and Eurocentric models. Justice in

Above: Justice is the foundation on which every society is built.

WIKIMEDIA COMMONS

In many societies emerging from mass violence and repression, conceptualising justice and ensuring meaningful access to it remains one of the key challenges.

transition can be understood as the way in which post-conflict societies select, engage (or not) with processes and practices of repair, recovery, coexistence and reconstruction in an attempt to achieve outcomes that are of value in their everyday lives.[4]

Accessing Justice after Atrocity: Key Dilemmas

In many societies emerging from mass violence and repression, conceptualising justice and ensuring meaningful access to it remains one of the key challenges. In the last four decades or so, interventions by the international community have focused on building courts, writing laws, prosecuting perpetrators of violence, supporting human rights defenders and promoting the rule of law.[5] The International Criminal Tribunals of Rwanda and Yugoslavia; hybrid courts in Sierra Leone and Cambodia; the Court of Bosnia and Herzegovina (CBiH); and the United Nations Development Programme's (UNDP) Access to Justice and Rule of Law programmes in the Democratic Republic of the Congo (DRC), Sudan, Chad, Mali and elsewhere provide succinct examples of this approach. This approach has been accompanied by a propagation of "one-size-fits-all tool-kits", designed by international and/or externally supplied experts with very little contextual resonance.[6] Ironically, despite a promulgation of these state-centred, top-down, prescriptive and bureaucratised processes, many post-conflict societies have struggled with responding to the multifaceted dimensions of justice in transition, particularly its access within victim communities.[7] Justice is often narrowly conceived and limited to the legal sphere, and addressed in skewed, partial and piecemeal terms. This ultimately represents severe philosophical and conceptual shortcomings by transitional justice scholars, policymakers and practitioners. Victims' own peculiar understanding of justice is rarely recognised, let alone respected. It is often side-lined and subsumed by existing international norms and standards. If the conceptualisation of justice is this problematic, then accessing that which is elusive and intangible presents no fewer dilemmas. Yet, there is consensus that accessing justice after violent conflict remains a hallmark of civilised society.

JUSTICE IS OFTEN NARROWLY CONCEIVED AND LIMITED TO THE LEGAL SPHERE, AND ADDRESSED IN SKEWED, PARTIAL AND PIECEMEAL TERMS

Access to justice is defined as "the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards".[8] As a basic tenet of the rule of law, Italian jurist Mauro Cappelletti defined it as "the most basic requirement, the most basic human right, of a system which purports to guarantee legal rights".[9] Emerging from this definition is a legal dimension premised on the fundamental principle of equality before the law, situated within the human rights discourse. It denotes that state legal systems must be organised to ensure that every person can invoke the "legal processes for legal redress irrespective of social and economic capacity and that every person should receive just and fair treatment within the legal system".[10] Put simply, access to justice refers to the equity that those from differing backgrounds are able to gain from the justice delivery system.

While this understanding resonates very well with stable democracies, conceptualising access in the context of societies in transition calls for a much wider and nuanced appreciation that expands narrow and legalistic notions. Such evolution is necessary, given that existing definitions of access to justice fail to take into account the impact of socio-economic, political and cultural conditions that hinder claims to use dispute resolution institutions and processes effectively. In fact, the concept should not only be defined in

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Re-establishing the rule of law is a prerequisite for the emergence of stable and peaceful societies, and justice packages are frequently part of the negotiated peace settlements.

terms of the functioning of the dispute resolution machinery (courts, tribunals and other institutions) in its interface with those who seek its services, but within the specific contextual realities of the victims and how they understand and seek redress and repair after atrocity. Lessons from countries such as South Africa, Sierra Leone, Rwanda and, most recently, Chad, engender the argument that justice in transition must address the injustices of the past by ensuring that victims access justice in its broadest forms. In other words, access to socio-economic, legal and political justice must be prioritised. In the absence of this, it will be a scenario analogous to justice delayed being justice denied.

OFTENTIMES, THE STARTING POINT IN ANY TRANSITION IS WHERE THE RULE OF LAW IS EITHER ABSENT OR DEGRADED – AND THE END GOAL IS ONE IN WHICH THE LAW PLAYS ITS ROLE IN A FUNCTIONING LIBERAL DEMOCRATIC STATE

The concept of access to justice has also attracted global attention. The UNDP has developed a global set of programmes, entitled Access to Justice and the Rule of Law, arguing that these two focus areas can "spur economic growth and help create a safe and secure environment for recovery in the aftermath of conflict and disaster".[11] Oftentimes, the starting point in any transition is where the rule of law is either absent or degraded – and the end goal is one in which the law plays its role in a functioning liberal democratic state. The degrading of the rule of law in situations of conflict presupposes that in "sociological and socio-legal terms, there is likely to be a loss or absence of legitimacy (including that of legal institutions) within communities at the sharp end of the conflict".[12] The resulting crisis of legitimacy suggests that in transitional societies, the law must be both the object and subject of change. It must simultaneously produce change and be changed itself. Therefore, re-establishing the rule of law is now regarded as a prerequisite for the emergence of stable and peaceful societies, and justice packages are frequently part of the negotiated peace settlements. A clear link therefore exists between the need

for accountability after atrocity and the re-establishment of the rule of law.

However, a major challenge to the re-establishment of the rule of law after severe conflict is a compromised judiciary that may have sanctioned some of the atrocities by insulating perpetrators, particularly the elite. It is indisputable that the abuse of human rights is usually accompanied by a weak judiciary comprised of politically biased or intimidated judges, which invariably affects the functioning of the court system. Further, it can be argued that the challenges associated with transitions go well beyond the malfunctioning of the court system. More often than not, thousands of victims will be in need of redress. Therefore, demands for trials, reparations and so on can overwhelm even the most sophisticated judicial system.[13] Despite the presence of well-oiled judicial mechanisms, conditions such as poverty, illiteracy and geographical location have an inevitable impact on the ability to access – let alone use – these systems. Therefore, justice must also be defined in a framework that encompasses the many ways in which access is denied "either through spatial, temporal, linguistic, social or symbolic barriers".[14]

Since access to justice through formal mechanisms (courts, tribunals and so on) is usually the focus in post-conflict settings, it is also essential to assess means for ensuring the functioning of complementary and less formal mechanisms. Whilst formal systems are an important component for victims accessing justice after conflict, the need for a better understanding of the sociopolitical dynamics in which these systems are situated is important. Essentially, the existence of formal systems is not a *sine qua non* for access to justice for victims. Therefore, it must be acknowledged that the establishment of well-functioning formal justice structures which are recognised by the population is still a challenge for societies in transition. Notwithstanding that informal justice models are the primary focus of dispute resolution in the emerging discourse in post-violent societies, their lack of recognition by international actors remains astounding. This is premised on the assumption that alternative paradigms of justice are desirable only to the "extent that they offer accessible and restorative remedies in ways that do not contravene international standards of rule of law and human rights".[15] Perhaps the biggest promotion of the idea that informal justice should be an integral component of justice reform strategies, due to their greater accessibility and their reflection of the local norms and conceptions of justice, was achieved by the UN in its report on post-conflict rule of law in 2004.[16] In this report, the UN argued, among other things, that justice institutions and

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Conditions such as poverty, illiteracy and geographical location have an inevitable impact on the ability to access justice systems.

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Access to justice in transitional societies must be understood from the perspective of the victims.

processes designed after conflict must be a reflection of the fundamental inequalities in the transitioning society. It is essential to locate justice within the broader social change process. This underscores the important point that access to justice in many transitional societies must be understood from the perspective of the victims. This point is premised on the notion that in many ways, the presence of functional and formal – and even informal – systems may not enrich the discourse on access to justice in the absence of a victim-focused approach.

One of the fundamental challenges with ensuring justice in transition is that the processes and interventions which are proposed and eventually adopted are often dominated by Western, liberal democratic frameworks and toolkits. As alluded to previously, these have tended to be top-down, often elitist, patently legalistic, state-centric in nature and externally driven. In most cases, these have had challenges of national ownership – particularly the hybrid institutions in East Timor, Sierra Leone and Cambodia – especially around two key issues: first, who bears the ultimate responsibility for the proper functioning of the courts between the partners in the tribunal government and UN administration, and second, how do locals participate in the judicial process so that they derive meaning from them? Invariably, the second issue is more important for victims, because it inevitably responds to their needs, aspirations and interests after violent conflict. Interestingly, these top-down approaches have been criticised for relegating the locals as victims to be emancipated and the perpetrators as prosecutable entities, whose contribution to the reconstruction of their future remains at the mercy of the international community. This only serves to reflect that Western-oriented approaches to achieve justice usually take precedence over local justice initiatives following mass violence. Essentially, such a concept of justice is often detached from people's lived realities, and hence it contributes little to restoring their shattered past and their quest for rebuilding their future.

STRUCTURES AND PROCESSES DESIGNED TO ENSURE THAT VICTIMS CAN ACCESS JUSTICE ARE OFTEN UNDER-RESOURCED, BOTH IN TERMS OF PERSONNEL AND FINANCIALLY, AND THEY RARELY ACHIEVE A FRACTION OF THEIR MANDATE

The fact that victims are a central part of the justice in transition intervention is never in doubt. Studies have shown that there is a broad interest in the workings of transitional justice on the ground in communities that have been affected by violent conflict. Yet, in many

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Marginalised groups, such as women and other minorities, suffer immense challenges in accessing justice.

societies in transition, justice continues to be viewed and implemented in a very narrow and legalistic sense, within courts and formal institutions that are distant from the people who require it the most. In addition, structures and processes designed to ensure that victims can access justice are often under-resourced, both in terms of personnel and financially, and they rarely achieve a fraction of their mandate. This clearly demonstrates a lack of appreciation of the complexities in understanding victims' predicaments and how they understand and interpret justice. For example, in the last 22 years, South Africa has indeed struggled to reverse the exigencies of apartheid. Inequality, ongoing racism, marginalisation, chronic housing shortages, poor education and other social services feature prominently as ongoing challenges for the country in 2017. Therefore, it is apparent that these are the broader issues of justice which characterised South Africa's period of transition since 1994. Essentially, this challenging picture, if juxtaposed with the achievements of the country's model Truth and Reconciliation Commission (TRC), the conception of justice-in-transition and the concomitant processes of access must emerge as the central focus of policymakers.

Justice in transition is usually based on who engenders and controls change within transitional societies, because power relations and the legitimation of dominant interests characterise post-conflict settings. With this dynamic, the question of justice and accessing it becomes heavily challenged. Therefore, strategies that create spaces for people to determine, shape and develop their conceptualisation of access to justice, and how these play out in post-conflict settings, are important. Geographical location, poverty, illiteracy and the costs of adjudication normally confront disadvantaged groups in post-conflict settings. In many cases, women, children and other marginalised ethnic communities are excluded because institutions are remote, slow and unaffordable, or because they are biased and discriminatory. Despite women being at the receiving end of most of the atrocities, their exclusion from the negotiating table remains an issue of major concern. In most cases, the peace processes thus agreed upon are typically deeply gendered, raising questions about the neutrality of the transitional justice process. Studies have also shown that the exclusion of women leads to a male conceptualisation of conflict revolving around power and territory, as well as stopping certain forms of violence at the expense of those that mostly affect women.[17] Inevitably, women's access to justice after atrocities has been framed largely around formal justice systems, premised within male-dominated,

state-building frameworks that are largely exclusionary and gender insensitive. This is further buttressed by Jeffrey and Jakala, who state that "the exclusion of women from decision-making bodies and absence of victim's voice from the judicial process, plays a role in the marginalisation of individuals on the basis of wealth, gender or geographical location".[18] It can therefore be concluded that in post-violence settings, marginalised groups, such as women and other minorities, suffer immense challenges in accessing justice.

