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He has been a visiting scholar and visiting professor at University of Nottingham in the United Kingdom, Harvard in the United States, Ku Leuven University in Belgium, Université Sciences Po in France, and Monash University in Australia. He was a visiting professor of law and the Henry J. Steiner visiting professor of human rights at Harvard Law School during the 2018–2019 academic year. During one of his sabbatical leaves, Professor Atuguba served as the executive secretary to the president of the Republic of Ghana (2013 to 2015), working directly with the president to provide policy anchorage between the executive presidency and about a thousand public service agencies. Before this, he worked as the executive secretary and principal researcher to the Constitution Review Commission (2010–2012), set up to undertake a consultative review of Ghana’s 1992 constitution.

Professor Atuguba is also co-founder, former executive director, and former board chair of the nonprofit institution Legal Resources Centre, and the Founder and Team Leader of Law and Development Associates, a law and consultancy firm. Over the years, and in the context of his work with these institutions, he has championed the development and application of innovative and creative ideas, solutions, and facilitation techniques for the resolution of some of the most intractable problems of African polities.

He has consulted widely for various international organisations and national institutions, including the governments of Ghana, Gambia, Lesotho, Liberia, and Sierra Leone. He has also consulted for the United Nations, the World Bank, the European Union, the African Union, the International Labour Organisation, the United Nations Development Programme, the United Nations Office on Drugs and Crime, the United Nations International Children’s Education Fund, the United Nations High Commission for Refugees, the International Organisation for Migration, the United States Agency for International Development, the United Kingdom’s Department for International Development, the Economic Community of West African States, the British Council, Action Aid International, Plan International, Oxfam and several other intergovernmental bodies, and international and local development agencies and nonprofits.

Professor Atuguba has researched and published extensively, mostly in relation to the intersection of law, human rights, policy, governance, the politics and economics of development, institutions, and institutional change. He has written more than 100 monographs, articles, book chapters, research reports, and technical papers on issues of public policy,
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Professor Atuguba’s research interests are in:

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Claude Grunitzky is the founder of TRACE and TRUE Africa, a media tech platform championing young African voices all over the world. In November 2016, TRUE Africa was funded by Google’s Digital News Initiative.

In February 2003, Grunitzky and two business partners completed a multimillion-dollar financing deal led by Goldman Sachs Group. As a result, the TRACE brand is now being leveraged globally across various television, event, and interactive platforms. TRACE, which now reaches an audience of more than 100 million people across 150 countries, was successfully sold to a French investor group in July 2010.

Grunitzky was raised between Lomé, Togo; Washington, DC; Paris, and London. Growing up, Grunitzky, who speaks six languages and carries three passports, was exposed to many different cultures. These foreign interactions shaped his transcultural philosophy and informed the creative energy of his media ventures.

A graduate of London University and MIT, Grunitzky is also the president and a board member at the Watermill Center, a laboratory of inspiration and performance founded by theater and visual artist Robert Wilson, which provides a unique environment for a global community of emerging and established artists and thinkers to gather and explore new ideas together. Grunitzky is also a board member at MASS MoCA, a museum in Massachusetts that is one of the world’s liveliest centers for making and enjoying today’s most evocative art, and at Humanity in Action, a foundation that works internationally to build global leadership, defend democracy, protect minorities, and improve human rights.

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She is a published writer. Her latest book, Love Does Not Win Elections, is about her experience contesting the People’s Democratic Party primaries in 2014 and was released to much acclaim. She collaborated on a series of children’s textbooks on social studies used in primary schools and a children’s reference book on Nigeria. She kept a weekly column for five years,
in *Thisday's The Lawyer* newspaper, and most recently, as the *Nigerian Citizen* for the *Leadership* newspaper, where she covered legal and social issues ranging from state-sponsored marriages to good governance. Ms. Osori is a regular commentator on radio and television and has been involved in numerous campaigns to improve social justice for women and girls and to improve governance in Nigeria.

Ms. Osori, an Eisenhower Fellow, graduated with law degrees from the University of Lagos and Harvard Law School and has a master in public administration degree from the Harvard Kennedy School. She is licensed to practice law in Nigeria and the State of New York.
Editors’ Remarks

We are proud to bring to you the 14th edition of the Africa Policy Journal. This year’s issue is a reflection of the uneven picture painted by the major political and economic events that shaped the continent in 2019.

Sudan is a perfect embodiment of this contrast. The country’s government was long written off in policy circles as a poster child of brutal unremovable authoritarian regimes “a la Africaine.” Yet economic pressures gave way to mass protests and finally the ousting of the world’s then only sitting president indicted for war crime. Though often threatened by reactionary suppressing forces, the Sudanese revolution ultimately led to the arrest of the infamous Omar El Beshir and the formation of a mixed civilian and military transitional government. Mr. Nasreldin Abdelbari, a respected human rights activist from the Darfur region, was appointed minister of justice. Sudanese people are now permitted to hope that human rights and the rule of law will at last become enshrined in the judiciary system of their country. Whilst it is too soon to assess the success of the transitional Sudanese government, the very involvement of civil society in Sudanese politics, in itself, is a victory to be revelled in.

For the first time in its meandering history, the Democratic Republic of Congo (DRC) has seen a peaceful transition of power at the very top of its government. There is little doubt that the election of Félix Tshisekedi was marred by significant electoral irregularities, facilitated or unimpeded by the introduction of electronic voting machines (“machines a voter”) dubbed by Congolese as “machines a voler” (stealing machines). However, the release of Kabila-era political prisoners, the efforts to bring peace to the eastern part of the DRC and the pledge to expand free education to Congolese children are initiatives of the
new government worthy of commendation, to the extent they prove to be more than ephemerid political subterfuges.

Succeeding to the DRC’s Dr. Denis Mukwege, Ethiopian Prime Minister Abiy Ahmed was awarded the Nobel Peace Prize for easing tensions with Eritrea and ushering in an era of “glasnost” characterized by unprecedented levels of political freedom for Ethiopian citizens. However, this ouverture showed limits during the October riots, which led to the killing of more than 60 people in the Oromo region of the country. The prime minister’s response to the crisis has been largely criticized as tardy and tepid.

In Cameroon, the Anglophone crisis persists with its ever-rising tolls of human casualties and refugees. However, the country experienced in the second half of the year a much-needed “détente” evidenced by the national dialogue on the crisis (whose degree of inclusiveness has nonetheless been called into question by many) and the release from prison of political opponents.

Tunisia mourned the passing of its president, Beji Caid Essebsi. Following the death of President Essebsi, Tunisia made a new stride in its walk towards a functional democratic government by holding elections generally regarded as free and fair.

A Baoulé proverb from Cote d’ Ivoire says: On a beau suivre un chemin accidenté, on en ressort toujours avec les hanches droites. This saying roughly translates to: “Though one may follow a tortuous path, one will still emerge with straight hips.” The African continent overall has been engaged since independence on such a winding road. Though it would be a fool’s errand to predict when it will reach final harbour, the editors of APJ are, on balance, encouraged by the trends in political freedom in countries such as Sudan, Tunisia, and the DRC, just to name those few. We say this without denying the persistence of real political, social, and economic challenges in those countries and others. Our assessment is in no way a call to complacency or a misplaced expression of satisfaction. It is an invitation to those who govern our beloved continent to accelerate and deepen reform in order to meet the legitimate expectations shared by Africans all across the continent.

We view our work at APJ as enthusiastic heralds of progress and unabashed alarms of setbacks. We believe that this role can only be constructive if it rests on journalistic work that is diverse in both its thematic approach and geographic scope. Thus, this year, we have been working to produce and publish interview series on a wide range of themes, including technological innovation, urbanization, democratic progress, and the Herero and Nama genocide in Namibia. We invite you to stay tuned over the coming months, as we gradually make this content available on our website.

Lastly, we would be remiss if we failed to thank and acknowledge the contribution of those who made possible the publication of this year’s journal. The quality of a journal’s content is determined by the professionalism and dedication of its staff. APJ’s editors have unreluctantly burned through the proverbial midnight oil, while juggling with competing academic demands, in order to deliver articles commensurate with the high standards of our readership. We
thank them for their devotion. We also thank the Center for African Studies, Dean Douglas Elmendorf, Martha Foley, the Harvard Kennedy School Student Government, and the Malcolm Wiener Center for Social Policy for their unwavering support through the years.

We thank you for taking the time to engage with the materials we selected and edited. We hope you will find in them the inspiration to carry on the arduous task of reshaping the narrative on our beloved continent.

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Africa’s Next Decade of Public Policy Development Is Being Led by Technology Innovators

By Alexander O. Onukwue

Alexander O. Onukwue is a Nigerian journalist with TechCabal.com, a digital media publisher of news and analysis on the technology space in Africa. He covers innovation policy, technology regulation, and lifestyle evolutions engendered by modern technologies. He’s at the concluding stages of a master’s degree in research and public policy at the University of Lagos, Nigeria. For his project thesis, he conducted a study to understand the challenges academic health researchers face in communicating their findings to policymakers. His reporting and analysis aim to explain policy processes, helping innovators, regulators, and the public with critical, clear understanding of the stakes.

In March 2018, young entrepreneurs, technology enthusiasts, and an invited government official gathered for a meet-up at the Impact Hub in Ikoyi, Lagos, Nigeria. At events featuring such people, participants usually exchange entrepreneurship stories: the grueling demands of product design, hacks for crafting investor-ready pitches, and navigating the challenges of team building while bootstrapping. But the presence of coloured sticky notes, board markers, and grouped brainstorming sessions gave the room a pedagogical, wonky, yet thrilling ambience.

This could be the future of the public policy development process in Africa. In the last decade, such settings have sprung up across the continent for co-creating innovation policies that will spur economic and social development. Since 2018, in countries like Senegal, Mali, Cote d’Ivoire, and Nigeria, innovation-focused organisations like i4policy have facilitated dialogues and “hackathons” that bring entrepreneurs, technologists, and government representatives together to forge multidisciplinary policy development. From those rigorous evidence-based conversations, the governments of Senegal and Mali each produced draft legislations for a “Startup Act” towards the end of 2019.

What does this portend? Could this be the model for leaping over Africa’s historic problems in efficiently developing inclusive, pragmatic policies?

Overcoming the Militating Factor

Co-creation, as a policy development approach, proceeds from democratic proclivities. When African countries mostly had militaristic executive branches, it would be quite ambitious, if not presumptuous, to propose meetings where governments were
expected to heed citizen-sourced ideas on “what the government should do or not do.” In governments led by dictatorships, policy development is very much a top-down process. This was the case in Africa where the post-independence elite more or less abused their intellectual head start over compatriots, lording it over them.

As countries adapt towards greater democracy in the 21st century, we have witnessed a marriage of openness to innovation and more distributed systems of policy development. Tunisia, formerly led by authoritarian regimes, became the first African country to develop and pass startup legislation from a bottom-up process. In Rwanda, the still-authoritarian government gives broad access to innovation incubation, making Kigali a top destination for technology and innovation in the region.

The gains of web 2.0 and emerging technologies have accrued from cross-border conversations—imagine the graphic designer in Rwanda hired by an advertising agency in Egypt and paid via the Nigeria-founded payments company Flutterwave. Perhaps today’s quasi-democratic African leaders are motivated to key into the rave by self-interest. But cross-border conversations have opened spaces on the roundtable for practitioners to substantially influence government directives.

**Technologists for Policy**

When the world needed urgent, sustainable responses to dire human conditions resulting from the Great Depression in the 1930s, policy innovators like John Maynard Keynes led the way. In the decades after, economists assumed increased prominence as public policy architects. Whether it’s Milton Friedman’s monetarism animating the deregulation policies of the Reagan-Thatcher era in the 1980s, or Jonathan Gruber forging Obamacare, or 2019 Nobel Laureate Esther Duflo showing the utility randomized trials in measuring policy adoption, economists have shaped and ruled the world.

In 2020, every news story will have a technology component. Every economic policy will succeed or fail depending on the technological frameworks nudging market decisions. As the world accelerates into an irreversible stream of possibilities, it behooves Africa’s technologists to seek further attention from their governments and the public. What economists were to public policymaking in the 20th century, technologists will become as the 21st enters its third decade.

This convincing thesis, attributable to Bruce Schneier—an American fellow at the Berkman Center for Internet & Society at Harvard Law School—captures an intriguing proposition: when more African tech founders take active interest in policy development, change happens quicker. Public policy—usually abstract and amorphously communicated to the public—will sound more concrete and practicable when solution providers play leading roles.

Change will not happen overnight, but recent gains should encourage more effort. In 2011, the Nigerian civic technology organisation BudgIT was born at a hackathon organized at a co-creation event. Nine years later, BudgIT has become one of West Africa’s leading private organisations advocating public sector
accountability. Its engaging model of using social media to communicate the country’s annual budgets to citizens in appealing graphics has attracted partnerships from sub-regional governments who want to appear more transparent to their electorate. Funding from Omidyar Network, the Gates Foundation,8 and others have encouraged BudgIT to move into Ghana and Sierra Leone.9 BudgIT has also built an innovation hub of its own10 where new tech-driven public policy-minded ventures are being incubated to tackle present and future policy challenges.

Entrepreneurs, Shoot Your Policy Shots

A brave new African decade beckons. After lagging much of the world for the last half-century, technology presents the continent an opportunity to skip various trial-and-error stages. Accelerating development in the new decade calls for bold action by entrepreneurs to leverage open mediums in attracting the attention of governments. These days, an effective way to demonstrate expertise on social media is to display one’s product and tag a potential client.11 In the same way, Africa’s more than 600 tech hubs12 and innovation enthusiasts should be earnestly plugging their antecedents and competence to produce better public policy outcomes.

Africa’s thriving technology companies are those solving pressing, continent-wide needs. Technologists know better than governments what the pain points are. But as founders develop solutions to one problem, they often become aware of others, creating a need to form networks of actors who can think up and implement solutions at scale. In December 2019, leaders in Nigeria’s financial technology space converged to dialogue on a first-ever industry innovation sandbox on fintech.13 Should they succeed, they would have engineered a much-needed institutional catalyst for driving financial inclusion and propelling economic growth. Importantly, it will be one more argument in favour of citizen-led co-creation as Africa’s magic wand for successful policy development.
Endnotes
The Democratic Republic of Congo: The Blind State

By Kayemba Mvula

Kayemba Mvula is a Congolese American, data-driven nonprofit and international development professional with extensive experience in the United States and Sub-Saharan Africa. He has worked on a number of social and economic issues, including economic development, criminal justice policy, international trade, human rights, and environmental pollution. His expertise is primarily in program monitoring and evaluation, but he has extensive experience conducting practical research more broadly. Originally from the Democratic Republic of Congo, Kayemba has lived most of his life in New Orleans, Louisiana, where he currently resides. Kayemba is passionate about data and practical research, as well as its capacity to help organizations make important decisions.

