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- The Africa Caucus at the Harvard Kennedy School

EDITOR'S REMARKS

I am so excited to present the 2016-2017 edition of the Africa Policy Journal. This edition of APJ showcases a range of topics, including information technology, education policy, and the commodities slump. These articles are the product of the hard work of our amazing contributors, who have graciously shared their expertise and knowledge of issues on the African continent.

I would like to thank my friends and editors emeritus Ngozika Amalu and Devon Maylie. Their support and feedback over the past couple of months has been invaluable. I'd also like to extend my thanks to this year's editing team for their hard work. Finally, I extend my deepest gratitude to the Center for African Studies, Dean Doug Elmendorf, Martha Foley, the Harvard Kennedy School Student Government, and the Malcolm Wiener Center for Social Policy.

Thank you for reading and I hope that you will continue to be our partner in changing the African narrative.

Sincerely,

Alicia E. Bello

Editor-in-Chief,
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Going Beyond the Model: Reimagining Education Policy in Africa

BY VIVIAN OJO

Africa is not in the business of retrofitting. In his Chatham House address, economist Carlos Lopez discusses the opportunity for Africa to develop not just in spite of, but because of, its "latecomer" status. Lopez refers to the continent's economic transformation in general, and speaks specifically about the potential in the green energy industry on the continent. Rural areas surrounding Dire Dawa in Ethiopia that had not previously had access to basic power grids for electricity, now host solar panels beaming more light, at cheaper rates, for more people, than ever before (*see Figure 1*). Africa is literally lighting up, and though Afro-optimism must be met with caution, this optimism must not stop short of application to education policy. The opportunity to harness the challenges of the past in charting a path for the future in the education sector is equally bright.

Figure 1. Solar panels in Dire Dawa, Ethiopia

As one of five siblings who attended high school in Namibia, I used the same tattered history textbook as my brother, who attended high school in Apartheid Namibia almost twenty years prior. While this is ideal for any parents with several children and a limited budget, the disheveled O'Callahan history book sits on my shelf as a reminder of how little has changed in Namibian education content. Of course, credit must be awarded where due; several teachers, by their individual initiatives, work tirelessly to revamp the style of teaching and improve the quality of learning. This kind of quality has, however, only emerged in some schools, particularly those where parents are most active

and resources most abundant. Sadly, innovation in education is not happening at scale in order to meet the demands of a rapidly growing population of young people in Namibia and in the broader African continent. In 2017, the research on cognitive learning is vast and the correlation between quality education and productive citizens is largely undisputed. Our continent needn't wait to make several mistakes; instead, learn from them and then fight to apply those lessons into reshaping rigid education systems.

For Africa, the creative process needn't be stifled by past pedagogy that has proven ineffective. In meeting the millennium development goals target for education, 2015 became the first year that every Namibian child was able to enroll in primary education. The opportunity to implement thoughtful and quality approaches to this cohort's learning is, in some ways, a blank slate for Namibian policymakers—who should by now have learnt, at the very least, what has not worked over the preceding two-and-a-half decades from the mistakes made in other parts of the world.

But like any policy issue, the *how* can prove more critical and difficult to answer than the why. Knowing how broken the current system is, is unfortunately not in itself a solution to the brokenness. A number of cases in and outside the African continent stand out in their approach to going beyond the standard education model and drawing on innovative education methodology.

The Case for Scale, Problem Solving, and Unconventional Teaching

In a standard African Leadership University (ALU) data and decisions class in Mauritius, the twenty-something-year-old teacher, a Harvard graduate from West Africa, instructs the cohort of undergraduates with confidence (*see Figure 2*). Today's class will help students to manipulate and refine the data they will use in a presentation to Uber's strategic head for South Africa later in the day. Their projects will attempt to identify which African market Uber should next enter. The learning is palatable, and there is true excitement in the eyes of students who will see their work in class integrated with work beyond it. ALU, the brainchild of Fred Swaniker, is an audacious vision for an African university with a deep focus on integrating learning with real-world problems, empowering students to take ownership of their learning and to think entrepreneurially. Swaniker speaks openly about building twenty-five campuses across Africa, serving over three million young Africans over fifty years. The sheer scale of the ambition has never been seen before in the pan-African education space, and yet somehow, it is the first of its kind to truly match the scale of problem that awaits the continent if the rampant broken education systems are not quickly fixed.

Figure 2. Inside ALU in Mauritius

The Case for Epicenters of Excellence and Liberal Arts

In Ghana, Ashesi University is over a decade old and continues to become a competitive university, not just for Ghanians, but also for students across the Africa. On hundred percent of Ashesi students will learn to code. A significant emphasis on career readiness, a diverse cohort, and a liberal arts and sciences approach to tertiary education will distinguish the university from its peers. Patrick Awuah, the founder of Ashesi—known as the millionaire who quit Microsoft to educate future leaders—sees Ashesi as part of a much-needed "African renaissance." He tells his friends that Ashesi does not intend to scale. The school will, of course, have impact by virtue of its alumni, but there is no intention to have several other branch campuses across the continent. Not all great ideas are, or even should be, scalable. Ashesi intends to stand out as an example of excellent pan-African tertiary education and leadership with the hope that the rest of the continent can learn from this model (*see Figure 3*).

Figure 3. Ashesi University College amphitheater

Cases for Student Ownership, Choice, Technology, and Travel in Education

Outside of the continent, there exists a host of innovative learning institutions on a tertiary level. In programs such as Minerva, the learning occurs in several major cities across the globe with students moving almost every term to allow for a diverse and immersive experience. For the founder, emphasis on cross-subject collaboration among professors to identify and address broader learning gaps is important to Minerva's pedagogical philosophy. At Minerva and in other educational institutions, online learning is increasing at a tempo to match our rapidly digitizing world. Sites like Khan Academy, for example, are making subjects more broadly accessible to students around the world via the Internet. Students are able to not only learn at their own pace from anywhere in the world, but can also choose what they wish to learn. This move toward allowing increased student autonomy and agency in the learning process is predicted to have great effects. Erika Patall shares, in the *Journal of Educational Psychology*, an experiment that demonstrates the importance of "choice" for education performance. She reveals, rather definitively that "when students received a choice of homework they reported higher intrinsic motivation to do homework, felt more competent regarding the homework, and performed better on the unit test, compared with when they did not have a choice." The case for student engagement and overall responsibility to learning can be identified even on a secondary school level in schools like African Leadership Academy, where all students, regardless of financial background, are expected to pay an amount—sometimes as little as $10—toward their school fees, which are facilitated by on-campus jobs (*see Figure 4*). This is done as an incentive so all students, regardless of socioeconomic background, take partial ownership and have significant stake in their own schooling.

There is an exhaustive list of educational institutions and platforms mushrooming across the globe paying particular attention to incorporating cognitive science, ethical leadership, entrepreneurial thinking, and collaborative teaching into their methodology. It is important to note that while a lot of this work has been done outside of Africa, much of it is new in practice, even to some of the world's top academic institutions. There is, in this regard, the opportunity for Africa to forge ahead in this area without trying to "play catch-up." In fact, one could argue that our continents positionality is a prime vantage point to chart our own path and avoid the natural pains that come with retrofitting.

The examples demonstrated above are not without flaws and fragilities. In fact, identifying the flaws of these models should be the work of any forward-thinking African government. These

examples, at their core, simply present interesting possibilities for approaching education in a more interdisciplinary, collaborative, and student-centred manner that policymakers should be exploring and perhaps implementing in the public sector. This does not mean ridding ourselves entirely of the standard education system. What it does suggest, though, is allowing ourselves the opportunity to imagine and build our own framework of learning that captures some of the nuances of our culture, introduces decolonial language, and pushes back at scale on the false notion of a singular structure of great teaching and learning.

As a policy issue, this calls for a revision of the curriculum, the teaching methodology, and greater structure of the education system. The process must hold every tenant of the education system to the light, evaluating each aspect on its merit and concerning its relevance to modern-day African needs, leaving no aspect immune from deletion or revision. On a practical level this might mean critical conversations with the recruiters of graduates in the private sector in order to make learning more "customer-driven," and thus considering students, parents, and future employers as key stakeholders. Essentially, this approach means a complete evaluation and reform of education policy to meet present-day needs. Such reform may even inspire those African communities beginning to access solar energy to charge their mobile phones, to start using those very gadgets to access relevant, comprehensive education and illuminate, on their own terms, a path to a brighter future.

Figure 4. African Leadership Academy in Johannesburg, South Africa

Endnotes can be found online at http://apj.fas.harvard.edu/

Gihembe refugee camp in northern Rwanda on World Refugee Day,
Hillel Bavli, Harvard Graduate School of Art and Sciences

Globalization and the Diffusion of Media Policy in Africa: The Case of Defamation of Public Officials

BY LYOMBE EKO

Abstract

The legal and policy transfer perspective holds that due to asymmetric power relations between nations, policy diffuses from global centers of power and influence to the periphery of the international relations system. Over the years, aspects of the landmark *New York Times v. Sullivan* decision handed down by the United States (US) Supreme Court have diffused to Africa. This paper analyzes how law and public policy standards protecting journalists from the wrath of government officials in defamation cases have diffused from the US to the African Commission on Human and Peoples' Rights and the African Court of Human and Peoples' Rights. These African judicial bodies received, contextualized, and Africanized international defamation principles with respect to public officials. This piece also explores how four African countries–South Africa, Kenya, Uganda, and Zimbabwe–have echoed the public policies set forth in *New York Times v. Sullivan* in specific cases involving media defamation of powerful government officials. This development bodes well for freedom of expression in Africa, a continent that has had the unfortunate reputation of being the home of authoritarian "strong men" who've ruled over regimes of law and disorder.

Introduction

Globalization and the interconnection of nations, cultures, and peoples through information and communication technologies has resulted in a global society, which, despite political, economic, cultural, social, and religious differences, is increasingly receptive to shared values of human rights and freedom of expression. These values often diffuse from centers of international influence and power to the periphery of the global system. The post-World War II international human rights regime that was inaugurated under the auspices of the United Nations (UN) is best known for its emphasis on freedom of thought, conscience, religion, and opinion. The Universal Declaration of Human Rights specifies that the right of freedom of opinion and expression ". . . includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers."

However, because of the diversity of political regimes, religions, and cultures around the world, freedom of conscience and opinion are pluralistic concepts that are conceptualized and applied differentially in politico-cultural and religious contexts. In recent years, the UN General Assembly has passed a number of resolutions that equate blasphemy—offensive statements or writings that deny the existence of God; parody, mock, or satirize specific religious faiths, sacred religious texts, revered religious figures, sacred locations, icons, or rituals—with defamation. Since some cultures and societies assign higher status to revealed religions, religious orthodoxy and religious rites often take precedence over the human right of freedom of opinion and expression in many parts of the world, including a number of African countries. The "Mohammed cartoons affair," a global, political, and diplomatic controversy triggered by its publication in 2005, of twelve satirical cartoons of Prophet Mohammed in the Danish newspaper *Jyllands-Posten*, and later in the French satirical newspaper *Charlie Hebdo*, brought the clash of freedom of expression and respect for religion to the forefront of international relations. Muslims in many parts of the world were not amused by the satirical cartoons. Under pressure from the Organization of Islamic Cooperation (OIC) and the Arab League, the UN General Assembly passed resolutions denouncing the "defamation of religion." This has resulted in the criminalization of blasphemy and globalization of respect for religion in numerous jurisdictions.

The African continent has not been an enclave immune to international debates over defamation and freedom of expression. Althought Africa is said to be on the margins of globalization and international power relations, international

public policy on human rights and freedom of expression have diffused to the continent and are being domesticated at the national and transnational levels under the auspices of the African Union. This is especially true of defamation, a form of tortious communication that, in Western context, is defined as "publication of a statement about a person that tends to lower his reputation in the opinion of right-thinking members of the community or to make them shun or avoid him . . . Defamation is usually in words, but pictures, gestures, and other acts can be defamatory." Defamation, as defined in specific social, legal, political, and cultural contexts, is generally considered outside the ambit of protected speech and expression. The evolution of defamation law in Africa is a result of the post-Cold war liberalization and democratization that took place on the continent in the 1990s. During that period, the African media presented post-independence Africa as a "political jungle," complete with animalized, authoritarian military rulers, "strongmen," "fathers of nations," and "presidents for life," and so on, who either presided over systems of "law and disorder," were essentially above the law, and beyond criticism even on matters of public concern. The typical African "postcolony" (to use the expression of Achille Mbembe) has undergone a dramatic change due in part to the diffusion and domestication of international norms of freedom of expression.

This article describes how international law and public policy standards protecting freedom of expression in general, and journalists in particular, have diffused from the US to Africa. This piece is significant because it focuses on criminal defamation of presidents and government officials. This is an area of law powerful political leaders and government officials had used as a censorious cudgel against journalists and the media. Criminal defamation law in Africa is a legacy of British, French, Portuguese, and Spanish colonialism. These laws had been enacted to silence criticism of European colonialism and exploitation. Ironically, when African countries became independent in the 1960s, most of these postcolonies dusted off European colonial defamation laws and imposed them on their fledgling countries. The democratizations of the 1990s helped pave the way for the diffusion of international human rights values to Africa. Specifically, it led to greater freedom of expression and to interrogation of the utility of criminal defamation laws at the level of the African Union.

Aim of Article

This article will focus on the transfer and diffusion of human rights and freedom of expression policy from the center of the global system to the periphery, using as a case study the diffusion of law of defamation of public officials from the US and the international community to the African Court of Human Rights and Freedoms, as well as a select group of African countries. Specifically, the article explores how "New York Times actual malice," the public policy standard for defamation of public officials set forth in New York Times v. Sullivan, a case decided by the US Supreme Court in 1964, has diffused to the African continent via the African Court of Human Rights, and is accepted or rejected in context-specific iterations of defamation law in South Africa, Kenya, Uganda, and Zimbabwe. These countries inherited the common law defamation tradition of the United Kingdom. This study was carried out within the framework of policy transfer, a theoretical approach that explains how legal traditions, laws, and policies are transferred from the center to the periphery of the global system in context of the unequal power dynamics like colonialism.

This article conceptualizes the actual malice standard of New York Times v. Sullivan as a legal innovation that diffused from the US to Africa. It analyzes how this landmark American defamation case has become persuasive authority in specific national and transnational jurisdictions. The first part of the article surveys British and French colonial law of defamation as applied to their respective colonies in Africa. The second part surveys American defamation law and policy values that diffused to Africa in the post-Cold War era. The third part analyzes how the transnational African Court of Human and Peoples' Rights adjudicated a defamation case from Burkina Faso and issued a landmark decision regarding public officials and defamation. The fourth part discusses how the African Commission on Human and Peoples' Rights conceptualized and domesticated American defamation policy with regard to public officials and applied it to a campaign to decriminalize defamation. The fifth part surveys how courts in South Africa, Kenya, Uganda, and Zimbabwe negotiated and domesticated American defamation law and public policies to their respective jurisdictions. The question that guided this exploratory study was the extent to which the values of New York Times v. Sullivan diffused and went "native" in Africa.

Theoretical Perspective: Diffusion of Innovations

This study of the evolution of African public policy with regard to the defamation of public officials was carried out within the framework of the diffusion of innovations perspective. In 1903, French sociologist Gabriel Tarde theorized the world is in a perpetual state of innovation and change. He suggested this situation of constant dynamism and flux requires the emergence, diffusion, and penetration of inventions. He suggested that innovations usually diffuse like widening ripples or enlarging concentric waves created by a drop of rain when it touches a quiet pool. Thus, each innovation has a geometric center from which it spreads to the outer fringes of the globe, the so-called periphery. Furthermore, innovations are often modified or reinvented in the diffusion process in order for them to be domesticated into the cultures, environments, or spaces to which they diffuse. While the concept of diffusion of innovations has mostly been applied to the technologies that facilitate social change in developing countries, the concept is an apt metaphor applicable to the spread of novel ideas, policies, and governmentalities—logics of government and governance—from international centers of power and influence to nations and transnational political entities in the periphery of the global system.The contention of this article is that the American public policy standard of New York Times v. Sullivan, which accords the media enhanced protection by requiring public officials and public figures who sue for defamation meet very exacting standards in order to collect damages, was a human rights innovation that diffused to Africa and other parts of the world through the process of policy transfer.