Conclusion

Indeed, there is a realisation that both conceptually and operationally, the justice enterprise needs rethinking. Essentially, the inclusion of participatory and inclusive processes in the design and implementation of access to justice mechanisms remains integral. This must be underpinned by realistic goals, objectives and expectations. It may also mean the development of a more sophisticated understanding of the relationship between the past, present and future, and between continuity and change in post-conflict settings – and how that interfaces with access to justice by victims. Such a reconfiguration will invariably have a residual effect of empowering victims. There is a further need for practitioners and scholars alike to think innovatively outside the prevailing transitional justice box to develop strategies that create spaces for people to determine, shape and develop access to justice solutions for themselves. Conceptualising the contours of transition-specific justice is a formidable task, and may be a far more ambitious project than has been understood by academia and policy commentators. Therefore, the approach to access – particularly in transitional societies – must be comprehensive in its attention to all interdependent institutions, sensitive to the needs of key groups, and mindful of the complementarity between transitional justice mechanisms.

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EDUCATION INTERNATIONAL

THE ANGLOPHONE DILEMMA IN CAMEROON: THE NEED FOR COMPREHENSIVE DIALOGUE AND REFORM

BY **ATEKI SETA CAXTON**

In recent months, the "Anglophone problem"[1] has dominated politics in Cameroon, following strike action initiated by lawyers and teachers in the two English-speaking regions of the country. On 11 October 2016, Anglophone lawyers commenced a sit-down strike after having petitioned the government to address their grievances, without success.

Cameroon inherited two legal systems when areas controlled by Britain and France joined to form a single state after the colonial powers withdrew. Civil law was practised in the French-speaking part and common law was practised in the English-speaking region during colonisation.

Above: The teachers' and lawyers' unions have joined together and insist on a two-state federation in Cameroon as the best way to guarantee their demands.

The Anglophone lawyers on strike asked the government to hold an emergency session of the Higher Judicial Council and redeploy all civil law magistrates from the two Anglophone regions, among other demands. They also requested a return to a two-state federation, as the best framework to guarantee the coexistence of both legal systems.

Teachers in the English-speaking regions joined the lawyers on 21 November 2016, after their own demands were also not met. Anglophone teachers fell out with the government for its continued deployment of Francophone teachers to Anglophone schools. They claimed that the teachers taught in broken English and, as a result, many students did not perform well in their final examinations. They also maintained that Francophones disproportionately outnumbered Anglophones in the Anglophone universities of Buea and Bamenda. Ordinary citizens later joined in the protests, decrying the poor state of infrastructure and difficulty in accessing basic necessities.

English speaking regions and countries

French speaking regions and countries

Bilingual Spanish and French speaking country (Equatorial Guinea)

LANGUAGES OF CAMEROON WIKIPEDIA

Historical Origins of the Problem

Cameroon (Kamerun) was a German colony from 1884 to February 1916, when the Germans were defeated and ousted from the territory during World War I by joint Anglo-French and Belgian forces. Britain and France decided to set up a joint Anglo-French administration in the newly conquered territory, but the initiative was short-lived. As a result of the failure of this cooperative, Britain and France, through the Simon-Milner agreement, decided to divide the country in 1919 along the Picot Provisional Partition Line, to permit each of them to administer their own territory separately. With the establishment of the League of Nations, the separated territories became mandates of Britain and France.

Each territory was governed according to the administrative system of Britain or France. This meant that the legal, educational, monetary and even political arrangements were significantly different in the two territories.[2]

With the creation of the United Nations (UN) in 1945, the territories changed in status from mandated territories of the League of Nations to trust territories of the UN. A very significant ramification of this change of status was that the trust territories were to be administered in preparation for self-government.

The territory administered by France (French Cameroun), got its independence on 1 January 1960 as the Republic of

INTERNATIONAL MONETARY FUND

President Paul Biya of Cameroon.

Cameroun. Nigeria got its independence from Britain on 1 October 1960. The territories administered by Britain (British Southern Cameroon and British Northern Cameroon), which were semi-independent territories administered as part of Nigeria, were to decide, through a plebiscite, to get their full independence by joining either Nigeria or French Cameroun. On 11 February 1961, the plebiscite took place. British Northern Cameroon voted to join independent Nigeria, while British Southern Cameroon voted to gain independence by joining the already independent Republic of Cameroun. There was no third option for self-governance for these territories.

British Southern Cameroon and the Republic of Cameroun agreed on a two-state federation, and drew up a federal constitution that effectively guaranteed independent administration of the states under a central federal authority. The federal constitution came into force on 1 October 1961, and the entity became the Federal Republic of Cameroon.

However, on 20 May 1972, President Ahmadou Ahidjo called for a constitutional referendum, which saw a 98.2% voter turnout voting 99.99% for a unitary constitution.[3] The country thus changed from the Federal Republic of Cameroon to the United Republic of Cameroon. On 4 February 1984, the current president, Paul Biya, passed a decree changing the country's name from the United Republic of Cameroon to the Republic of Cameroon. As such, many people felt that it was a return to the appellation of French Cameroun when it got its independence in 1960.

Another constitution was drawn up on 18 January 1996, making the country a decentralised unitary state. Yet, political watchers have observed delayed or cautious implementation of the decentralisation process.

With these changes (no matter how well intentioned) and their unforeseen effects on the fortunes of Cameroonians, many of the recently protesting Anglophones felt that their cultural and historical uniqueness was trounced in the union.

Are Anglophones Marginalised in Cameroon?

A few state officials have denied claims of the Anglophone problem. Some stated that the recent protests were political and revealed the uncompromising ethos of extremism clawing for any gains against more moderate voices; others asserted they were social, fomented from abroad and fed by an explosive blend of economic odds and anger over lack of access to basic services. Yet other

SHAWNCALHOUN

Anglophone common law lawyers claimed they were appalled by the gradual phasing out of common law principles in Cameroon's legislation.

voices reiterated that this was part of an insidious attempt by separatist movements to divide a country that remains "one and indivisible".

However, many Cameroonians, especially those from the English-speaking regions, strongly deplore any of these claims that disparage the Anglophone problem. They reference cases of marginalisation, including under-representation in strategic positions of government and downright exclusion from others.

For instance, although the government acknowledged in a statement made by the Minister of Justice, Laurent Esso, on 22 November 2016, that the problems of Anglophone lawyers were the same as problems faced by lawyers everywhere else in Cameroon, Anglophone common law lawyers challenged this position. The lawyers claimed they were appalled by the gradual phasing out of common law principles in Cameroon's legislation, especially through the recent harmonisation of the Criminal Procedure Code, the Organisation for the Harmonisation of Business Law in Africa (OHADA) Uniform Acts and the Inter-African Conference on Insurance Markets (CIMA) Code. They feared that the same phenomenon would be observed in the Civil Code and the Commercial and Civil Procedure Code, which are being drafted. They blamed the government for their inability to organise under a separate Common Law Bar, because the law actually proscribed the existence of any Bar separate from the Cameroon Bar Association, which could permit them to cohere and defend their interests as common law lawyers. They also asked for the creation of a Common Law Bench at the Supreme Court.

The Anglophone lawyers raised issues of representation and the recruitment of legal personnel. In his statement, Esso mentioned that there were 1542 active magistrates, including 91 in service at the Ministry of Justice, 1412 in service in the courts and 39 on secondment. This group included 1265 French-speaking magistrates and 227 English-speaking magistrates.[4] As for judicial officers, there were 514 in total – 499 Francophones and 15 Anglophones. Of the 128 magistrates practising in the North West region, 67 (52.3%) are French speaking with a civil law background. Of the 97 magistrates in the legal services, 64 (65.9%) are Francophones. Of the 27 magistrates in the legal services in Bamenda, there are 21 Francophones (77.8%).[5] A similar trend is observed in the South West region.

With regard to the claims made by the Anglophone lawyers, the government has stated that efforts were being made to address problems that affect lawyers throughout the national territory. Regarding the fears of the gradual

phasing out of common law in Cameroon with the drafting of the Criminal Procedure Code and the OHADA Uniform Acts, the government has maintained that the drafting of those documents drew extensively from common law principles. The government has maintained, with regard to the deployment of Francophones to Anglophone regions, that the Francophone lawyers' competence is not questionable and that they were able to dispense of their duties. The government has also maintained that insufficiency in the number of lawyers recruited was a national problem that was not particular to the Anglophone regions.

Anglophone teachers, on the other hand, called for the redeployment of French-speaking colleagues from Anglophone regions, and maintained that the election and appointment of authorities in the Anglo-Saxon universities of Bamenda and Buea should be in strict compliance with Anglo-Saxon norms. They demanded better access for students of Anglophone origin to the professional opportunities in the Anglophone universities because, as they put it, "our children who graduate from the university cannot get jobs."[6] They also stated that lay, private and professional schools were doing much to support the education sector in Cameroon, but received little or no subvention from government.

Because the government did not address these issues when they were raised, teachers' and university lecturers' unions issued a call to strike and suspended classes on 21 November 2016. They grounded education in the English-speaking regions in Cameroon.

Are Current De-escalation Efforts Effective?

Given that they had similar issues, the teachers' and lawyers' unions joined together to form the Cameroon Anglophone Civil Society Consortium (CACSC) to dialogue with the government. A commission was created to this effect to look extensively into the problems of Anglophone lawyers and teachers and propose appropriate solutions.

The government proposed a 2 billion CFA franc subvention to confessional schools and promised the recruitment of 1 000 bilingual teachers. The government also produced an English version of the OHADA Uniform Act, which existed only in French.

The CACSC remained implacable and refused to lift the call to strike, insisting on having a two-state federation as the best way to guarantee their demands. In addition,

GLOBAL PARTNERSHIP FOR EDUCATION

Anglophone teachers called for the redeployment of French-speaking colleagues from Anglophone regions.

The #BringBackOurInternet campaign was a protest against the government-sanctioned Internet shut down in Cameroon.

they called for civil disobedience and a shut-down of all economic activities in the two Anglophone regions.

On 17 January 2017, after the ad hoc commission submitted its report to the government, the Minister of Territorial Administration and Decentralization signed a ministerial order banning all the activities of the CACSC and the Southern Cameroon National Council (SCNC) throughout the national territory. The government proceeded to arrest some key leaders including Nkongho Agbor Balla (barrister and president of the Anglophone Consortium), Fontem Neba Aforteka'a (University of Buea), Paul Ayah Abine (Supreme Court justice) and Mancho Bibixy (leader of the Coffin protests in Bamenda). Other leaders fled the country or went into hiding. On the same day, the government also shut down Internet services in the two Anglophone regions. The regions went for 93 days without Internet, until 20 April 2017 when the services were restored. The Internet blackout greatly damaged the economy of the country, and Internet service providers incurred big losses. Businesses were ruined, distance learners were put offline and social bonds were broken. Some called themselves "Internet refugees" as they had to travel hundreds of kilometres to "digital sanctuaries" in French-speaking regions to access the Internet. If anything, the suspension of Internet services greatly reinforced the sense of exclusion in the Anglophone community.

IF ANYTHING, THE SUSPENSION OF INTERNET SERVICES GREATLY REINFORCED THE SENSE OF EXCLUSION IN THE ANGLOPHONE COMMUNITY

On the day of the ban, the Consortium transferred its operations abroad, where others continued to organise and lead anti-government protests and give directives to the population to engage in civil disobedience.

Charting the Way Forward – Dialogue and Reform

The crisis has outgrown the less-complicated demands that originally led to the strike action initiated by teachers and lawyers. Ordinary citizens have joined the protests, which have increasingly become suffused with burgeoning clamours for independence. To diffuse the crisis through heavy crackdowns only seems to justify the cause of the protesters. And the more resolute both parties get, the more

GALLO IMAGES/REUTERS/FINBARR O'REILLY

Anti-government demonstrators block a road in Bamenda, Cameroon (8 December 2016).

the conflict seems to crystallise into a clash between peace and justice. Bringing appropriate and lasting solutions to the current crisis in Cameroon will thus be a challenge, necessitating trade-offs and compromise from both sides. Nevertheless, it is important to highlight a few important steps that seem relevant to the process of bringing lasting solutions:

1. Trace the historical origins of the crisis and identify the gaps

If we were to go by the words of British poet laureate John Masefield, historical change isn't just the occurrence of "one damn thing after another".[7] Effects follow from actions. It is therefore always necessary to analyse how particular conjunctions of material circumstances and human activity contribute to shape the fortunes of men.