In his book *Seeing Like a State*, James S. Scott discusses how the modern state came to be, primarily by making its “territory knowable,” meaning that aspects of a territory or a state need to be measured, assessed, or quantified to allow government programs to be implemented. Core to his thesis, though it goes relatively undiscussed in the book, is how data come to be central to modern statecraft. So, if data are core to allowing a state to “see,” how does one operate a state that is effectively blind?

The Democratic Republic of Congo (DRC) has not held a census since 1984, so statistically speaking, we know very little about the country. This lack of data doesn’t just limit researchers and academics but the state itself. We are now coming up on the first anniversary of the presidential elections in the DRC, and Félix Tshisekedi is now president of the fourth largest country in Africa. Though the results of those elections were long in dispute, what we do know is that if poverty reduction and economic growth are core to the government’s mission, then the DRC is currently operating at a deficit.

According to the National Agency for the Promotion of Investment in the DRC, the country currently possesses 238,935 kilometers of roads; approximately 5,000 km of railways; 89 hydroelectric plants; 500 airstrips; and 5 international airports. Unfortunately, this already existing infrastructure, which is necessary for development, is inadequate, and much of it is in serious disrepair.

Much the same can be said of the country’s data infrastructure, as it is recommended that countries hold a census every ten years. The fact that a census has not been conducted in the DRC in more than 30 years has forced analysts in the country to rely on
estimates instead. How can a government go about building schools, roads, or hospitals without a clearer understanding of what the demand or need for them might be?

Data should be at the core of policy decisions and an indispensable resource to governments. Across the globe, censuses are used to not only allocate funds for roads, schools, and bridges but also to allocate political representation, as well as fund health and wellness programs. In short, a census allows important decision makers to better understand how a country is changing and ensure that all citizens receive their just due. Without the existence of reliable census data, not only has the Congolese government been at a disadvantage, but the private sector has been moving blind as well, as business leaders often utilize local indicators to make investment decisions. This lack of certainty is no doubt inhibiting not only investment but growth as well.

None of this has been lost on policymakers. The issue of the state “moving blindly” was raised by Jaynet Kabila, a member of Parliament and sister of then president Joseph Kabila in 2012. Ms. Kabila raised the issue in Parliament while questioning how then prime minister Matata Ponyo and his government planned to implement its social and development objectives without knowing how many people there are in the country—effectively calling for a new census. This problem, unfortunately, persists today.

Though the holding of censuses counts on the continent has proven to be contentious at times, there is little doubt that data should be driving policy decisions. The need for improved national statistics on the continent is so stark that in 2010, due to improved data sources and a shift in counting methods, Ghana’s GDP was found to be 62 percent higher than originally believed. Such gaps in knowledge cannot be helpful to the policy making process.

Thus, while there is much that the recently formed Congolese government could be doing to help lift its population from poverty and ensure economic growth, it may be wise for President Tshisekedi to consider starting with a simple population count.
Endnotes

8 Trefon, “Population Census DRC.”
9 Trefon, “Population Census DRC.”
15 Trefon, “Population Census DRC.”

The Climate Change Challenge that No One Is Talking About: Its Impact on Africa

By Simon DeBere

Simon is a joint MPA-ID and MBA student at the Harvard Kennedy School and Harvard Business School. Prior to graduate school, he spent three years working for an agricultural social enterprise in East Africa, One Acre Fund. The organization focuses on improving the agricultural yield and incomes of more than a million small-holder farmers across the continent, and during his time there, Simon was able to see first-hand how vulnerable these families were to the effects of climate change. He continues to be interested in challenges related to the African continent and in particular how narratives and the global economic structure continues to marginalize African issues and perpetuate rich world dominance.

As voices for action against climate change grow around Europe and North America through movements such as Extinction Rebellion, the recent Global Climate Strike, and discussion of a Green New Deal, a fundamental piece of the story remains largely absent from the discussion: that the severe challenges from climate change will be most severely felt in Africa, which will soon be home to over one in three people on Earth. This reveals the continued ignorance and apathy with which much of the rich world views the continent. Climate change will be the third great wave—following slavery
and colonialism—of under-acknowledged exploitation of the continent by the rich world. The rich world would do much better by acknowledging that the battle to address climate change must be waged first and foremost in defense of Africa.

**Climate Change Will Disproportionately Affect Africa, Despite Contributing Nothing to Its Causes**

Nearly all the effects of climate change will be in poor countries. Empirical work finds that higher temperatures have substantial negative effects on economic growth in poor countries but no effect on growth in rich countries. A one-degree Celsius rise in temperatures is associated with a decline in economic growth of 1.9 percentage points in Sub-Saharan African countries—affecting agriculture, industrial output, and political stability. (This compares to smaller, but still negative, effects of 0.9 percentage points in countries that are poor but not in Sub-Saharan Africa.) Furthermore, temperatures are projected to rise faster in Africa than in the rest of the world. The Intergovernmental Panel on Climate Change projects an increase of 4 degrees Celsius by the end of the century vs. the world average of 2.9 degrees Celsius.

Africa is particularly vulnerable to the effects of climate change. High dependence on agriculture, where yields are at risk from temperature and rainfall changes, will damage food security and therefore the livelihoods of 70 percent of the population. Furthermore, compared to rich countries, low incomes and state capabilities in Africa mean that the continent has limited capacity to respond to these challenges. This is even more relevant, given that between now and the end of the century, Africa’s population is projected to triple, increasing by nearly 3 billion people, accounting for 95 percent of all population growth.²

Yet Africa has contributed almost nothing to the causes of climate change. Currently, Africa contributes just 4 percent of global CO² emissions compared to 25 percent for North America and Europe. Furthermore, Europe and North America are responsible for 50 percent of all historical cumulative emissions compared to just 3 percent from Africa.³ Rich countries have driven emissions and benefited from them, whereas Africa has been unable to benefit from them but will now have to bear most of the consequences.

**Discussion of Africa Is Absent for the Climate Change Debate**

In recent months, politicians and activists have made significant progress in bringing the issues of climate change to the forefront of public discourse in Europe and North America. While framed as progressive movements, the discourse reveals the typical blind spots and biases of the rich world towards Africa. Activists have favored framing the issues as affecting all of humanity or around what will be the domestic challenges in rich countries. Although this successful activism has benefits, it continues to mask the severity of the issues faced by the most vulnerable around the world and so potentially limits the actions of the rich world.

Greta Thunberg, the 16-year-old
Swedish climate change activist, told world leaders “You have stolen my dreams,” regarding their lack of action towards climate change. Although her work is laudable, the media’s focus on her overlooks those who will be most affected. It will be subsistence farmers across the African continent who will be forced to adapt, with their already limited means, to a changing climate as they try to extract a living from their increasingly limited fertile land. It will not be the citizens of Sweden, whose wealth and economic structure will insulate them from climate change’s worst effects.

It’s Time to Acknowledge the Dire Climate Change Challenges for Africa

A climate change narrative that acknowledges Africa does justice to the reality and provides a stronger, clearer rationale for significant and urgent action. Without such a narrative, actions will invariably always fall short. In doing this, the rich world must be careful not to perpetuate an incorrect narrative of helplessness and pity towards the continent. Instead, it’s important to recognize firstly that Africa’s challenges regarding climate change have not been caused by African actions; and secondly, the interconnected global ecosystem means that many of the ways to limit the consequences from climate change cannot come from Africa. It is therefore the responsibility of the rich world to act to affect change at a scale that only it can.

Some may say that in order to drive the necessary policy changes in the rich world, the arguments must appeal to rich world voters and policymakers and even play into their existing biases. But only by fully understanding how severe the consequences will be for the continent can we galvanize the political will for immediate and substantive action. While the direct changes from climate change to daily life in the rich world will be relatively small—providing limited incentive for change—the potentially catastrophic damage to the lives of billions of Africans is precisely the incentive required for action.

So, What Does This Mean for You?

- Arm yourself with an understanding of how climate change will affect Africa. If you care about climate change, then your primary concern is Africa, and you must understand how the continent is at risk.
- Use this understanding to ensure Africa is included in climate change debates. We must push for Africa to be part of the climate change debate—including through African voices. Therefore, when you find yourselves discussing climate change, ensure Africa is part of the discussion.
- Advocate for more significant action on climate change on behalf of Africa. We must do more to address climate change and faster. Share your understanding of the potentially extreme—and unjust—effects of climate change in Africa to galvanize support for climate action among your peers.
Endnotes
Tax Base Erosion: A Cautionary Tale of the DRC

By Laure Gnassou, Experienced Economist

Laure is an experienced economist, with a particular interest in African economies, notably the Democratic Republic of Congo. Prior to her experience with the United Nations (UN), Laure worked with the European Parliament, the European Commission, and the Central Bank of Finland. She holds a “Diplôme d’Etudes Approfondies” (Pre-PhD) in international economics from Grenoble University, France. The views and opinions expressed in this article are solely those of the author. Email: laure.gnassou@hotmail.com; Twitter: laure_app.

Acknowledgement: The paper results from a presentation at the Tax Justice Network annual conference on Paradise Lost (Inequality and Tax Injustice) in Lima (Peru) from 13–14 June 2018. A revised version of the paper was presented at the Effective State Inclusive and Development (ESID) conference in Manchester (UK) from 9–11 September 2019.

Abstract

Referring to the Addis Ababa Action Agenda of July 2015, the domestic revenue mobilization through taxation is a top priority to achieve the 2030 agenda for sustainable development. The Democratic Republic of Congo (DRC), a major resource-rich country, has faced difficulties in ensuring the sound delivery of public services. It is marred by inequality and has regularly experienced humanitarian crises. This paper investigates the root causes of tax base erosion in the fragile African state.

First, the paper examines the critical impact of multinational enterprises (MNEs) on the DRC’s tax base. Often by obtaining tax incentives in exchange for foreign direct investment inflows to develop the extractive industries, MNEs apply tax avoidance practices and proceed to transfer pricing to reduce tax payments. This tax leakage has fomented the erosion of the country’s limited tax base.

Second, the paper highlights that in March 2018, the country kicked off a controversial attempt to reform its mining legislation during a severe political crisis. The rise in taxation of minerals aimed to protect the country’s tax base.

Third, the paper stresses that international cooperation in the area of tax matters is critical for restoring the tax base and improving domestic tax capacity. Since January 2019, a change in political leadership has offered a new opportunity for reconnecting with donors on tax matters. This could contribute to ameliorating the efficiency of the country’s tax administration and modernizing its tax system.

Introduction

The Democratic Republic of Congo (DNC) is a major resource-rich country
in Africa that remains exposed to critical political, security, economic, and financial challenges. The rise in taxation of the extractive sector is one of the key challenges that the country recently tackled to better contribute to its sustainable economic development.

This paper stresses that multinational enterprises (MNEs) have often obtained tax and customs incentives in exchange for foreign direct investment (FDI) inflows to develop the Congolese extractive sector. They have exploited loopholes of both international and national legislations, through tax avoidance practices, to reduce tax payments. In 2016 and 2017, the Panama Papers and the Paradise Papers uncovered imbroglios of deals related to the Congolese extractive sector. Additionally, they unveiled financial secrecy surrounding the Congolese elites—overall pointing out that insufficient governance of the sector, combined with tax dodging, resulted in an erosion of a tax base in the fragile state.

Thus, this paper highlights that the DRC attempted to reform the legislation on the extractive industries in view of protecting its tax base. In March 2018, mining policy reform aimed to improve the sector’s governance and mobilize more domestic revenue. This has exacerbated tensions between the state and MNEs over the management of mining wealth. MNEs strongly contested the increasing fiscal pressure and the withdrawal of a ten-year stability clause.

Finally, this paper explores opportunities and motives for broadening and deepening cooperation in tax matters between the DRC and donors. The challenge consists in strengthening the country’s fiscal pace. In this regard, additional structural reforms are required to promote a sustainable tax base.

1. Tax Base in Jeopardy in the DRC, a Major Resource-Rich Country in Sub-Saharan Africa

Despite vast mineral deposits, the mining sector’s contribution to fiscal revenues was limited over the past decade. This partly results from a strategy consisting of a controversial race to the bottom on taxes aimed at attracting foreign capital flows. Moreover, MNEs set up practices that contributed to eroding the country’s tax base.

1.1. The Attractiveness of the Congolese Extractive Sector under Review

In the early 2000s, the country implemented structural reform to revitalize the extractive sector, particularly industrial mining activities. Attracting private capital flows in the extractive sector by granting tax incentives became a priority.

1.1.1. The Extractive Sector Profile in the DRC

As of the mid-1980s, the country’s economy underperformed mainly due to political instability, the mismanagement of the state-owned enterprises (SOEs), and a sharp fall in commodities prices. The mining industry collapsed. From 1985 to 2001, the mining sector’s

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1 From 1973 to 1975, the Mobutu regime experimented with the Zaïreanization of the economy, which mainly consisted in the nationalization of the main companies, including the Générale des Carrières et des Mines, a base metal company in the ex-Katanga province, and the Office des Mines d’Or de Kilo Moto, a gold mining company in the ex-Province Orientale.
share in GDP declined from 24.6 percent to 7.3 percent, according to the International Monetary Fund (IMF).¹

In the 2000s, the mining policy reform contributed to relaunching the industrial mining sector. First, junior companies partnered with SOEs detaining public mining assets. They were progressively replaced by MNEs, especially in the copper-cobalt belt, after the democratic election of then president Kabila in 2006. Since then, MNE investments kept driving production of base metals, although GECAMINES SA (GMC) owns public mining assets in the copper-cobalt belt (see Figure 1).

In 2014, the mining sector’s share in GDP accounted for 19 percent. The same year, mining revenues for the central government were estimated at USD 829 million, only representing 16 percent of public revenues.³ A year later, tax collecting agencies² collected USD 1.17 billion, representing 82.2 percent of tax revenues from the mining sector, notably the corporate income tax (CIT).⁴ As a result, the DRC is more exposed to base erosion and profit shifting (BEPS) owing to the extreme reliance on corporate income tax.

### 1.1.2. Tax and Customs Incentives vs. a Surge in FDI Inflows to the DRC as of 2002

![Graph showing total copper production and other production between 2010 and 2017.](image_source)

**Note:** Temporary data.


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² The tax-collecting agencies are as follows: (i) the Direction Générale des Douanes et Accises; the Direction Générale des Impôts; and (iii) the Direction Générale des Recettes Administratives, Judiciaires, Domaniales et de Participation.


Referring to the Central Bank of Congo (BCC), in 2016, the extractive sector accounted for USD 9,733.7 million, or 97.6 percent of the country’s total official export value.² The country’s economy mainly depends on the export of a few minerals, with copper and cobalt corresponding to 56.2 percent and 20.8 percent, respectively, of the total export value in 2016.

81–013 of 2 April 1981, on mines and hydrocarbons. The 2002 mining code included an attractive fiscal, customs, and exchange regime, as well as a stability clause of ten years (a legal guarantee deriving from mining deals negotiated under the previous law). According to the IMF, the code was “more generous compared to peer countries,” such as Chile, Peru and Australia.