Diffusion of the American Defamation Standard As Legal and Policy Transfer

The diffusion of defamation standards from the US to Africa over the period of a half-century, exemplified the process of international legal and policy transfer. This expression refers to the diffusion of human rights and other pubic policies from centers of political, economic, and technological power (the UN and the developed world) to the periphery of the global system (the developing world). Dolowitz and Marsh define policy transfer as "a process in which knowledge about policies, administrative arrangements, institutions and so on, in one time and/or place is used in the development of policies, administrative arrangements and institutions in another time

or place." Esin Örücü suggests legal transfers diffuse from the centers of international political power to the global economic and legal periphery—the transitional or developing regions of the world—that he calls "extraordinary places." The policy transfer perspective holds that due to asymmetric power relations between nations and regions, bundles of implicit and explicit communication laws and policies almost always diffuse in a manner identical to the diffusion of technological innovations.

Policy transfer takes place through jurisprudential imposition, imitation, or through multilateral cooperation. Nelken advanced the notion there are three types of legal transfer: (i) legal transfers that take place through processes of trans-territorial harmonization of private law, as is the case with the European Union and the Council of Europe; (ii) legal and policy transfers that take place within the framework of international conventions entered into under the auspices of the United Nations or its specialized agencies; and (iii) legal transfers imposed as part of colonial domination, or post colonial arrangements. African countries have been on the receiving end of policy transfers since the colonial era, which lasted roughly from 1800 until 1960. Indeed, colonialism was based on the transfer of law and policy from European centers of power and influence to African colonies. After independence, many newly independent countries enacted national legislative instruments that transferred or grafted European colonial policies and values onto post-colonial systems. Legal transfers are characteristic features of national, supranational, and international communication policy regimes. One of the major uses of policy transfer is to harmonize the laws of the recipient country with those of the colonial power of with international norms. An example of this is the transfer of the freedom of religion and expression values of the Universal Declaration of Human Rights to African countries in the post-Cold War era.

British Colonial Law of Defamation

The main source of defamation law in contemporary Africa was European colonial defamation law and policy. The major European powers—the United Kingdom, France, Germany, and Portugal—partitioned Africa among themselves during the Berlin West Africa Conference of 1884 and 1885, which was hosted by German Chancellor Otto von Bismarck. When Germany lost World War I it also lost its African territories under provisions of the Treaty of Versailles of 1919. The United Kingdom, France, and Portugal thus became the

largest colonial powers in Africa after World War I. One of the branches of law the United Kingdom and France transferred to their African protectorates and colonies was defamation law. Given the colonial contexts, these laws and policies were generally aimed at maintaining law and order through the enforced subservience of colonial subjects. As such, these laws and policies were skewed toward the colonial administrators and powerful colonial entities. Sir John William Salmond summarized the laws of defamation that were in force in the United Kingdom and its overseas territories at the turn of the twentieth century. Defamation law in the UK and its African territories was generally defined as "the publication of a statement about a person that tends to lower his reputation in the opinion of right-thinking members of the community or to make them shun or avoid him." In the late nineteenth and early twentieth centuries, the eras of colonialism, defamation law in British African territories were an instrument of law enforcement. The law had the following provisions:

> A defamatory statement is not necessarily made in words, either written or spoken . . To exhibit an insulting picture holding up the plaintiff to ridicule or contempt is an actionable libel. So also is the act of placing an effigy of the plaintiff among those of murderers and other ill-famed persons in an exhibition.

According to Lord Salmond, defamatory "statements" were statements made in some "permanent and visible form, such as writing, printing, pictures or effigies." Furthermore, slander, defamation that was not in permanent form, had an elastic definition. It included "spoken words or in some other transitory form, whether visible or audible, such as gestures, hissing, or other inarticulate but significant sounds." In the colonies, this broad definition ultimately included African symbolic expressions of displeasure or dissent: foot-dragging, shuffling, foot-thumping, whistling, sighing, coughing, clearing one's throat, rolling one's eyes, spitting, laughing, or giggling, drumming, dancing, standing, sitting, wearing African masks and masquerades without authorization at the wrong time, in the wrong place, in the right location, at the wrong time, or in the wrong manner could be construed as making criminal defamatory "statements' against her majesty's government, the colonial authorities, their representatives, or their assigns.

Cartoons and caricatures were also covered by the law: "An action will lie for the publication of a humorous story, which exhibits the plaintiff in a ridiculous light, or for a caricature of his personal appearance or manners." This law made it a crime to draw cartoons of anyone in a position of authority in the colonial administration. A fundamental characteristic of British colonial law of defamation was that the onus of proving the information published was truthful and in the public interest

lay with the accused: “The burden of proof rests upon the defendant; it is for him to prove that the statement is true, not for the plaintiff to prove that it is false.” In short, under British colonial law of defamation as interpreted in different African colonial contexts, defamation was not merely an actionable tort per se, in which proof of actual damages was not required, but it was also a criminal offence that was punishable by imprisonment or fine or both. As the examples above from Zimbabwe and Sierra Leone demonstrate, the post-independence defamation law regimes of many British African postcolonies have continued to operate within the draconian colonial straightjacket they inherited from British colonialism. Not only are these laws patterned after British defamation law, they have in some cases continued to follow British colonial legal precedent.

Defamation Under the French Law of July 29, 1881, on Freedom of the Press

In the French colonial territories of Africa, defamation was governed by the law passed on July 29, 1881, on freedom of the press, which had been enacted in France. Though this law was considered the cornerstone of freedom of the press in France, its colonies and overseas territories, after close to a century of post-revolutionary turmoil and restrictions on the press, had limiting provisions that incriminated certain behaviors specific to the press. These *délits de presse* included offenses against the president of the republic, publication of false information, acting against the honor and consideration of a citizen, inciting citizens to commit crimes or to violate the law, and criminal defamation. Since defamation was a criminal offence in France the law guaranteed the press a modicum of procedural fairness under the law of criminal procedure. This emphasis on procedure was to provide media defendants in defamation suits an opportunity to demonstrate the truthfulness of their publications and their good faith.

The 1881 freedom of the press law was extended to France’s African colonies. Before passage of the law, the colonial administrator was the sole, authorized newspaper publisher in each territory. He had the power to delegate some of that responsibility to Catholic missionaries. This was all part of France’s assimilationist policy, which aimed at transforming Africans into black French men and women. Nevertheless, African colonial administrations had no patience with the niceties of procedural safeguards in their application of the press law in general, and criminal defamation

in particular. Any opposition to colonialism and any implicit or explicit sign of insubordination toward the colonial authorities or the Catholic was censored and severely penalized. All publications had to be controlled and edited by a white, European French citizen, and all African journalists who did not follow the dictates of the colonial administration were either imprisoned or exiled to other colonies. As we will see below, the government of Burkina Faso argued in Konaté v. Burkina Faso, a 2005 case adjudicated by the African Court of Human and Peoples' Rights, that the country's criminal defamation law provisions met international standards because they were grounded in the French 1881 freedom of the press law. The law offers criminal sanctions against *délits de presse* (press offenses against the law). The fall of the Berlin Wall in 1989, and the "wind of democratization" that blew across Africa in the 1990s emboldened African journalists and civil rights activists to challenge strict governmental control of the media in the British, French, and Portuguese-speaking countries of the continent. Since many of these countries had been shaken by the forces of globalization, emerging online technologies, and human rights policies that diffused from international communities, several democratized their governmental systems and reluctantly granted the media a modicum of freedom. Since our focus is the diffusion of American defamation values regarding public officials to Africa, we will now survey these policies.

Emergence of a New American Defamation Policy: The New York Times v. Sullivan

The US is known for its exceptional First Amendment law and policy regime, which guarantees Americans freedom of speech and of the press. While the US is noted for exporting innovative technologies, popular culture, and fast food to the rest of the world, it has also exported its culture-specific, First Amendment-inflected version of defamation policy to the rest of the world. Frederick Schauer suggests defamation is a substantive area of law and policy that is a hallmark of American exceptionalism. While the US inherited a criminal defamation or "seditious libel" regime from the British colonial regime in North America, this type of defamation has, over the years, been abolished in in favor of civil defamation lawsuits.

Additionally, the US Supreme Court has said prosecutions for defamation against the government, as well as civil lawsuits, are not tolerable under the American constitutional system. Therefore, criticism of government officials should

not be construed as criticism of government officials. In *Rosenblatt v. Baer*, the US Supreme Court ruled that

> Criticism of government is at the very center of the constitutionally protected area of free discussion. Criticism of those responsible for government operations must be free, lest criticism of government itself be penalized. It is clear, therefore, that the "public official" designation applies, at the very least, to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs.

American public policy on defamation is grounded on the British common law of defamation, which has two prongs: libel (written defamation) and slander (spoken defamation). Defamation law and policy in the US essentially stayed true to its British roots until 1964 when it was brought within the ambit of First Amendment jurisprudence during the civil rights era. In effect, many American public officials who were intent on stifling the civil rights movement of the 1960s attempted to use defamation as a censorious weapon to silence Martin Luther King Jr. and other African American leaders clamoring for civil rights in the US. The outcome of these legal and political struggles was the emergence of a defamation regime in which the government and its institutions are not permitted to bring defamation actions. Furthermore, these cases reinforced the idea of exceptio veritatis (substantial truth as a defense in libel), and cases turn on the attitude of media defendants toward the truth, not toward the plaintiff. Therefore, public officials who bring actions for defamation in connection with their official duties have a virtually insurmountable task. This revolutionary turn was set forth in the landmark 1964 case *New York Times v. Sullivan*, which as we see later, has influenced defamation law around the world.

As indicated above, the legal controversy in *New York Times v. Sullivan* arose during the civil rights era. The *New York Times* published a full-page editorial advertisement that described in detail an alleged "wave of terror" that had been inflicted on Martin Luther King Jr. and other non-violent civil rights demonstrators in some southern states. The advertisement contained minor inaccuracies: the song student protesters sang, the number of times Martin Luther King Jr. had been arrested, and so forth. Louis B. Sullivan, police commissioner in Montgomery, Alabama, sued the *New York Times* and the civil rights leaders who had placed the ad for libel. He claimed he was identified in the advertisement because the word "police" had been mentioned. The trial judge in Alabama held that the inaccurate statements in the ad were libelous per se, that is, they were defamatory at face value, and that the jury had to decide

whether the statements were made "of and concerning" the plaintiff. If they were, general damages were to be presumed. The jury returned a verdict of $500,000 for Sullivan. The Alabama Supreme Court affirmed, holding that defamation was not protected speech and malice could be found in the defendants' statement. The *New York Times* appealed to the US Supreme Court, which agreed to review the case. The question before the court was whether finding the *New York Times* and the civil rights leaders liable for criticizing a public official in connection with his official conduct violated the freedom of speech and of the press guaranteed by the First Amendment. The court stated that it was considering the case in the context of

> . . . a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.

After ruling that erroneous statements are inevitable in free debate, and even mistakes must be protected in order to give freedom of expression the "breathing space" it needs to survive, the court set forth the now famous *New York Times* actual malice standard:

> The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice"—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

The court essentially ruled that a public official could not collect damages for defamatory falsehoods uttered in connection with official duties because doing so would violate the First and Fourteenth Amendments. This new policy brought defamation law within the ambit of the First Amendment. It set forth the status of public officials under defamation law, and specified the standard of proof they have to show in order to collect damages. This is a very high standard because it is subjective and essentially transforms public officials who sue for libel into mind readers who have the near-impossible task of ascertaining the state of mind of the media defendant at the time the alleged defamatory statement was published.

The New York Times v. Sullivan represented a radical departure from the common law defamation tradition the US had inherited from the United Kingdom. The *New York Times* actual malice standard is subjective, concerned with the defendant speaker's attitude toward the truth rather than toward the plaintiff. The court has broadened the *New York Times* actual malice standard

through the progeny of *New York Times v. Sullivan*. *Gertz v. Welch* set forth the categories of plaintiffs in defamation suits and the fault standards they have to meet to collect damages: public officials, public figures, and limited purpose or vortex public figures must meet the stringent *New York Times* actual malice standard, while private figure plaintiffs have to meet the lesser fault standard of negligence.

Diffusion of the *New York Times* Actual Malice Defamation Policy to Africa

We saw earlier Gabriel Tarde advanced the idea that innovations usually diffuse like widening ripples or enlarging concentric waves created by a drop of rain when it touches a quiet pool. Thus, each innovation has a geometric center from which it spreads to other areas. Furthermore, innovations are often modified or reinvented in the diffusion process in order for them to fit each culture or environment for which they come into contact. This model is applicable to the diffusion of the defamation policies set forth in *New York Times v. Sullivan* to other parts of the world. In the last half-century, certain aspects of the landmark decision have diffused from their geographic center of origin (the US) to the periphery of the international system. Indeed, a few years after the *New York Times v. Sullivan* decision, its values diffused to some "early adopters"—the European Court of Human Rights and the United Kingdom. This paper is concerned specifically with the diffusion of these policies to the African Commission on Human and Peoples' Rights, the African Court of Human and Peoples' Rights, as well as to a number of African countries. Along the way, this defamation policy was reinterpreted, reinvented, rearticulated, and applied to local realities.

The African Court on Human and Peoples' Rights

When the Pan-African body, the Organization of African Unity (OAU) was formed in Addis Ababa, Ethiopia, in 1963, its main focus was the political and economic liberation of Africa, as well as the eradication of apartheid and racial discrimination in southern Africa. The priority of most newly independent African countries was the development of basic infrastructures: health and sanitation, education, agricultural production, transport and communication, and so on. Individual rights and liberties were not part of that equation. In the field of mass communication, the media were conceptualized as catalysts for development, not instruments for Western-style, liberal

democratic debate, criticism, and denunciation of governmental failures. What existed was mostly a tightly controlled, government-owned press. The result is that an authoritarian human rights situation existed in most African countries from 1960 until 1990. Under pressure from African and international human rights activists who took African countries to task for condemning human rights violations in southern Africa while turning a deaf ear to such violations in their own countries, the member states of the OAU adopted the African Charter on Human and Peoples' Rights in 1981. This unprecedented charter emphasized freedom, equality, justice, peace, and human dignity. The charter, which was passed in 1986, limited African state sovereignty on matters of human rights by ensuring that "human rights violations could no longer be swept under the carpet of 'internal affairs.'" Article 30 of the charter created the African Commission on Human and Peoples' Rights, and gave it a mandate "to promote human and peoples' rights and ensure their protection in Africa."

In 1998, African states adopted the "Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights." The African Court on Human and Peoples' Rights (ACHPR) is a continental court established by African countries to ensure protection of human and peoples' rights. The court was established to complement and reinforce the functions of the African Commission on Human and Peoples' Rights through adversarial litigation and adversary opinions rendered to member states of the African Union. The protocol establishing the African court came into force on January 25, 2004. The ACHPR is a continental court established by African countries to ensure protection of human and peoples' rights in Africa. The court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights, the protocol itself, and any other relevant human rights instrument ratified by the African states concerned. This mandate includes interpretation of the United Nations Universal Declaration on Human Rights in the African context.

As of December 2015, only thirty of the fifty-four African countries have ratified the protocol establishing the court, and only seven of twenty-nine countries have made the required declaration recognizing the competence of the ACHPR to receive human rights cases from non-governmental organizations and individuals. Many African countries that have unsavory human rights records are loath to submit themselves to the jurisdiction of the court, for fear of unleashing sandstorms of human rights litigation in a transnational court whose decisions are echoed and amplified by the international human rights community. Nevertheless, the fledgling

ACHPR, which was set up to complement and reinforce the functions of the African Commission on Human and Peoples' Rights, has an impressive docket. Taken together, the jurisprudence of the African Commission on Human and Peoples' Rights and the ACHPR constitute an emerging body of law that is laying the foundation for a human rights law and policy regime on the African continent.

The African Court of Human and Peoples' Rights and Defamation of Public Officials

In furtherance of their mission of protecting and promoting individual rights on the African continent, the ACHPR and the African Court on Human and Peoples' Rights have reinterpreted and domesticated international human rights norms and policies in Africa. In so doing, they have relied on other transnational courts, like the European Court of Human Rights and the European Court of Justice, as persuasive authority. They have promoted freedom of expression and campaigned against the criminalization of defamation in Africa. This section discusses a landmark media law case, *Konaté v. Burkina Faso*, that was decided by the African court in 2014. This case demonstrates how the court handled the defamation of public officials in Burkina Faso, a member country of the African Union.