Modern Cameroon began as a federal state. The federal experiment lasted barely a decade, and the country transitioned to a unitary state. The ongoing crisis seems to be a corollary of that alteration. The situation beckons the current generation to provide an answer as to why the transition ushered feelings of discontent across a section of the country's population over time. Providing an answer may mean reimagining a 21st century society where everybody who comes with their own uniqueness, is guaranteed a means of celebrating and preserving it and, at the same time, feels that they belong to the larger nation.

Among the arguments made at the time the country transitioned into a unitary state was that the federation was a very costly system to manage. Yet, lawyers and teachers called for a return to the two-state federation to permit for some level of local autonomy and control. While tenable, at the moment this demand seems to be a no-go option for many in the current government.

A few other voices are calling for a 10-state federation in Cameroon – a proposal which also raises many more delicate questions about costs. Others are clamouring for outright self-government for the Anglophone regions. However, the president has declared unequivocally that the government will spare no efforts to counter any such voices seeking to divide the country.[8]

The 1996 Constitution describes the country as a decentralised unitary state. Many indicate that for over 20 years now, no effort has been made to achieve the

decentralisation prescribed by the Constitution. In 2012, the World Bank described Cameroon's legal framework on decentralisation as "overlapping, cumbersome and contradictory, and in many respects open to different interpretations as decentralized functions are ill-defined and not distinct from 'deconcentrated' operations of the central government".[9] The World Bank also stated that the president had not passed a decree of application regarding the format for the implementation of the decentralisation process. Common law lawyers remained fearful that even in a decentralised state, civil law will continue to dominate, and their particular concerns will remain unsolved.

The key takeaway from the crisis is the need for subsidiarity and more localised control of decision-making in Cameroon. Vertical and horizontal localisation of political and economic power will increase people's stake in development and the preservation of national stability. The central authority should be performing only those tasks that cannot be performed at a more local level. Whether it is called a federation, an effectively decentralised state, or another appellation, it will be important to de-escalate current tensions by guaranteeing more local control of decision-making. However, if federalism or decentralisation is to work, there must be a real commitment to the centre, as well as to the individual units. The institutions that implement this must be strong and sustainable. As the former Soviet Union and Yugoslavia demonstrate, federalism does not provide a means of keeping together people who don't want to stay together.

2. Reengage in dialogue

Since the crisis started, the government opened up to dialogue, through both the prime minister and an ad hoc commission created to look into the problems posed by teachers and lawyers. However, the outcomes of the deliberations fell short of addressing the needs expressed. The continued engagement of the groups in civil disobedience is testament to this. A tour by the prime minister to the North West region – in an attempt to urge schools to resume, deep into what would be the second term of the school year – did not help to change the minds of parents, who continue to request the release of their sons from prisons, and sincere dialogue and reforms.

To deal with the current impasse, the government needs to reengage in more comprehensive dialogue, and also be more receptive to the problems raised and proposals made. Recently, the government created a National Commission on Bilingualism and Multiculturalism, which is to report directly to the president on matters affecting bilingualism and multiculturalism in the country. This is a positive gesture. The government also announced reforms, creating a Common Law Bench at the Supreme Court and common law departments in state universities in the French-speaking part of the country. These could improve the lot of Anglophone lawyers. However, the government could show further commitment by acknowledging that the Anglophone population as a whole – not just teachers and lawyers – has general challenges which need to be addressed. In addition, remedial measures requiring perpetual inviolability could be embedded in the Constitution.

3. Amnesty for protesters and the unconditional release of prisoners

The Constitution recognises the right of citizens to peaceful protest. This is also enshrined in the 1990 laws on freedom of association and assembly. The third preambular paragraph of the Universal Declaration of Human Rights underscores the importance and need to guarantee the protection of human rights by the rule of law, "if man is not to be compelled to have recourse to rebellion as a last resort against tyranny and oppression."[10] Some of those incarcerated in connection with the crisis, such as Ayah, were arrested in violation of due process, and others have no lawyers for their defence. The trial of the leaders of the CACSC has been adjourned for the fifth time to 7 June 2017, without any rights to bail.

SINCE THE CRISIS STARTED, THE GOVERNMENT OPENED UP TO DIALOGUE, THROUGH BOTH THE PRIME MINISTER AND AN AD HOC COMMISSION CREATED TO LOOK INTO THE PROBLEMS POSED BY TEACHERS AND LAWYERS

For the government to be more persuasive, it also has to be more receptive. The government should stop the use of force by military officers on the populace. This violence only serves to complicate matters, and time has shown that this method has not been effective in solving the crisis. If the calls of the people are legitimate, then ordinary civilians should not be arrested for exercising their constitutional rights. The UN Secretary-General's Acting Special Representative, François Loucény Fall, who visited the country on 13 April 2017, asked for the unconditional release of those jailed in connection to the crisis. Their continued detention greatly mars renewed calls for dialogue. Protesters should also be granted amnesty by the government, so that they can continue to behave, feel, think and act like Cameroonians.

Conclusion

The ongoing Anglophone crisis in Cameroon originates from history. In the wake of World War I, two men – British High Commissioner Alfred Milner and French Army General Henri Simon – representing two nations, Britain and France, in an agreement, confirmed the Picot-Oliphant Line of 1916, drawn to partition former German Kamerun

into two asymmetrical territories. What was to follow after the famous Milner-Simon agreement of 1919 was the consolidation of British and French systems in the separated territories. This did not change after reunification in 1961. The post-reunification period has been interspersed with sporadic identity struggles in attempts to preserve the bicultural heritage of the country.

There were manifestations in the 1990s that led to all-Anglophone conferences to defend the status and standing of Anglophones in the country. The recent crisis – another escalation in that sequel – has revealed a number of gaps within the political system, which must be closed if Cameroon is to move forward as one nation. Existing institutions and leadership structures must be more responsive to the needs of citizens, and addressing this could mean more localised control of political and economic resources. Overly centralised power structures limit access and create disconnect with the population. On the other hand, the military needs to improve on its human rights record, as young people – who have since left school – are becoming increasingly radicalised. Civil society has a huge role to play in addressing these gaps.

The destruction of the landmarks of the old established order – such as the non-commemoration of unification day in greater parts of Anglophone Cameroon, in 2017 – seems to have instilled a fresh spirit of nationalism and self-determination among the English-speaking populace. John F. Kennedy once said regarding crisis: "The Chinese use two brush strokes to write the word 'crisis'. One brush stroke stands for danger; the other for opportunity. In a crisis, be aware of the danger – but recognize the opportunity."[11] This is an opportunity to remake Cameroon. Even as the country faces a very stark choice between the forces of conservatism and change, many in the country still express their conviction that a great destiny awaits Cameroon, provided that each person is willing to assume responsibility to find the best and most positive answers to these questions: Why are we Cameroonians? What makes us proud to be Cameroonians? What type of Cameroon do we want for our children?

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THE POLITICISATION OF THE INTERNATIONAL CRIMINAL COURT BY UNITED NATIONS SECURITY COUNCIL REFERRALS

BY **BETHEL AREGAWI**

Introduction

Domestic legal mechanisms can sometimes face challenges in assuring accountability for any gross human rights violations. The International Criminal Court (ICC) has been applauded for its critical role in ending global impunity through its mandate to intervene when a state lacks the capacity, or is unwilling, to prosecute people accused of the gravest crimes of concern to the international community, such as genocide, war crimes and crimes against humanity.[1] The ICC's modus operandi has attracted much criticism, in particular from Africa, as the only two referrals ever to have been exercised by the United Nations Security Council (UNSC) have involved African parties. This raises certain issues. First, some members of the UNSC are not yet parties to the ICC's statutory framework, the Rome Statute, yet are able to entrust the ICC by referring matters to this judicial body, which can arguably seem somewhat of a double standard. Second, the ICC is merely a jurisdictional mechanism and does not have the capacity to enforce its decision without full cooperation of its state parties. When state parties do not comply, the ICC must be able to rely on the UNSC to intervene with full support, which does not always occur.

In examining the circumstances under which the UNSC can refer cases to the ICC, this article addresses the referrals of the Darfur situation and Libya, non-signatories of the Rome Statute, and the non-referral of Burma, where gross human rights violations have been widely reported.[2] The article

Above: The International Criminal Court has a critical role in ending global impunity through its mandate to intervene when a state lacks the capacity, or is unwilling, to prosecute people accused of the gravest crimes.

UN PHOTO/PAULO FILGUEIRAS

The 1998 Rome Conference established guidelines for the United Nations Security Council's engagement with the International Criminal Court.

concludes that the ICC's reliance on the UNSC undermines the legal principle of predictability and puts the court's credibility, integrity and perception of legitimacy into question.

Origins of ICC and UNSC Relations

The Negotiated Relationship Agreement between the United Nations (UN) and the ICC recognises the ICC, in article 2(1), as "an independent permanent judicial institution which [...] has international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purpose".[3] Further, article 2(2) stipulates that "[t]he UN and the ICC respect each other's status and mandate".[4] The preamble of the ICC's Rome Statute[5] describes a correlation between the aims of justice and maintaining peace and security by stating that severe crimes must not go unpunished, as they "threaten the peace, security and well-being of the world".[6] Further, it emphasises the need to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of these crimes.[7] Moreover, article 53 of the Rome Statute allows for the prosecutor – empowered to prosecute crimes that would have taken place on the territory of a state party or allegedly committed by a national of a state party – to determine if an investigation should not be initiated when there is "no reasonable basis to proceed" or "an investigation would not serve the interest of justice".

The establishment of the ICC did not involve the UNSC but, ultimately, the 1998 Rome Conference set up guidelines for the UNSC's engagement with the ICC. Further worth noting is that the UNSC and ICC act under different mandates. Article 24 of the UN Charter assigns the UNSC "primary responsibility for the maintenance of international peace and security" in conformity with the principles of justice and international law, and allows it to act on behalf of its members. The members must "agree and accept and carry out"[8] any decision made by the UNSC under article 25 of the UN Charter. Consequently, the UNSC is responsible for finding peaceful means to settle disputes, if possible, defined in Chapter VI of the UN Charter, and for directing concerted actions to threats to peace under the same convention.

Contextual Background to the UNSC's Referral Practices

Currently, 34 African states[9] are parties to the Rome Statute, giving the ICC a mandate to investigate grave crimes, as defined in article 5 of the Rome Statute. A case can fall under the scope of the ICC using four methods. First, a state that is party to the Rome Statute can request the ICC to exercise its jurisdiction to adjudicate such matters. Second, a state that has not yet ratified the Rome Statute can exceptionally accept the ICC's mandate to investigate crimes committed by its nationals or on its territory. Third, the ICC prosecutor can initiate an investigation on its own initiative. And fourth, the UNSC can request the ICC to investigate a situation. Article 13(b) in the Rome Statute gives referral authority to the UNSC, even if it relates to a non-state party

or by nationals thereof, to exercise its jurisdiction in light of Chapter VII of the UN Charter.

Only two cases involving non-state parties have been referred to the ICC by the UNSC: the case of the Darfur situation in 2005, and Libya in 2011. In April 2004, in its first referral of the Darfur situation, the UNSC issued a presidential statement expressing concern over the humanitarian crisis.