Furthermore, MNEs obtained tax and customs incentives under the 2002 investment code, creating an enabling environment for securing national and outbound investments. These tax incentives, including tax holidays, are temporarily granted to further attract FDI inflows to the DRC. In practice, they are often maintained, given corruption and political interference in tax policy. Tax and customs incentives become inefficient by generating important tax loses. They participate in a tax base’s erosion showing a disconnection between tax policy and tax administration.

Overall, a cumulative amount of FDI inflows reached USD 20,467.2 million from 2002 to 2016 (see Figure 2). The MNEs, particularly Chinese mining companies, have massively invested in the copper–cobalt belt, the ex–Katanga province. In 2017, FDI inflows stood at USD 1,340.2 million. Given its strategic commodities (copper, cobalt, and lithium), the DRC is at the forefront of green technologies, notably the electrification of transportation. In the coming years, the country might become a new land of opportunity for investors in the quest to develop cobalt and lithium projects. This might mobilize further FDI inflows since President Tshisekedi’s elections in December 2018.

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iii Concerning the Sino–Congolese agreement on mining and infrastructure of 2007, the Chinese SOEs obtained tax exemptions.

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1.2. Tax Avoidance, Tax Evasion and Other Financial Practices Pressuring a Narrow Tax Base in the DRC

In 2018, the state budget was only estimated at USD 5,709,165,104. It usually relies on donor assistance, given that there is an insufficient mobilization of public revenues. The narrow tax base also reflects the behaviour of taxpayers, who set up strategies to dodge taxes and/or evade funds.

1.2.1. Assessing Tax Avoidance in the DRC

Although, in 2015, a finance law including provisions on transfer pricing was introduced in the country, shortcomings are observed in its implementation. MNEs have exploited loopholes to reduce tax payments. Through tax planning practices, they artificially shift profits to a low or non-tax jurisdiction or tax haven. They have undertaken tax avoidance practices knowing that most MNEs are registered in tax havens, while they set-up subsidiaries in the DRC. Therefore, transfer mispricing is the key driver for BEPS, which tends to narrow the country’s tax base.

1.2.2. Other Financial Practices: Mergers and Acquisitions of the Congolese Mining Assets Outside the DRC Jurisdiction

Most Mergers and Acquisitions (M&A) related to the Congolese mining assets occurred outside the country, mainly in tax havens. For instance, from 2010 to 2012, “the country lost at least USD 1.36 billion in revenues from the under-pricing of mining assets that were sold to offshore companies.”

As a second example, on 9 May 2016, Freeport-McMoRan Inc. sold its 56 percent stake in Tenke Fungurume Mining (TFM) Holdings Ltdv to China Molybdenum Co. Ltd. (CMOC) for a total amount of USD 2.65 billion. Lundin Mining detained 24 percent unity interest in TFM, while GECAMINES SA (GMC) continued to hold a 20 percent interest in TFM. The Congolese authorities were not informed about the deal, and they rejected the mining deal’s validity. The government did not receive tax revenue, as the purchase of the Congolese mining rights was done in a jurisdiction outside of the country. On 27 October 2016, the government agreed to the sale of TFM by CMOC. In February 2017, GMC finally obtained financial compensation amounting to USD 100 thousand, in order to drop its legal complaints against Freeport-McMoran and Lundin. Overall, in 2017, CMOC controlled 15 percent of the cobalt market through its latest overseas mining acquisition in the DRC.

The narrow tax base also results from the mismanagement and endemic corruption. In 2017, Global Witness stressed that at least a USD 750 million payment by mining operators to GMC and tax-collecting agencies went missing from 2013 to 2015. In response, on 28 November 2018, iv

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v TFM Holdings Ltd is registered in Bermuda. Since November 2016, CMOC acquired 100 percent of TFM Holding Ltd.
GMC released a detailed report dismissing the allegations.18

1.2.3. Tax Evasion

Concerning illicit financial flows (IFFs), Gabriel Zucman estimated that, in 2014, Africa accounted for 30 percent of offshore tax evasion, a total of USD 15 billion in tax revenue loss.19 In the DRC, MNEs and individuals are engaged in tax evasion. By doing so, they participate in boosting the share of financial wealth held offshore. The recent publication of the Panama Papers20 and the Paradise Papers21 revealed secrecy surrounding financial transactions carried out by the Congolese elite and MNEs.

2. Attempts at Amending the Mining Policy in the DRC

The government recently engaged in a reform of the legal framework on extractive industries to improve governance. It focused on restoring its ownership with regard to the management of mining wealth.

2.1. The Glimpse of Resource Nationalism: Learning from the Revised Mining Code

Recently, a trend of resource nationalism has been observed in Sub-Saharan Africa, especially Zambia, Tanzania, and Mali. Concerning the DRC, for years, the IMF encouraged the Congolese authorities to amend their mining policy by redefining an adequate fiscal, customs and exchange package to raise domestic revenue mobilization (DRM)22 in a country that was exposed to tax dodging. The new mining law23 was promulgated on 9 March 2018. It was completed through a revised mining regulation24 on 8 June 2018.

2.1.1. Long Overdue Mining Policy Review

After a review of mining contracts, vii in 2012, the government started to reform its mining policy with the World Bank’s support. On 17 October 2013, the ministry of mines issued the first draft of the mining law, viii which was sent to the parliament in mid-March 2015. However, in 2016, the government halted the review of the 2002 mining code, owing to a commodity markets slump25 and the strong opposition of mining operators. Finally, the national assembly and the senate adopted the revised mining code, on 8 December 2017, and 22 January 2018, respectively.

2.1.2. Focus on the Fiscal, Customs, and Exchange Package of the Revised Mining Code

Through the 2018 mining code, the Congolese authorities embarked on an aggressive strategy to increase the mining sector’s contribution to public finance (see Table 1).

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vi More attention was given to the issue of resource nationalism in Africa. For instance, on 12 June 2019, a panel was dedicated to “Resource Nationalism in Southern Africa: Challenges and Opportunities” at the 8th European Conference on African Studies which was hosted by the University of Edinburgh’s Centre of African Studies.

vii In 2005, the Lutundula report (a parliamentarian report) provided major insights related to Leonine contracts. Although it was never discussed at the parliament, given the sensitive nature of these contracts, it provided grounds for the ministerial decision of April 2007 pertaining to the review of 61 mining contracts from 11 June 2007 to 22 October 2010.

viii The international and national law firms (Duncan & Allen and Cabinet Mukendi Wafwana & Associates) were initially recruited, thanks to the World Bank project “Projet d’Appui au Secteur Minier en RD Congo.” They provided legal assistance to the government. After drafting the 2002 mining code, they were involved in revising the said code.
<table>
<thead>
<tr>
<th>KEY FEATURES</th>
<th>ARTICLES OF THE REVISED MINING CODE</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>An increase in the rate of royalties on main minerals</td>
<td>Art. 241</td>
<td>For non-ferrous metals and/or base metals: from 2% to 3.5%. For precious metals: from 2.5% to 3.5%. For precious stones: from 4% to 6%. For strategic substances: a 10% super-profit. The government plans to declare cobalt, coltan, lithium, and other minerals as strategic substances.</td>
</tr>
<tr>
<td>An introduction of a 50% profit-windfall tax, the so-called super-profits</td>
<td>Art. 251 bis</td>
<td>The tax will be applicable when commodity prices are 25% superior to feasibility study prices.</td>
</tr>
<tr>
<td>A reduction of a stability clause from ten years to five years</td>
<td>Art. 276 Art. 342 bis</td>
<td>The elimination of the 10-year stability clause has increased legal uncertainty in the country.</td>
</tr>
<tr>
<td>The CIT</td>
<td>Art. 247</td>
<td>The CIT remains unchanged at the rate of 30%.</td>
</tr>
<tr>
<td>The transfer of mining rights between affiliates</td>
<td>Art. 253</td>
<td>The transfer must take place under the arm’s length principle.</td>
</tr>
<tr>
<td>Changes in the shareholding of any mining company</td>
<td>Art. 276 bis Art. 276 ter</td>
<td>M&amp;A involving Congolese mining assets require the state’s approval.</td>
</tr>
<tr>
<td>A rise in the state’s free share in mining projects from 5% to 10%</td>
<td>Art. 71</td>
<td>The state opted for rising its control over mining assets.</td>
</tr>
<tr>
<td>A fiscal decentralization and mining sector</td>
<td>Art. 242</td>
<td>The mining license fees of any mining company will be redistributed as follows: (i) 50% to the central government; (ii) 25% to the province in which the project is executed; and (iii) 15% to the territorial entity.</td>
</tr>
</tbody>
</table>
Addressing the recurrent shortage of foreign exchange

Art. 269

MNEs are requested to repatriate 60% export revenues.

Art. 309 bis

In case of noncompliance, MNEs are exposed to penalties estimated at 5% of the total non-repatriated revenues. Previously, mining operators had to repatriate 40% of export revenues.\textsuperscript{x}

Tackling the dedollarization process

Art. 263

Mining operators are encouraged to convert funds in national currencies to participate in preventing a crisis of confidence in the Congolese franc.\textsuperscript{ix}

ix On 17 June 2017, the central bank insisted on the measure’s enforcement.

The increased fiscal pressures on mining operators could reduce the profitability of mining projects.

Moreover, the revised mining code comprised other amendments covering key areas, such as the Congolese Entrepreneurship,\textsuperscript{x} the local content,\textsuperscript{xi} local communities,\textsuperscript{xii} the environmental issue,\textsuperscript{xiii} and the fund for future generations.\textsuperscript{xiv} Overall these innovations aimed to generate a positive impact on the country’s economy.

Nonetheless, Global Witness does not consider that the revised code will contribute to increasing transparency in the mining sector.\textsuperscript{27}

2.2. Resource Nationalism and Growing Tensions with Mining Companies

Resource nationalism implies a drastic change in dynamics between the state and MNEs. Therefore, taxation of minerals and a clause of stability gradually became a contentious issue.

2.2.1. Attempts at Mitigating Tensions between the State and a Cartel of Mining Companies in the DRC

On 8 February 2018, mining giants expressed to then president Kabila their concerns regarding the fiscal aspects of the revised mining code and the legal guarantee of stability. On 7 March 2018, the former president met with the main executives of these...
companies. Despite the said meeting, on 9 March 2018, the revised mining code was promulgated in replacement of the 2002 mining code.

On 21 March 2018, Mr. Kabwelulu, then minister of mines, started discussions on the revision of the 2003 mining regulation during a tripartite workshop. Nonetheless, the private sector was divided. A new independent group emerged, known as the “Initiative pour la Promotion de Industrie Minière” (IPM), gathering Randgold Resources, AngloGold Ashanti, Glencore Plc, Ivanhoe Mines, Gold Mountain International, Zijin Mining Group, MMG, and CMOC. The IPM withdrew from the Chamber of Commerce, the so-called “Fédération des Entreprises du Congo” (FEC) on 15 March 2018. It considered that the Chamber was not defending its interests enough. On 23 March 2018, it attended a separate meeting with then minister of mines Kabwelulu, who disregarded its proposals. On 29 March 2018, the lobby of mining giants issued a statement stressing that it accepted 76 percent of the articles in the 2018 mining code. On 8 June 2018, the mining regulation, however, entered effect, without addressing the IPM’s concerns. Given the context, the IPM might seek arbitration. Civil servants will play a critical role in implementing the revised mining legal framework to prevent any litigation by MNEs.

2.2.2. The Audit of GMC Contracts, a

Strong Sign of Resource Nationalism
On 14 June 2018, Mr. Yuma, GMC head, announced a review of the company’s mining contracts to raise the state’s revenues. Since then, no update has been made public on the ongoing renegotiation of GMC’s joint ventures. The audit could be viewed as a strong sign of resource nationalism, which could exacerbate tensions between the state and the industrial mining sector.

Finally, the business climate is likely to further deteriorate, knowing that the DRC is already considered to be a high-risk jurisdiction. The country is ranked 183 out of 190 in the 2020 World Bank’s Doing Business report.

3. The DRC in Fringe of the International Cooperation in Tax Matters
Since 2001, the country has reconnected with the donor community, which has aided on political, security, economic, and humanitarian issues. Nonetheless, international support on tax matters is rather limited. After the release of the Panama Papers and the Paradise Papers in 2016 and 2017, respectively, it became clear that the DRC could benefit from a range of technical assistance to raise domestic mobilization efforts, which is critical to achieving the UN 2030 agenda for sustainable development, including the 17 sustainable developments goals (SDGs).

3.1. A Rebuilding of Fiscal Institutions (Tax and Customs Administrations) at the National and Provincial Level
Referring to the Addis Ababa Action Agenda, taxation plays a key role in financing the implementation of SDGs. In this regard, developing countries are urged to implement taxes
more effectively. Beyond changes in the taxation of minerals, the DRC has engaged structural reforms mainly focused on increasing domestic revenue and strengthening public financial management to reduce aid dependency. In 2009, the government adopted a plan to enhance the efficiency of revenue collection. It already intended to improve DRM.  

Firstly, strengthening the tax administrations’ capacities is required to ameliorate transparency in managing the tax system. It will also address the limited performance of revenue-collecting agencies, which are poorly staffed and ill-equipped. It also will ensure tax compliance. Secondly, the broadening of the tax base mainly implies modernization of its tax system by: (i) rationalizing tax exemptions and (ii) eliminating a set of duties and taxes. Thirdly, the economic diversification away from the extractive sector, a gradual formalization of the informal economy and a taxation of the digital economy will contribute to enlarging the taxpayers’ database. This is imperative to ensuring a sustainable tax base. 

Over the years, the IMF has supported the DRC through technical assistance. In addition, the World Bank and other donors have provided their support, including the Public Financial Management and Accountability Project. In 2016, the DRC joined the BEPS project. Hence, it could adhere to the African Tax Administration Forum and other multi-stakeholder initiatives to tackle harmful practices, including tax avoidance and tax evasion. This will contribute to upgrading the country’s tax system and establish an official tax dialogue with other countries (see Table 3).

**Table 3. An Overview of the International Cooperation in Tax Matters**

<table>
<thead>
<tr>
<th>DONORS ASSISTANCE</th>
<th>INITIATIVE</th>
<th>COMMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Building National Tax Capacity</td>
<td>The Platform for Collaboration on Tax (PCT)</td>
<td>In April 2016, the UN, IMF, the World Bank, and the Organization for Economic Co-operation and Development (OECD) set up the PCT to reinforce capacity building support on tax matters in developing countries. The main activities are: (i) development of toolkits; (ii) guidance to support the implementation of BEPS measures; and (iii) tackling ill-conceived tax incentives.</td>
</tr>
<tr>
<td>1. Building National Tax Capacity</td>
<td>The OECD/G20 BEPS Project</td>
<td>Since July 2013, the OECD has been involved in addressing challenges related to BEPS. The BEPS project includes more than 100 countries and jurisdictions. Its objectives consist of: (i) addressing tax avoidance; (ii) guaranteeing a more transparent tax environment; and (iii) boosting the coherence of international tax rules.</td>
</tr>
<tr>
<td>1. Building National Tax Capacity</td>
<td>The Addis Tax Initiative (ATI).</td>
<td>In 2015, the UK launched the ATI, which gathers 39 countries. Donors intend on doubling their support of tax reform in developing countries by 2020. The ATI’s purpose is to tackle tax avoidance, as well as domestic and cross-border evasion. In return, developing countries must engage tax reforms to ameliorate the transparency, efficiency, and effectiveness of their tax systems.</td>
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<tr>
<td>-------------------------------</td>
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</tr>
<tr>
<td>2. Building National Audit Capacity</td>
<td>The Tax Inspection Without Border (TIWB)</td>
<td>On 13 July 2015, the OECD and the United Nations Development Program set up the TIWB at the third finance for development conference in Addis Ababa, Ethiopia. The joint initiative aims to provide tax audit assistance to developing countries and improve compliance with national tax laws by taxpayers, especially MNEs. It contributes to increasing DRM by carrying out more effective tax audits.</td>
</tr>
</tbody>
</table>

Source: The Author.