This defamation case rose out of a number of articles published in *L'Ouragan*, a weekly newspaper based in Ouagadougou, capital of Burkina Faso, in 2012. One of the articles suggested that the prosecutor of Burkina Faso, Placide Nikièma, three police officers, and a bank official were involved in counterfeiting, money laundering, and banditry. Another article accused the prosecutor of "torpedoing" justice, while a third article suggested the prosecutor was a rogue officer who was responsible for the miscarriage of justice in the country. Nikièma filed a complaint in the Ouagadougou High Court against the writers of the article and the editor of *l'Ouragan* for criminal defamation, public insult, and contempt of court. The court found the editor-in-chief, Lohé Issa Konaté, guilty of criminal defamation and sentenced him to twelve months imprisonment, fines, damages, and costs amounting to about $13,000 plus court fees. Additionally, the court ordered *l'Ouragan* be suspended with immediate effect for six months and that the judgment of the court be published in three newspapers including *l'Ouragan*, at the end of its suspension, at the expense of Konaté and his colleague Roland Ouédraogo, who had written one of the defamatory articles. Konaté was promptly incarcerated after the judgment of the court. On appeal, the Ouagadougou Court of Appeal affirmed the judgment of the Ouagadougou High Court. Seeing that he could not get justice in Burkina Faso, Konaté applied to the ACHPR for review of the judgment. He claimed the jail term, huge fine (by African standards), civil damages, and the

court costs, violated his right to freedom of expression protected under Article 9 of the African Charter on Human and Peoples' Rights and Article 19 of the International Covenant on Civil and Political Rights. Article 9 of the African Charter states:

1. Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinions within the law.

Article 19 of the International Covenant on Civil and Political Rights states:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of art, or through any other media of his choice.

In deciding this case, the African court employed the international proportional justice policy, which is based on the "idea that punishment for a particular offense should be proportionate to the gravity of the offense itself." The issue before the court was whether the restrictions on freedom of the press obtained in Burkina Faso and applied to Konaté were provided by laws that met international norms, pursued a legitimate state objective, and were a proportionate means to attain that state objective. The court ruled the restrictions imposed by laws criminalizing defamation of judges, magistrates, and other members of the judiciary were reasonable, were prescribed by laws that met international standards, and furthered respect for the rule of law, a legitimate governmental objective. However, the court ruled the nature of the plaintiff was important in defamation cases. Therefore, in protecting the honor and reputation of others against defamation, it had to consider the function of the person who was being protected. In other words, the court had to make a determination whether the person was a public figure or a private individual: "The Court is of the view that freedom of expression in a democratic society must be the subject of a lesser degree of interference when it occurs in the context of public debate relating to public figures."

The court cited an African Commission on Human and Peoples' Rights policy that states: "People who assume highly visible public roles must necessarily face a higher degree of criticism than private citizens; otherwise public debate may be stifled altogether." The court held Burkina Faso had "failed to show how a penalty of imprisonment [for defamation] was a necessary limitation to freedom of expression in order to protects the rights and reputation of members of the judiciary." The court also ruled Burkina Faso had failed to show that suspension

of *l'Ouragan* for a period of six months was necessary to protect the rights and reputation of the prosecutor of Burkina Faso." The court concluded the custodial sentence imposed on Konaté constituted a "disproportionate interference in the exercise of freedom of expression by journalists in general" and Konaté in particular: "any custodial sentence relating to defamation is inconsistent" with the African Charter of Human and Peoples' Rights and other international human rights instruments. The court ordered Burkina Faso to repeal its French colonial criminal defamation laws within two years.

A number of things were remarkable about this case from a public policy perspective. First, the African court grounded its legal analysis and ruling on African and international human rights standards of freedom of expression. It expressly referred to the African Charter of Human and Peoples' Rights, the Revised Treaty of the Economic Community of West African States, the International Covenant on Civil and Political Rights, the UN Human Rights Committee, the European Court of Human Rights, and the Inter American Court. Second, it was the first time a continent-wide institution had ordered an African nation to eliminate the censorious colonial legacy of criminal defamation. Third, the court thoughtfully considered Konaté's argument regarding his failure to exhaust local remedies in Burkina Faso. In effect, the internationally recognized requirement that human rights complainants exhaust all national legal remedies before they refer their cases to international human rights courts was a major obstacle facing Konaté. The editor of *l'Ouragan* argued, and the Court agreed, that although he had not appealed his conviction and sentence to the *Cour de Cassation*, the highest court in Burkina Faso, his case was admissible before the African court because he could not have obtained effective and sufficient remedy in Burkina Faso. Fourth, the court emphasized, like the US Supreme Court did in *New York Times v. Sullivan*, that the status of the state prosecutor as a "public figure" meant he was expected to show a high degree of tolerance for severe criticism related to his official duties. The court based its reasoning on a 1996 African Commission on Human and Peoples' Rights decision that paraphrased and echoed *New York Times v. Sullivan*: "people who assume highly visible public roles must necessarily face a higher degree of criticism than private citizens; otherwise public debate may be stifled altogether."

The Decriminalization of Expression (DOX) Campaign of the African Commission on Human and Peoples' Rights

The Konaté judgment was a milestone in media law and policy in Africa because it boosted the African Commission on Human and Peoples' Rights continent-wide campaign to eradicate the criminalization of defamation. In effect, in 2010, the Commission passed a resolution calling for a radical change in African public policy on defamation. The resolution, which was entitled "Repealing Criminal Defamation Laws in Africa," called on state parties to the African Charter on Human and Peoples' Rights to "repeal criminal defamation laws, or insult laws, which impede freedom of speech." In 2012, the African Commission—and by extension, the African Union—launched the "Decriminalization of Expression (DOX) Campaign," which aims to rid Africa of criminal defamation, insult, false news, and sedition laws that are vestiges of European colonialism. The campaign is spearheaded by the African Commission's special rapporteur on freedom of expression and access to information in Africa,Pansy Tlakula of South Africa.

Indeed, when the ACHPR ruled the law in Burkina Faso served a perfectly legitimate objective, namely, to protect the honor and reputation of public officials, but that imprisonment of a journalist for defamation constituted a disproportionate interference in the exercise of the freedom of expression, its ruling was consistent with the public policy posture of the African Commission on Human and Peoples' Rights. Specifically, the judgment echoed its 2002 Declaration of Principles on Freedom of Expression in Africa. This declaration calls on African countries to ensure their laws relating to defamation conform to following standards: 1) no one was to be found liable for true statements, opinions or reasonable statements regarding public figures; 2) public figures were to be required to tolerate a greater degree of criticism than private citizens; and 3) sanctions for defamation were never be so severe as to inhibit the right to freedom of expression. The declaration also echoes the public official/private citizen dichotomy of the *New York Times v. Sullivan* policy, according to which public officials are expected to put up with severe criticism on matters connected to their public functions.

However, there is a difference between the US Supreme Court's classification of defamation plaintiffs in *New York Times v. Sullivan* and its progeny, and that of the African Commission on Human and Peoples' Rights and the ACHPR. The US Supreme Court classified defamation plaintiffs into four categories: 1) public officials, a "designation [that] applies . . . to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility

for or control over the conduct of governmental affairs"; 2) public figures, celebrities, entertainers and the like; 3) limited purpose of vortex public figures, persons who inject themselves in the midst of public controversies in a bid to influence their outcomes; and 4) private individuals. The first three types of plaintiffs have to meet the exacting "*New York Times* actual malice" standard, while plaintiffs who are private individuals only have to prove journalistic negligence or malpractice. For their part, the African institutions use the expression "public figure" to designate government employees and high profile politicians. This conceptualization is apt in the context of human rights in Africa. As we saw earlier, it is mostly African government officials and authoritarian politicians who have used criminal defamation as a censorious weapon against journalists who report adversely on public affairs.

The Diffusion of New York Times v. Sullivan Principles to Africa: The Cases of South Africa, Kenya, Uganda, and Zimbabwe

The media law environment in contemporary Africa is characterized by a system of law and disorder, a model of governance based on the triumph of arbitrary legalism (rule by decree) and authoritarianism that results in the supremacy of law over individual rights. To make a determination whether the public policy values set forth in *New York Times v. Sullivan* have had an impact on post-colonial defamation law in Africa, we next survey defamation case law in South Africa, Kenya, Uganda, Zimbabwe, and Sierra Leone. These countries are former British colonies in Africa.

Diffusion of the New York Times v. Sullivan *to South Africa*

As technologies and ideas diffuse to countries with different political, social, cultural, and historical experiences, these technologies and ideas are given what Jon Guice calls "new ideas, intentions, purposes, and contexts of use in different times and places, for different people and groups." In Africa, both media law in general and defamation law in particular consist of a series of policies (innovations) that diffused from the US to Europe and Africa in the colonial and post-colonial period. South African courts, which operate in a democratic country with a robust system of rule of law, judicial independence, and a tradition of incorporating new ideas from the international community, seem to be open to persuasive authorities from other jurisdictions. It is therefore not unusual to see South African courts cite persuasive authorities from the United Kingdom, Canada, Australia,

the Netherlands, and especially the US in defamation cases. It is also not uncommon to see South African media defendants in defamation suits attempt to persuade judges to rely on cases decided by the US Supreme Court in order to expand the scope of media freedoms in South Africa.

The foundational posture of the constitution of post-Apartheid South Africa is the recognition and protection of human dignity. This foundational concept is front and center in defamation law, where reputation and human dignity go hand in hand. As a result, the law seeks to strike a balance between freedom of expression, reputation, and dignity. The assumption is that damaging a person's reputation is tantamount to damaging said person's dignity. Additionally, under South Africa's brand of common law, defamation plaintiffs are not required to claim or prove falsity to prevail over media defendants. Indeed, the South African Constitutional Court has held that

> . . . although freedom of expression is fundamental to our democratic society, it is not a paramount value. It must be construed in the context of the other values enshrined in our Constitution. In particular, the values of human dignity, freedom and equality.

In other words, human dignity and equality trump freedom of expression; the feelings of the listener trump the rights of the speaker. These legal principles were evident in the case *Khumalo v. Holomisa*. Well-known South African politician Bantubonke Holomisa—a former strongman of an apartheid-era tribal homeland, sitting member of the South African Parliament, and leader of a political party—sued a newspaper, *The Sunday World*, its parent media company, and journalists, for defamation. The newspaper had written a story that implicated Holomisa in criminal wrongdoing. In its defense, the newspaper and its personnel stated the story about Holomisa was a matter of public concern, and that Holomisa had not alleged the information in the story was false. The newspaper defendants further claimed the common law of defamation in South Africa, which does not require plaintiffs to prove falsity or even raise a defense of falsity, violated the freedom of expression guaranteed by the Bill of Rights of the South African Constitution. The Transvaal High Court rejected the argument of the media defendants because under South African law only a narrow class of plaintiffs is required to establish the falsity of a defamatory statement to collect damages. This class of persons includes the state, state officials, and politicians who sue for statements made about their fitness for public office. In short, the requirement that libel plaintiffs allege and prove falsity comes into play only when the state, public officials, and politicians whose fitness for office is questioned, sue for defamation. Under South African law, the falsity of a defamatory statement is not an element of

the civil wrong of defamation. However, truth may be an important factor the court takes into consideration when it decides whether the statement was legal or not. In general, in defamation suits, the burden of proving the truthfulness of the statement rests with the media defendant. As a result, plaintiffs are not required to claim or prove falsity. Plaintiffs only need to show the defamatory statement was unlawful and intentional.

In *Khumalo v. Holomisa* the media defendants appealed to the South African Constitutional Court (the country's Supreme Court). The question before the court was whether the South African common law of defamation, which does not require plaintiffs to allege and prove falsity, is consistent with the freedom of expression provisions of the South African constitution. The court ruled it was. The media defendants argued the South African common law of defamation inherited from the British colonial administration was inconsistent with the constitution. They relied on the *New York Times* actual malice standard from *New York Times v. Sullivan*, which states that in order to collect damages for defamatory falsehoods uttered in connection with their official duties, public officials must prove the defendant published with knowledge of falsity or with a reckless disregard of the truth or falsity of the statement.

Of the *New York Times* actual malice standard it was being asked to adopt, the South African Constitutional Court said: "This decision represents the high-water mark of foreign jurisprudence protecting the freedom of speech and many jurisdictions have declined to follow it." The court then proceeded to show the courts in the United Kingdom, Germany, and Australia had declined to follow the *New York Times v. Sullivan* standard. The court concluded that if adopted *New York Times v. Sullivan* would offset the delicate balance between freedom of expression, reputation, human dignity, freedom, and equality that has been struck in South Africa. *New York Times v. Sullivan*, the court said, would lead to a "zero-sum result . . . [that] fits uneasily with the need to establish an appropriate constitutional balance between freedom of expression and human dignity . . . " The court further ruled that "in not requiring a plaintiff to establish falsity, but in leaving the allegation and proof of falsity to a defendant to a defamation charge, the common law chooses to let the risk lie on defendants. After all, it is by definition the defendant who published the statement and thereby caused the harm to the plaintiff."

Despite its refusal to apply the values of *New York Times v. Sullivan* to the Holomisa case, in order not to eviscerate the human dignity of the plaintiff, the South African Constitutional Court did not reject *Sullivan* outright. A few years later, a judge of that same court noted that *New York Times v. Sullivan* was a famous case that provides guidance for future development of the law in South Africa. It should also be

noted that the Supreme Court of Appeals of South Africa used a progeny of *New York Times v. Sullivan—Gertz v. Welch*—to end strict liability in South Africa.

Though the numerous defamation suits filed by South African president Jacob Zuma against the media and cartoonists give the impression that South Africa is a defamation plaintiff's paradise, the country is getting less defamation-plaintiff friendly. After the Holomisa case, a South African court heard a defamation case in which a progeny of *New York Times v. Sullivan—Hustler v. Falwell*—was brought up. In *Bheki Cele v. AVUSA Media Ltd*, a senior police official sued a newspaper for defamation over an article and a manipulated photo in which the officer was portrayed as a lawless sheriff in the American Wild West. The issue before the court was whether the article and photograph were defamatory. The court answered in the negative. It used language reminiscent of *New York Times v. Sullivan* when it stated that "the law requires of such public figures, politicians and public officers (by virtue of their chosen professions) to be robust and thick-skinned in relation to comments made against them . . . " The court added: "Similarly, the United States Supreme Court emphasized the value of the visual arts as a medium of political and social commentary in *Hustler Magazine and Another v. Falwell*, when it stated as follows: '[F]rom the early cartoon portraying George Washington as an ass down to the present day, graphic depictions and satirical cartoons have played a prominent role in public and political debate . . . From the viewpoint of history, it is clear that our political discourse would have been considerably poorer without them.'" The court then dismissed the case.

The cases discussed above show South African courts are receptive to freedom of expression values that have diffused to the country from the major democracies. *New York Times v. Sullivan* is mentioned with increasing frequency in African courts as lawyers and judges seek to come to terms with its global impact, and with the reality that powerful South African leaders like Jacob Zuma have used the human dignity clause of the South African constitution to intimidate the media and their political opponents.

New York Times v. Sullivan *in Kenya*

South Africa is a relatively young democracy whose apartheid past makes it very solicitous of human rights and human dignity. Things are a little bit different in Kenya, which had a different colonial and post-colonial experience. However, due to globalization, the common law tradition of Kenya has also been influenced by the diffusion of media law and policy from centers of influence and power in the US and Western Europe. It is therefore not surprising that *New York Times v. Sullivan* would crop up in defamation cases in Kenya. In one such case, a well-known member of Parliament and an assistant minister in the

government, Mwangi Kiunjuri, sued a journalist and two media companies for a story that appeared in the *Sunday Nation* newspaper. The article in question claimed police had arrested the minister and others as they consorted with half-naked prostitutes in the red light district of Nairobi. Kiunjuri was not amused by this accusation of moral turpitude.