TENS OF THOUSANDS OF PEOPLE HAD BEEN CAUGHT IN THE CROSSFIRE AND PAID THE ULTIMATE PRICE, WHICH THE COMMISSION CONCLUDED WERE DELIBERATE AND INDISCRIMINATE ACTS AGAINST CIVILIANS

This was followed by several resolutions condemning the violence that had taken place, and declaring the situation in Sudan a threat to international peace and security by identifying that there was criminal responsibility for the violent acts. Further, the then-UN Secretary-General, Kofi Annan, established a commission in October 2004 to conduct an investigation on site.[10] The commission explained in its findings that the internal armed conflict had involved the Darfur rebel groups, militias known as the Janjaweed and the government of Sudan. Moreover, over a year into the conflict, tens of thousands of people had been caught in the crossfire and paid the ultimate price, which the commission concluded were deliberate and indiscriminate acts against civilians. Many villages in the Darfur region were destroyed and civilians were subjected to rape, looting and torture, leaving about 1.65 million internally displaced persons.[11] The commission found that the government of Sudan and the Janjaweed were responsible for gross violations of human rights, amounting to war crimes and crimes against humanity, and recommended that the UNSC refer the situation to the ICC. On 31 March 2005, the UNSC adopted Resolution 1593, referring the Darfur situation to the ICC, and expressed full Sudanese cooperation with the ICC and its prosecutor.[12] However, Sudan refused to arrest and surrender President Omar al-Bashir (despite two arrest warrants, in 2009 and 2010); government minister Ahmad Muhammad Harun; senior militia/Janjaweed leader and member of the Popular Defence Force, Ali Muhammad Ali Abd-Al-Rahman (known as Ali Kushayb) (2007); former Commander-in-Chief of Justice, Abdallah Banda Abakaer Nourain (Abdallah Banda) (2009); and former Minister of National Defence, Abdel Raheem Muhammad Hussein (2012). Al-Bashir still remains in office. In accordance with article 27 of the Rome Statute, no person is

GALLO IMAGES/AFP/THIERRY CHARLIER

In the town of Nyala, South Darfur, tens of thousands of people lined both sides of the road to greet then-Secretary-General, Kofi Annan, when he arrived in the region to get a first-hand impression of the humanitarian situation there (May 2005).

GALLO IMAGES/REUTERS/ELDSON CHAGARA

Demonstrators voice support for Sudan's president, Omar al-Bashir, who was indicted by the International Criminal Court for genocide in Sudan's western Darfur region, as they protest the arrival of the United Nations Security Council in El Fasher, North Darfur (October 2010).

exempt from criminal responsibility, regardless of their official capacity. This was also evident in the Libya case, as it too involved individuals holding official or influential positions.

The second UNSC referral, based on Resolution 1970, was Libya, based on the findings of the UN Human Rights Council.[13] The findings described the Libyan security forces' attacks on peaceful protests in Tripoli and Benghazi, with hundreds of casualties.[14] In addition, other acts that the council condemned included extrajudicial killings, arbitrary arrests, and the detention and torture of peaceful protestors. In the referral, the UNSC decided promptly – by unanimous vote of all 15 members – to mandate the ICC to investigate Libya. The prosecutor decided on 3 March 2011 that there was a reasonable basis to initiate an investigation. On 27 June 2011, arrest warrants were issued for Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and former Libyan intelligence chief Abdullah Al-Senussi for crimes against humanity (murder and persecution). The case against Muammar Gaddafi was eventually terminated due to his death.

The ICC was established to complement the domestic criminal justice system, in accordance with the Rome Statute's principle of complementarity. It investigates and prosecutes individuals only if a state does not, cannot or is genuinely unwilling to do so. The Libyan authorities challenged the admissibility of the cases against Al-Senussi and Saif Al-Islam Gaddafi to prosecute both cases domestically. Only the case against Al-Senussi was later declared inadmissible. In Gaddafi's case, the ICC concluded that the domestic proceeding against him did not cover the same case that was brought before the ICC. Yet, Libya has decided to carry on with the prosecution against Gaddafi, failing to uphold its obligation to cooperate fully with the ICC as defined in Resolution 1970, by not surrendering Gaddafi to the court and therefore rendering the court unable to follow through with its proceeding.

The ICC has made efforts to convince the UNSC to take more actions in demanding Sudan to cooperate fully with the ICC, yet the UNSC has only issued one presidential statement. This lack of support by the UNSC, also detected in the Libya case, undermines the authority of the ICC and has spilled over to some parties to the Rome Statute as they neglect to follow their obligation to cooperate with the ICC, especially in failing to execute arrest warrants – an obligation stated in article 87 of the Rome Statute.

Challenges with Cooperation between the UNSC and the ICC

Gross human rights atrocities have occurred since the inception of the ICC, yet the UNSC has only used its referral

UN PHOTO/LOEY FELIPE

Fatou Bensouda, Prosecutor of the International Criminal Court, speaks to journalists after briefing the United Nations Security Council on the situation in Libya (May 2016).

authority in two cases. Darfur and Libya are not the only conflict situations outside the scope of the ICC's jurisdiction, where gross abuses of international human rights law and violations of international humanitarian law calls for the UNSC to make referrals. An example that has received media attention due to human rights and humanitarian law violations – such as extrajudicial killings, rape and other forms of sexual violence – against people belonging to national or ethnic, religious and linguistic minorities, are persistently carried out in Burma. Recently, researchers and journalists have tried to shed light on the violations and abuse of human rights, particularly against the Rohingya Muslims. Violent attacks resulting in hundreds of cases of injury and death, socio-economic exploitation, forced displacement of about 140 000 people and the denial of citizenship are some of the gross systematic abuses experienced by minorities in Burma.[15]

In all 30 UN General Assembly Resolutions on Burma, the aforementioned crimes have been documented and calls have been made to the regime to end the existing impunity. However, the military regime has consistently ignored UN recommendations that directed much focus on the lack of an independent judicial investigation. The UNSC began to discuss the grave human rights violations in Burma four years prior to the Libyan referral, but due to not reaching a unanimous vote, none of the discussions concluded in a referral. This begs the question: what are the distinguishing factors that causes the UNSC to use its referral authority in the Darfur region and Libya, but not in Burma? A set of objective criteria to assist in determining the specific grounds for a referral has yet to be expressed. Such criteria would offer more consistency and predictability in future referral practices. Developing such criteria would also provide member states and civil society with a set of principles that outlines the UNSC's scope of authority, which could be utilised, if needed, to put pressure on the UNSC to push forward the common goal of defeating impunity.

THIS BEGS THE QUESTION: WHAT ARE THE DISTINGUISHING FACTORS THAT CAUSES THE UNSC TO USE ITS REFERRAL AUTHORITY IN THE DARFUR REGION AND LIBYA, BUT NOT IN BURMA?

Further, if the objective in the UN Charter is to maintain peace and security, has the UNSC succeeded in Darfur and Libya? Has the ICC succeeded in combating impunity for gross human rights violations in these territories, as per the Rome Statute's objective? In a statement to the UNSC, the ICC has raised awareness of the UNSC's lack of efforts in maintaining peace and security in the Darfur situation by not "providing necessary technical, political, peacekeeping and other appropriate resources to assist in investigations, arrests and other elements of cooperation".[16] The ICC has also struggled with fulfilling its objective to combat impunity, since the judicial process cannot take place without successfully executing arrest warrants, such as in the case of Sudanese president al-Bashir. Further, chief prosecutor Fatou Bensouda told the UNSC that "[s]ystematic and wide-spread crimes continued to be committed with total impunity in Darfur nearly 10 years since the situation was referred to the International Criminal Court",[17] which speaks to a lack of efficiency in the prosecutions carried out by the ICC.

The UNSC is, in its entirety, a political body. Thus, there is a strong likelihood that decisions to refer a situation to the ICC are influenced by its political nature. Moreover, three of its five permanent members are not parties to the Rome Statute, but the UNSC can still refer situations involving states that are not parties to the same Rome Statute. This can be perceived as damaging to the ICC's credibility, integrity and perception of legitimacy that it so heavily relies on. Although the ICC is not a component of the UN system, the Rome Statute recognises certain prerogatives for the UNSC, such as being granted referral authority. Due to the structure and nature of the UNSC, there is a likelihood of the ICC being pressured to pursue certain investigations springing from a referral rather than others. In the same vein, the same type of pressure can arguably inflict the ICC, if the UNSC uses its

support as a bargaining chip should the ICC refuse to take on its referrals. Therefore, it is vital that the UNSC respects the status and mandate of the ICC. The referral authority does provide the UNSC with a type of control that does not exist within domestic criminal justice systems, which raises great concern and highlights the importance of the UNSC to act fairly and impartially and eliminate any opportunities for bias when deciding on which cases to refer to the ICC. The ICC could be greatly compromised if referral decisions are made based on the benefit to UNSC permanent members' political ties or their political interests.

Conclusion

A quintessential element that significantly affects the work of the ICC is the consistent cooperation of states. Yet, some non-state parties and parties to the Rome Statute refuse to comply with its obligation to cooperate with the ICC, such as in the case involving al-Bashir. The ICC does not have enforcement forces; it relies on states' willingness to assist to execute its mission. This is indicative of its lack of full authority and influence. The ICC can be deemed compromised, as it relies on the UNSC to back up the ICC with its power to mandate cooperation from all UN member states. Establishing consistency in investigating cases of gross crimes will heavily enhance the role of the ICC to prevent gross violations of human rights amounting to war crimes, which will further strengthen the UNSC's central mission to maintain international peace and security. Further, in the referrals regarding the situations in Darfur and Libya, the UNSC articulated an obligation to cooperate with the ICC only directed to the countries involved in the referrals. Parties to the Rome Statute fall by default under this obligation though the UNSC, with the authority to impose binding obligations on all member states, simply urges non-state parties to do the same. In the context of the two referred cases, follow-up assistance by the UNSC has continuously been essential, particularly with regard to the non-enforcement of arrest warrants. This could arguably explain the lack of progress in both cases.

In addition, there is a need for the UNSC to invest in a working group to establish objective criteria and credible processes for determining potential referrals to the ICC. This will allow member states and civil society to argue for referrals – in situations such as Burma, and future situations where impunity still remains – and ensure the legitimacy of the ICC. Further, to enhance the efficiency of the referrals, it is imperative to develop a policy that fosters better coordination and a stronger working relationship between the UNSC and the ICC.

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Endnotes

1 These crimes fall within the jurisdiction of the ICC, stipulated in article 5 of the Rome Statute. Genocide is the destruction, in whole or in part, of a national, ethnic, racial or religious group, carried out with the specific intent to exterminate. Crimes against humanity are acts (murder, torture, sexual crimes) committed as part of a generalised and systematic attack against a civilian population (a crime against humanity can be committed during an armed conflict as well as in times of peace). War crimes are serious violations of the laws and customs applicable to armed conflicts (whether international or domestic).

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12 Eleven UNSC votes were in favour: Argentina, Benin, Denmark, France, Greece, Japan, Philippines, Romania, Russia, Tanzania and the United Kingdom. The four abstentions were Algeria, Brazil, China and the United States.

13 The UN Human Rights Council is an intergovernmental body included in the UN system consisting of 47 states, which are responsible for the promotion and protection of human rights around the world.

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MEDIATION IN AFRICA: IS THERE SPACE FOR THE YOUTH?

BY **IRENE LIMO**

Introduction

Increasingly, there have been calls to involve youth in mediation and peace processes, but are the youth a unique enough group, with needs and interests different to the rest of the society, for them to demand space in mediation processes? Some practitioners advocate for the youth to be integral to mediation processes, arguing that they have the knowledge and skills required, and they should be included – directly and indirectly – by virtue of their numbers in society. On the other hand, including the youth in mediation should not impact negatively on the process.

The United Nations Security Council (UNSC) Resolution 2250 on youth, peace and security, adopted in 2015, urges member states to include youth in peace processes.[1] However, it does not provide clear guidelines on how to achieve this. The African Union (AU) has declared 2017 as the Year of the Youth, under the theme "Harnessing the Demographic Dividend through Investments in Youth". However, there are no known policy guidelines on how to involve the youth in mediation practices in Africa. Whilst the need to balance inclusivity against efficiency in a peace process is important, inclusivity should not be superficial or merely symbolic, and the youth should be brought on board in a systematic and structured way with the aim of strengthening mediation.