3.2. Fighting against the Illicit Financial Flows (IFFs) in the DRC Lost in the Panama and Paradise Papers

Since the Mobutu regime, the scourge of corruption has hampered the country’s economic development. The DRC ranked 168th out of 180 countries, according to Transparency International’s Corruption Perceptions Index 2019. In spite of the recent release of the Panama Papers and the Paradise Papers, so far, the Congolese authorities have not taken any legal action towards the individuals and companies cited in these papers.

However, the United States has imposed individual sanctions targeting two prominent persons, Mr. Gertler and Mr. Pieter Deboutte, with robust political and business ties with then-president Kabila. On 20 December 2017, US President Trump signed Executive Order 13818, in line with the 2016 Global Magnitsky Human Rights Accountability Act. The order put the said persons on the list of the US Office of Foreign Assets Control (OFAC) due to corruption and human rights abuses. Gertler’s business empire covers mining, oil, transport, and agribusiness sectors. The executive order strictly prohibited any individual or company from engaging in transactions with persons under sanctions. Most MNEs distanced themselves from Gertler’s empire, except Glencore Plc, on June 15, 2018, the OFAC sanctioned 14 of his companies. See US Department of Treasury, Global Magnitsky Designations and Designation Update, Specially Designated Nationals List Update, (2018), https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20180615.aspx.
given financial commitments. On 15 June 2018, Glencore resumed its royalty payments in euros to Mr. Gertler through a non-US financial institution to preserve its assets (Mutanda Mining Sarl and Kamoto Copper Co.) in the copper-cobalt belt. On 15 March 2018, Global Witness expressed concerns regarding the capacity of the United States to monitor and enforce Executive Order 13818 under the 2016 Global Magnitsky Act pertaining to Mr. Gertler.

Altogether, the Congolese authorities could further investigate the Gertler case, but only if there is a strong political will for recovering capital outflow. In this regard, the exchange of information between countries is imperative, which is a prerequisite to tackle IFFs, especially tax evasion. The DRC should be part of a global cooperative effort in terms of tax transparency. Yet, this option could be strengthened, as Gabriel Zucman recommends creating a global wealth registry to fight financial opacity. Such a mechanism could allow the Congolese tax authority to track offshore assets held by the Congolese elite and uncover financial transactions concluded in tax havens involving the Congolese mining assets.

**Conclusion and Policy Recommendations**

The country has reached a critical juncture. As its economy depends on primary commodities, it could benefit from the mining policy reform, which significantly amended taxation of minerals. The reform constituted a momentum, despite tremendous pressures exerted by mining giants. It must be associated with other structural reforms for preventing tax base erosion. The country should further engage with other donors to expand and deepen cooperation in tax matters. It could better protect, then broaden, its tax base by strengthening its tax capacity. This is a prerequisite for improving DRM in view of ensuring the proper delivery of SDGs. The Congolese authorities could take ownership of sustainable economic development. This also requires engaging on the path to long-term peace and political stability; one of the key challenges to achieve in the DRC.
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why the kenya-somalia maritime dispute is far from over, regardless of the international court of justice ruling

by philip onguny

philip onguny is an assistant professor in the school of conflict studies at saint paul university in ottawa, canada. his research revolves around ethnopolitical violence in sub-saharan africa, including the role of media in conflict transformation and peacebuilding. he is the co-editor of lutte contre le terrorisme en afrique: acte de bienveillance ou prétexte géostratégique?, published by the university of montreal press.

abstract

this article focuses on the ongoing maritime boundary dispute between kenya and somalia. it argues that, regardless of the anticipated international court of justice’s ruling in 2020, the decision will only formalize legal ownership of the disputed area rather than settling recurrent border disputes between the two states. this is because of the broader geopolitical factors that are shifting the security landscape in east africa and the horn. the article discusses some of the legal principles upon which the court’s decision might be hinged, contending that winning the case on either side will not change much in terms of the growing regional security concerns. withstanding the dynamics of this dispute and the changes in regional balance of power, the article does not pretend to offer exhaustive thoughts on the case, neither does it offer solutions to that end. rather, its ultimate objective is to generate academic and policy debates on whether regional arrangements would be the best course of action for these kinds of dispute as a means to prevent potential ripple effect in the continent.

introduction

territorial and boundary disputes are not a new phenomenon in africa. the 1884–1885 berlin conference, for instance, “set out (among other things) the conditions under which territory might be acquired on the coast of africa.” while the conference may have served as a major landmark in africa’s territorial governance, it also marked the beginning of border/boundary disputes on the continent, both terrestrial and maritime. in many cases, boundary claims stem from historical variations of border maps, territorial redrawing of the
newly formed states, and reconfiguration of rights and responsibilities.

As such, one leading explanation for boundary disputes is that “borders were designed in European capitals at a time when Europeans had barely settled in Africa with little knowledge of the geography and ethnic composition of the areas whose borders were designing.” While colonial legacy may have had a profound impact on contemporary border/boundary conflicts in Africa, recent studies have shown how increased exploration of inland, offshore, and coastline natural resources influence the current patterns of border/boundary conflicts over time and space. Drawing upon country-specific cases, such studies seek to approve or disapprove dominant perspectives on natural resource conflicts, such as “resource curse,” “resource trap,” or “Dutch disease.”

Pending these views, there is relatively little work done to understand the recent scramble to control sea spaces, island features, and waterways by African states. Yet, Africa’s regional security is increasingly threatened by disputes over transboundary natural resources. In writing about Africa’s disputes over watercourses and maritime borders, some scholars have observed that “unconsolidated borders arise from governments’ negligence in not setting up judicious institutions to cater for their territories, and this has turned out to be a good basis for external intrusion and a vital source of disputes between states.” Accordingly, the bourgeoning boundary disputes in Africa seem to confirm this perspective. The River Nile “water wars” between Ethiopia, Sudan, and Egypt recently prompted by the construction of the Grand Ethiopian Renaissance Dam (GERD) is one of such disputes. Arguably, Ethiopia is using its relative economic strength as a leverage to construct the dam without external support, while Sudan, which, until recently, had supported the construction of GERD for its own economic prospects, joined Egypt in questioning the downstream flow of Nile waters upon its completion in 2020. Since Egypt and Sudan have failed to thwart the construction of this mega-dam, the dispute has shifted focus and is now centered on the timeframe needed to fill it, with concerns over “water security” by the lower riparians since GERD is expected to be Africa’s biggest hydroelectric power plant.

Other ongoing disputes involving boundary delimitations, territorial sovereignty, and inconclusive treaties over transboundary natural resources in the continent are abundant. They include, among others: the dispute between the DRC and Uganda over Rukwanzi Island in Lake Albert; disagreements over Lake Nyasa’s boundary between Tanzania and Malawi; diplomatic tussles over the sovereignty of Hala’ib Triangle involving Sudan and Egypt; the dispute over Mbanié, Cocotiers, and Congas Islands between Gabon and Equatorial Guinea; the boundary dispute over the Orange River between Namibia and South Africa; and disagreements between Botswana and Namibia over the use of Okavango river basin, which is testing the sustainability of treaties established to guide the use of the river.

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of the disputed watercourse.\textsuperscript{16} These are some of the many disputes that are currently active and whose solutions remain uncertain or temporary. The maritime border dispute between Kenya and Somalia is therefore not atypical. In fact, the two countries are already embroiled in other border/boundary disputes with their respective neighbors. Kenya has an ongoing dispute over the Ilemi Triangle with both Sudan and Ethiopia,\textsuperscript{17} and another dispute over Lake Victoria’s Migingo Island with Uganda. Meanwhile, Somalia has a long running border dispute with Ethiopia.\textsuperscript{18}

This article argues that regardless of International Court of Justice’s (ICJ) 2020 ruling on the Kenya–Somalia maritime dispute, the relationship between the two counties will remain uncertain. This is because of other geopolitical factors, such as cross-border conflicts in the Horn of Africa; the involvement of the Kenyan Defense Forces in Somalia under the African Union Mission in Somalia’s (AMISOM) efforts to cripple Al-Shabaab insurgency; problems linked to refugee camps in Kenya (Somalian refugees being the majority); and concerns over piracy and criminal activities along Kenya’s shared coastal line with Somalia. The article begins by outlining some of the international legal foundations upon which the Court’s decision on the Kenya–Somalia dispute might be hinged. It then orients the discussions to the complexities surrounding the dispute. The conclusion offers reflections on whether regional arrangements are the best course of action for such disputes, and reviews potential challenges to such arrangements.

**Governance of International Watercourses and Maritimes Boundaries/Borders**

Beyond economic and livelihood support arguments, waters can serve as boundaries between states and potential transport routes, particularly when they are navigable. This is why there have been attempts to set up international legal mechanisms, often multilateral, as instruments of governance, even though their enforcement or practical implications remain uncertain. In terms of managing international watercourses, some scholars have acknowledged the difficulty in establishing water boundaries particularly between two contiguous riparian states, pointing out three possible ways in which an agreement might be achieved.\textsuperscript{19} That is, “(1) by following a shore of an IWC [international watercourse]; (2) by cutting across its waters; and (3) by using the waterway as a reference for drawing a land boundary.”\textsuperscript{20} All these possibilities determine “the regime of navigation and the allocation of non-navigational uses.”\textsuperscript{21} Cooperation is thus needed between states on how to use and/or manage them.

With regard to non-navigational uses, for example, some have identified four principles that have been tested over the years as a means to guide international water laws.\textsuperscript{22} This includes: a) “absolute territorial sovereignty” (or the Harmon Doctrine), suggesting that “a state is free to dispose, within its territory, of the waters of an international river in any manner it deems fit, without concern for the harm or adverse impact that such use may cause to other riparian states”; b) “absolute territorial integrity,” which
“establishes the right of a riparian state to demand continuation of the natural flow of an international river into its territory from the upper riparian or riparians, but imposes a duty on that state not to restrict such natural flow of waters to other lower riparians”; c) “limited territorial sovereignty/integrity,” premised on the assumption that “every riparian state has a right to use the waters of the international river, but is under a corresponding duty to ensure that such use does not harm other riparians”; and d) “community of co-riparian states in the waters of an international river,” which centers on the idea that “the entire river basin is an economic unit, and the rights over the waters of the entire river are vested in the collective body of the riparian states, or divided among them either by agreement or on the basis of proportionality.” Overall, the third principle (limited territorial sovereignty/integrity) remains the privileged one because it considers riparian states as equal and prohibits the states sharing a watercourse of causing “significant harm” to other riparian states.

In terms of maritime boundary disputes, the United Nations Convention on the Law of the Sea (UNCLOS) remains the main guiding principle for negotiations on matters relating to sea and ocean spaces. UNCLOS also offers guidelines on how to manage exclusive economic zones (EEZs), which affords a single state the rights and responsibilities over the sovereignty of a maritime territory. Within UNCLOS, as some have pointed out, are other procedures on how to determine “Territorial Sea” limits (allowing a state to claim sovereignty over resources found up to 12 nautical miles [NM] from its coastal lines), “Contiguous Zone” (adding additional 12 NM to the initial 12 NM coastline if the extension in question does not overlap with contiguous zone of another state), and “Continental Shelf,” which allows for “a natural prolongation of the land territory to the continental margin’s outer edge.” Overall, the general customs and principles guiding disputes over ocean and sea spaces revolve around “sovereign territory, trust territory, terra nullius, and res communis.” Also, determining from whence a territory begins or ends often draws on “the classic enumeration of the modes of acquisition of territorial sovereignty [which] comprises accretion, cession, succession, conquest, effective occupation, and prescription.”

The problem with such normative provisions is that political will is often lacking when it comes to their enforcement, particularly when economic and security concerns are at stake. Nonetheless, settlements of maritime boundary disputes have taken many forms, ranging from third-party bilateral negotiations to regional and international mediations. In 2017, for instance, the International Tribunal for the Law of the Sea (ITLOS) settled the Ghana-Côte d’Ivoire maritime border dispute, upholding the equidistance principle to enforce a single maritime delimitation solution. In 2013, the ICJ reached a conclusion on Niger-Burkina Faso territorial dispute, which culminated into territorial exchange and town swaps between the two states. The Cameroon-Nigeria dispute over Bakassi peninsula was also settled through the ICJ, concluding that the disputed strip was part of Cameroon’s
Since the ICJ’s ruling is final and binding for member states, many African states increasingly take this route. The question that arises is whether this is the best path in terms of long-term regional cooperation.

**The Kenya-Somalia Boundary Dispute: The Winner Loses All?**

At the heart of Kenya–Somalia maritime dispute is whether the nautical boundary between the two countries should run southeast, based on an equidistant projection from terrestrial border line separating the two countries (Somalia’s position), or eastwards, according to the 1979 “parallel of latitude” agreement (Kenya’s position). Figure 1 shows the disputed area between the two states.

Following a preliminary agreement by the two states to settle the dispute outside the courts in 2009 through an memorandum of understanding, Somalia changed tack and filed the case at the ICJ in 2014, thwarting efforts to a potential bilateral arrangement. Although Somalia’s position may appear to make the most sense, based on terrestrial maps, the ICJ does not consider maps as legal titles. Accordingly, “while a map generally serves the purpose of identification of the territory and its boundaries, the Court has emphasized that a map, in and of itself, does not constitute a legal title.” This means both countries have a 50–50 chance of winning the case from a legal point of view. However, the dispute is compounded by other geopolitical factors, most of which revolve around economic, political, and security concerns.

Economic aspects of the dispute center on the control of oil and gas deposits concentrated in the disputed area that both countries eye for economic gains. To illustrate, the Kenyan government, Qatar Petroleum, Eni (Italian), and Total (French) recently signed an agreement in July 2019, allowing the oil companies to explore Kenya’s offshore oil and gas blocks from 2020, and some of the blocks might extend to the disputed area. Therefore, Somalia has every reason to be worried, and its decision to take the Court’s route is unsurprising. In fact, Somalia is also planning on licensing its offshore oil and gas by 2020 in an effort to attract more investors to its gradually improving economy.