One of the media defendants immediately advanced a novel "constitutional privilege" defense. He told the judge that Section 79 of Kenya constitution, which guarantees freedom of speech and of the press, "embodies the rule in *New York Times v. Sullivan* [emphasis in the original], and consequently a publisher is not liable for publishing pertinent facts pertaining to a public figure upon investigation of the circumstances of the facts published of the public figure." The court observed that "the third defendant's defense [sic] is built around the persuasive authority of the American case *New York Times v. Sullivan* . . . " Whereupon, the defendant urged the judge to abandon Kenya's colonial era strict liability law and follow the new legal developments heralded by *New York Times v. Sullivan*.

In the end, after giving a lengthy exposé of *New York Times v. Sullivan*, the High Court of Kenya dismissed the defamation charge against the newspaper and the journalist, stating the constitutional privilege of *New York Times v. Sullivan* was "the principle now well established in the new line of cases that have set the pace in defamation jurisprudence, and which it is not possible to overlook: *New York Times v. Sullivan*." The court then cited cases in Australia, the United Kingdom, and South Africa where *New York Times v. Sullivan* had served as persuasive authority in defamation cases. The judge announced he was taking into consideration the "new criteria based on constitutional principle, and on contemporary developments in comparative law and human rights" to acquit the two media defendants. He found the third defendant, a TV station, that had ironically raised the *New York Times v. Sullivan* constitutional defense, liable for publishing hearsay information and imposed punitive and compensatory damages for defamation. This case demonstrates an interesting phenomenon of diffusion of legal innovation. Clearly, the defense counsel bombarded the judge with the "constitutional privilege" defense from what they called the persuasive *New York Times v. Sullivan* case. They also added cases from several commonwealth jurisdictions whose rulings they claimed were part of this new line of cases that have "set the pace in defamation law." The judge was persuaded by this internationalist argument; he essentially abandoned the strict liability system of Kenya in favor of *New York Times v. Sullivan* and its new international progeny as the new defamation benchmark in Kenya. Of the three defendants, the only one who was not victorious was the TV announcer who broadcast a report based on the newspaper

story without investigating it. It is not clear whether under *New York Times v. Sullivan* the public official would have been able to prove the broadcast rose to a reckless disregard for the truth. It is interesting that in Kenya, as in South Africa, the focus of the court was on the status of the plaintiff public official; that the official had to put up with criticism, not on the standard of proof he had to meet to collect damages.

Diffusion of New York Times v. Sullivan *Principles to Uganda: Ali v. Monitor Publications Ltd.*

In 2002, a Ugandan newspaper, *The Monitor*, published an article on the dangers of being overweight. It stated that overweight people tend to be diabetic and sexually impotent. A photograph of Hon. Moses Ali, a senior government official and politician who happened to be a "big man" of ample proportions, accompanied the article. Ali was not identified as the person in the picture and he was not mentioned in the article. Nevertheless, he was not amused his image was associated with diabetes and impotence. He sued *The Monitor* for defamation in the High Court of Uganda at Kampala, claiming that by using his picture to illustrate the article on the connection between obesity, diabetes, and sexual impotence, the newspaper "meant and/or was understood to mean by innuendo or otherwise . . . that he was overweight, obese, diabetic, and impotent." Ali told the court the article was false and misleading because he was neither diabetic, overweight, nor impotent. He said he had four wives and over thirty children.

In its defense, the newspaper stated the picture was not defamatory because it "was true in fact and was a fair comment." The issues before the court were whether the words and picture in the article were defamatory, whether the publication was a fair comment made in the public interest, and whether Ali, a public official, was entitled to remedies (damages). The court answered all questions in the negative. Judge R.O. Okumu Wengi wrote: "Unfortunately, public officials are placed at an awkward position in defamation law since the promulgation of the 1995 constitution." That constitution had liberalized the political system in Uganda. Judge Wengi said even though the Uganda Supreme Court had ruled the onus was on newspaper defendants to show there was no malice in their publications:

> it is the court to determine if indeed there was actual malice and for the public official to show its existence . . . In the present case there was no malice either, but literary mischief only. For a political leader this can do no harm to his reputation, and an apology is all that is needed to tone down the editorial mischief . . . In times of transition politics, newspapers . . . will nibble at leaders of all categories with needling publications and assert the 'stand by our story' position . . . This has consequences for the much cherished freedom

of the press when making vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. For libel can claim no talismanic immunity from constitutional limitations: *New York Times v. Sullivan* 1974 (sic).

The judge then dismissed the case. In this Ugandan iteration of *New York Times v. Sullivan* the focus was again the public official. However, the court went beyond the threshold that seems to have developed in defamation law in Africa–the public official should expect to be criticized. It added that it was for the court to decide whether the article contained actual malice. This is a departure from *New York Times v. Sullivan*, where the burden is on the plaintiff public official to prove the article was written with knowledge of falsity, or with a reckless disregard of whether it was true or not.

Diffusion of New York Times v. Sullivan *to Zimbabwe*

Zimbabwe has one of the harshest defamation law regimes on the African continent. In January 2012, three Zimbabwean political activists, Calvin Ncube, Mpumelelo Donga, and Gift Mlala—members of the youth wing of the opposition Movement for Democratic Change (MDC)—were arrested in Bulawayo and charged with violating Zimbabwe's Criminal Law (Codification and Reform) Act of 2004. The act states in part:

> (2) Any person who publicly, unlawfully, and intentionally—
> (a) makes any statement about or concerning the President or an acting President with the knowledge or realizing that there is a real risk or possibility that the statement is false and that it may—
> (i) engender feelings of hostility towards; or
> (ii) cause hatred, contempt, or ridicule of;
> the President or an acting President, whether in person or in respect of the President's office; or (b) makes any abusive, indecent, or obscene statement about or concerning the President or an acting President, whether in respect of the President personally or the President's office; shall be guilty of undermining the authority of or insulting the President and liable to a fine not exceeding level six or imprisonment for a period not exceeding one year or both.

The modern version of British colonial seditious libel further specifies the word "statement" includes any act or gesture published in any printed or electronic medium destined for reception by the general public.

The three men were charged with insulting and undermining the authority of President Mugabe because they were found in possession of newspaper clippings of a political cartoon (*see Figure 1*). The government alleged the cartoon mocked the president,

his wife, Grace, and Reserve Bank of Zimbabwe governor Gideon Gono. The cartoon—originally published in The Daily Nation, in Nairobi, Kenya—was featured on the website of the newspaper, as well as the website of Radio Netherland African Service. The cartoon was downloaded in was the ultimate act of political defiance—ridicule of eighty-eight-year-old president Robert Mugabe and his forty-six-year-old wife Grace. At the trial, a magistrate in Bulawayo, Thobekile Mkhosana-Matimbe, acquitted the MDC youths of all the charges, due to contradictions in the state's case.

Figure 1. "Ménage á trois between Sally Mugabe, Gideon Gono, and President Robert Mugabe," cartoon by Gado, The Daily Nation, Nairobi, Kenya, 2010.

Zimbabwe and distributed by e-mail and social media. Printed copies of the cartoon ultimately found their way to the streets of Bulawayo where the cartoon was photocopied and passed from person to person. The story in the cartoon was grounded on a rumor that Grace Mugabe was having an affair with Gono. It

It is remarkable the judge courageously dismissed the case against the political activists, given the authoritarian nature of President Mugabe. The case gives us a glimpse into the type of criminal defamation and insult laws that the African Commission on Human and Peoples' Rights and the ACHPR

are trying to eradicate. It is notable that Zimbabwe has signed, but has not ratified, the protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights. The court therefore has no jurisdiction on the country.

However, it is interesting that in 2014, the Constitutional Court of Zimbabwe took steps toward the elimination of criminal defamation. In 2011, editor Nevanji Madanhire and writer Nqaba Matshazi, of the *Standard Newspaper*, published an article that claimed a medical aid society was on the verge of bankruptcy. The reporters were arrested and charged with criminal defamation, which carried a maximum penalty of two years imprisonment under the Criminal Law Code of Zimbabwe. The reporters declared the criminal defamation law of Zimbabwe, under which they were being charged, was unconstitutional and requested the court declare it null and void. The issue before the court was whether criminal defamation was a limitation on freedom of expression that is reasonably justifiable in a democratic society. The Constitutional Court of Zimbabwe answered in the negative. The court unanimously ruled that "what is distinctive about criminal defamation, though not confined to that offence, is the stifling or chilling effect of its very existence on the right to speak and the right to know . . . The overhanging effect of the offence of criminal defamation is to stifle and silence the free flow of information in the public domain." The court used the "chilling effect" vocabulary of American law. It further cited *inter alia* the African Charter of Human and People's Rights, which calls on African governments to repeal criminal defamation as persuasive authority, to support its ruling that criminal defamation was unconstitutional: "The offence of criminal defamation constitutes a disproportionate instrument for achieving the intended objective of protecting the reputations, rights, and freedoms of other persons."

Conclusion

The *New York Times v. Sullivan* actual malice standard is a First Amendment, free speech standard grounded in the American constitutional mentality of skepticism, nay, outright suspicion of the government, public officials, and intolerance of abuse of power. It is part and parcel of a system where the press is the watchdog of the public interest, and performs a checking function on the government and public officials. In the fifty years since the US Supreme Court ushered in the new policy on public officials and defamation in *New York Times v. Sullivan*,

the name of the case has diffused across the globe where it has been reinterpreted, reinvented, and adapted in multiple politico-cultural and legal contexts.

While several principles of the case are specifically American and do not travel well, those aspects that emphasize public officials are not above the law, or even criticism, have been domesticated in a number of key African jurisdictions. The African Commission and ACHPR, and a number of African jurisdictions have embraced *New York Times v. Sullivan*'s skepticism toward public officials. The reason for this is simple: authoritarian strong men have dominated post-independence African countries for a half-century.

The offenses of insulting the head of state, injuring a public official's ego, causing politicians to lose face, or damaging their reputations through publication of truthful or substantially true statements, are no longer what they used to be in several parts of Africa. It's clear that some of the values of *New York Times v. Sullivan* have diffused to numerous African jurisdictions and have been domesticated in various degrees along a continuum. The two judicial organs of the African Union: the African Commission on Human and Peoples' Rights and the ACHPR, as well as South Africa, Kenya, Uganda, and Zimbabwe, are at various points on that continuum. Though the *Sullivan* values have been evoked in a number of African countries, they have really not taken root in many jurisdictions.

South Africa probably has the most advanced democratic political system on the African continent. The values of *New York Times v. Sullivan* have been evoked the most in South Africa, as its modern democratic constitution sets forth a battery of positive rights. Nevertheless, these rights create a high level of "entitlementality" that puts the brakes on freedom of expression from time to time. Furthermore, South Africa muddies the waters of freedom of expression by equating reputation with the elastic, metaphysical concept of human dignity. The implication is that libel-proof plaintiffs—persons whose reputations are so tarnished that no further harm can be done to them—have no human dignity. This takes the law into the grey area of moral judgment and metaphysics.

Nevertheless, values of *New York Times v. Sullivan* and its progeny have diffused to South Africa, and the courts are beginning to reinvent them to suit the specific context of the post-apartheid realities where an entrenched, ruling political party, the ANC, has a tendency to abuse power and silence media critics through onerous defamation laws. President Jacob Zuma's long-running million-dollar defamation suits (now withdrawn) against South African cartoonist Jonathan Shapiro (Zapiro) demonstrated the current defamation law regime of South Africa is barely different from their nineteenth century versions. In matters of defamation, South African law resolves the tension between

freedom of expression and the reputation and dignity of political leaders and public figures by tilting the scales in favor of political leaders. The good thing is that African courts are beginning to apply the *New York Times v. Sullivan* principle, which holds that powerful public officials, by virtue of the positions they occupy in government, should be willing to put up with harsh criticism of their stewardship of the public offices they hold.

Endnotes can be found online at http://apj.fas.harvard.edu/

The Anatomy of Government Neglect in Nigerian Maritime Industry

BY ADEKANMI ALEXANDER ABAYOMI

Abstract

The Nigerian maritime industry, with its enormous opportunities, has been articulated in several publications, but little has really been said about how government neglect has been a hindrance on the success of the industry. This neglect has not only eaten deep into the Nigerian economy, but it has also dented Nigeria's integrity among the committee of international maritime nations–it has crippled the implementation of Nigeria's Cabotage legislation. Nigerian mariners' sea-time training, maritime businesses, shipyards, reforms and policies, seas and coastline, ports and investment opportunities, are all victims. Foreign dominance of Nigeria's maritime industry has rendered Nigerian mariners idle; government chances of making huge revenue from maritime have been drained.

It is still unthinkable why a nation like Nigeria could decide to undermine the strength of its maritime sector, which is capable of being a top revenue earner for the country. The federal government's neglect to implement international conventions has cost the nation a huge fortune. Nigeria lost about $3 billion between 2012 and 2015, due to the non-implementation of the Sea Protection Levy (SPL) that was introduced in 2012. Nigeria also loses over $60 million annually, as a result of neglect, to unregulated fishing, according to the National Oceanic and Atmospheric Administration. This article aims to point out areas of government neglect on Nigerian maritime, and to put its challenges into perspective with an attitude to conscientize the government and its policymakers.

Introduction

The 2015 Nigerian Maritime Expo (NIMAREX) left Nigerians with numerous reflections, including the unpleasant state of Nigerian seafarers, ineffective implementation of Coastal and Inland Shipping (Cabotage) Act 2003, and foreign dominance of Nigerian coastal shipping. These reflections and other challenges confronting the industry are products of government neglect. They also require serious attention because Nigeria's maritime industry is strategic to the nation's economy. Apart from Nigeria being an exporting nation, largely due to oil production, the nation's population and importing policies also make it one of the biggest markets for foreign goods. Nigerian relationships with shipping and trade are tremendous. Totals of 5,139 and 1,131 ocean-bound vessels called at the Nigerian Ports in the first quarters of 2015 and 2016, respectively, and cargo recorded during the first quarters of 2015 and 2016 was 49,604,516 metric tons and 43,347,523 metric tons, respectively (Nigerian Ports Authority). In a statistical bulletin, the Central Bank of Nigeria reported that about eighty percent of goods consumed in Nigeria are imported. Nigeria is a coastal state. It is endowed with a coastline of about 870 kilometers and about 3,000 kilometers of inland waterways with vast exclusive economic zone. Moreover, the nation still needs to complement these endowments with investments in human capital and infrastructural renewal, ship acquisition programs, scientific policies, and automated port operations in order to fall in tandem with Goldman Sachs. Goldman Sachs identified Nigeria as one of countries with the potential to join newly industrialised nations like Brazil, Russia, India, China, and South Africa.

To show how insignificant the industry is to the government, the Central Bank of Nigeria announced plans to provide financial assistance to some sectors in 2015, but maritime sector was unscrupulously omitted from this arrangement. Despite the potentials of Nigeria's inland waterways, it still has a long history of neglect. , Government has made some efforts to make the inland waterways attractive. Recently, a section from Baro in Niger State to Warri in Delta State was 572-kilomeer dredged (National Inland Waterways Authority). With all the advancement of American inland waterways system, the U.S. is still desperately striving to improve its inland waterways system. Lamar Alexander, a Republican senator from Tennessee, introduced the American Waterworks Act in 2012, which sources funds for the improvement of the nation's inland and intra-coastal waterways.

Some of the reasons the Coastal and Inland Shipping (Cabotage) Act of 2003 was enacted are to encourage domestic participation in the nation's coastal shipping and to restrict foreign access to Nigeria's domestic coastal shipping and offshore operations. Unfortunately, the Cabotage Act of 2003 has done little to actualize these objectives. To believe the Cabotage Act of 2003 will work without some basic structures and regulations in place is like hoping that a camel will pass through needle's eye. For instance, the Cabotage Act of 2003 states that only vessels wholly-owned and manned by Nigerian citizens, built and registered in Nigeria, shall engage in Nigeria's coastal territorial inland waters. These provisions are difficult to comply with because wholly-owned Nigerian vessels are extremely scarce, and are also sub-standard, low-tonnage vessels. Nigeria's ship owners are moribund with no incentive or finance to compete with foreign vessel owners; hence, they have been edged out of lucrative business opportunities in Nigeria's oil and gas industry.