Above: Increasingly, there have been calls to involve youth in mediation and peace processes.

AEGIS TRUST

The African Centre for the Constructive Resolution of Disputes (ACCORD) attended the Ubumuntu International Youth Conference held in Kigali, Rwanda (June 2016).

Youth in Numbers

About 65% of Africa's total population is below the age of 35 years, and over 35% is between the ages of 15 and 35 years[2] – making Africa a youthful continent. The world's youth population (ages 15–24) currently stands at 1.2 billion – the largest number of youth ever to have existed (18% of the world's population).[3] Globally, more than 600 million young people live in fragile and conflict-affected contexts today.[4] Further, young people continue to be chronically under-represented in the world's parliaments, where only 1.9% of the world's 45 000 parliamentarians are younger than 30 years. Africa ranks third globally, at 1.5%, in the lower and single houses, and first globally, at 0.7%, in the upper houses.[5] The youth bulge is often associated with increased violence, but are countries with youthful age structures, or countries experiencing a youth bulge, more likely to experience political violence? Research undertaken shows that when the youth make up more than 35% of the adult population – which they do in many developing countries – the risk of armed conflict is 150% higher than in countries with an age structure similar to most developed countries.[6] On the other hand, of the 1.8 billion young people (ages 15–29[7]) in the world, more than 1.2 billion are living in countries where youth development has shown some improvement over the past five years.[8] With the right policies, institutions and investments, developing countries can turn their large youth populations into a boon, further boosting economic growth, contributing to sustainable development and addressing the structural causes of conflict.

These statistics highlight the need to understand the dynamics of the youth and their involvement in conflict, as well as the importance of involving the youth in decision-making, conflict prevention and mediation processes – a domain where they are often marginalised. Further, the realities of young people's lives in conflict and post-conflict settings are often not well understood. This often leads to young men being seen as perpetrators and young women as helpless victims. Further, this does not take into account the fact that different categories and identities of youth experience conflict differently. The youth are not a homogeneous group with similar needs, interests and concerns.

Inclusivity and the Youth in Mediation

The *United Nations (UN) Guidance for Effective Mediation*[9] defines inclusivity as the extent and manner in which the views and needs of conflict parties and other stakeholders are represented and integrated into the process and outcome of a mediation effort. However, the ambiguity of the term "inclusivity", and the resulting range of interpretations and underlying assumptions on what, who, how, why and when, further complicates the

UN PHOTO/RICK BAJORNAS

Ahmad Alhendawi, the United Nations Secretary-General's Envoy on Youth, addresses the 2016 Economic and Social Council Youth Forum on the theme, "Youth Taking Action to Implement the 2030 Agenda" (1 February 2016).

objective of including the youth in mediation processes. Broadening participation in mediation and negotiation can strengthen the effectiveness of these processes, and the quality and sustainability of the agreements.[10] However, a process can be inclusive and still fall short of representing the different views and sections of society.

The youth can be involved in mediation processes in different ways, including direct representation at the negotiation table, as part of mediation teams, as observers, in official and informal consultative forums, in post-agreement mechanisms, and in public participation as part of "pressure groups". They can also be witness and signatories to peace agreements. Another avenue for engagement is being informants, experts and advisors to the mediation teams. One form of engagement that remains improbable for the youth, especially in official mediation processes, is being the lead mediator or negotiator.

By including the youth, the mediation process seeks to include actors traditionally alienated from political power. This inclusion also increases the level of ownership by the youth of the peace process and on the implementation of the agreements. The youth also have better access to their peers and can support peace processes by facilitating dialogues among the different youth categories and identities. Recognising the agency of youth in conflict prevention and resolution, in 2016, a group of seasoned UN, AU and European Union (EU) special envoys and mediators emphasised the need to involve the youth more systematically and meaningfully in all tracks of mediation.[11]

Guiding Frameworks on the Involvement of the Youth in Peace Processes in Africa

Besides the recently adopted UNSC Resolution 2250, the UN has developed the System-wide Action Plan on Youth and established the Office of the Secretary-General's Envoy on Youth. Other frameworks include the Guiding Principles on Young People's Participation in Peacebuilding and the UN Guidance for Effective Mediation. At the regional level, besides designating 2017 as the Year of the Youth, the AU has instituted frameworks and mechanisms including the African Youth Charter and the AU Youth Division, as well as various human rights and peace frameworks. National youth policies at the member state level are some of the mechanisms that can be used to open up spaces for the youth to engage in peace processes. There are currently 32 countries in Africa that are known to have national youth policies.[12] In some countries, the youth are a part of national infrastructures for peace. Questions often raised include whether these youth participate in the actual peace processes, in what capacity and form, and whether their presence, input and recommendations are taken into consideration during the talks and in developing and implementing the agreements reached.

GALLO IMAGES/GETTY IMAGES/TOM MARUKO

South Africa's largest union called for a one day strike to highlight the significant problem of youth unemployment in the country (March 2014).

Youth Involvement and Engagement in Mediation

Youth in their different categories – whether as individuals, student leaders, youth representatives in political parties, youth groups and youth in civil society – have contributed in different ways to conflict prevention and resolution.

Consultative forums: Through these forums, the youth have provided key information to mediators, helping them to understand the issues behind public positions. They have also facilitated dialogue among their peers, bringing to the fore the needs, interests and concerns of the youth. This was the case in the 2005 Sudan peace process, where Lazaro Sumbeiywo – as the lead mediator for the process – organised consultative forums with the youth. In another example, under the framework of the International Conference on the Great Lakes Region (ICGLR), the youth were brought to the table through the Regional Youth Forum representation, which was established as an institutional mechanism to ensure the full participation of the youth in the work of the organisation for peace, stability and development in the region. This enabled the youth to select their representative(s) to the regional summits or peace talks on the Burundi and Democratic Republic of the Congo (DRC) conflict situations.[13]

THEY HAVE ALSO FACILITATED DIALOGUE AMONG THEIR PEERS, BRINGING TO THE FORE THE NEEDS, INTERESTS AND CONCERNS OF THE YOUTH

Witness and signatories: Kenya's Nakuru County Peace Accord, signed in 2012, was an effort to end the electoral violence that had been experienced previously in Nakuru during the 1992, 1997, 2002 and 2008 election years. In the Accord, the elders express that they will engage with youth groups.[14] The Accord also categorically highlights youth as part of the signatories to the agreement.

Inclusion of a youth agenda in the agreement: Addressing youth issues such as unemployment is evident in agreements like Kenya's 2008 agreement.[15] Burundi's 1994 agreement emphasised the education of the population, especially young people, in the values of peace and tolerance, as well as respect for life and other democratic values.

Peer mediation: This is an approach used to introduce youth to the concept of non-violent resolution of conflict in schools and at a community level. In Kenya, more than 10 schools have mediation clubs, with teachers and school administrators involved.[16]

Long-term approaches to building capacities for engagement in peace processes: Another approach that has been used to prepare the youth for engagement in peace and social change is emerging leaders training. This intensive leadership training builds the confidence and capacities of the youth, further empowering them to take a more active role in decision-making, community transformation, sustainable peace and the promotion of their rights. Other initiatives that have sought to build youth leadership capacity include the Model AU and Model UN, through simulations of both institutions that bring together youth from across Africa and the world to assume roles of African and global leaders, working to tackle issues affecting the African continent and the world. In some countries, such as Morocco, associations like the Moroccan Association of Young Mediators (*Assocation Marocaine des Jeunes Médiateurs*) have been established to harness and build the capacity of the youth in mediation and conflict resolution, and also to contribute to the creation of a culture of participation, dialogue and tolerance.

Gender, Youth and Mediation

During periods of intense conflict, existing inequalities between women and men are exacerbated. While violence has a negative and long-lasting impact on young men and women, the types (and targets) of violence suffered by young people is highly gendered. Young women and girls, as well as those who are the poorest among young people, are hardest hit by violent conflicts.[17] UNSC resolutions 1325 (2000) and 1889 (2008) call for the increased participation of women in peace processes, including in decision-making. More often, young women are at a double disadvantage, because of their gender and age. When women are involved in mediation processes, they are often seasoned women with

The participation of young women in peace processes and decision-making must be increased.

ACCORD ARCHIVE

The African Centre for the Constructive Resolution of Disputes (ACCORD) hosted a global workshop in partnership with the United Nations Peacebuilding Support Office on "Sustaining Peace by Investing in Youth" in Durban, South Africa (14–17 November 2016).

decades of experience. Some examples include President Ellen Johnson Sirleaf of Liberia, Betty Bigombe, Catherine Samba Panza and Graça Machel. Young women face cultural stereotyping, as peace processes are considered a man's domain. In developing peacemaking strategies and policies, there is the need to ensure consistent attention to gender equality and young women's participation. Often, training for women by the mandating organisations target diplomats or seasoned women, leaving no (or limited) slots for young women interested in mediation. There is therefore a need to identify strategies to reach out to young women and provide mentorship in mediation.

Challenges Hindering Youth Involvement in Mediation

Most mediators are often (former and current) heads of state, senior military officers, career diplomats, seasoned experts and elders, and religious or traditional leaders with extensive experience in leadership, preventive diplomacy and conflict management. These criteria seem to lock the youth out of mediation, particularly in any leadership role, often leaving the youth to play a supporting role in such processes. This support role often exists parallel to consultations that feed into formal mediation processes – but even so, there is no guarantee that the outcome of the parallel consultations will be incorporated into the main discussions or agreement. The appointment of mediators is also often political, especially with most track one mediation processes that address challenges around political transitions involving heads of state and high-level political actors.

Intergenerational relations are often strained in the aftermath of conflict. Young people may distrust or blame adults for the violence, and adults may blame the youth or see them as a threat. In the African context, the youth are often considered immature, disruptive, not having the memory of war, and lacking the skills and experience to be effective mediators or to engage on par with the elders.

MOST MEDIATORS ARE OFTEN (FORMER AND CURRENT) HEADS OF STATE, SENIOR MILITARY OFFICERS, CAREER DIPLOMATS, SEASONED EXPERTS AND ELDERS, AND RELIGIOUS OR TRADITIONAL LEADERS WITH EXTENSIVE EXPERIENCE IN LEADERSHIP, PREVENTIVE DIPLOMACY AND CONFLICT MANAGEMENT

Further, there are no guiding frameworks for the involvement of youth in peacemaking, and no systematic proactive strategies for youth inclusion in mediation. Thus, any involvement of the youth in mediation is often ad hoc. Noting the different categories and identities of the youth, it is difficult in some cases for the youth to come together as a group to develop a common youth agenda that can be shared with the mediators.

The youth lack experience in mediation, which limits their engagement in technical teams and in implementation bodies such as ceasefire monitoring teams, or truth and reconciliation bodies. Mediation has been considered an elite process, and the socio-economic status of the youth limits them from engaging in formal peace processes. Further, political processes are not easily accessible to young people, with some of these processes linked to political and military elites. In some cases, the participation of youth is only symbolic, where their opinions are manipulated or excluded from decision-making processes. Where they are part of the discussions, their substantive representation, impact and influence in the process is hardly felt or seen.

THE YOUTH LACK EXPERIENCE IN MEDIATION, WHICH LIMITS THEIR ENGAGEMENT IN TECHNICAL TEAMS AND IN IMPLEMENTATION BODIES SUCH AS CEASEFIRE MONITORING TEAMS, OR TRUTH AND RECONCILIATION BODIES

Where the youth are given the space to engage in peace processes, in most cases those who are involved are the elite youth – not necessarily youth at the community level or in rural areas, who often have limited education and take up arms to fight or are easily manipulated. This was the case in the Sudan peace process, where the youth were reported to have lost their impartiality during the peace discussions in 2005.[18] There is a lack of awareness on the existing capacities of youth mediators, and thus a need to further increase efforts to document such experiences. Further, the youth lack sufficient and sustainable funding to support peace processes directly or indirectly.