Political factors revolve around national pride, power, and influence in the region. Given the geopolitical value of Kenya in the region, it has occupied a central role in matters of regional development, peace, and stability. Moreover, several Western states with interests in the region often operate within Kenya, with many embassies, multinational corporations, and international non-governmental organizations also operating from Kenya. Certainly, Kenya remains an influential player in the region, and the international community cannot afford to lose its cooperation in regional matters. However, this influential role is progressively marred by cyclic episodes of political violence and systemic corruption within

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state institutions, which raise doubts about its long-term influence in the region. Uncontrolled borrowing and debt accumulation also threaten the sustainability of Kenya’s political and economic power. Kenya therefore has more to lose if the dispute is ruled in favor of Somalia, which is increasingly and steadily transforming its political and economic landscape. In fact, Al-Shabaab insurgents remain the main threat to Somalia’s political and economic stability. For this reason, it would probably be naïve to think of contemporary Somalia as a weak state in the conventional sense of the term. Nonetheless, a win for Somalia would probably mean nothing more than a source of national pride, as it is obviously the underdog in the dispute.

Security factors mainly revolve around the containment of the Al-Shabaab terrorist groups, including other criminal activities such as piracy offshore Kenyan and Somalia coastlines. Furthermore, the border between Kenya and Somalia has, over the years, been marred by cross-border conflicts, culminating into forced migrations, with Somalis remaining the majority of displaced populations in refugee camps such as Dadaab. The Kenyan government threatened to shut down the camp in 2015 over security concerns, following a series of terrorist attacks in Kenya between 2013 and 2015. Losing the case against Somalia might jeopardize Kenya’s cooperation and role in AMISOM. Even so, Kenya receives both technical and financial support from the international community, particularly the United States, to carry out its military operations in Somalia. It is therefore uncertain whether it has the capacity and/or military might to carry out such missions without external support. With uncontrolled circulation
of weapons in Somalia, and resilience of its insurgent groups over the years, security dynamics might shift considerably if the support Kenya receives is halted due to non-cooperation.

While these factors are subject to interpretation and contextual dynamics, what is certain is that the security landscape in East Africa and the Horn will be impacted by this ruling. This is further complicated by the shifting nature of local, regional, and international politics. In case of a loss, Somalia might see the institutions of global governance as favoring Kenya given its geopolitical value in the region. This might be used by Al-Shabaab terrorist and criminal operatives to continue recruit more sympathizers. A loss for Kenya might mean uncertain or limited cooperation, which the international community cannot afford. In fact, “the US, NATO, the EU and individual states like Russia, China, India and South Korea maintain a naval presence around the Horn of Africa,” operations which depend on Kenya’s cooperation.

Furthermore, the dispute has been drawing alliances, with the Arab League recently warning Kenya against illegal annexation of Somalia’s territory, conveniently framed by Somalia as “Arab waters.” These dynamics underscore the complex nature of the dispute. Thus, regardless of the ICJ’s verdict, the winner is still poised to lose since both countries are struggling to maintain a working diplomatic relation over other unsettled cross-border issues. More interestingly, however, is why Kenya is more favorable to a settlement outside the court, while Somalia insists on the ICJ’s ruling as the best course of action. The answer to this question probably lies in the judicial comity of state parties to the ruling, however inconvenient the decision might be.

**Are Regional Arrangements the Best Course of Action?**

As argued in the previous sections, the Kenya–Somalia maritime dispute is compounded by a myriad of geopolitical factors that stretch beyond political, economic, and security concerns. The dispute therefore invites a reflection on whether regional arrangements would be the best course of action for these kinds of disputes. Of course, such a consideration is not something new. Boutros Boutros-Ghali already entertained such a thought in 1992, pointing out that “the Security Council has and will continue to have primary responsibility for maintaining international peace and security, but regional action as a matter of decentralization, delegation and cooperation with United Nations efforts could not only lighten the burden of the Security Council but also contribute to a deeper sense of participation, consensus and democratization in international affairs.”

Accordingly, three reasons drive the rationale to consider regional arrangements: a) the assumption that wars and migrations lead territories and economies to consolidate their interests toward action “rather than remain on the sidelines”; b) the fact that “they understand better local cultures and actors because of their shared backgrounds and experiences, and thus they can be more effective in the field”; and c) “their agendas are not overcrowded with every global problem, and that they can focus better on the crisis at hand.”

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Although less plausible at this point, a regional resettlement for this case would test the reasonableness of the “local–turn” discourses emphasizing local solutions for local problems, which, even though tainted by “liberal peace” criticisms, has gained traction in academic and policy debates.\textsuperscript{48} Such a “turn” would, first and foremost, mean the two states recognize that “African leaders and the AU understand the problems of Africans better than anyone else, and [that] they are also the ones greatly affected by these disputes.”\textsuperscript{49} Further, such a “turn” would require discussion on whether the 2016 Lomé Charter—providing state parties with, among others, guidelines on maritime governance and responsibility to delimit their own boundaries—would offer meaningful alternative dispute resolution mechanisms for Kenya and Somalia. This is because the Lomé Charter aligns with the African Union’s 2050 Africa’s Integrated Maritime Strategy, whose success will also depend on regional cooperation on how to use and/or manage Africa’s watercourses and maritime boundaries.\textsuperscript{50} Finally, such an arrangement would test the feasibility of the African Union’s ambitious border policy seeking to transform hard/soft borders management practices into “bridges” within the continent through cross-border collaboration.\textsuperscript{51}

The success of such arrangements will, of course, depend on several structural factors and/or conditions. First, where it would draw its legitimacy at the local, regional and international levels is not clear, particularly the governance structure. Second, and most importantly, what would cooperative structures and enforcement power look like—coercion or diplomacy? Furthermore, whether cooperative and/or enforcement powers will consider varying capacity of states need to be reflected upon. Third, the manner in which such an arrangement would interact with normative principles and/or treaties at the global level, including the interests of superpowers, will have to be rethought. Fourth, how these arrangements would be financed in the long term to ensure their sustainability will require a reflection on consolidated efforts toward funding structures among party states. Finally, would such arrangements require “subcontracting” for certain responses, despite this being one of the criticisms levelled against UN security organs? The history shows that such an approach has produced mixed outcomes, most of which have been negative.

\textbf{Concluding Remarks}

In this article, I have argued that the Kenya–Somalia maritime boundary dispute points to a growing trend that underscores the need for a clear and complete formalization of international borders, as many African states are embarking on an ambitious exploration of natural resources within their watercourses and sea spaces. This is likely to prevent potential incremental effects of “water wars” in the continent. In a sense, this view aligns with those contending that, “in modern international relations, a territorial boundary generally needs to be complete and precise if it is to be useful, with no areas left vague; and [that] these qualities may well be secured by a judicial or arbitral settlement.”\textsuperscript{52}
The article also holds that a clear formalization of maritime boundary would, at best, address issues of legality over which state has sovereign rights or obligations over the disputed area but will certainly not settle the dispute in the long term. This is why the winner of the case still loses. Further, the ICJ’s ruling on the dispute will most certainly influence the course of action taken by other African states in similar situations, with a potential ripple effect across the continent. This is due to the shifts in regional balance of power and the increasing role China plays in Africa’s economic and political matters. In fact, China has expressed its support for Kenya in its bid to secure the 2021-2022 non-permanent seat at the Security Council.

In short, it is uncertain what the ruling might mean for other African coastal states not content with colonial maritime border maps, and whether they would take the ICJ route or consider regional arrangements as an alternative means to settle their disputes. While the answer to these questions is not straightforward, regional arrangements remain the most promising course of action for these kinds of disputes because they subscribe to the logic of task-sharing responsibilities with multilateral institutions of global governance on matters of security. In practice, however, we are reminded that “a general reluctance to engage local resolution mechanisms can be widely observed and it is apparent that states rely upon the arbitration and adjudication facilities provided by international courts and tribunals, in particular the International court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS)...even in circumstances where capable regional tribunals exist...”53
Endnotes


13 Sone, “Interstate border disputes in Africa.”


20 Caflisch, “Regulation of the Uses of Interna- tional Watercourses,” 4

21 Caflisch, “Regulation of the Uses of Interna- tional Watercourses,” 6


23 Salman, “The Helsinki Rules,” 627


26 Paul Collier, “The Helsinki Rules,” 627


29 Hugh Thirlway, “Territorial Disputes and


Sone, “Interstate border disputes in Africa.”


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Thirlway, “Territorial Disputes and Their Resolution.”

African Infrastructure with Chinese Characteristics

By Karl T. Muth, PhD

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Abstract

China’s bet on infrastructure in Africa rests on an assumption that African development will be similar in a macro trajectory and technological path to Chinese development from 1952 till now. Thus far, this has proven relatively accurate. Though sundry parts of post–colonial Africa have developed, industrialized, and urbanized at varying rates, the differences in these rates are arguably less extreme than was true between various provinces of China.

It is notable that the development paths of these countries have been kindred in process, though not synchronized in time. This asynchronous but predictable demand for rail technology is advantageous for China, which sees Africa as a source of reliable demand for its railway equipment that has found little commercial export success in the West.

The Northern Corridor Integration Project (NCIP) is ambitious. As part of the East African Railway Master Plan—an even more comprehensive

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infrastructure development agenda—many (non-African) policymakers, commentators, and politicians heralded the unveiling of the NCIP as the next phase of development in Africa.iii But funding and progress to complete the work have both been sporadic and incomplete.⁴

Caption: A diagram, above, illustrates the various Master Plan routes and gauges of rail. Note the choice of rail gauge is highly correlated with the colonial power that controlled a given area pre-1960.

However, with a combination of technical assistance, foreign funding, and system standardization, there may be a path forward for the rail link that joins the deep-water Kenyan port of Mombasa to the landlocked country of Uganda to its west and eventually to Juba, South Sudan. This assistance, funding, and standardization will come primarily from China—part of a decades-long mating dance between increasingly capital-hungry African governments and an increasingly cash-flush Chinese government.⁵

African politicians and governments, driven by a thirst for Chinese capital, often make domestic decisions hoping to please visiting Chinese businessmen and bureaucrats.⁶ These include: posting conspicuous Sinograph signage in airports or public places where it is culturally alien, the use of characteristically Chinese iconography on African coins and notes (see below), and the increasing prevalence of chiefs of staff, commerce secretaries, and other visible African diplomatic personnel learning basic Mandarin Chinese.⁷

Africa’s next generation is so deeply intertwined with Chinese policymaking and standardization of railway projects that all member countries of the Northern Corridor Integration Project (NCIP)—a subset of the Master Plan’s connection, salvaging, and repurposing of existing rail corridors—have agreed to adopt railbeds

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and signal equipment that conform with Chinese National Railway Class 1 specifications (CNR1). The use of the CNR1 standard outside Asia is, at first, unsurprising as it provides an international standardization alternative to the existing mélange of rail and loading gauges, including the often—anachronistic European standards (in some cases, French–derived rail standards used in African contexts have not been used in France itself for decades, or at all in the case of the Trans-Saharan Railway). iv

China’s CNR1 specification is a durable railway standard that can support both passenger and freight traffic and can be further improved to support high-speed operation, as showcased by the high-speed trains that run on tight-tolerance, improved CNR1–specification rail from Guangzhou to Shenzhen at 350 kilometers per hour. v The tolerance specifications for CNR1 rail lines in Africa are, importantly, very strict (with an allowable deviation of 10 percent that is specified by British rail standards); hence, the resulting system should be able to utilize Chinese–built rolling stock as well as Chinese-brokered partner–constructed cars, such as the

iv The Trans-Saharan Railway, originally intended to be built to the standard of prewar French railways, almost immediately diverged in quality, practices, and railbed techniques (in part owing to the sandy context but also due to the limited abilities of a conscripted labor force) from railways built in France. For a summary of the project, see generally “Trans-Saharan Railway,” Accessed November 19, 2019, https://www.globalsecurity.org/military/world/europe/fr-trans-saharan-railway.htm.


Caption: A photograph, above, shows travelers riding on top of a train from Babanousa to Wau. Note the intermediate–voltage transmission lines running above–ground along this rail right–of–way to the left and a service frontage road constructed to the benefit of both rail and electrical infrastructure.
Bombardier-Sifang intermediate passenger trains currently used in Asia throughout the China Railways system. And, while China was underprepared to produce its own locomotives and rolling stock in the 1950s and 1960s as its domestic rail system expanded, it is now equipped to be an exporter of rail technology to emerging markets who, like 1960s China, are unlikely to produce their own locomotives, signals, and rolling stock.

China’s long-term vision is not, of course, entirely altruistic. The Chinese purpose for building a substantial CNR1 specification rail network in Africa is, at least in part, to become a supplier to three evolutions happening simultaneously in Africa. First, as agriculture in Africa becomes dramatically more modernized and productive, the harvest will need to be moved by a modern rail network, and China can provide the freight cars and reliable locomotives needed. Second, as agrarian areas professional services, software, and non-agricultural activities, the demand for intermediate-speed long-haul passenger rail will increase both for business travel and for tourism—much as it did in China. Third, the CNR1 railbed AE5 standard to be used in Africa also includes allowances for cable right-of-way, laying of fiber optic and other communications technologies, as well as the erection of wireless repeaters and other wireless network infrastructure alongside rail lines—thereby creating a natural foothold in Africa for China’s hardware, telecom, and other firms to be key partners and suppliers to African governments.

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Similar to 1950s China under Mao Zedong, countries like Uganda lack the industrial base and domestic demand to construct their own locomotives, rolling stock, signaling equipment, and other railroad assets. Mao created what is now the China Railway Engineering Corporation to build early railways, including the famous Silk Road Railway (also called the Lanxin Railway); much of Chinese railway design can be directly traced to these early experiments in railway construction. African countries do not yet seek the luxury of railway experimentation and want to buy an off-the-shelf solution.

It is worth noting, however, that outsourced Chinese problem-solving comes at a high price in this context. As recently as the final weeks of 2019, China claimed Kenya violated the financing covenants attached to the Chinese railway financing package. Under the onerous and exacting terms of that package, Kenya will likely be forced to forfeit existing non-rail infrastructure to China as part of a “collections process,” including the port of Mombasa. Mombasa is the maritime prize of East Africa—a most important natural deep-water harbors in the world—and it is named as collateral in Chinese contractual agreements with the Kenyan governments. This is not unprecedented, as Zambia and Sri Lanka have already been forced to hand over their ports to the Chinese in whatever amount to debt settlement proceedings.

Saddled with the costs of crumbling colonial-era rail infrastructure that is often unreliable or inoperable, African leaders are understandably interested in any available alternatives. And China is, symbiotically and not coincidentally, interested in cultivating a new continent of customers ready to build African infrastructure with Chinese characteristics. But African diplomats should not mistake trade for aid, or assistance for altruism—in Chinese foreign policy, everything has a price.