Section 23(1)(e) of the Cabotage Act of 2003 provides that vessels operating on Nigerian waters shall be exclusively crewed by Nigerian citizens, except where the Minister grants a waiver. Nigerian mariners are currently perceived as mere classroom seafarers with no experience. Both foreign and local ship owners disobey this provision because the seafarers are not capable to man vessels. The experience, competence, and reliability of the crewmen are fundamental to the profitability and safety of the ships—which is why the price of a crew is among the highest costs of running of ship. Crewing of ships is also a great source of income for nations. The Philippines export seafarers to several nations. A sum of $3 billion was contributed to the Philippine economy in 2008 from exporting mariners to Japan alone, according to (Doris Magsaysay-Ho).

The Nigerian Maritime Administration and Safety Agency (NIMASA) has failed to protect the few good, local seafarers. NIMASA has the responsibility to moderate the flow of foreign seafarers to the system. Both NIMASA's National Seafarers Development Programme (NSDP) and the Maritime Academy of Nigeria, Oron, Akwa Ibom State, in Nigeria have wasted billions in resources of naira in the name of producing employable seafarers for the nation. NIMASA initiated NSDP in 2009 to sponsor Nigerians for seafaring trainings abroad, but despite billions of naira squandered on getting NSDP cadets trained, is still highly uncompetitive. Over time, NIMASA has shown its cluelessness on the sea time aspect of NSDP, the nucleus of the project. The reported purchase of a training vessel for the cadets

for sea time training is still a fantasy. Hopefully, the idea of using vendors to provide sea time training for the NSDP's cadet will materialize. Over $19 billion has been remitted to the account of Maritime Academy of Nigeria, Oron, as the statutory allocation of five persent from NIMASA, in the last five years. Yet, the institution cannot produce master mariners and chief engineers, and their seafarers are a mass of hare-brained mariners. Mpkandiok Ante Mkpandiok, acting rector of the Maritime Academy of Nigeria, recently confessed the products of the Academy are half-baked seafarers and the nation's foremost maritime training institution lacks basic equipment like training vessels for its cadets and a Global Maritime Distress and Safety System (GMDSS) simulator. A GMDSS is used to increase safety and make it easier to rescue distressed ships, boats, and aircrafts. GMDSS training is mandatory for all seafarers.

Mismanagement of funds and corruption have ruined the future of the only maritime institution recognized by the International Maritime Organization (IMO) in Nigeria. Even though Nigeria is on the IMO white list, its number-one training institution for seafarers cannot boost a training vessel for the mandatory on-board tutelage of the seafarers before NIMASA issues a certificate of competency to each cadet on behalf of the school. Even the few Nigerian seafarers who have been able to maneuver in NIMASA to get certificates of competency are stranded because ship owners do not honor those certificates. Only the influential Nigerian seafarers are fortunate enough to get space for sea time training. No ship owner should entrust its vessels in the hands of inexperienced mariners.

Keeping this all in mind, it is easier for the Nigerian Minister of Transportation to grant a waiver to foreign built, owned, crewed, and flagged vessels to operate in Nigeria's domestic coastal trade and offshore; no Nigerian shipbuilding company has the capacity to construct ocean-going vessels. Nigerians are still earnestly waiting for the first set of locally constructed ocean-going vessels by the Nigerian navy. To be among the largest ship-owning nations like Greece, Japan, China, Germany, Singapore, and the United States, investments in shipyards, shipbuilding, and ship acquisition are key. The state of Nigeria's shipyards is chronic. In spite of Nigeria's maritime status in Africa, its shipyards can be counted on the tip of one's fingers; meanwhile, China has over ninety established shipyards—constructing a wide range of vessels' sizes and types and about thirty major new shipyards are warming up. The few shipyards in Nigeria are either too expensive for ship owners or their delivery pace is quite slow. Some Nigerian ship owners still prefer to take their vessels to Dakar in Senegal for repair because of the cheaper price, without considering the distance and the cost of travel to get there. Currently, Nigeria does not have a dry dock capable of maintaining large crude tankers. Large tankers sailing to and from Nigeria have to go

to South Africa for dry docking (Nigeria Liquefied Natural Gas Corporation). Dry docking of these large tankers could be a major source of income for Nigeria but, unfortunately, South Africa is profiting. It should be noted, though, that the Nigerian navy is now ready to open up its dockyard for maximum utilization. The Badagry Ship Repair and Maritime Engineering Company's proposed $1.5 billion dockyard project is an investment in the right direction. Praise must also be given to the Nigeria Liquefied Natural Gas Company for prioritizing local content in its shipbuilding and repair project.

Flagging a ship is a business relationship. One of the benefits of flagging a ship to the flag state is to generate revenue. Nigeria's ship registration system grapples because bureaucrats have not set a clear long-term vision. Liberia's registry keeps growing at a rapid pace because its flag is driven by core shipping and business-minded professionals. The Liberian flag is the second largest in world. The Liberian registry recently reached a 4,000-vessel registration milestone of more than 131 million gross tons. However, vessels registered under the Nigerian flag are ones of low tonnage. Nigeria has failed to use availability of cargo like crude oil and liquefied natural gas to market its flag.

Maritime is an industry driven by professional discipline. The appointment of Nigerian ship registrars and deputy registrars should not be based on a promotion system. The system was created with the NIMASA Act of 2007. Some members of the NIMASA staff deserve promotion due to their diligence and service to the nation, but patriotism is not enough here. Competence and professionalism are the yardsticks for driving a business organization like the ship registration system. If Nigeria truly desires to be the number-one Maritime Administration Agency in Africa by the year 2020, it must engage core professionals, rather than the usual bureaucrats.

The campaign for amendments of most of the existing Nigerian maritime and shipping legislations keeps amplifying. Amending the laws, in isolation of some basic infrastructural and developmental structures, will not solve the challenges. Nigeria must structure a number of factors: its maritime capacity building, ports' infrastructures, ship acquisition, shipyards and shipbuilding, channels dredging, shipping reforms, maintenance, and installation of safety facilities if it is really interested in making the laws and regulations workable.

The Cabotage Vessel Financial Fund (CVFF) was established by Section 42 of the Cabotage Act of 2003 to boost indigenous participation in coastal shipping and offshore operations by providing loan facilities to indigenous operators for ship acquisition. But, with this stipulation, ship owners are still stranded. The purpose of the CVFF is to encourage indigenous ship-owning investment; refine the nation's level of maritime technology and know-how; assist local maritime operators

to create synergy with foreign shipping and oil companies; empower Nigerians to effectively take control of the maritime activities of both Nigeria and the West African sub-regions; reduce foreign companies' influence and dominance; generate foreign exchange for the nation through freight rates; and help both the local shipping and oil companies, in terms of capacity and capability, to participate in the lifting of Nigeria's crude oil ,which composes over ninety percent of the nation's exporting trade. Thirteen years later, the Cabotage Fund has not been effectively implemented and disbursed, as participation of Nigerian shipping companies in marine transportation has yet to ameliorate. Part VIII of Section 44 of the Cabotage Act of 2003 empowers the NIMASA to collect a two percent surcharge on all vessel contracts involved in coastal trade and other tariffs, fines, fees for licences, and waivers under the Cabotage Act of 2003; deposit it with commercial banks; and administer the fund under guidelines proposed by the Minister of Transportation, subject to the approval of the National Assembly. Until now, the NIMASA has not been able to specifically say the accrued sum of the CVFF—several figures are in the air. The agency has also announced several conflicting dates for the commencement of the disbursement of the CVFF. It's incomprehensible how the NIMASA, with its partners, intends to disburse this huge fund without a credible, consistent, and transparent platform. However, the CVFF and other Nigerian ship-acquisition schemes are not the only victims of government neglect. Government programs designed to refurbish and repair Nigerian old vessels are also complete messes, and government keeps voting millions of naira into it every year. Twenty-one local vessels selected in 2011 by the NIMASA for repair have yet to be fixed. It is essential for the nation to right its ship acquisition programs because these will profoundly boost national income, employment, local content, and maritime business. The government guarantee system remains the most effective way of disbursing and managing a scheme like the CVFF. The establishment of a Nigerian national guarantee fund will drive the loan scheme, and provide credit risk and financial security to shipping companies who want to either buy or sell vessels, thus helping them mitigate the financial risks involved in the investments.

Disbursement of the CVFF is not the only challenge confronting its objectives; the nation also needs to look into the repayment system of this loan facility. The timeframe given for repayment of the CVFF loans is too short and will make repayment quite difficult for ship owners. Presently, Nigerian ship owners have extreme difficulty breaking even because foreign vessels have taken over all charterers and offshore companies. It is when local ship owners have fixtures and contracts that they can employ, create wealth, and ultimately repay, loans. Even

government cannot generate revenue when the local ships are idle. Non-patronage of the local ships has made a lot of ship owners close their shops. It will be counter-productive if the loans are granted, but the government fails to create an environment for maritime business to flourish. However, the majority of Nigerian ship owners are naturally wired not to repay loan facilities, even if they are swimming in profits. A legal framework for enforcing repayment of the CVFF loan facilities needs to be put in place. Nigeria's Ship Acquisition and Ship Building Fund (SASBF) failed in 1998 because local ship owners treated the loans as their heritance. All loans were disbanded with the money leaving. The non-provision of imprisonment for people who deliberately refuse to repay loans is still a lacuna in Nigeria's jurisprudence. It makes debtors not seriously consider the offence. It is time for Nigeria to join nations like Greece, the United Arab Emirates, and Switzerland in imprisoning individuals who fail to repay their debts and loans.

The proposed diversion of the CVFF to establish a new national carrier is another challenge confronting the loan scheme. The proposal is not only illegal, but also unfair. Rotimi Amaechi, Nigeria's Minister of Transportation, has refuted this proposal. The CVFF is a scheme where local shipping companies contribute two percent of their income and sweat to strengthen their participation in the nation's coastal shipping and offshore operations. However, to use such a fund to establish a national carrier, which would be operated and driven by foreign shipping companies, is like robbing Peter to pay Paul. None of the local shipping companies can bid for a national carrier status because they are practically invisible on international routes. No Nigerian-owned ship is currently plying international routes (Indigenous Ship-owners Association of Nigeria). Undoubtedly, Section 35(b) of the NIMASA Act of 2007 empowers the minister to grant national carrier status to a shipping company if a vessel operates on international routes and deep sea, and not in Nigerian coastal and inland waterways. But the government will be violating the provision of Section 42(2) of the Cabotage Act of 2003 if the Cabotage Fund is used for any other purpose(s) rather than to provide financial assistance to Nigerian operators in the nation's domestic coastal shipping and offshore operations. The Cabotage Fund is legally meant for the advancement of local content in Nigerian coastal shipping and to refrain from promoting any shipping company on international routes.

The idea of a national carrier is a welcomed development, especially where the nation earns no foreign exchange from freight rates. Statistics show Nigeria annually exports about 900 million barrels of crude oil and over 100 million tons of general cargo, and no Nigerian operator earns freight rate from the international carriage of these goods. Nigeria loses $700 million monthly to the dominance of

crude oil shipment by foreign ship owners (Nigerian Ship-owners Association NISA). Nigeria is also the only oil-producing nation without a national fleet; whereas Angola, which recently became an oil-producing country, has a fleet for its oil deliveries.

National carrier arrangement is not all about parading a fleet of ships or securing equity in vessels handling the nation's international carriage of goods. It must also prioritize maritime local content. A new proposed national carrier will further consolidate foreign dominance in Nigerian shipping and offshore operations if the local manpower is not sought. Hopefully, members of the committee, saddled with the drafting of a national fleet policy, will look into the concept holistically. Like oil and gas, shipping is also a huge project. It requires the right quality of national human capital to drive the ports, shipyards, ships, charter parties, ship investments and finance, freight derivatives, and the trading. Despite the numerous shipyards in South Korea, the nation still could not meet its orders because of human capacity and capability. Availability of shipyards alone without human capital is highly counter-productive.

Effect of Unlegislated Maritime Bills on Nigerian Port Reforms

The advent of port concessionary in 2006 brought in the private sector to drive ports operations in Nigeria, which also caused the Nigerian Port Authority to cease from being the permanent economic regulator of the ports. The National Transport Commission Bill was drafted to provide a new regulator for not only the ports, but also the inland waterways, railways, and roads. Unfortunately, the National Transport Commission Bill, Ports and Harbour Bill, and Maritime Zones Bill are still before Nigeria's National Assembly since the 5th Assembly (2003-2007) is unlegislated. Non-passage of these bills is severely disturbing the smooth regulation of the Nigerian maritime industry. However, when excesses of the concessionaires became unbearable, Nigeria had no choice but to appoint the Nigerian Shippers' Council (NSC) in 2013 as interim regulator of the ports, pending the enactment of the National Transport Commission Bill. The temporary appointment of the NSC was not only criticized by the concessionaires, but was subsequently challenged in court. If Nigeria's National Assembly had passed these bills, concessionaires would not have sought judicial interpretation of the roles, validity, and legality of the action of the NSC as the economic regulator of the ports at a Federal High Court in 2014. Justice Ibrahim Buba in Lagos upheld the appointment of the

NSC as the regulator in a lawsuit filed by the concessionaires against the NSC. The judge did not only declare the shipping line agency charge levied by the concessionaires as illegal, but also ordered the concessionaires to refund the illegal charges that had been collected since 2006 and be kept in the Cargo Defence Fund, a department under the NSC, for the benefit of the shippers.

The provision of a port regulator is an integral part of the port concession agreement between the Federal Republic of Nigeria and the concessionaires. It is meant to establish transparent and enforceable guidelines that will drive the objectives of the port reforms. The provision ought to have been established before the commencement of the port concession agreement. Obviously, if a permanent regulator had been in place, actualization of automated cargo handling, efficient pilotage, towage, dredging and allied port services, speedy cargo clearance, reasonable port operations rates, and forty-eight-hour port operations could have topped the agenda. Speedy cargo clearance and turnaround time for vessels are important to the port reforms because their influence on port traffic and cargo dwell time reduction is fundamental. What the Nigerian Customs Service needs to do in securing revenue, achieving speedy and cost-effective cargo clearance, and actualizing forty-eight-hour port operations is an electronic, single-window clearing system. This will phase out the problems of delay, corruption, and bribery, owning to multiple government agencies and Ccstoms officers' physical examinations. Nigeria yearly loses over $1 trillion to inefficiencies and corruption in the cargo clearing process, according to a report titled "Nigeria: Reforming the Maritime Ports." The concept of forty-eight-hour port operations will make Nigerian ports highly competitive in West Africa, mainly among the landlocked countries within the sub-region. The inability of the Nigerian Customs Service to install a transhipment tariff hampers the use of Nigerian ports in this way.

The Ports and Harbour Bill, on the other hand, was drafted to seek legislative framework for private sector participation in Nigerian ports and terminal operations, and to provide a bold vision in creating today's modern ports. Currently, the port concession agreement still lacks legislative backing, due to non-passage of the Ports and Harbour Bill. This does not give potential investors any confidence; it is also extremely difficult to reassure foreign investors about Nigeria's attitude toward the implementation of bilateral agreements. Many investors seem to be eyeing the exits.

Non-passage of these bills holds backs the full benefits of the port reforms in Nigeria. It allows abuses, illegal increment and collection of terminal charges, storage charges at the ports, and shipping lines agency charges. The free storage period has also been reduced from seven days to three by the concessionaires, while the demurrage period at the ports has

been decreased as well. However, the Ports and Harbour Bill did scale through a second reading on November 8, 2016, at Nigeria's House of Representatives. The House subsequently referred the bill to its committee on ports and harbours and waterways for further deliberations.