Recommendations for Better Engagement of the Youth in Mediation

The engagement of the youth in mediation processes is essential to ensure sustainable and inclusive peace. The following are recommendations for direct and indirect engagement of the youth in mediation:

- ***Create opportunities for job shadowing*** for the youth by pairing them with experienced mediators. This is a platform that allows the youth trained in conflict resolution to put their skills and knowledge to practice. Such opportunities could include seconding trained youth to support mediators or special envoys, who often have a lean team.
- ***Establish youth committees***, such as in the Central African Republic, made up of youth from all the negotiating parties. This can create more space for the youth to engage in peace processes.
- ***The youth must be trained in mediation*** and on thematic areas such as elections, governance, rule of law and gender, among others. They should also be taken through simulation exercises, scenarios and policy workshops on mediation. This can be done through programmes such as the Model AU and Model UN.
- ***Promote innovative accountability and transparency mechanisms*** for governments at all levels to address youth exclusion and marginalisation. This is key to opening the space for youth engagement in peace processes at local and national level.
- ***Organise intergenerational dialogues*** between the youth and seasoned mediators and leaders, to provide a learning platform for the youth. This will bridge the intergenerational experience gap in mediation.
- ***Establish collaborative relationships*** between youth and decision-makers, which will contribute to a coordinated approach in supporting peace processes.
- ***Deliver mentorship programmes*** for younger women where "older", experienced female and male mediators mentor younger or less-experienced women peace practitioners.
- ***Strengthen an evidence-based research approach*** on the positive contributions of the youth to peace processes. The evidence on the roles of youth in peacemaking remains limited.
- ***Comprehensive analyses of the different youth identities and interests*** reduces the risk of homogenising the youth and can lead to a more informed, inclusive process.
- At a policy level, the UN, AU and regional economic communities/regional mechanisms (RECs/RMs) should ***develop action plans or guidelines on how to engage*** the youth in mediation to support the implementation of legal frameworks. Further, developing ***roadmaps*** to implement these frameworks will bring more practice to the policy.
- ***Peer mediation*** should be encouraged in schools and communities, linking these efforts to the work of the elders and other actors in the community.
- ***Information technology and the media*** should be used to promote youth engagement in mediation processes, parallel to initiatives that emphasise personal contact.
- There should be ***increased technical support and funding*** for youth who are supporting peace processes.
- ***In-depth analysis*** on the phases of a peace process, and identification of the key entry points for the youth, should be undertaken.

- ***Sensitisation of institutions*** should be undertaken to ensure that policymakers further understand the dynamics of the inclusion of the youth.
- ***Establish mechanisms for the dissemination*** of good practices and knowledge to inform inclusion of youth in peace processes.

WHILE THERE IS CONSENSUS THAT INVOLVING THE YOUTH IN MEDIATION IS USEFUL IN STRENGTHENING THE LEGITIMACY AND SUSTAINABILITY OF PEACE AGREEMENTS, THERE IS STILL A LACK OF CLARITY ABOUT HOW THIS INVOLVEMENT IS DEFINED AND ACHIEVED

Conclusion

The youth can be the custodians of peaceful generations. They should be key agents for social change, peace, economic development and technological innovation. However, while there is consensus that involving the youth in mediation is useful in strengthening the legitimacy and sustainability of peace agreements, there is still a lack of clarity about how this involvement is defined and achieved. Thus, there is a need to further interrogate how to operationalise inclusivity, more particularly for the youth and their interests. In developing strategies and policies, we should be aware of the misconception that youth are either victims or perpetrators, or only a risk factor – and draw upon the increasing evidence that demonstrates that the youth can be peaceful agents of change, including in mediation. It is an indisputable reality that women are at the margins at the peace table, and more needs to be done to increase the number, space and capacities of young women engaging in peace processes.

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SOUTH AFRICA AND KENYA'S LEGISLATIVE MEASURES TO PREVENT HATE SPEECH

BY **KARABO RAJUILI AND NOMAGUGU NYATHI**

"Hate speech lies in a complex nexus with freedom of expression; individual, group and minority rights; and concepts of dignity, equality and safety of person."
~ United Nations Educational, Scientific and Cultural Organization report, 2015[1]

GALLO IMAGES/AFP/EDUARDO SOTERAS

Introduction

Globally, there has been a resurgence of discriminatory and hateful speech in response to various social and political upheavals. While most democracies, such as South Africa and Kenya, provide for freedom of expression, they place limitations on this right to promote social cohesion and protect other fundamental rights – namely the right to equality and the right to dignity. The choice to criminalise speech that falls outside the bounds of protected speech is less widely applied. This is primarily because the use of criminal sanction to prevent hate speech is seen as being in direct contradiction to the freedom of expression and other rights. This is exacerbated by the fact that there is no agreed definition of "hate speech".

Above: Discriminatory speech in South Africa is not limited to race; it is also linked to xenophobic attacks.

UN PHOTO

South African society has engaged in intense public discussions on hate speech and freedom of expression. The nation is still polarised, to some extent, along racial lines - a legacy of the country's apartheid past.

This article reviews South Africa and Kenya's attempts to curb hate speech through legislative means. In particular, the use of criminal sanction is examined, and the strengths and weaknesses of this approach are explored. This is done in the context of the South African government's recent move to introduce legislation to criminalise hate speech, in response to racist speech outbursts on social media. In Kenya, with the upcoming elections in August, legislation is in place to mitigate politicians' predilection for using hate speech as a campaign strategy, and to prevent the resurgence of electoral violence that has characterised Kenya's elections in the past years.

Hate Speech in South Africa and Kenya

South Africa's constitution protects the freedom of expression; however, it places a limitation on speech that "propagates for war; incites imminent violence; or advocates hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm".[2] This is in line with international law, particularly Article 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR).

Despite these constitutional provisions, racially prejudiced and other discriminatory speech has made freedom of expression a contested notion at times. The Reconciliation Barometer survey findings noted that strong distrust between racial groups still persists in South Africa.[3] Social media platforms have been particularly hard hit by hate speech – for instance, in 2016, a social media post by realtor and private citizen, Penny Sparrow, sparked a wave of criticism for its racist content. In a Facebook post, Sparrow referred to black South African New Year's Day beachgoers as "monkeys", and used other derogatory language. The vitriolic post went viral and launched intense public discussions on hate speech and freedom of expression. Moreover, the post was not seen as an isolated incident, but as evidence of a nation still polarised along racial lines and supremacist beliefs – a legacy of the country's apartheid past.[4]

The South African Department of Justice and Constitutional Development states that among the discriminatory speech cases reported, hate speech cases have been the most prevalent matters over the last 15 years.[5] Research shows that many of these cases involve interpersonal exchanges of words between people, usually in the workplace and residential areas.[6]

Discriminatory speech in South Africa is not limited to race, however. Insults against those in the lesbian and gay communities and towards foreign nationals are also

notable, and some political commentators link these to homophobic and xenophobic attacks. A few racially inciting and discriminatory statements have also been heard from political leaders, and sung at political gatherings. In the Afriforum vs Malema case[7], former president of the African National Congress Youth League, Julius Malema, was found guilty of hate speech after he, on several occasions, sang verses from a South African liberation song, which contains words that translate to "shoot the Boers/farmers, they are rapists/robbers". Malema was prohibited from singing the song at public or private events.

In Kenya, like South Africa, the right to freedom of expression is constitutionally protected, while placing limitations on speech that propagates war, violence, advocacy for hatred and incitement to cause harm, in line with Article 19 of the ICCPR. Hate speech, nevertheless, is a significant part of political culture. Political analysts observe that is has been used as a political tool since the establishment of a multiparty system in 1992, and has thus become the norm over many years. As a result of such divisive rhetoric, people are polarised by ethnicity. The violence that erupted during the 2007 election period left nearly 1500 people dead and 600000 displaced[8] and is, in part, attributed to hate speech and divisive rhetoric. Apart from ethnic divisions, there have also been examples of hostile attitudes towards refugee and migrant populations in Kenya, spurning hate speech against these groups.

Legislative Remedies for Hate Speech in South Africa and Kenya

The main legislation dealing with hate speech in South Africa is the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (Equality Act), which deals specifically with the offence of hate speech and provides for remedies. Section 10 of the Equality Act prohibits the "publishing, propagating, advocating or communicating words with the 'clear intention' to be 'hurtful'; be harmful or to incite harm; promote or propagate hatred".[9] The Act provides that every magistrate court may be an equality court. Unfortunately, the courts have been underutilised and public education on how to use the courts has been minimal.

The Equality Act, in its prohibition of hate speech, extends beyond the South African constitutional limitations on speech. For instance, the inclusion of "hurt" as a category is the subject of the current legal challenge, especially among freedom of expression civic organisations. Section 12 of the Equality Act further provides a public interest defence in a liability exemption. Apart from equality courts,

GALLO IMAGES/AFP/EDUARDO SOTERAS

Julius Malema, president of the Economic Freedom Fighters (EFF), gestures outside a Johannesburg court, after appearing for a hate speech trial (12 April 2011).

GALLO IMAGES/AFP/EDUARDO SOTERAS

Kenyan politicians stand in the dock at the Milimani Law Courts over alleged hate speech (14 June 2016).

the South African Human Rights Commission is also mandated to hear hate speech matters.

The Prevention of Hate Crimes and Hate Speech Bill (Hate Speech Bill) is now scheduled to come before the legislature this year (2017). Unlike the Equality Act, which makes criminal sanction discretionary only "as appropriate" through referral to the National Prosecuting Authority (NPA), the Hate Speech Bill – if passed – will introduce harsher penalties of up to 10 years for racist speech and other prejudicial speech, including insult and ridicule. The Bill will make racism and other forms of discrimination aggravating factors to crime. The Bill contains a clause in section (4)(b) that provides for the criminalisation of "any person who intentionally distributes or makes available an electronic communication which constitutes hate speech"[10] – presumably in response to various prominent incidences of racist speech on online platforms.

In Kenya, the National Cohesion and Integration (NCI) Act of 2008 provides for prohibitions to speech. The government was prompted to put measures in place to correct a toxic political culture that is based on advocating for hatred within the citizenry.[11] The NCI Commission has, for example, investigated online hate speech, which led to the arrest of six individuals who were known to be notorious for persistently disseminating inflammatory statements and spreading hate speech through social media. However, much like South Africa's draft Hate Speech Bill, Kenya's prohibitions are wide, and to an extent vague, and run the risk of infringing on freedom of expression. Section 13 of the NCI Act criminalises the use of hate speech and bars the use of threatening, abusive or insulting words or behaviour in any medium, if they are intended to spur ethnic hatred. An amendment to the NCI Act is underway – which, if passed, will increase penalties and extend the reach of the law to various social media platforms.

An obvious difference with Kenya's NCI Act and South Africa's Equality Act is that the NCI Act is more specific on prohibited journalistic and artistic conduct. The NCI Act is supported by the Penal Code of 2009, which defines hate speech as a subversive activity, intended or calculated to promote feelings of hatred and enmity between different races or communities in Kenya. Such speech calls for an imprisonment of up to seven years.

Media is pertinent when contemplating the subject of hate speech. Both South Africa and Kenya have media regulation mechanisms in place against hate speech. In South Africa, the Broadcasting Complaints Commission of South Africa (BCCSA) and the Code of Ethics and Conduct for South African Print and Online Media (Press Code) self-regulate on the prevention of hate speech in print, broadcast and online media. Section 5 of the Press Code commits media to avoid a wide list of discriminatory or denigratory

references, except where it is strictly relevant to the matter reported and it is in the public interest to do so. In Kenya, the Media Council of Kenya, through the Media Council Act and Communications Authority established under the Kenya Information and Communications Act, provided for self-regulation as per Kenya's 2000 Constitution. However, in recent years, the Kenyan government closed down the space for media self-regulation. In 2013, the government introduced amendments to the legislation, giving the state greater control over the media through co-regulation.