Caption: A Chinese-made locomotive wearing a livery that includes the Kenyan flag, bought by the Kenyan government with money borrowed from China’s Exim Bank, arrives near the key Kenyan port of Mombasa (see port cranes, left) during a trial run of the locomotives and associated rolling stock in 2017. Photo by Xing Yihang appears in a World Bank blog on the same topic, available at: https://blogs.worldbank.org/ppps/kenya-s-new-railway-and-emergence-government-government-procurement-method.
Endnotes
The Politics of Biafran Separatism in Nigeria: Spikes and Falls in the Intensity of the Agitation

By Adeniyi Jeremiah Awoyemi and Olugbenga Opeyemi Okuande

ABSTRACT

While existing explanations for the recurring agitation for Biafra are not necessarily wrong, this study notes that the ethnic competition argument is overly elite-driven, neglecting the perspectives and autonomous actions of the masses. Consequently, it poses Biafra separatism in highly static terms, failing to account for variation in the intensity of the agitation over time and the factors that could lead to spikes and fall in the intensity of the agitation across different administration. As such, the study focused on the elements and dynamics driving the resurgent, the uprisings of, and the fluctuation in the intensity of the Biafran agitation in Nigeria, with attention to different administrations in the Fourth Republic (1999–2019). Drawing on the evidence from the literature, the study observed that what ties all the existing explanations together is the level of feeling of collective victimization in separatist movements. Also, having studied all the administrations in the Fourth Republic, it is observed that during administrations when there is a high feeling of collective victimization and low sense of inclusion (in political recruitment and governance), separatist agitation tends to be very high. Conversely, administrations of high sense of inclusion and low feelings of collective victimization see the lowest levels of separatist agitations.

Introduction

About 50 years ago, Nigeria’s south-east region comprising Abia, Anambra, Ebonyi, Enugu, and Imo, as well as other adjoining ethnic groups, formally announced its break away from Nigeria and proclaimed itself a new

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nation called Biafra. The federal government effectively subdued the secessionist action after almost three years of devastating civil war (1967–1970), and five decades later, agitation for the state of Biafra has resurfaced. Since November 2015, southeast Nigeria (dominated by the Igbo) has witnessed demonstrations by Biafran separatists. On 2 December 2015, the protests degenerated into violence, when two policemen and some protesters, out of the thousands that had blocked the strategic Niger Bridge in the commercial city of Onitsha, Anambra State, were reportedly killed. Also, the protests by Biafran separatists on 19 October 2015 led to the arrest of Nnamdi Kanu, the leader of the Indigenous People of Biafra (IPOB) and director of web-based Radio Biafra, on charges of sedition, ethnic incitement, and treasonable felony. The IPOB and Radio Biafra stepped up a struggle that was championed by the Movement for the Actualization of the Sovereign State of Biafra (MASSOB) formed by Ralph Uwazuruike in 1999. A combination of state repression and internal dissent resulted in the weakening of MASSOB, consequently leading to the formation of Biafran Zionist Front (BZF). Nevertheless, the weakening of MASSOB and BZF opened the way for the IPOB to continue the agitation for Biafran separatism. The protests by the IPOB heightened security fears and tension in the southeast and Niger Delta regions of Nigeria. Thus, putting pressure on the Nigerian government to deal with the agitation. The recent upsurge in the demand for a separate Biafran State calls for an inquiry to understand why the agitation has persisted, for about 50 years after the end of the Nigerian civil war. Hence, this study is designed as a knowledge-building effort to understand the various elements driving the uprising of the Biafran agitation in southeast Nigeria with attention to different administrations in the Nigeria’s Fourth Republic (1999–2019). The article starts with the history of Biafran war, post-war policies by the Nigerian government to douse Biafran agitation, as well as the emergence of secessionist movements across different administrations in Nigeria (1999–2019). Moreover, unbalanced political recruitment and non-compliance with the zoning principle (rotation of political power) are discussed as the causal factors for the spikes and falls in the intensity of Biafran agitation in Nigeria. The article concludes by revealing the consequences of the reoccurring agitation on the Nigerian state.

Methodology
A desk-based research method was adopted. The data used in this study were collected from two different sources, namely documentary sources and reports in online newspapers. Data collection from documentary sources involved the mapping and evaluation of the relevant literature on Nigerian politics and society, particularly those relating directly to the Biafran war and its onset, termination, and post-war policies. The data used were gathered from textbooks, reputable journal articles, and online national newspapers (The Sun, Sahara Reporter, Daily Trust, The Nation, The Cable, The Punch, Vanguard, and Guardian) for the period—January 2010 to June 2017—in order to draw
out relevant information. These newspapers were selected on the basis of their ease of access, national scope, and relative credibility. The content analysis of media reports, particularly those relating to Biafran separatism in Nigeria’s Fourth Republic (1999–2019) was scrutinized to produce data that enabled the mapping of incidents involving Biafran supporters by locations and dates.

The Biafran war

On 15 January 1966, a group of majors, mainly Igbos from the east, attempted to take over the federal government of Sir Abubakar Tafawa Balewa, who was the prime minister at that time. They succeeded in killing Balewa and many other heads of the Nigerian government—including Sir Ahmadu Bello, the powerful premier of the north and, in a dramatic gunfight, Samuel Abiola, the premier of the western region. Within less than two hours, Major-General Ironsi began to organize some resistance to the coup. Many events of that night are still shrouded in mystery and innuendo, but by the next morning, the prime minister of the Federal Republic of Nigeria, along with some chiefs from the eastern and northern regions, was dead. The chief of staff of the army, General Ironsi (an Igbo), gathered troops still loyal to the Nigerian government to end the coup and capture its ringleaders. He also appointed himself as the provisional head of government so as to regain order and stability. Nevertheless, the January coup was perceived as an ethnic coup, led by the Igbo to gain control of the federal government because all the senior military and civilian officials that were killed were either westerners or northerners, thus increasing the regional strife.

Moreover, on 29 July 1966, a counter-coup was staged, and Yakubu Gowon became the military head of the State of Nigeria. Shortly after the July coup, the northerners began to take revenge on the Igbo with nearly 50,000 Igbo killed in the months following the coup, and millions returned to their ancestral homes in the eastern province. Colonel Odumegwu Ojukwu (premier of the eastern region) expelled most northerners from the East while many Yoruba in the West were expressing fear and hatred of Nigerian soldiers from the North, who were called “an occupation force.” By March 1967, one and a half million Igbo had left their homes across Nigeria and returned to the East. Any military personnel who were not from the East were expelled from Eastern Nigeria. In addition, Colonel Odumegwu Ojukwu declared the eastern region of Nigeria to be the Independent State of Biafra after Yakubu Gowon created 12 states out of the existing four regions in Nigeria, consequently stripping the oil-rich Niger Delta and food producing areas from the East. There was a last-ditch effort to maintain unity under the invitation of Kwame Nkrumah, who had just been ousted from Ghanaian presidency, in the town of Aburi in Ghana on 5 January 1967. However, the meeting did not produce any fruitful results. After Ojukwu’s declaration of independence of Biafran state at the end of May, there was no pushback from the Nigerian government. It took two months for the Nigerian government to respond to Biafra’s declaration.
of independence owing to confusion in
the Nigerian army.\textsuperscript{16}

\textbf{Post-War Policies and Resurgence of Biafran Agitation}

The war ended with a promise from
the federal government to reconcile
the Nigerian state and the Igbo people.
Gowon pledged to guarantee the secu-

rity of life and property of all Nigerians,
including the secessionist leaders and
their followers.\textsuperscript{17} He pledged a policy
of reconstruction, rehabilitation and
reconciliation toward the victims of
the civil war.\textsuperscript{18} The subsequent years
also saw the introduction of a host of
other policies and constitutional deci-
sions aimed at strengthening peace
and national unity, as well as guaran-
teeing political stability.\textsuperscript{19} These
decisions included, for instance, the
creation of new states and local gov-

erment; strengthening the central
government vis-à-vis the federating
States;\textsuperscript{20} the establishment of federal
unity colleges in all states in Nigeria
to draw students from all parts of the
country with a view to promoting pos-
itive inter-ethnic relations; combating
ethnicity and tribalism by initiating a
National Youth Service Corps scheme
that involved a mandatory one-year
community service programme for all
Nigerian graduates; and the adoption
of a federal character/quota system
to guarantee equal or fair access to
state patronage to all segments of the
population.\textsuperscript{21}

\textbf{Secessionist Movements across Different Administration in the Fourth Republic}

Soon after Nigeria began its dem-
ocratic rule in 1999, there has been
re-emergence of different secessionist
movements. The first attempt was
headed by Ralph Uwazurike, a law-
yer, when he formed the Movement
for the Actualization of the Sovereign
State of Biafra (MASSOB).\textsuperscript{22} Although
the strategy adopted by Ralph
Uwazurike during his Biafran agi-
tation was peaceful, it was perceived
to be aggressive by the Nigerian gov-
ernment, and this led to his arrest
on several occasions during the reign
of President Olusegun Obasanjo.
However, in the early years of the
presidency of Goodluck Jonathan (who
was adopted by many Igbos as “one of
their own,” coming from the neigh-
bouring Niger Delta region of Bayelsa
State and who additionally adopted the
Igbo name of “Azikiwe”), Biafran agi-
tations continued—though they were
muted under the administrations of
Olusegun Obasanjo (1999–2007) and
Umaru Shehu Yaradua (2007–2010).\textsuperscript{23}

The MASSOB attracted different
people of different tendencies and
conflicting ambitions. Therefore, frac-
tionalisation within the movement
was only a matter of time. One of the
early factions, the Indigenous Peoples
of Biafra (IPOB) led by a United
Kingdom–based Nnamdi Kanu, started
in 2013, “when it was cleared that the
Ralph Uwazuruike–led MASSOB had
been compromised by the Nigerian
government and politicians after his
incarceration. It was also claimed
that IPOB had to revive the “defunct”
Radio Biafra as a “platform to edu-
cate and sensitize Biafrans who have
been biased and made dormant by the
propaganda fed to them by the Yoruba
dominated media in Nigeria.”\textsuperscript{24} While
Nnamdi Kanu’s pirate Radio Biafra had
been operating under Jonathan’s gov-
ernment, it was Buhari’s government
that inadvertently “popularized” him and his innocuous Radio Biafra when the Nigerian Broadcasting Service started drawing the attention of the populace to his controversial broadcast.\textsuperscript{25} The government inadvertently further increased his popularity when it detained him for nearly two years on several charges that included treason and operating the pirate Radio Biafra. He was refused bail despite several court rulings granting it. His prolonged incarceration turned him into a cult figure among his followers and stoked the ethnic solidarity of his Igbo kinsmen.\textsuperscript{26} While in detention, he converted to Judaism and began to make even more controversial statements, with his supporters organizing marches and rallies across several cities in Nigeria, Europe, and North America.\textsuperscript{27}

In addition to the MASSOB (which renamed itself Biafra Independent Movement, or BIM) and the IPOB, there are other Biafra separatist groups, such as the Biafra Zionist Movement (BZM), which is led by Benjamin Onwuka. The group—also known as Biafra Zionist Federation—came to public notice on 5 November 2012, when it declared a new state of independence at an event in which at least 100 peaceful protesters were arrested.\textsuperscript{28} On 8 March 2014, the BZM attacked Enugu State Government House in a bid to hoist the Biafran flag there. It struck again on 7 June 2014, when its members attempted to seize the radio and television stations of the Enugu State Broadcasting Service to announce the secession of Biafra.\textsuperscript{29} In addition, Onwuka audaciously announced the formation of an “interim cabinet” for Biafra, with himself as the “interim president” and appointed ministers and top government officials for the said nation (including some from the North Central States of Nasarawa and Niger States)—apparently without consulting those so appointed.\textsuperscript{30}

What Accounts for Spikes and fall in the intensity of Biafran agitation in Nigeria’s Fourth Republic (1999–2019)?

**Unbalanced Political Recruitment**

The political development in Nigeria since the end of the civil war has polarized the country into a North–South fragmentation, with the South constantly accusing the North of political domination. For instance, the non-resolution of the national question and the vociferous contestations over where the locus of power should be concentrated continues to fuel a politics of anxiety.\textsuperscript{31} The combustible politics of oil—clearly based on inequalities, greed for power, the exclusion of certain groups from the gains of oil, and the desire of the competing groups to advance their agenda in relation to the national questions—does pose a direct challenge to the resilience of Nigeria’s federalism.\textsuperscript{32} Clearly, as presented below, the Igbo are virtually an isolated group that is subtly denied access to the presidential position.

From Table 1, the Igbos (apart from Aguiyi-Ironsi) from the Southeast have not been able to attain the leadership of the country. Before Goodluck Jonathan became the president of the country in 2011, the oil-bearing region, specifically the south-south region, endured systematic resource exploitation at the expense of environmental insecurity, while the south-eastern region experienced relative
political marginalisation, i.e., insufficient inclusion in decision making bodies at the highest national levels.\textsuperscript{33}

Furthermore, Table 2 demonstrates that after the civil war, it took four decades for Igbo men to achieve positions of power within the military, with Lieutenant General Azubuike Ihejirika attaining the position of chief of army staff and Mr Ogbonna Okechukwu Onovo attaining the position of inspector general of the Nigerian police. This suggests that there is an ethnic disparity in the recruitment of soldiers in Nigeria.