Neglected Areas Affecting the Growth of Nigerian Maritime Industry

The versatility of Nigerian ports creates opportunities for various sizes of vessels to call. But for Nigeria to generate revenue from these opportunities and to be known as one of the mooring locations for bigger ships, it has a lot of work to do in regards to capital dredging, pilotage, and breakwaters. Bigger vessels like the capesize, post-Panamax vessels, triple-E vessels, and super tankers are suitable to serve only large ports with a draft of up to 24 meters (78 feet). Berthing of these bigger vessels in Nigerian ports will improve the country's gross domestic product (GDP); increase the bulk movement of crude oil, petroleum products, and other capital goods; reduce operating costs and the time in transit for goods; and boost cargo-handling businesses and the turnaround time of cargoes. The depth of Nigerian waterways is still not enough to accommodate these larger vessels, and the warehouse capacities in major seaports in Nigeria are microscopic. A WAFMAX vessel of 4,500 TEU and 260 meters long is the biggest and longest to have ever docked in a Nigerian port. Nigeria's quest to become the hub of maritime activities in the West and Central African sub-regions will remain elusive without a deep seaport (Mr. Omar Suleiman – former MD of NPA). The investment ratio of 60:20:20 between the private sector and the federal and state governments in the development of some deep seaports in Nigeria is insufficient. Only the breakwaters, which the government provides, consume more than forty percent of both the federal and state governments to the port development cost. The government is also still responsible for the dredging and other infrastructures. The breakwaters at Escravos terminal are completely submerged, thereby destroying the buffer between the ocean and the river channel and restricting the draft to a maximum of 5 meters (Warri-based Shipping Trade Group). The non-functional nature of Nigerian ports has made it difficult for government to generate revenue from them. The ports in the Delta State of Nigeria comprise of the Warri port (the main port), the Koko port, the Burutu port, the Sapele port, and crude oil ports and jetties, and they are all victims of government neglect. Warri port is one of the Nigerian ports seriously suffering from capital dredging. Bulk carriers no longer call the

Warri port because the channel is practically blocked, as a result of non-dredging. Navigational buoys in the Warri port channel had been swept away by water, which makes safe navigation impossible; vessels get stuck in the channel for days and the government has no tugboats to rescue the grounded vessels (Warri Port Manager). However, the Nigerian Ports Authority recently purchased two new tugboats to enhance marine operations in the Lagos Pilotage district. The unavailability of a functional pilot cutter in the Warri-Sapele Pilotage district is disgraceful. The Warri port is so strategic to the Nigerian southeast market because of its proximity. From Warri to Onitsha, Anambra State is the largest market in eastern Nigeria; by road it is less than two hours, while it takes close to six hours from Lagos. The functionality of the Warri port provides an opportunity for goods to get to both the south and southeast areas of the country cheaply and timely.

The Nigerian Shippers Council and the Nigerian Ports Authority are enjoined to welcome fresh ideas on decongestion of Nigerian ports and to facilitate infrastructural development in the nation's dry ports. The survival of Nigerian dry ports is key to maritime businesses like ship broking and agency, freight forwarding, stevedoring, towage, pilotage, marine insurance and banking, port warehousing and storage, ship chandlery, and project cargo management.

Multi-modal transportation is another area that, if properly addressed, could be a gateway to the Nigerian ports' competitiveness. Multi-modalism is the reliance of many modes of transport, from water transport to rail, road, inland water, and pipeline. Nigeria must concentrate more on intermodalism because there must be some connectivity between the modes of transport. Multi-modal transportation has the capacity to help Nigerian market in terms of coverage, quick delivery of goods, minimization of logistic expenses, trade and commerce, revenue generation for government finance, and the development of related economic activities. Goods transported by sea should be able to get to the owner of the cargo, and subsequently to their customers, as soon as possible; through rail, pipeline, and road transport and vice versa. Multi-modal transportation is a very interesting approach to solving a big part of cargo mobility problems. Road traffic is a challenge to cargo mobility in Nigeria, mainly around the seaports in Lagos, because the movement of goods by road is popular in Nigeria. The roads are subjected to traffic gridlocks caused by container trailers and petrol tankers trying to access the Tin Can Island Port Complex, Port of Lagos (Apapa), and fifty-seven tank farms in Apapa. The Executive Secretary of the NSC Barrister Hassan Bello averred road access to the ports in Lagos has made the seaports unfriendly for businesses to thrive. According to him, traffic gridlock has contributed to the slow pace of port operations, noting that the

forty-eight-hour cargo clearance cannot be achieved if traffic management is not in place. The new ports in Lekki and Badagry, as well as Lagos, must feature fast cargo railway and pipeline networks to avert the road congestion in Apapa.

The porosity of Nigeria's territorial waters is a big threat to national income. The vulnerability of Nigerian waters is not only distracting foreign investments, but a lot of international ship owners are wary of fixing their vessels for charters that indicate Nigeria as the loading or discharging country. As result of this, NIMASA loses three percent levy on each vessel. The ships ought to be entering Nigerian waters, and this has really suffocated maritime businesses in Nigeria, especially coast pilot, ship chandlery, bunkering, freight forwarding, ship agency, and broking. Nigeria monthly loses about $1.5 billion, due to the vulnerability of its sea (United Nations Security Council). The unrest in the Niger delta region is causing a lot of maritime-related crimes at the Gulf of Guinea, and has also forced a drop in the country's crude oil production from nearly 2.3 million barrels per day to about 1.56 million. More than thirty-five maritime crimes were recorded in the first quarter of 2016 alone. Although the Nigerian navy has been responsive, a synergy with other Gulf of Guinea nations is needed to tackle this problem from inland.

Rather than depending solely on crude oil in Nigeria, shipbuilding and recycling can be looked to as great hubs of income generation and also capable of boosting the nation's fleet of ships. However, the ocean-shipping industry faces a tough time, mostly the dry bulk market. It was a dark year in 2015 for the dry bulk sector, while it was actually the best year for the tanker sector since 2008. The beginning of 2016 did not change the story of dry bulk market as the Baltic Dry Index (BDI) reached a new all-time low of 290 points in February. However, the BDI rose seventy-one points on November 11, 2016—the first time the BDI will been above 1,000 points since August 14, 2015, when the BDI sat at 1,055. All these market fluctuations, including a decline in new orders, changes in exchange rates, an increase in economic risks following the "Brexit" vote in the UK, and the growing labor unrest in China, Japan, and South Korea, could be worrisome to the shipbuilding industry. But, despite all these challenges, the market still looks strong. Ship owners ordered a good number of containerships in 2015, while new orders for dry bulk ships rapidly declined. According to the Clarkson Shipping Intelligence Network, seventy-five ships were ordered with capacity of 1.03 million TEU in H1 2015. Based on the containerships on order and planned deliveries, the supply capacity should see an increase of around 1.6 million TEU in 2017. The tonnage of the commissioned containerships, approximately 3.7 million TEU, is currently equivalent to around eighteen percent of the present global

container fleet's capacity of 20.9 million TEU (Hapag-Lloyd AG Q2 / H1 2016 Investor Report).

Even with the low ordering of new dry bulk carriers, there is still a large order booked for future deliveries. Reduction in dry bulk newbuilding orders is, however, a blessing to the ship recycling market. In the first half of 2016, 373 bulkers and general cargo ships were scrapped, representing 23.8 million tons of DWT-carrying capacity (Shipbroker Intermodal). The Baltic and International Maritime Council (BIMCO) reported that international dry bulk ship owners are scrapping ships aged eighteen years or older, while some Chinese owners have scrapped ships that were even younger. Nineteen ships out of twenty-eight built between 1998 and 1999 got demolished between 2013 and 2015. Scrapping of old ships will continue, and by 2018 and 2019, we might see an upturn (Virtual Shipbroker). As a matter of fact, a rise in ship recycling has contributed significantly to BDI, reaching a mark of 704 points as of April 2016.

Like Pakistan, India, and Bangladesh, which are known for the recycling of vessels, Nigeria is also a potential destination for ship recycling. The scattered shipwrecks in Nigeria's waterways have created gaps for investment and business. Nigerian waters are littered with a large number of abandoned ships (Nigeria's Association of Marine Engineers and Surveyors). Instead of spending almost $25 billion proposed by the Lagos state government to remove the wrecks, such a sum should be invested in dry dock. Recycling those abandoned ships in Nigeria will aid investment and save ship owners a lot of money from towing shipwrecks abroad for recycling. Ship owners abandon their ships in a country like Nigeria because the shipwrecks are very expensive to tow abroad. The law on removal of wrecks in Nigeria does not specifically define the geographical operational ambit of the receiver of wrecks, and the liability of the ship owner with regards to the cost of removing the wrecks is not well-defined. However, the Nairobi International Convention on Removal of Wrecks 2007, addressed a lot of fundamental issues on the international removal of wrecks, including the Lacuna in the Merchant Shipping Act of 2007. Nigeria needs to swiftly domesticate this international law because it would not be able to enforce the provisions of the convention on ship owners since it is not yet a law in the country.

One great advantage Nigerian companies have over their international competitors is the cost of labor in Nigeria is highly affordable. Cost of labor has always been one of the ruling factors in the business of shipbuilding and recycling. Because the cost of living in some countries is considerably lower than in others means they can produce certain items at a much lower cost. Big shipbuilding nations like China, Japan, and South Korea are currently expanding their production sites to more labor-friendly

countries, mainly where labor is inexpensive. Saudi Aramco's partnership with South Korea's Hyundai Heavy Industries (HHI) for the development of a shipyard in Saudi Arabia will add greater value to Saudi Arabia's economy, boost localization efforts, and help to create jobs for Saudi nationals (President/CEO, Saudi Aramco 2015). Ship owners prefer to break their vessels on south Asian beaches because the cost of labor is criminally cheap, and they can easily make dirty profit from the south Asian ship-recycling sharp practices. Out of 768 ocean-going vessels that were recycled in 2015, 469 were broken on the beaches of Pakistan, India, and Bangladesh. And seventy-nine percent of ships sold for recycling in the first quarter of 2016 ended up on the same south Asian beaches. Ships in Bangladesh, India, and Pakistan are frequently dismantled on beaches and piers, rather than in dry docks or dismantling slips (International Law and Policy Institute). Ship recycling in these countries is subject to less control and inspection. Nigeria can carve a niche for itself in this business by capitalizing on its cheap working population. The dynamism of Nigerian population is that it is relatively young and it can be regarded as a working population (International Finance Corporation, Nigeria).

The commencement of a U.S. shale gas boom and Russia's Yamal LNG project have prompted surging demand for both LNG and LPG carriers. Iran's 40 million and Nigeria's 22 million metric tons of LNG per year are also factors influencing a turnaround in the market of new LNG tankers construction. Nigerian bitumen deposit is estimated at 42.74 billion metric tons, (Blacks Greatest Homeland: Nigeria is Born Again), an indicator for more bitumen carriers. The commencement of sulphur emissions rules within certain geographic zones (Emissions Control Areas or ECAs) and the Energy Efficiency Design Index (EEDI) for new buildings to a thirty percent reduction in emissions by 2025 are indications toward a low sulphur-shipping industry in the future. It is significant to say that the introduction of global sulphur caps in 2012 has become a major driver in ship design. Therefore, the global 0.1 percent sulphur content limit intends to also increase demand for new ship engines.

One interesting factor about the shipbuilding market is that it is versatile. It serves all the markets: tanker, containership, Ro-Ro, dry bulk, multipurpose, etc., so it can easily switch to where there is a demand. For instance, with the sudden return of interest in Aframax crude carriers, 57 new orders were placed in 2015. This is the highest number of Aframax crude oil tanker orders since 2006 when 101 were ordered. In 2003, Hyundai's Vinashin yard in Vietnam shifted from its focus on bulk carriers into new business areas, such as tankers, with a fifty percent increase in its order book.

The shipbuilding industry is part of a sophisticated marine cluster with upstream and

downstream links, as well as connections to other clusters including logistics and electronics (OECD 2013e). The shipbuilding value chain is composed of many different activities from design to post sales and the high degree of modularity in the industry means production can be fragmented across different units and countries in a global value chain.

Availability of steel in Nigeria is one of the domestic links to shipbuilding. Nigeria is one of the world's largest producers of steel, but local demand for Nigerian steel is still very low and this limits the growth of the nation's steel industry. Many steel plants in Nigeria are currently operating below thirty percent of their production capacity as a result of low patronage (Manufacturers Association of Nigeria). Significantly, one of the commercial ways in which Nigerian steel can be locally patronized is through shipbuilding because it is a huge consumer of steel. Shipbuilding has been a major driver of steel consumption in Korea—as much as 77.6 percent of South Korean steel plate shipment went to shipbuilding (Korea Iron and Steel Association). The Nigerian shipbuilding industry is also capable of resuscitating the Nigerian marine equipment and ship spare parts industries. Around eighty percent of Korea's marine equipment output is produced by members of the Korea Marine Equipment Association (KOMEA). KOMEA companies recorded production worth $11.9 billion in 2011 (Korea Iron and Steel Association) and are still growing. Algeria's heavy investments in port capacity and skills development helped the nation to jump straight into the ten fastest-growing ship parts trading nations. If Nigeria is to revamp its ship construction industry, it will require massive investment, scientific industrial programming, a robust subsidy arrangement, a structured work force and private sector, and smartness in negotiating strategic partnerships and bilateral agreements with international friends.

Conclusion

Nigeria remains a new destination for future maritime investments, but no one will invest in a country where there is fear and uncertainty, policy inconsistency, and no rule of law. At the moment, Nigerians are not even investing in their own economy because they are afraid of the Economic and Financial Crimes Commission probing into the sources of their funds. One vital point worth noting is that solutions to Nigerian economy woes are inherent. However, that does not stop the nation from cementing synergies with non-Nigerians; the reality is that Nigeria needs to dutifully harness its natural and human

endowments for national gain.

Until Nigeria embraces diversification of its economy; total overhaul of legislation, institutions, and regulatory framework; development of local content in the maritime industry; and professionalism as the yardstick for appointing maritime administrators and practitioners, its maritime industry will continue to face obstacles, and the hope to tap maritime revenue estimated to generate $7 trillion annually will remain a mirage. The Nigerian government is expected to demonstrate a strong political will in diversifying the economy, but it seems President Muhammadu Buhari appreciates oil and gas more. The Ministry of Petroleum Resources, under President Buhari's supervision, is set to present a new national oil policy, national gas policy, downstream policy, and fiscal reform policy to the Federal Executive Council of Nigeria. These new policies are to provide clear-cut policies, coordinate the business relationship between government and investors, reflect current trends in the global oil industry, and address fiscal issues in the petroleum industry. However, the Nigerian maritime industry is being treated as an orphan.

Nigerian maritime is an industry with no direction. The current shipping policy in Nigeria, the National Shipping Policy Act of 1987, was enacted following Nigeria's ratification of the United Nations Code on Trade and Development (UNCTAD). The government is making no effort to replace this obsolete and faulty act. Even the Nigerian Maritime Administration and Safety Agency have no clearly outlined vision for national maritime policy. A tailored national maritime policy that will provide definite long-term vision and an action plan for shipping reforms built around direct participation is what Nigerians are anticipating. Those in charge of these proposed reforms in Nigerian shipping should be conversant with Section 17 of the Nigerian Investment Promotion Commission Act of 1995, which allows a non-Nigerian to invest and participate in the operation of any enterprise in Nigeria because it contravenes the principle behind Cabotage Act of 2003 and could be a big challenge to the prospect of local content in Nigerian shipping reforms. An oceans policy is also needed in Nigeria to modernize the nation's ocean management; the port concession agreements are overdue for review; and the Presidential Committee on Development of the Maritime Industry 2012 Report also deserves implementation.

Endnotes can be found online at http://apj.fas.harvard.edu/

Historical Antecedents and Paradoxes that Shaped Kenya's Contemporary Information and Communication Technology Policies

BY DOUGLAS GICHUKI, ARTHUR GWAGWA, AND ISAAC RUTENBERG

Abstract

Kenya National Information and Communication Technology (ICT) Master Plan 2013/14 -2017/18 is an ambitious undertaking, poised to cement Kenya's position as Africa's leading ICT Hub. The fact it is a part of, and derives strength from, the 2006 National Information and Communications Technology Policy (policy) demonstrates the policy is responsive to domestic and global developments. Since its adoption, it has provided a normative framework through which the Kenyan ICT sector has hugely contributed to the country's economic growth. Most noticeable has been the growth in mobile commerce, with more than two-thirds of the adult population engaging in it, making Kenya the world leader in mobile payments.

Although Kenya has come a long way in introducing liberal market reforms that have immensely benefited the technology sector, policy challenges remain. Just like most major economies, such as China, the government has actively promoted and supported the development of technologies that bolster the horizontal flow of information, but at the same time, has devoted substantial efforts to control the substance of information flowing via these technologies. Kenya, therefore, needs to introduce a number of policy reforms, key among which is addressing the current policy disjuncture between the policy's liberal values on the one hand and the draconian and media national security laws.