South Africa and Kenya are also signatories to other regional and international instruments. The African Charter on Human and Peoples' Rights (African Charter) does not explicitly require hate speech to be prohibited by law. The Declaration of Principles on Freedom of Expression in Africa, adopted in 2002, is broad about the limits of free speech, as it simply provides that "any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary in a democratic society".[12] The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), however, provides for broader prohibition – including, in Article 4, the criminalisation of racially discriminatory speech. Given this international law framework, it is apparent that while states might set up the relevant domestic laws, implementation and framing of these laws is reliant on social context and the histories of these countries.

The ICCPR, of which both South and Kenya are signatories, sets out a three-part test for any limitations or sanctions on speech: legality, legitimacy and necessity. First, legality is not simply a matter of it being lawful. The test calls for law to provide clarity and precision, to enable citizens to foresee the consequences of their conduct on the basis of the law. Vague laws, because of the difficulty of adherence, are seen to have a chilling effect on expression. Second, the legally sanctioned restriction must protect or promote a legitimate aim – that is, it cannot be used as "back door" legislation to shield government or politicians from fair criticism. Third, the restriction must be necessary and proportionate. Necessary restriction is understood to imply action taken only as a means of last resort, where no alternative remedy exists that could achieve the same objective. Proportionate restriction means that the punishment should be on par with the offence committed.[13]

To a large extent, the legislative remedies proffered by Kenya's current NCI Act and South Africa's draft Hate Speech

GALLO IMAGES / THE TIMES / THULI DLAMINI

Members of the community march against racism and to condemn the racist social media post by Penny Sparrow in Scottburgh, South Africa (January 2016).

GALLO IMAGES/AFP/EDUARDO SOTERAS

Kenyan anti-riot police officers guard the entrance of the Milimani Law Courts, in Nairobi as supporters gather to enter the trial of eight Kenyan politicians charged with hate speech and incitement to violence (June 2016).

Bill fall short in their imprecise definitions, as discussed previously, as well as in their adherence to the principle of proportionality, particularly in the use of criminal sanction.

Is Criminal Sanction for Hate Speech Effective?

At the crux of this article is the question of the efficiency and effectiveness of criminalising hate speech.

Kenya's experience provides useful lessons on the difficulties of prosecuting people accused of hate speech as a criminal offence. Evidence suggests that those charged with or accused of hate speech are rarely successfully prosecuted. Cases either drag on without result or are dropped – often for political reasons. Where prosecutions of political leaders have been pursued, the leadership takes advantage of the publicity rather than pursuing genuine reform. This is apparent in Kenya, where allegations were made that hate speech prosecution was only being used to silence opposition parties.[14] This has also led the opposition to seek a review of the interpretation of hate speech. The vulnerability of legislative remedies being used in fighting political battles is therefore significant. South Africa is also not immune to the law and legal institutions being used in political battles. The possibility of the proposed provisions on insults, which are broad and vaguely defined in hate speech legislation, falling prey to such battles should be considered.

There is also a secondary problem to the wide-reaching laws of prosecution. Citizens who do not intend to agree with racist and other discriminatory statements would be guilty of a criminal offence by sheer cause of republishing on social media platforms. Similarly, journalists reporting on a matter of wide public interest would be at risk of facing harsh sanctions. South Africa's Hate Speech Bill explicitly criminalises the distribution of hate speech through electronic means. The manner in which information is published and shared electronically makes prosecution for electronic distribution vulnerable to selective application, which undermines the rule of law. Moreover, a post deemed hate speech in South Africa may very quickly appear on posts of people in other countries, where national provisions against hate speech cannot apply or be enforced.

The regulation of speech, particularly in a transitioning democracy, also creates the risk of curtailing public opinion. Chuma posits that hate speech regulation has the potential to lead to either active or implicit censorship of political discourse, in the name of fostering "peace". This, he observes, is significant, as it limits the opportunity for fair criticism of the government.[15]

JAN TRUTER

In service delivery protests, anti-apartheid narratives in songs, speech and language that could be deemed as insulting are invoked to express present-day dissatisfaction, and could attract criminal sanction if applied strictly in accordance with the new Hate Speech Bill.

The impact of criminalising speech on democratic participation and social dialogue should be considered. In Kenya, police have been empowered with audio recorders to monitor any hate speech at public gatherings. The significant effect this may have on public gatherings – where people may be afraid to gather or freely express dissent – is of concern. The provisions in South Africa's new Hate Speech Bill raise different concerns around the right to gather. In so-called service delivery protests, anti-apartheid narratives in songs and speech and language that could be deemed as insulting are invoked to express present-day dissatisfaction, and could attract criminal sanction if applied strictly in accordance with the new Hate Speech Bill. The effect this may have on shutting down necessary public debate or intergroup dialogue to reduce discrimination should be of concern.

Conclusion

A review of South Africa and Kenya shows the complexity of attempting to regulate hate speech. South Africa and Kenya have differing contexts. Historical events show that the potential for widespread violence as a result of hate speech is much higher in Kenya – although South Africa is not immune from this, given its historical struggle with racial prejudice and inequality. The Kenyan experience shows that criminal sanction does not necessarily lead to a fair application of the law or mitigate the use of hate speech.

The following recommendations are therefore offered:

- The decision to impose criminal sanction requires robust and careful consideration in line with human rights principles. The recognition from South Africa's own courts that the use of criminal sanction on speech should only be applied as a remedy of last resort, and in line with the principle of proportionality, should be adhered to.
- Kenya should re-examine its legislation in light of strengthening judiciary independence and judicial effectiveness. It is crucially important that a clearer definition of hate speech be articulated, to lessen the arbitrary application of the law. Emerging research from the Umati Project – a big data-driven research project on hate speech in Kenya[16] – and other such independent studies, should be sought out in this process.
- It is important to focus on the positive obligations of the state and society in promoting human rights and tolerance, rather than fighting only the manifestations of intolerance and prejudice. Independent institutions – such as the South African Human Rights Commission

(SAHRC), the Equality Courts in South Africa and Kenya's National Commission on Human Rights (KNCHR) – should ensure that their role as forums to remedy the infringement on rights is fully utilised. Effective and meaningful public education on their roles must be undertaken.

- Social media is of concern for both governments, as citizens, academics and journalists increasingly use these platforms to express their views. Social media is an important tool for democratic participation, and is also helpful in predicting social unrest. Through independent human rights institutions, analysis of activity to keep abreast of social tensions, not for the purposes of undue surveillance, but to manage the risk of extreme speech that causes violence, should be undertaken. National laws that unduly infringe on social media rights and access to these platforms, under the pretext of social cohesion, should be reviewed and, where necessary, repealed.

South African and Kenyan lawmakers have taken important steps in dealing with the persistent problem of hate speech. However, legislative remedies for hate speech, particularly as it relates to criminal sanction, is not well considered in South Africa's forthcoming Hate Speech Law and Kenya's interventions through the NCI Commission. In both instances, punishments against hate speech may not yield the intended outcomes of preventing hate speech, nor comply with the test for any limitation or sanction on speech. Dieng aptly observes that "we must recognize the limits of legislation to combat hate speech and incitement. We need to develop a multi-layered approach to fight the root causes of hate speech, racism, and discrimination".[17]

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COUNTERING TERRORISM AND VIOLENT EXTREMISM IN AFRICA

BY **MARISHA RAMDEEN**

GALLO IMAGES/AFP/EDUARDO SOTERAS

Introduction

The rise in terrorism and violent extremism in Africa has created severe security threats as this growing phenomenon has resulted in death, destruction and instability in the countries and regions where terrorist groups operate. Social, political and economic factors can be attributed to the causes of this threat. In Nigeria, the actions of Boko Haram have left thousands of people dead and displaced. It has also made neighbouring countries susceptible to bombings and kidnappings. The same can also be said for Somalia, where al-Shabaab threatens to destabilise an already fragile state, impeding sustainable development and democracy. Whilst these and other groups are prevalent in the north, east, west and Horn of Africa, they have created a continental dilemma as they threaten the larger African political, social and economic security.

Coordinated and harmonised efforts to counter terrorism and violent extremism are underway among and between states, together with regional, continental and international organisations. These efforts include collaboration on border security, sharing intelligence, and the development of strategies and frameworks, such as the African Union's (AU) Counter Terrorism Framework and the United Nations' (UN) Global Counter-terrorism Strategy.

However, since the 9/11 attacks in New York, military intervention has become synonymous with countering terrorism and violent extremism. In spite of this hard power approach, the threat is still very much prevalent. Military

Above: Somali government forces secure the scene of a car bomb claimed by al-Shabaab militants outside the president's palace in Mogadishu (30 August 2016).

GALLO IMAGES/AFP/EDUARDO SOTERAS

Boko Haram militants (in camouflage) embrace and shake hands with Boko Haram prisoners, released in exchange for a group of 82 Chibok girls, who were held captive for three years by the militants, near Kumshe, Nigeria (6 May 2017).

intervention has brought its own challenges, in the form of a high number of civilian fatalities and damage to infrastructure. This then begs the question: what would an alternate approach be to preventing and responding to terrorism and violent extremism that would minimise the high fatality rate and level of destruction?

This article first provides a brief overview of the network of extremist groups in Africa. It then outlines the frameworks that have been developed to respond to this threat. Third, the article examines the military interventions undertaken in response to the extremist threats thus far, with reference to Nigeria and Somalia. Fourth, the article explores alternate approaches to counter terrorism and violent extremism, with particular reference to Mali. This is followed by recommendations to adopt soft power approaches in countering these threats.

Network of Extremist Groups in Africa

The origins, manifestation and support of most extremist groups in Africa should not be seen in isolation – they stem from a vast number of factors, intermingled with allegiances and alliances that create a firm connection among them. This can be attributed to a common belief that most extremist groups share: the pursuit of a state that promotes Sharia law,[1] devoid of Western influences and ideologies. In North Africa, terrorism and violent extremism can be traced back to the cold war, and to the veterans of the anti-Soviet Muslim Army, known as the Mujahideen. The Soviet Union's withdrawal in Afghanistan saw many foreign fighters return to their countries of origin. In Algeria, the Armed Islamic Group – made up of foreign fighters and former members of the Mujahideen and its splinter faction, the Salafist Group for Preaching and Combat (GSPC) – were responsible for training individuals from Chad, Sudan, Libya, Mali and Mauritania in combat. The GSPC extended its operations, aimed at attacks on government and military targets, throughout southern Algeria, northern Mali and regions of Niger and Mauritania. It renamed itself al-Qaeda in the Islamic Maghreb (AQIM), after pledging allegiance to the global militant al-Qaeda organisation, and has been responsible for providing support and training to Nigeria's Boko Haram.[2]

Another affiliate of al-Qaeda is al-Shabaab. This rise of the Islamic State in Iraq and the Levant (ISIL), more commonly referred to as the Islamic State (IS), has gained the allegiance of Boko Haram. This has resulted in many of its fighters travelling to Libya to provide support for the IS group. In 2014, Boko Haram surpassed IS as the world's most deadly violent extremist organisation.[3] The intensification of the Arab Spring, together with open borders and ungoverned spaces throughout the Maghreb and Sahel regions, have contributed significantly to the rise in transnational connections between extremist groups and the movement of fighters.[4]

GALLO IMAGES/AFP/EDUARDO SOTERAS

An al-Shabaab fighter waves a flag in the outskirts of Mogadishu, Somalia (June 2009).

Boko Haram is responsible for over 10 000 deaths and for more than 1.5 million internally displaced persons across the nation.[5] It is also responsible for burning down villages and has received widespread condemnation for mass abductions, such as the kidnapping of 276 Nigerian schoolgirls in April 2014.[6] Al-Shabaab has launched attacks against government institutions, civilians, international organisations and the African Union Mission in Somalia (AMISOM). The group has become notorious for infiltrating local organisations to recruit and train Somali youth.