Since the return of democracy, there has been a lopsidedness in political appointments, consequently paving the way for the resurgence of secessionist agenda by the MASSOB led by Chief Ralph Nwazuruike.\textsuperscript{14} The MASSOB openly canvasses for the disintegration of the federation and periodically engages the Nigerian security agencies in battles. The emergence of the MASSOB is based on the persistence of bitter memories of the civil war, lack of security of Igbo lives and
properties, injustice, hatred, and perceived marginalisation of the Igbos in the distribution of national power and economic resources.\textsuperscript{35}

Non-Compliance with the Zoning Principle

The zoning system or formula refers to the partitioning or division

<table>
<thead>
<tr>
<th>Military Positions</th>
<th>Names</th>
<th>Ethnic Groups/Geopolitical Zones</th>
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<tbody>
<tr>
<td>Chief of Defence Staff</td>
<td>General Martin LutherAgwai</td>
<td>Hausa/North-Central</td>
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<td></td>
<td>Lieutenant General Victor Malu</td>
<td>Tiv/North-Central</td>
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<tr>
<td></td>
<td>Lieutenant General A. Ogomudia</td>
<td>Sokoto/South-South</td>
</tr>
<tr>
<td></td>
<td>Major General Martin Luther Agwai</td>
<td>Hausa/North-Central</td>
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<tr>
<td></td>
<td>Lieutenant General Owuye Azazi</td>
<td>Ijaw/South-South</td>
</tr>
<tr>
<td>Chief of Naval Staff</td>
<td>Vice-Admiral Ganivo Adekeye</td>
<td>Yoruba/South-West</td>
</tr>
<tr>
<td></td>
<td>Rear Admiral Ibrahim Ogoshi</td>
<td>Ijala/North-Central</td>
</tr>
<tr>
<td>Chief of Air Staff</td>
<td>Air Marshall Isaac Alfa</td>
<td>Ijala/North-Central</td>
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<td>Air Marshall Jhn Wuye</td>
<td>Berom/North-Central</td>
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<td></td>
<td>Air Chief Marshall Paul Dike</td>
<td>Urhobo/South-South</td>
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<td></td>
<td>General Aliu Gusau (Rtd)</td>
<td>Fulani/North-West</td>
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Service Chiefs in the Fourth Republic during Musa Yar’Adua’s Tenure

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<tr>
<td>Chief of Defence Staff</td>
<td>Air Chief Marshall Paul Dike</td>
<td>Urhobo/South-South</td>
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<tr>
<td></td>
<td>Lieutenant General Owuye Azazi</td>
<td>Ijaw/South-South</td>
</tr>
<tr>
<td>Chief of Army Staff</td>
<td>Lieutenant General Luka Yusuf</td>
<td>Bara Kagoma/North-Central</td>
</tr>
<tr>
<td></td>
<td>Major General A.B. Danbazau</td>
<td>Hausa/North-West</td>
</tr>
<tr>
<td>Chief of Naval Staff</td>
<td>Rear Admiral Isaiah Iko Ibrahim</td>
<td>North-Central</td>
</tr>
<tr>
<td>Chief of Air Staff</td>
<td>Air Chief Marshall Paul Dike</td>
<td>Urhobo/South-South</td>
</tr>
<tr>
<td></td>
<td>Air Marshall Mohammed Umar</td>
<td>Hausa/North-West</td>
</tr>
<tr>
<td></td>
<td>Air Marshall Oluseyi Petirin</td>
<td>Yoruba/South-West</td>
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Service Chiefs in the Fourth Republic during Goodluck Jonathan’s Tenure

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<tbody>
<tr>
<td>Chief of Defence Staff</td>
<td>Air Marshall Oluseyi Petirin</td>
<td>Yoruba/South-West</td>
</tr>
<tr>
<td></td>
<td>Air Marshall Ola Saad Ibrahim</td>
<td>Yoruba/North-Central</td>
</tr>
<tr>
<td></td>
<td>Air Marshall Alex Badeh</td>
<td>Fali/North-East</td>
</tr>
<tr>
<td>Chief of Army Staff</td>
<td>Lieutenant General Azubuike Ihejiuka</td>
<td>Igbo/South-East</td>
</tr>
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<td></td>
<td>Lieutenant General Kenneth Minimah</td>
<td>Ijaw/South-South</td>
</tr>
<tr>
<td>Chief of Naval Staff</td>
<td>Admiral Ola Saad Ibrahim</td>
<td>Yoruba/North-Central</td>
</tr>
<tr>
<td></td>
<td>Vice Admiral Joseph Ezeoba</td>
<td>North-Central</td>
</tr>
<tr>
<td>Chief of Air Staff</td>
<td>Admiral Usman Jibrin</td>
<td>Ijala/North-Central</td>
</tr>
<tr>
<td></td>
<td>Air Marshall Alex Badeh</td>
<td>Fali/North-East</td>
</tr>
<tr>
<td></td>
<td>Air Vice Marshall Adesola Amosun</td>
<td>Yoruba/South-West</td>
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Service Chiefs in the Fourth Republic during Mohammad Buhari’s Tenure

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<th>Names</th>
<th>Ethnic Groups/Geopolitical Zones</th>
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<tbody>
<tr>
<td>Chief of Defence Staff</td>
<td>General Ayoyomi Olorisakin</td>
<td>Yoruba/South-West</td>
</tr>
<tr>
<td>Chief of Army Staff</td>
<td>Lieutenant General Tukor Buratai</td>
<td>Kamuri/North-East</td>
</tr>
<tr>
<td>Chief of Naval Staff</td>
<td>Rear Admiral Ikot-Ete Ekwe Ibas</td>
<td>South-South</td>
</tr>
<tr>
<td>Chief of Defence Staff</td>
<td>Air Marshall Sadiq Abubakar</td>
<td>Fulani/North-East</td>
</tr>
</tbody>
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National Security Adviser General Owuye Azazi | South-South

National Security Adviser General Owuye Azazi | South-South

Source: as compiled by authors.
of a country into different electoral zones in order to rotate major political offices, opportunities, and benefits, either political or socio-economic among the six geo-political zones in Nigeria. This is aimed at ensuring effective political equity and representation among different regions and states at the federal, state, and local level of administration in Nigeria.\textsuperscript{36}

Table 3 depicts how zoning was practiced from 1999 to 2007. The top political positions were equally distributed among the six geopolitical zones in Nigeria, the presidency went to the Southwest and the vice-presidency was zoned to the Northeast during People Democratic Party (PDP)'s tenure. The position of the senate president was zoned to the Southeast from 1999 to 2007. As such, the Igbo people were equally represented in Nigeria as occupying the number three position in the country. Their representation as occupying the number three position (the seat of the senate president) showed that they were not excluded in the administration. From 1999 to 2007, zoning ensured that the major ethnic groups in Nigeria were equally represented in the political recruitment and appointments. The top positions, such as the president, vice president, and senate president, were occupied by Yoruba, Hausa-Fulani, and Igbo ethnic nationals. Even the minorities (South–South and North–Central) were equally represented with the positions of secretary to the federal government and chairman of the then ruling PDP, respectively.

There was a shift in power from the South to the North when the seat of the president was zoned to the North in 2007, and this brought in President Musa Yar'Adua from the Northwest and the vice president from the South–South. During this period, the southeast geopolitical zone was represented with the position of the chairman of the then ruling PDP and this gave them a sense of belonging.\textsuperscript{37} The political power was again shifted from the North to the South when the president of the country, Yar’Adua, died on 5 May 2010, and his death brought in his vice president, Goodluck Jonathan, who hailed from the South–South. President Jonathan later contested in 2011 for the position of president and won the general elections that ushered him into power (2011–2015). His administration appointed an Igbo man from the southeast geopolitical zone as the secretary to the federal government of Nigeria. During President Jonathan’s leadership, the issue of agitating for the creation of the Republic of Biafra was not in place. Although, the zoning principle of Nigeria’s presidency was challenged by the Northern political class that opined that the position of president should have remained in the North from 2007 to 2015, as witnessed between 1999 to 2007 when political power was residing in southwestern Nigeria. The zoning, which could have granted rotating presidency between the North and South in Nigeria, was truncated. In 1999, the presidency went to the Southwest, and they ruled from 1999 to 2007, during which the Southeast was represented by occupying the seat of the senate president. In 2007, the Southeast occupied the seat of chairman of the PDP, which was the period from 2007 to 2011. In 2011, the Southeast occupied the seat of secretary to the federal government
of Nigeria, and that period lasted until 2015. In 2015, there was change in political power from the PDP to the All Progressive Congress (APC) when President Goodluck Jonathan was defeated in the elections by the APC candidate, General Muhammadu Buhari, who took over the presidency on 29 May 2015. Table 3 reveals that the position of president went to the Northwest, the vice president went to the Southwest, and the office of senator president was occupied by the North-Central. Both the positions of speaker of the Federal House of Representatives and secretary to the federal government went to the Northeast. The South-South region occupied the seat of the chairman of the APC. This development became clear to the people of the Southeast when they lost out of the political equation that distributes top positions. Hence, the issue of marginalization of the Igbos in Nigeria’s political system came in place.

Agitation for Biafra Separatism and the Nigerian state

Having examined the pattern of political recruitment, it is observed that during administrations when there is a high feeling of collective victimization and low sense of inclusion in political appointments and socio-economic opportunities, separatist agitation tends to be very high. Conversely, administrations with a high sense of inclusion in political appointments and socio-economic opportunities and low feelings of collective victimization see the lowest levels of separatist agitations. For instance, after the election of Goodluck Jonathan as the president in 2011, there was a sharp reduction in the Biafran separatist agitation. To be sure, the Igbo from the Southeast voted massively for the PDP, which produced Jonathan as its presidential candidate.

As a form of reward, the Igbo people featured prominently in the administration of Goodluck Jonathan as evident in Table 3. The Southeast, as compared with other regions, felt a high sense of inclusion as they were well represented in the composition of both executive and legislative positions.

However, following the defeat of Jonathan in the 2015 election and the assumption of office by Muhammadu Buhari, the Southeast experienced a low sense of inclusion in the administration. As revealed in Table 3, no Igbo person holds a senior position, such as president, vice president, senator president, speaker of the Federal House of Representatives, secretary to the federal government, or chairman of the ruling party. Although, apart from the position of president, the rest of the positions mentioned were held by Igbo people from the Southeast between different administrations in the Fourth Republic. All in all, such exclusion of the Igbo representatives within the top positions aggravates the protest and agitation for the sovereign state of Biafra as the people from the zone feel excluded and victimized.

Indeed, the reoccurring agitation of Biafra serves as a glaring indication of the failure of post-war settlement in Nigeria, which has serious implications on political stability and democratic consolidation. With separatist...
agitations simmering in other parts of Nigeria, the persistence of the agitation for Biafra could become a rallying point for groups questioning the Nigerian project. Biafra separatism can produce a snowball effect, motivating group after group to demand for greater autonomy or separation. This might create a basis for democratic breakdown. There have been attempts in the past by pro-Biafra separatists to connect their struggle to the struggles of other groups that are dissatisfied with the Nigerian state. Such alliances have given rise to new groups challenging the Nigerian project and agitating for separation. A good example of such groups is the Lower Niger Congress (LNC), which describes itself as “a platform by which willing peoples of the Ethnic Nations of the old Eastern Region and the old Mid-Western Region, seek to federate themselves into a cohesive, values-driven, systems-based political bloc.” In 2015, the LNC issued a five-point mandate calling for, among other things, a referendum to decide whether the people of the two regions would wish to continue to be part of Nigeria. As separatist agitation intensifies, it is likely that separatist groups will proliferate. The combined activities of these groups could raise

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<th>Table 3: Zoning of Political Offices in Nigeria (1999-2019)</th>
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the risk of inter-ethnic disaffection, destabilize Nigeria’s fledgling democracy and further deepen the crisis of confidence among government and ethnic groups across the country.

Policy Implication and Recommendation of the Study

Although the agitation for the state of Biafra was consistent in all the administrations in the Fourth Republic, there was a noticeable fall in its intensity during President Jonathan’s administration, only to assume a frightening spik since the advent of President Buhari’s administration. The question of inclusion and marginalization comes to play. The southeast region was less represented in the administration of President Buhari than any other administration in the Fourth Republic. Hence, Biafran supporters tend to pose their agitation as a response to the exclusion in political appointments. To address this kind of sentiment, a well-thought-out national reconciliation programme needs to be established. The purpose of the programme is to heal the wounds of the past and bring back all those who feel a sense of exclusion in the Nigerian state. In addition, the programme should not only provide a platform for pro-Biafra groups to express their grievances, so the government can channel them to the appropriate quarters for redress but also help in formulating mechanisms that will be used to determine the effectiveness of this national reconciliation programme after its implementation.

Conclusion

Evidently, the resurgence of Biafran agitation under the democratic regime of President Muhammadu Buhari substantiates the perpetual reminiscences of the Biafran heroes who fought to liberate their people under the rubric of self-determination. But the recent agitation for a sovereign state of Biafra is attributed to the perceived underrepresentation of the Igbos in the President Buhari-led government. However, it must be noted that it has become a trend in Nigeria for losers in general elections to play on primordial sentiments to make things difficult for the new administration. Thus, the present agitation for the sovereign state of Biafra lies not only in the political calculation of those who control the Nigerian state but also in the lingering socio-economic discontent among the people of Nigeria.

The study found marginalization and systematic “minoritization” of the Igbo domiciled in the Southeast geopolitical zone to have been elevated to an official state policy. Nonetheless, the study shows that while certain actions, inactions, and policies of the Nigerian government, which are perceived to be targeted against the Igbos, have created the feelings of collective victimhood among the people, and which are often exploited to mobilize the people for separatist agitations. The study notes, therefore, that the feeling of relative deprivation and discontent with the system is not necessarily a product of collective victimization but a fallout of the inability of the government to secure the lives and property of the masses.
Endnotes
2 “Conflict Briefing.”
4 “Two Policemen, nine others die”
15 Atofarati, “The Nigeria Civil War.”
16 Atofarati, “The Nigeria Civil War.”
18 Gowon, “Reflections on the Nigerian Civil War.”
20 Suberu, “States’ creation.”
23 Nigerian Outlook, 23 February 1962
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37 Terwase, Abdul–Talib, and Zengeni. “Conflict resolution.”

38 Terwase, Abdul–Talib, and Zengeni. “Conflict resolution.”

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The Africa Policy Journal sat down with Patrick Loch Otieno (PLO) Lumumba for an interview during his recent visit to Harvard Law School for an event with the Harvard African Law Association. Lumumba served as the Director of Kenya Anti-Corruption Commission from September 2010 to August 2011 and has been director of The Kenya School of Laws since 2014.

APJ: Hello, my name is Memme Onwudiwe.

APJ: And I’m Guy Josif.

APJ: And we are with the Africa Policy Journal, and today we have the honor of sitting down with and asking some questions to PLO Lumumba.

LUMUMBA: Thank you very much for the invitation. I’m glad to be here to share this conversation with you.

APJ: That’s great. Guy, would you want to start us off?

APJ: Yes, we are really honored and pleased to have you here with us. Please tell us about yourself and how you got to where you are today? What was the motivation that really gifted you moving towards the success that you already accomplish and still advocating?

LUMUMBA: I am a Kenyan trained as a lawyer. I’ve taught law for over 30 years now and practiced law for nearly 32 years. I have a keen interest in various areas of law. I’ve been a keen student of constitutional law, an area in which I’ve written—equally keen interest in human rights and
humanitarian law. And curiously, I’ve also started the Law of the Sea, which was the subject of my PhD studies at the University of Ghent in Belgium.

But recently—of course, recently to me—in the last five years, I’ve spent a lot of energy and time talking about Africa and the different dimensions of development in the African continent. And I think that is becoming a major preoccupation in addition to my philanthropic activities.

APJ: That’s great to hear. And just to kind of key in on some of your work, particularly, you know, past roles. You were the director of Kenya’s Anti-Corruption Commission, and many believe that corruption is somewhat embedded in collective norms in Africa, while others think it might be a carryover from colonialism and others even say it’s an institution. I was just hoping you could comment a bit on why corruption is becoming such an intractable paradox, it seems, for Africa?

LUMUMBA: My view is that the modern African state, as constituted, has provided a fertile ground for corruption, particularly by those who are in the political arena. And to the extent that we have made the pursuit of political office to be very expensive and therefore attracting individuals who want to use political office for personal gain, it has become the culture that you go into political office not to serve but to use the office for personal benefit. And all these intertwined with certain traditional practices, which were very innocent.

In many African societies, if somebody did something that you wanted to appreciate, you’d possibly give them a goat or give them rum or give them something. But what has happened is that African culture has now been perverted by the political class, and the provision of public service or other corruption has now been made a condition precedent to the performance of services which ought to be rendered without pay.

And I have, at a different setting, described this as the absence of political hygiene. The absence of political hygiene means that there are no moral standards against which political leaders are measured. And this, coupled with the ethnicization of politics and nepotism, have served and created a fertile ground for corruption. The net effect is that Africa suffers at all levels.