Keywords

Kenya, Information Communication Technology, information control, ICT policy, ICT policy stakeholders

Introduction

The Global Entrepreneur Summit, which took place in Nairobi in July 2015, marked a global watershed recognition of Kenya's quantum leaps in the ICTs sector and its impact on rapid economic growth. The impressive facts and statistics reveal Kenya as one of the few successful examples of technological adoption in Africa's transitional markets, beyond Silicon Valley's well-developed, technology-based entrepreneurial ecosystems. Out of a population of 44 million, there are 29.6 million Internet users in Kenya, representing a 69 percent penetration rate, while mobile penetration stands at 84 percent. According to the July 2015 sector updates by the Communications Authority of Kenya (CA), the amount of international Internet bandwidth available in the country grew to 1.6 Gbps. The used bandwidth increased by 57 percent to 783,761 mbps. The mobile phone and 3G modems continue to dominate in provision of connectivity.

The growth of ICT access in Kenya has been attributed to massive investments in infrastructure from telecommunications service providers, as well as aggressive promotions to entice users. In 2014, the Kenyan government launched the National Optic Fiber Backbone, which has now connected fifty-seven towns in thirty-five counties. This was aided by fairly market-friendly policies that encourage innovation, a knowledge-based economy, and foreign investment.

Improved access to mobile, fixed line, and fiber optic broadband has aided a culture of innovation, as Kenyans have been on the forefront in developing Internet-based services and applications that are locally relevant to the Kenyan economy and society. In the field of mobile commerce, the figures are impressive. More than two-thirds of the adult population engages in mobile commerce, making Kenya the world leader in mobile payments. At 86 percent penetration in Kenyan households, mobile payment such as M-Pesa® is redefining the ways in which Kenyans perform transactions and has also facilitated financial inclusion by promoting savings and financial transactions among the unbanked.

The need to access these applications, platforms, and services has also, in turn, had a reciprocal, catalytic effect on the numbers that use mobile phones. These innovations have impacted Kenyan political and economic activity in

other fields, including citizens' participation and agriculture. The Kenyan ICT sector has also attracted investment from international corporations, including investments toward the establishment of local Internet exchange points. For example, the Google cache server helped lower the latency of all Google traffic. Another example is the IBM Research – Africa campus, which opened in Nairobi in 2013 as the first commercial technology research facility on the continent. The Facebook Africa Policy division has been collaborating with the Center for Intellectual Property and Information and Communication Technology Law in Kenyan ICT multi-stakeholders policy discussions.

Yet, in the middle of such progress, especially on the economic front, signs of relapse have been noticed. The government has passed laws and introduced measures that restrict civil liberties, ostensibly as anti-terrorism measures, as well as to diffuse ethnic tensions. As other eastern African countries like Ethiopia have demonstrated before, without appropriate safeguards, technologies of expression could easily be turned into tools of repression used to curtail the free flow of information, with potential impact on long-term economic growth. This can be avoided if the state's response to emerging threats such as terrorism and cybercrime are curtailed to a point where they are necessary to achieve legitimate aims, are prescribed by the law, and are proportionate to the aims being pursued. By reviewing Kenya's history in ICT policy formulation, the country can learn from its past and avoid prospective policy relapses. This paper seeks to provide a review, explore the ongoing impact of such a relapse to the extent that it is occurring, and provide recommendations for strengthening the impact of ICT through effective policy.

Through a combination of the "rationalist" and the "behaviorist" approaches to policy analysis—which examines policy as an outcome of complex social, political, and economic interactions—this paper assesses the evolution of Kenya's ICT policy in the areas of telecommunications, broadcasting, and the Internet from 1963 to present day. In developing the analysis that follows, this paper is guided by two main questions. First, to what extent have Kenya's successive governments' media policies since its independence shape the origins, course, and outcomes of the country's ICT sector? Second, what were the contextual and institutional channels through which policy is made, and to what extent have these institutional arrangements shaped and influenced the stakeholder networks, processes, and power relations through which the Kenyan ICT policies are negotiated? Data for this research was gathered through desktop research and through in-depth interviews with experts in ICT, media policy, and/or governance in Kenya.

The paper has four sections: 1) the illiberal roots of Kenyan

media policy; 2) the digital age and the liberalization agenda; 3) the factors that shaped the adoption and implementation of the National 2006 ICT policy; and 4) resurging illiberalism to advance the goals of peace, security, and prosperity. Suggestions are provided in the conclusion. Overall, the paper observes that although Kenya's liberal market reforms enhanced the technical and regulatory capabilities of its ICT sector to drive economic growth, the overarching political regulatory framework remains unsatisfactory and has been worsening as seen by recent legal and policy measures that curtail the exercise of civil liberties online.

The Illiberal Foundations of Kenyan Media Policy

The roots of Kenya's modern-day digital information and communication technology can be traced back to the earliest submarine cables connecting the country to the external world that were laid by the Eastern and Southern Africa Telegraph Company in 1888. These largely connected British administrators in the colony and the few settler farmers. After independence, the East African Post and Telecommunications Corporation (EAPTC), owned by Kenya, Uganda, and Tanzania, served as the main provider of telecommunications and postal services in the region until 1976 when EAPTC eventually disintegrated amidst acrimony, paving the way for Kenya to put in place a homegrown ICT policy.

When Jomo Kenyatta came to power in 1963, he inherited a fairly free and fair media, albeit foreign-owned. Despite his reputation as the Republic of Kenya's founding father and liberator, under the guise to strengthen the state his administration introduced restrictions that curbed media freedom, mainly due to partisan reporting. An example is the Official Secrets Act of 1968, which etched away an already narrowing media space. The negative impact of this law on the media was immediately felt at the National Media Group where editorial controls and heavy-handed state censorship contributed to partisan reporting and the departure of independent and freethinking editors.

From 1978, the newly sworn in Daniel Arab Moi administration inherited a severely partisan media and introduced further draconian measures in a bid to consolidate political power. A large number of Kenyans lost trust in mainstream media, leading to the establishment of various underground press outlets such as Pambazuka, Pambana, and the Organ of the December 12 Movement. These outlets called for media reforms, which in some cases, led to the arrest and

prosecution of some of their editors, as well as the ban of independent critical media. The government also ordered local media to stop publishing news by foreign wire services because they were allegedly misinforming the world about events in Kenya. This was in addition to the deportation of a British journalist in December 1988 for reporting on the queue-voting fiasco.

The Moi administration also introduced far-reaching authoritarian reforms, which included nationalization of a privately owned press, like the Voice of Kenya (VOK). A public radio broadcast service was renamed Kenya Broadcasting Corporation and became government's mouthpiece. The government rationalized their heavy-handed approach on the need to protect national security. They claimed that, as a fragile, transitional democracy, Kenya needed stability, and therefore the media was meant to promote national unity and economic development. However, in reality, Moi's policies were designed to fend off growing political opposition and public agitation against economic liberalization that affected the standards of living of only a select few.

In 1991, owing to both internal and external pressure for reforms, the government adopted a multi-party political system. This paved way for the liberalization of the media and communications sectors, as seen by the proliferation of independent newspapers and magazines such as *Economic Review* and *Finance*. Despite these policy reforms, there were further slippages in both media policy and practice, which saw the arrest of journalists and confiscation of printing presses. The government also went on to sponsor legislation that regulated media operations.

The Digital Age and the Liberalization Agenda

The Moi administration witnessed the advent of new technologies in Kenya, in particular the computer and the Internet. However, throughout the 1990s, it viewed ICT with great suspicion, partly due to its fear that computers might cause a loss of state secrets or pose a threat to national security. The administration was also concerned such technologies would take away jobs, although the underlying reason for the skepticism was its fear of opposition, as the opposition party was better able to mobilize and assert itself through these new technologies.

The government was compelled to liberalize the media by external forces, for example, globalization, which partly fueled an increase in the number of media houses. Further, economic demands, as well as pressure from donors and civil society, forced the government

to review the laws governing the media. In particular, they demanded the abolition of the restrictive media, liberalization of airwaves, and harmonization of the overlapping Kenya Post and Telecommunication Act and Kenya Broadcasting Act.

In response to these external demands, the attorney general appointed Hillary Ngweno to head a task force on press law to review and make recommendations on the freedom of both print and electronic media. The Kenya Mass Media Commission Bill of 1995 and the Press Council Kenya Bill of 1995, both of which resulted from the review, were rejected by most non-state actors on the grounds they did not adequately create a framework that guaranteed access to information. There was further discussion the bills didn't adequately protect journalists, publishers, and broadcasters, and also that they gave government unfair representation in the proposed regulatory body.

In the face of growing media and civil society vigilance, government discarded the proposed laws and appointed Horrace Awori in 1996 to head another task force. In 1998, the new task force recommended the establishment of the Independent Broadcasting Authority (IBA), tasked with the responsibility of regulating the allocation of frequencies in the broadcasting and telecommunications sector. However, the government instead established the Communication Commission of Kenya (CCK). Although not substantially different from the proposed IBA, the move demonstrated government's historical political interference and control over the ICT sector. Particularly, it is indicative of how the Moi government dominated the media policy agenda.

Such control explains why the media rebelled again against government-led review processes and instead endorsed the media review task force led by the Kenya Union of Journalists (KUJ). One of the KUJ task force's accomplishments was its proposal of the media bill of 1998, which proposed the framework for the free and independent press for the task force. The KUJ made recommendations for the establishment of an independent mass media commission, the institution of the Media Council of Kenya, and for the replacement of section 79 of the 1963 Constitution of Kenya with new provisions that guaranteed freedom of the media; protection of journalists, publishers, broadcasters; and right of access to information.

At first, the government did not take up the recommendations. However, pressure to review media laws increased until Moi reluctantly compromised. In 1997, the government repealed articles 52, 53, 54, 57, 58, 66, 67, and 121 of the Kenyan 1969 constitution that hindered freedoms of expression and assembly, and which criminalized the free flow of published or documented information in Kenya. The Moi government slowly implemented these new policies until it left power in 2002.

As a sign of its lack of commitment to transparency, and how it reluctantly embraced reforms, the first ICT policy drafts emanating from the Moi administration were closely guarded secrets that did not welcome any stakeholder participation. These were all authored by the National Communications Secretariat (NCS), which was situated in the office of the president. Outside of government, the Computer Society of Kenya was creating a draft for an informatics policy, while UNESCO was attempting to establish a regional informatics network.

As the 1990s drew to a close, the Kenyan private sector increasingly pushed for policy changes that would open the media sector for domestic companies. These efforts were largely channeled through chairpersons of private sector associations sitting at the National Y4K Steering Committee. Recommendations from the committee to integrate ICT into national development did not, however, reach cabinet due to President Moi's anxiety over a free media.

By the late 1990s, however, the Moi regime was both politically and economically weak and greatly susceptible to external donor pressure for democratization and liberalization. Donors also demanded reform of the print media and the ICT sector. For instance, the privatization of Telkom was made a precondition to resume talks with the International Monetary Fund and the World Bank. The Moi administration was increasingly encountering a dynamic and vociferous opposition from civil society, religious leaders, and opposition politicians.

In response to donor pressure, the government issued two policy statements. In Sessional Paper No. 2 of 1996, it issued a policy statement regarding the liberalization of the telecommunications sector. The deregulation process was further spelled out in a 1997 Sector paper. The 1998 Kenya Communications Act, which repealed the Kenya Posts and Telecommunications Act, put forth measures to liberalize the telecommunications sector; for instance, by opening up of the telco sector to private enterprises. This move resulted in companies like Vodafone entering the Kenyan market. It also split Kenya Post and Telecommunication into five separate entities, including a fixed-line operator (Telkom), a regulator (the CCK), and an in-house, policymaking organ (the NCS).

According to the Kenyan Ministry of Finance and Planning (MFP) 2001 reports, the ICT policy agenda was again forced on a reluctant government by multilateral donors through the Kenyan Poverty Reduction Strategy Process. The Poverty Reduction Strategy Paper (PRSP), published in June 2001, was developed under the coordination of the United Nations Development Program, the International Monetary Fund, and the World Bank in a consultative process involving government,

civil society, the private sector, religious organizations, youth, women, and other marginalized groups. The paper placed ICT as one of eight sectors needing prioritization to help reduce poverty and spur economic growth.

The Road to Kenya's National 2006 ICT Policy

It was in the context of increasing forced democratization and increasingly free media that Mwai Kibaki came to power in 2002 under the National Rainbow Coalition (NARC). In March 2003, the NCS convened a stakeholder's forum and publicly released the first draft of the government's ICT policy, which was modeled highly on the Common Market for Eastern and Southern Africa (COMESA) ICT framework. Although this was a commendable attempt to formalize Kenya's first ICT policy, and a high watermark distinguishing Kibaki's administration from the Moi regime, the move was largely criticized for lacking a wider private ICT stakeholder involvement or input. The new framework provided a forum for government institutions dealing with ICT. The NCS did not endorse the policy recommendations of this forum. Despite these deficiencies, the structural changes in the Kibaki government in 2003 came to affect the ICT sector in progressive ways.

In June 2004, President Kibaki restructured the institutions dealing with ICT policy, eliminating the Ministry of Information and Transportation and merging broadcasting and telecommunications into the newly created Ministry of Information and Communications, directed by Raphael Tuju. The new structure yielded five organizations that coordinated the Kenyan government's actions in the ICT sector. These included the Ministry of Information and Communications; the CCK—the regulator; Government Information Technology Service (GITS), which provides computer and technology support for ministries; the NCS, which advised the government on communications policy; and the Directorate of E-Government.

The newly elected NARC government also led an economic recovery workshop in 2004 in an effort to promote economic growth. The workshop proposed the mainstreaming of ICT in all government operations, especially the adoption of a "master plan" for e-government by the end of June 2004, but also an improvement of the regulatory framework. The 2004 e-government strategy was aimed at improving government efficiency through reciprocal information sharing, encouraging citizens' engagement of the government, and attracting foreign direct investment.

Intra-Government Institutional Dissonance

One core challenge for the Kibaki government with respect to developing an ICT policy was the chaotic dispersal of institutions making ICT policy in government. The Ministry of Transport and Communications was responsible for telecommunications and postal matters, whereas Information and Tourism was in charge of the electronic media and broadcasting. Although the e-government directive was a welcome initiative, government continued with its adhoc approach to ICT policy and strategy, exacerbated by turf protection by various government agencies. For instance, the ICT strategy was developed before an ICT policy could be developed. At best, the implication was the strategy preempted the policy; at worst, an admission that policy statements did not actually guide government implementation actions. It was therefore not clear how the e-government directorate in the office of the president would work with the new Ministry of Information and Communications or with GITS in implementing the strategy.

Dissonance Between Media and ICT Policies

While Kenya was clearly moving forward with ICT liberalization and innovation, just like the previous administrations, the Kibaki government didn't harmonize the ICT and media policies. During the Kibaki era, the liberalized media continued more or less unabated until 2005, when President Kibaki lost a referendum vote on the new constitution to a well-coordinated opposition led by Raila Odinga. This prompted his government to regress openly on its much-touted respect for the media by invoking Section 88 of the Communications Act of 1998, raiding media houses and seizing broadcasting equipment.

Generally, the main source of news had been the mainstream printed press in the years preceding Kibaki's presidency; through non-traditional online resources such as blogs and social media, Kenyans could now share and disseminate news in alternative platforms. This was partly because of an increasing democratization and Kibaki's institutional permissiveness on ICT growth, and partly due to the inherent ability of online activities and reporting to be (somewhat) anonymous. This resulted in frequent and unmediated conversations by Kenyans at home and in the diaspora, who could access news through the digital editions of the main dailies, as well as blogs and social media.

It could be argued that although the development of online media was a global phenomenon, it was aided to take root in Kenya by Kibaki's permissiveness. However, the raid on the media houses is an indication of dissonance in policies governing media and those governing ICTs. Such dissonance, it could be argued, was out of step with the growing global media convergence.

The government's challenges in implementing an effective ICT policy eventually underscored the need for increased engagement with the private sector, civil society, and international stakeholders. Although Kibaki had initiated work with the private sector since 2003 to promote economic growth in Kenya, the inclusion of ICT represented a radical shift in Kenya's approach to ICT policymaking. In addition, there was a marked insistence on employing qualified technocrats to run ICT policy formulation and operations in government.