Frameworks to Address Terrorism and Violent Extremism in Africa

The 9/11 attacks in New York, regarded as a watershed moment in major international terrorism, led to a widespretad military campaign against terror. In Africa, however, national, regional and continental efforts to address this growing crisis have been underway as far back as the early 1990s. For example, from 1992 onwards, the Organisation of African Unity (OAU) had adopted various counterterrorism frameworks that focused on the efforts of cooperation and recognising terrorism and violent extremism as criminal acts. These frameworks were refined and expanded after the transition of the OAU into the AU. In 2002, the AU adopted the Plan of Action on the Prevention and Combating of Terrorism, which embraces practical measures that substantially address Africa's security challenges. It takes into consideration measures in areas such as police and border control, legislative and judicial measures, the financing of terrorism and the exchange of information. A key outcome of the 2002 Plan of Action was the African Centre for the Study and Research on Terrorism (ACSRT), which serves as a structure for centralising information, studies and analyses on terrorism and extremist groups. It further promotes the "coordination and standardization of efforts aimed at enhancing the capacity of member states to prevent and combat terrorism".[7] The AU's Dakar Declaration Against Terrorism, adopted in 2004, takes cognisance of the links between terrorism, drug trafficking, transnational organised crime, money laundering and the illicit proliferation of small arms and light weapons.

Efforts in Preventing and Responding to Terrorism and Violent Extremism in Africa

Whilst the frameworks mentioned previously provide concrete guidelines on how terrorism and violent extremism should be addressed, in practice immediate interventions

GALLO IMAGES/AFP/EDUARDO SOTERAS

Nigerien special forces prepare to fight Boko Haram in Diffa (March 2015).

have been undertaken from a primarily military approach, and this has raised concerns about effectiveness. Whilst military intervention is necessary in some cases in the short term, the result of such intervention has resulted in the loss of lives, human rights violations, mass displacements and damage to infrastructure.

In Nigeria, a Multinational Joint Task Force (MNJTF) was established in 1998 between Nigeria, Chad and Niger as a strategic mechanism for combating transnational crimes in the Lake Chad region, prior to the threats by Boko Haram. The MNJTF became more active in 2012 when attacks by Boko Haram increased significantly. During the Paris Summit in May 2014, which was dedicated to addressing security concerns in Nigeria, it was decided that regional cooperation should be enhanced by means of "coordinated patrols and border surveillance, pooling intelligence and exchanging relevant information".[8] Member states of the Lake Chad Basin Commission (Cameroon, Chad, Niger and Nigeria) and Benin pledged troops to the MNJTF, and further support was received from the United States of America (USA), United Kingdom (UK) and European Union (EU). In January 2015, the AU conducted military operations to prevent the expansion of Boko Haram by approving a West African Task Force of 7500 troops from Nigeria, Chad, Cameroon, Niger and Benin to fight the insurgent group.[9] The MNJTF has made some progress as a result of these operations – the military has been able to recover some Boko Haram-held territories. But this has come at a price. Where military offensives took place, villages were evacuated, leaving people without their livelihoods and resulting in thousands of people being displaced. Most recently, in January 2017, six civilians were killed and over 200 injured when a Nigerian military jet mistakenly bombed a camp for displaced people.[10] In addition, the cases of human rights violations are a serious concern and raise questions about the way in which the military has been operating. A report released by Amnesty International in June 2015 documented shocking levels of deaths in military custody, extrajudicial executions, torture, unlawful detention and arbitrary arrests by the military.[11] In a survey undertaken by Afrobarometer, results showed that the Nigerian government has been criticised for a lack of coherent policy to combat Boko Haram, as well as for heavy-handed approaches taken by the Nigerian Police Service, the State Security Service and the military, creating a high level of distrust of the Nigerian government's security forces. It should be noted that reprisal attacks have been orchestrated against the Nigerian military by Boko Haram, resulting in further deaths.

Somalia also presents an example of a primarily military intervention to counter al-Shabaab. In 2007, the AU's Peace and Security Council (PSC) created AMISOM. Initially with a six-month mandate, the mission aimed to provide support to the transitional government of Somalia and to take all

necessary measures appropriate and, in coordination with the Somali national defence and public safety institutions, to reduce the threat posed by al-Shabaab and other armed opposition groups,[12] among other responsibilities. AMISOM has been working together with the Somali National Army (SNA) and through coordinated efforts during the course of 2014, gained back some towns initially seized by the insurgents. Whilst some progress has been made by AMISOM and the SNA's counter-efforts, al-Shabaab continues its attacks, specifically targeting these military operations. Apart from the attacks and human rights abuses orchestrated by al-Shabaab, reports by Human Rights Watch indicate that government security forces, AU troops and allied militias have also been responsible for indiscriminate attacks, sexual violence, arbitrary arrests and detention.[13]

Alternate Approaches to Countering Terrorism and Violent Extremism

Given the challenges and hostilities that result from military intervention, alternate approaches must be considered – for example, a dual-track approach where mediation is used together with military intervention, or other soft power approaches. Mali is a good example of how it responded to the Tuareg rebellion.[14] This rebellion, led by the National Movement for the Liberation of Azawad (MNLA), had the backing and support of Ansar Dine, an insurgent group operating in northern Mali that sought to impose Sharia law. In response to the crisis, the AU and the Economic Community of West African States (ECOWAS) adopted a dual-track approach: dialogue with the MNLA, as well as adopting military intervention. In December 2012, representatives of the Mali government met with both the MNLA and Ansar Dine, where a ceasefire was achieved. During these talks, both groups agreed to drop calls for independence and the imposition of Sharia law. It should further be noted that as a result of the mediation, legitimate demands by the MNLA were met to an extent, through the Algiers Accord, and the MNLA now has more autonomy in the northern region of Mali. Thereafter, French military intervention was implemented through United Nations Security Council Resolution 2071 to push back insurgent groups who continued to pose a threat to the country. The intervention was successful to some extent, but sporadic attacks continue to take place.

Due consideration should also be given to mediation attempts in Nigeria. Indirect peace talks were considered in 2012, during which Boko Haram considered a ceasefire. As Reuters reported: "It is the first time a ceasefire has been mentioned, so it is a massive positive, but given the lack of trust, a resolution is still a way off."[15] Talks resumed in 2015, when President Muhammadu Buhari of Nigeria met with Boko Haram members in an attempt to negotiate the release of the girls kidnapped in Chibok, with hopes that it would lead to further peace talks in the future. In 2016, however, speaking

UN PHOTO/BLAGOJE GRUJIC

The government of Mali and Tuareg rebels sign an agreement, in Ouagadougou, Burkina Faso, for the immediate ceasefire of fighting (18 June 2013).

GALLO IMAGES/AFP/EDUARDO SOTERAS

African leaders and delegates attend the Africa Union Peace and Security Council Summit on Terrorism in Nairobi, Kenya (2 September 2014) and propose creating a special fund to combat Islamist militant groups growing in strength from Kenya to Nigeria.

at a session to the UN General Assembly, Buhari indicated that he would only be willing to speak to Boko Haram when the extremist group's leaders openly acknowledged their leadership of the groups, as well as their willingness to meet with the president.[16] It is important to note that in Somalia, newly elected President Mohammed Abdullahi "Farmajo" Mohamed indicated his intentions to open talks with al-Shabaab, and should they refuse, this would potentially lead to a military intervention.[17]

A CHALLENGE OF MEDIATING WITH ARMED GROUPS IS THAT IT MAY PRESENT THE NOTION THAT THE STATE IS CONCEDING TO AN ARMED GROUP OR SHOWING WEAKNESS

One lesson that can be derived from the examples mentioned here is that attempts at dialogue and mediation produced some positive results. These attempts provided an opportunity for the perpetrating groups to present their grievances and have these issues addressed, to an extent, as in the case of Mali. The second lesson is that where mediation and dialogue took place, although it may have not resolved the conflict, the ceasefires prevented further violent conflict from occurring for a period of time.

Recommendations for Soft Power Approaches

Assessing the positive and negative consequences of military interventions has led to the consideration of alternatives, particularly the benefits of using soft power approaches.

Enhancing the use of mediation: Mediation is an effective soft power approach for resolving conflicts. It entails resolving a conflict through a political settlement, which calls for a process of inclusiveness that represents all sectors of society and those directly affected by the conflict. This would ideally include the representation of women, youth and perpetrators. An inclusive process is beneficial, as it provides vital information on how various groups are affected by the conflict. It also provides the opportunity for perpetrators to raise their grievances, thus providing insight on some of the root causes that lead to terrorism and violent extremism. A challenge of mediating with armed groups is that it may present the notion that the state is conceding to an armed group or showing weakness. However, mediation seeks to "merely acknowledge existence and exhibit a pragmatic will to end conflict, putting ideology and doctrine aside".[18] Mediation can also bring about a ceasefire, which may to a minimum degree suspend the immediate violence. As in the cases of Nigeria and Mali, where a ceasefire was considered following talks, the conflict may not have been resolved, but at least additional violent conflict was prevented.

Sharing of information and research to counter terrorism and violent extremism: The paucity of vital information still remains a challenge, as extensive research is required to analyse and understand threats and vulnerabilities in countering terrorism and violent extremism. Furthermore, states have a responsibility to understand differing interests among groups, and dialogue creates an opportunity to

bring about this understanding. Tools and resources that promote research and the sharing of information are an important avenue to counter terrorism and violent extremism. A better understanding of the causes of this manifestation and the ways in which extremists operate will assist in finding creative approaches to countering such groups. The establishment of the ACSRT is a positive example in this regard.

Enhance the use of humanitarian diplomacy: It is important to note that engagement with armed groups "does not necessarily mean that there is an agreement to their demands. It may not guarantee a result, but it can present an opportunity to address and provide assistance to humanitarian needs."[19] This can serve two vital purposes: having access to those in need of humanitarian assistance where it is urgently required as a result of the conflict, and using this as an opportunity to open considerations for dialogue and as an entry point for mediation.

Strengthening the link between development and peace processes: Whilst mediation is one effective tool, there are other soft power approaches that speak to improving the political, social and economic pillars of society – which would, in effect, weaken the elements that promote insurgency groups. From a social perspective, there needs to be rehabilitation efforts for local and foreign fighters, so that they are reintegrated into society and do not feel the need to continue the cycle of violence. This is a necessary and essential countermeasure in preventing the continuation of terrorism and violent extremism. "While it is clear that some foreign fighters return home hardened and committed to violent extremism, others do not. They find themselves disillusioned by the gap between the propaganda and the reality of foreign conflict."[20]

Collaborative efforts and engagement initiatives cannot be limited to the role played by continental and regional actors. It is important for states to take the lead in initiating engagements at a national level on ways in which to improve development processes, while also reaching out at a community level to gain a better understanding of the dynamics among communities. States have a responsibility to create an enabling environment that promotes employment for youth. The youth in fragile states, who often find themselves unemployed, are easily manipulated into joining and continuing the cycle of extremism. Thus, the state's role in creating an environment in which sustainable development will be enhanced could possibly limit the influence of extremist groups from gaining youth support and more recruits.

Conclusion

The factors that contribute to terrorism and violent extremism are complex, and the way in which this threat is countered can create further complications. Military intervention is a common solution to address terrorism and violent extremism. While it is an effective short-term solution, it has led to further hostilities, such as reprisal attacks, as well as a high death toll of civilians, mass displacements and damage to infrastructure. It is therefore essential to explore alternate approaches that can minimise human suffering while addressing

ACCORD ARCHIVE

Participants discuss terrorism, mediation and non-state armed groups at the African Union's 6th Annual Retreat of Special Envoys and Mediators on the Promotion of Peace, Security and Stability in Windhoek, Namibia (October 2015).

the threat itself. The need to adopt soft power approaches is a long-term but necessary solution to resolve the threats of terrorism and violent extremism effectively. It should therefore be a priority for all stakeholders – from the international to the local levels – to collaborate and harmonise efforts to address this threat. Attempts at dialogue and mediation are vital soft power approaches that should be engaged to counter terrorism and violent extremism.

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