How politics is rotten in many countries. The provision of critics of services such as education and health and agriculture has continued to suffer. And as Kofi Annan famously said, “Corruption undermines democracy.” And to the extent that it undermines democracy, it creates a culture of anarchy and despondency. And the consequence is that we have underdeveloped states in Africa which continue to play up to punch below the economic and political weight to the detriment of the peoples of Africa.

APJ: With independence came a lot of hope, optimism, and belief that Africa would rise from the ashes. Unfortunately, there is no hope. Where did we go wrong from that point?
LUMUMBA: You are right. That’s when African countries regained their political independence in the early 1960s, exempting Ghana in 1957 and the three countries which were never colonized such as Ethiopia. And of course, the unique creation of Sierra Leone and Liberia, there is a sense in which African countries have not fulfilled the goals that were identified as the basis of the struggle for independence. And these were very clear goals.

The people wanted to ensure that they govern themselves so that they could provide education, they could provide health services, they could improve infrastructure, they could improve agriculture, and create opportunities for young men and women to create a developmental state.

And when one listens to African leaders at that time, and you would allow me to mention only a few, because they were the most eloquent and most passionate in this regard: people like Ghana’s Kwame Nkrumah; Kambarage of Tanzania; Patrice Émery Lumumba, who did not live very long, of the Democratic Republic of Congo; Modibo Keïta of Mali, Secretary of Guinea; and even Kenya’s Jomo Kenyatta. And at that time, even people like Apollo Milton Obote—people can go on and on.

There was a sense in which there was passion, and passion was informed by the recognition that Africa has rich resources. At that time, our human resources were not very well developed. But subsequently you can see in the early years, in the arena of education, universities were improving or emerging from all parts of Africa. If you are not talking about Fourah Bay in Sierra Leone, you are talking about Ibadan in Nigeria. Or Makerere in Uganda or even in the upper-side South Africa, universities such as Fort Hare. There is a sense in which Africa was growing in this sector of education.

Even in the health sector. One can see that the diseases which were debilitating are not dealt with through deliberate effort. So, vaccination for polio was being dealt a death blow as well. Waterborne diseases such as typhoid and bilharzia, the ever-present malaria.

In the area of agriculture, we could see the production of both food crops and commercial crops. And if you talked about countries such as Kenya, coffee was booming. In Ghana, cocoa was booming, as in Cote d’Ivoire and many other things. But then the politics of South of Africa was very quickly disrupted. Many commentators, of course, will have different views on this. There was the neo-colonial project.

No sooner had African countries settled than we started seeing the subterranean hands of the asked white colonizer. And you see it in countries such as the Democratic Republic of Congo or Congo Kinshasa, as it was then famously known with the assassination of Patrice Lumumba. You see the assassination of Sylvanas Olympio in Togo.

And after that, very quickly, we see
the era of coup d’etats. Some of the chief architects of the new Africa, such as Kwame Nkrumah, he’s overthrown. We see Modibo Keïta is overthrown, Nnamdi Azikiwe in Nigeria—and those disruptive activities have to undermine whatever growth that was realized. And then you started to see how often military leaders who had no idea about governance—and subsequently because they were politically bankrupt—they started the process of ethnicization of politics. And this was not the preserve of military leaders, even those who are not of a military background, in order to survive and to perpetuate their hegemony, started the ethnicization of politics.

So that African leaders and African peoples became very easy to divide. And the reason why countries such as France, the United Kingdom, Portugal, Belgium, and subsequently countries such as the Soviet Union and even the United States of America, then converted Africa into a theater, if you may, of ideological competition. And when this competition was at its height, many things suffered with the consequence that we lost direction. And when we lost direction, then we were engaged in meaningless conflicts. And you will remember there were conflicts almost in every other part of Africa. There were conflicts, either of high intensity or low intensity.

We had the civil wars in the Democratic Republic of Congo. We had secessionist wars. We had coup d’etats and insurrections and all these, in a nutshell, did undermine and I dare say continue to undermine the development of Africa and the promises that we made to ourselves in 1963. You do not disobey Ethiopia. And one can nostalgically remember the exaltation of Kwame Nkrumah with the leaders in 1963 that we must unite in order to realize the gains of independence. Of course, nobody heeded Kwame Nkrumah. And today we are beginning to realize that he had a vision. Which, if it had been embraced, possibly Africa would have been in a better place. And we can see in your own country, Sudan. You’ve seen some of the wars that have continued to take place initially, Dafur. You’ve seen what has happened after the breakaway of South Sudan. You’ve seen the kind of governance that we have had in Central African Republic, the activities in Mali, and the continued conflicts in places such as Somalia.

So one can give numerous examples, but it is important to also recognize that there are a number of African countries which have done well. And we must never forget to mention this because it is very easy to identify the negatives without appreciating the positives. Countries such as Botswana, which in 1966 were backward countries, have succeeded in creating a democratic environment in which the resources of the people are utilized for their benefit. To a certain extent, even the countryside, just Kenya, which has had political problems, has continued in some way to ensure that the social fabric has not been torn. Countries such as Tanzania off the continent, countries such as Mauritius—and one can go on and on.
There are countries which continue to do well; in the recent past, Rwanda, Tanzania, and even Uganda after the fall of Idi Amin in 1986. Today, of course, some may say that the Ugandan president has overstayed his welcome, but there is a sense in which during the first 10 years there was a good repair job that was done. And all these must be seen in the context of global politics. The essence of which is that they are countries which on a daily basis are planning on how to utilize the resources of Africa for their benefit and, even if it is not their design, to the detriment of Africa.

APJ: That’s very powerful and kind of shifting focus, as I think you give it to the modern relations of Africa, to outside states. China’s form on, you know, China–Africa cooperation in its most recent iteration, it seems to have touched on issues of peace and security that are outside of its traditional focus on simply industrial and economic considerations. What are your thoughts on this and kind of the development of the relationship between Africa and China more generally?

LUMUMBA: China is a country that we have observed during our lifetime arising from what one may have described as a third-world country and becoming the second most powerful economy in the world and the factory of the world in many areas. And the net effect with the population that is in excess of $1 billion is that it has great appetite for resources on Africa. It is the home of resources, some may claim inexhaustible, but there are no resources that are inexhaustible.

And the Chinese, in my view, have made a deliberate effort to target Africa specifically, ostensibly for purposes of a trade which one cannot quarrel about. But we see their presence in Europe and in the United States of America. But these are strong economies which in many ways have immunized themselves or are capable of immunizing themselves from the assault of China. But one of the most curious things now is that China is beginning to go beyond the boundaries of trade as we know it. And he’s saying to the extent that you do not have the capacity to protect your territorial sea, to the extent that you do not have the capacity to protect your exclusive economic zone.

We have the capacity and the desire and the ability and the willingness and indeed the appetite to assist you in that regard. I find that very dangerous. What that means is that China will now want to have bases off the coast of Senegal. They want to have bases off the coast in the Gulf of Guinea. They will want to have bases off the Mozambique Channel. They want to have bases in Djibouti and ultimately to want to have inland military facilities in the continent of Africa. When you do that, then Africa immediately becomes a theater of potential war in the global sense. And I think that is incumbent upon Africa. And when I talk about Africa, I must live with the fact that Africa is composed of 55 countries. And I’m also alive to the fact that the Moroccans don’t agree that Sahrawi is a country.
And therefore, if you ask them, they’ll say 54 countries. But in high diversity, Africa also has the ability to use our diversity to good effect. And because China is very powerful, it is important that African countries negotiate with China.

In my view, at certain levels, continentally under the aegis of the African Union and in certain cases regionally under the aegis of SADC, or East African community or Central Africa, or West Africa. In that way, they have no one population. And secondly, they have the economic counterweight to ensure that negotiations with China between equals to the extent that they can claim equality. But if individual countries are left to negotiate with China bilaterally, many African countries are economically very weak. And because they are weak and they don’t have resources or remain producers of primary goods, it is very easy to twist African politicians who, because of short-term political interests, will want to see immediate gains for the sake of elections without considering the generational impact of the activities under us. Then China can be very dangerous going forward, and the sooner we realize that, the safer in order to redefine our relationship and interaction with China.

**APJ:** Speaking about China, recently Africa was visited by the German Chancellor as well as the British Prime Minister. There had been an argument about this being a scramble for Africa by the West because of the fear of tennis implants. Is that the case? What is your take on that? How does that, Pete, fit in your “Africa on the dinner table”?

**LUMUMBA:** You know, there is a sense in which in answering that question, one must go into the arena of speculation. But there is also a sense of déjà vu—déjà vu in the sense that when one reads history, one can see that in Berlin in 1884, it is the same countries which congregated and partitioned Africa. And one can see that that appetite has remained. And it is not lost on me that I think in the month of August or in the month of September, we had a flurry of visits to the continent of Africa. We saw the British Prime Minister. We saw the French prime minister. We saw the German Chancellor. We saw the Chinese president. All visiting different countries of Africa from the west to the east, from the south to the north. And the whole idea, which is innocent on its face, is that we are creating bilateral relationships for purposes of trade.

The danger is that if we enter into these agreements without clear scrutiny, what begins innocently as trade may metamorphosize into something else to the detriment of the continent. And I have learned not to blame all these players. I don’t blame the British. I don’t blame the French. I don’t blame the Germans. I don’t blame the Americans. I don’t blame the Chinese. I blame us, particularly our political leaders. Oh, let me not use the word leaders or politicians, because leadership is a totally different ballgame. All politicians have demonstrated—at least the bulk of
them—that their strategic engagement, if there is strategy at all in the manner in which they engage, is something that does not look to the future.

So that when you look at some of the agreement that we are entering into with China, the loans that we are receiving from China to deal with infrastructural development, some of which are not very well thought out. If you look at the cost of borrowing from China and you look at the impact on the real soft issue needs of the people, and when I talk about soft issue needs of the people, I’m talking about what are you doing in the sector of education, in a manner that creates opportunities for young men and women to acquire a set of skills that will not only confine them to the employment market but enable them to invent onto into innovate. I’m looking at about the agriculture sector. We are still selling primary goods, and I would want to see engagement that allows for transfer of technology so that in the next few years we are not selling coffee beans. We are not selling minerals like coltan or rare art. We are not selling uncut diamonds. We are not selling raw gold. We are not importing toothpicks from China. We are not importing eggs from Brazil. We are not importing noodles from Italy. We are not importing secondhand clothes from the United States of America or Europe. I want to see these factories being set up in Africa so that we have opportunity of improving their sectors and we can strengthen African countries and strengthen African economies in a manner that they are able to engage. And when they sit at what I’ve called the dinner table ad nauseum. They are there as diners not as food to be eaten or as waiters to serve others.

APJ: And thank you so much for that visual. And just one last question. This actually speaks a little bit to what you were just talking about. Ali Mazrui once said, “Africa produces what it does not consume and consumes what it does not produce.” I’m wondering in this moment we live in with the differing scenes of African nations signing the CFTA, which is an iconic moment also, you know, all going to China for the forum on China, Africa cooperation—I’m wondering that, in the sense of Ali Mazrui’s paradox, do you think Africa is going in the right direction in solving it?

LUMUMBA: When Ali Mazrui made his famous documentary, Africa: Africa Creepo Heritage, I think he identified quite a number of weak areas which continue to undermine the continent. And that famous quote is one that stands out because Ali was concerned that Africans continued to import or to export primary goods and to import goods that had been manufactured elsewhere. And I believe that there is no debate now that that is part of the reason why Africa continues to be underdeveloped. If you want to measure Africa against some of the indices that we have had in the recent past, we did not—apart from Rwanda and I think Botswana—many African countries did not
achieve the Millennium Development Goals. We now have the Sustainable Development Goals, but we know that in countries where there is conflict, such as the Democratic Republic of Congo, and only in the last few days we have seen nearly 180 thousand Congolese being expelled from Angola back to Congo. And we have seen similar activities against Nigerians in Ghana and in many countries. This is happening. The net effect is that Africa has come to recognize that she must do things herself. And recent developments. And when I talk about recent, I’m talking about the activities of the African Union and Agenda 2063 in the year 2013.

And some of the things that the seven pillars say is that in order for African countries to get into the orbit of mid-level development, there are a number of things that must be done. You’ve got to silence the guns. And when you silence the guns, one might not see the direct relationship between that and other economic activities. Where there is conflict, there is no agriculture, where there is conflict, there is no economic activity.

And number two, they say, among other things, is that we must also ensure that we remove foreign interference by the year 2025. Foreign interference means, among other things, from where I sit, that you allow countries which do not have clear interests in the long-term health of your country to run your industries, and that when you engage with them, you engage in a manner that is mutually beneficial. And when one sees a number of activities in Africa, one is beginning to see that there is some movement. The movement may not be dramatic. It may not be as fast as we desire. But look at East African community. Some of the things that we have seen under the Treaty of the East African Community is the removal of tariff and non-tariff barriers. The agreement that certain goods must not be imported into that region. And if they are imported, then there must be appropriate tariffs to ensure that you protect local industry. You see that under COMESA, you see that under the ECOUS. You see that under SADC, you see that under Central African Republic. So that in terms of the infrastructure, the economic infrastructure, African countries have established them.

But what continues to undermine those things is the quality of politics. One can see in a number of African countries that why we have sound policy documents, while we have these visions 2020, Vision 2025, Vision 2030, Africa, and Agenda 2063, the political class. On the other hand, doing things that undermine our very journey to the chosen undesired destination. And it is now incumbent upon African intellectuals, upon African men and women in the private sector, upon Africans who are the electorate, to make demands of their political leadership.

History has demonstrated that people are led in the direction that they demand. And I’m submitting to us that we of the African stock are largely very docile. And because of
what docility, the political class, most of whom are bankrupt, do things that don’t actually help the continent. And the sooner we recognize that democracy is oiled and underpinned by the awareness of the population, the safer we are. If we don’t, then Africa will continue to degenerate. And what you very early on describe as the scramble for Africa will not only be a scramble, but a new partition of Africa.

APJ: Thank you very much for your time today. We really appreciate.

LUMUMBA: Thank you very much. God bless you. And I wish we work towards the growth of Africa. It’s not something that will be achieved in 10 years, in 20 years, in 100 years. But our joy is that we have planted the seed.
ACKNOWLEDGEMENTS

We would like to recognize and thank, on a non-exhaustive basis, the people who helped produce this year’s journal. We thank Martha Foley, assistant director of student services, who provides endless support for our work. We would also like to thank the Center for African Studies, the Mossavar-Rahmani Center for Business and Government, the Kennedy School Student Government, the Malcolm Wiener Center for Social Policy, and the Africa Caucus at the Harvard Kennedy School for their financial support and encouragement.

We also thank Nicole Lewis, our copy editor at the Kennedy School, and Cerise Steel, our designer, for their work to ensure the journal came together to meet the standards of excellence of HKS student journals. Last but not least, we would like to thank all of our contributors who have turned their passions and research on Africa-related topics into well-formed and articulate academic articles and opinion pieces that we are proud to share with our readers.