These policy entrepreneurs created a conducive environment for civil society and the private sector to have open conversations about the direction of Kenya's ICT policy. By 2004, the private sector was fully engaged in the ICT policymaking process. After the launch of the government's 2004 E-Government Strategy under the leadership of Juma Okech, the Kenya Private Sector Association and the head of the civil service agreed to bimonthly meetings between the private sector and government to review progress and discuss pertinent issues. The Kenya ICT Federation (KIF), a group of private sector ICT organizations, also initiated frequent meetings with government and head of e-government.

It is also important to note that when the IMF supported Kenya's recovery out of its economic stagnation in the 1990s, it made it one of the conditions for the Moi government to liberalize the media, as part of its poverty reduction strategy framework. This liberalization that undergirded media policy reform cleared the path for the private public sectors inclusive agenda in the policymaking process that culminated in the liberal 2006 National ICT Policy. One major revolutionary outcome from this was the three undersea fiber optic cables that landed at the Kenyan coast in September 2009. They catalyzed an ICT revolution marked by cheap access to GSM feature phones and easy access to broadband Internet.

On November 18, 2004, the second draft of the national ICT policy, which had been put together by KIF, Kenya ICT Action Network (KICTAnet), a multilateral donor fund, the International Development Research Center of Canada (IDRC), and the Ministry of Information and Communication, was issued in a "National ICT Visioning Workshop." At the workshop, multi-sectoral teams designed sector visions around education, health, government, trade, and industry; small and medium enterprises; and agriculture. Unlike the 2003 draft of the national ICT policy that was rejected, the second draft policy identified ICT as one of eight sectors of Kenya's economy. Its provisions focused mainly on ICT education and training, tax reduction, and tax incentives on both computer hardware

and software. It also addressed impediments that discouraged the growth of e-commerce.

The differences between the 2003 and 2004 drafts of Kenya's national ICT policies were important. The 2003 draft was a result of an exclusive government process, while the 2004 draft included many private aforementioned stakeholders. The 2003 process had failed its objective to collect and collate views of stakeholders drawn from the public and private sectors as a basis for preparing Kenya's national ICT policy. Though more than twenty background papers were presented at the five-day workshop that resulted in the 2003 draft, the policy remained confidential, circulating within government offices with no stakeholders being allowed access to it until the national ICT visioning workshop convened in November 2004. The resulting draft ICT policy from the workshop was then published for wider stakeholder input before it was finalized in 2005.

It is on this basis that on March 9, 2005, the ICT community, comprising private sector operators, academics, and NGOs, gathered for the second National ICT Convention, organized by KICTAnet. Civil society was represented by Catalyzing Access to ICTs in Africa (CATIA), the Association for Progressive Communications, the Kenya WSIS Civil Society Caucus, and the Kenya Community Media Network. The private sector was represented by KIF, the Telecommunications Service Provider Association of Kenya (TESPOK), and the Computers Society of Kenya. Donor groups such as the IDRC, UNDP, and UNESCO were also present.

Unlike the 2003 version, the 2004 draft policy addressed the issue of uncoordinated dispersal of functions, and in addition, the issue of broadcasting, which was previously housed in the Ministry of Information and Tourism. The Ministry of Information and Tourism did not closely cooperate with the Ministry of Transport and Communications, which was responsible for telecommunication regulation.

In a move to reset the relationship between government and the various private stakeholders on ICT policymaking, the Ministry of Information and Communication called for public input on the 2004 draft of the national ICT policy. An electronic communication forum was developed by the Telecommunications Service Providers of Kenya, an umbrella body of all telecom providers. The compilation of their viewpoints was led by Alice Munyua, director of KICTAnet. CCK management also developed a website on which comments or inputs could be posted to improve the 2004 draft ICT policy. The reports of Alice Munyua and the CCK—both based on the public's comments—covered a number of issues that were included: environment sustainability of ICT, the use of ICT for poverty eradication, universal access in rural areas, promotion of local content on ICT, and protection of the CCK from undue political

interference. These reports were handed over to the ministry in April 2005. Having used the 2005 reports from the private sector to revise the 2004 draft, the Kenya national ICT policy was finally adopted by the cabinet in January 2006.

Kenya's 2006 national ICT policy has as its mission to improve the livelihood of Kenyans by ensuring the availability of accessible, efficient, reliable, and affordable ICT services. It offers the broadest reach on stakeholder involvement in Kenya's ICT sector, designating roles to various categories of the ICT stakeholders in a way that limits government's mandate to that of an enabler of policies that are conducive to private sector investment in ICT. It also enables development partners to support the capacity of building in the areas of ICT in collaboration with the Kenyan government; civil society, meanwhile, is given room to inform ICT policymaking, specifically, concentrating on ICT access, ICT for learning, poverty reduction, and good governance.

Implementation of the 2006 National ICT Policy

Since the adoption of the 2006 national ICT policy, the Kenyan ICT sector has hugely contributed to the growth of the Kenyan economy. The growth is most noticeable in mobile commerce, with more than two-thirds of the adult population engaging in it, making Kenya the world leader in mobile payments. The ICT impetus has, in part, been supported by the post-independence, market-friendly policies that have also contributed to overall growth in the private sector.

A major strength of the national ICT policy is its organic nature, demonstrated by its responsiveness to current challenges in the context of Kenya's economic aspirations. This is seen in the Kenya National ICT Master Plan launched in 2013, which will further enhance an enabling policy, legal, and regulatory environment of the ICT sector in Kenya.

The master plan signals Kenya's national commitment to universal Internet access, in particular a broadband plan across policymakers and stakeholders, though Kenya should incorporate more detailed performance indicators in its plan to ensure transparency and accountability. Further, and in line with Vision 2030, the master plan can only work along with similar plans on agriculture, manufacturing, tourism, education, and other areas mentioned in the vision. The ICT legacy planning should not be on electoral cycles, or other political considerations' its stated objectives should transcend the politics of the day.

However, for the policy to yield maximum impact, not only in the economic realm, but

also in governance, the country needs to reform its political culture, especially the role of the media and information technologies in the advancement of civil liberties. The antecedents of the current challenges can be linked to the politics of the formative years of the Kibaki administration, especially in 2005 when the administration launched an onslaught of the media after losing in a constitutional referendum to Raila Odinga. When the 2007 post-election ethnic violence erupted in Kenya, the government used the same law to suspend live broadcasting. It did so purportedly as a measure to curtail ethnic tensions. The 2007 election highlighted the uneasy tension between Kibaki's liberal economic policies—particularly as exemplified in the national ICT policy on one hand—and an undemocratic culture in his administration, mainly through his administration's control of main media platforms. While others think Kenya's rapid economic development will eventually lead it to achieve a full macro democratic stature, others, citing the Kibaki era, argue economic growth did not lead to it attaining a full democratic stature. Kibaki helped Kenya reach some of its highest levels of economic growth, but failed to address massive corruption, which led to claims of fraud in his 2007 presidential election, and in turn exploded into violence.

The contradictory role of the ICT was amplified in the 2007 and 2013 elections. Whereas in 2007, the media (including social media) was used to foment ethnic violence; in the 2013 elections, the media, moved to the other extreme, with the overarching message on ICT platforms of "peace at all costs." As a result, the government enacted laws and relied on old ones to enforce civil obedience and also, ostensibly, to quell terrorism threats. As an example, on December 5, 2013, Kenya's National Assembly passed two contentious bills: the Kenya Information and Communication (Amendment) Act and the Media Council Act. The enactment of the new media law came amid measures to reinforce government control over the Kenyan media in the wake of the September's 2013 attack by Al-Shabaab militants on the Westgate shopping mall in Nairobi. Critical reporting exposed ineptitude in the government's ability to handle the insurgency, and caused it to rethink broadcasting guidelines for issues that affect trust in public institutions and territorial integrity. In the recent report submitted to the African Commission, the Kenyan government said it "acknowledges the threat that an unregulated or rogue media poses to national security."

In December 2014, President Kenyatta signed into law the Security Laws (Amendment) Act of 2014 amid protests from human rights defenders. The law, among other provisions, allows admissibility in court of electronic messages and digital material, regardless of whether or not they are in their original form.

These measures are also a threat to innovation, in particular

the flow of money through mobile applications such as M-PESA in the COMESA region. For instance, in the aftermath of an attack on a University in the Kenyan town of Garissa in April 2015, the government made a sweeping declaration that ordered all banks and microfinance institutions to stop working with people thought to be associated with al-Shabab.

According to Opennet, while these actions and related legal provisions are aimed at controlling hate speech, they have had an impact on intermediary liability, free speech, and media freedom online, as well as on privacy of communications. This is somewhat similar to Rwanda where freedom of expression has been curbed and online media heavily regulated in the wake of the 1994 genocide, during which traditional media fueled ethnic tensions.

Conclusion

From the above discussion one conclusion can be drawn. The trajectory of the Kenyan ICT story reveals that, although Kenya's liberal market reforms enhanced the technical and regulatory capabilities of its ICT sector to drive economic growth, the overarching political regulatory framework remains unsatisfactory and has been worsening. This is seen through the successive contested elections and recent authoritarian measures that curtail the exercise of civil liberties online. The result is a drop in Kenya's state of freedom in the world from "partly free" to "not free." President Kibaki helped Kenya reach some of its highest levels of economic growth, but failed to address massive corruption, which led to claims of fraud in his 2007 presidential election, and eventually exploded into violence. Yet, Kenya is not alone in this. Such paradoxes are also seen in major economies such as China, where the regime actively promotes and supports the development of technologies that bolster the horizontal flow of information, but at the same time, devotes substantial efforts to control the substance of information flowing via these technologies.

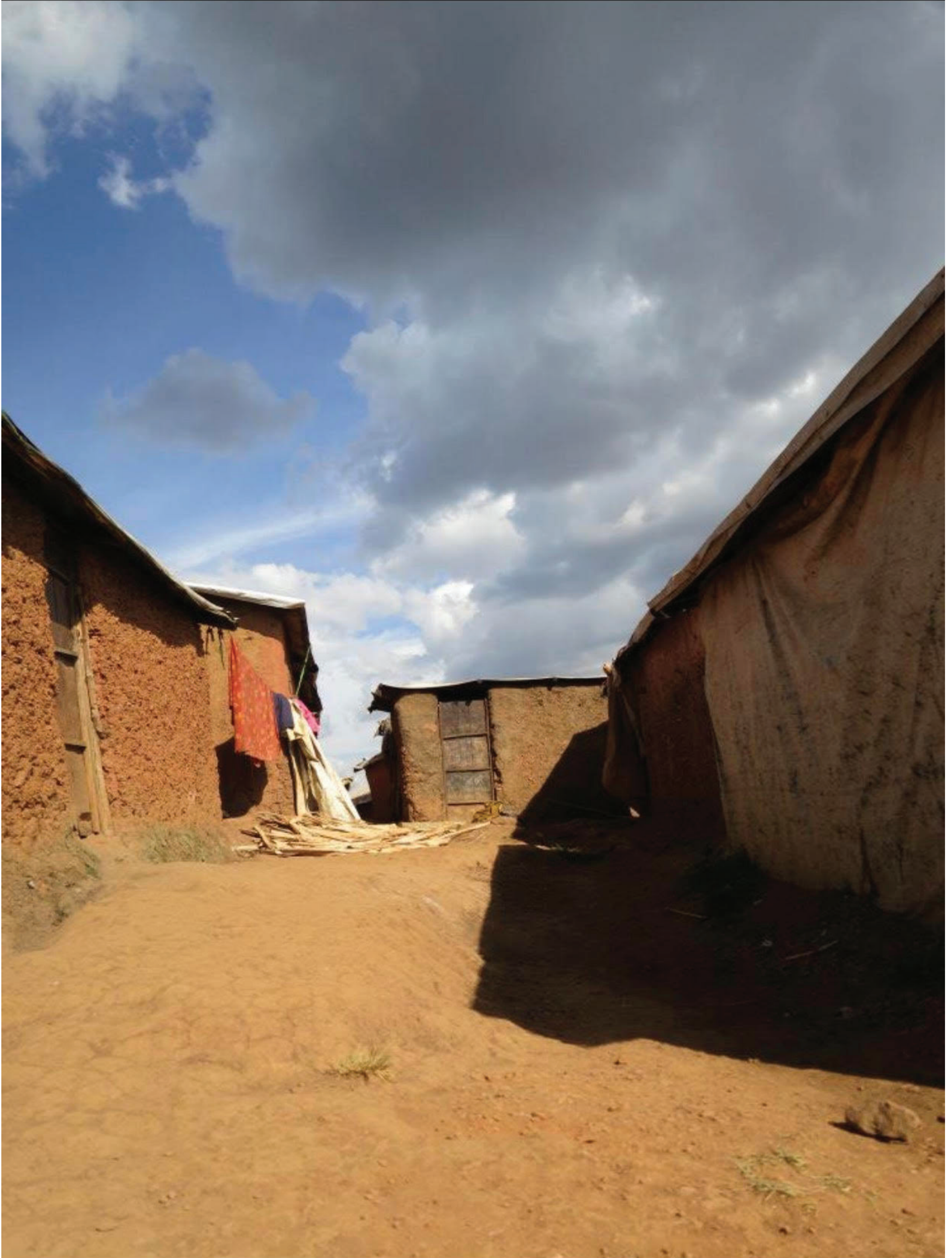
At a policy level, Kenya needs to address these policy dissonances in order to ensure a convergence between the values embodied in its progressive ICT sector and national political culture. This will ensure the sector facilitates information access to all in line with the United Nations sustainable development goals, which, alongside other basic rights, include the right to access information. Kenya can do so by realigning media laws with its 2010 bill of rights, which seeks to protect and promote the right to freedom of information and expression, including in the context of modern information technologies.

Although Kenya's 2006 ICT policy makes no reference to freedom of expression— which is explicitly mentioned in Kenya's 2010 constitution—the reference can still be incorporated as a cross-cutting theme in subsequent ICT masterplans and strategies.

An alignment of the ICT sector with the constitution, as well as international norms and standards, will enable Kenya to achieve a balance between legitimate national security considerations and individual liberties. Achieving this balance will pave the way for the ICT sector to play a digital diplomacy role that transcends local and regional ideological tensions.

On a positive note, the subsequent ICT master plan is an indication the government is not flatfooted, but is nimble in its application of the national ICT policy. The master plan should be implemented in the framework of Kenya's socioeconomic blueprint Vision 2030, which pushes for the realization of a middle-income, knowledge-driven Kenya in 2030. By doing this, the tenets of rule of law that undergird Vision 2030 will permeate every aspect of the implementation, as well as sit well with the principles of a fair, free, and professional media spelt out in the Kenya Information and Communications Act of 1998. In addition, the rule of law should be seen in the application of effective anti-trust laws to counter entrenched nepotism and corruption in the media industry.

Endnotes can be found online at http://apj.fas.harvard.edu/



Gihembe refugee camp in northern Rwanda on World Refugee Day,
Hillel Bavli, Harvard Graduate School of Art and Sciences

The End of the Commodities Super-Cycle and its Implications for the Democratic Republic of Congo in Crisis

BY LAURE GNASSOU

Abstract

Peace is a prerequisite for a full implementation of the 2030 agenda for sustainable development and the African Union (AU) agenda 2063. Preserving peace remains a challenge in the Democratic Republic of (DR) Congo.

Since 2015, the country has faced political and electoral crises. In the meantime, China's economic slowdown hit the country hard, given a continued drop in commodities prices. According to the International Monetary Fund (IMF), the DR Congo's growth rate is estimated at 3.9 percent in 2016. The country has entered a recession. It is confronted with pressure on public finance, mainly due to funding of the electoral cycle.

Introduction

In Central Africa, the DR Congo is a major rent-based economy, which is overwhelmed by crises. First, the country, a fragile state, has been embroiled in political and electoral crises since 2015. In addition, it faces a longstanding security crisis fueled by the active presence of armed groups in the eastern provinces. On May 11, 2016, the constitutional court stressed that the constitution from February 18, 2006, authorized by President

Kabila, would remain in place until the installation of the newly elected president. Therefore, the 2016 presidential elections have been postponed until April 2018, according to the African Union-facilitated agreement on October 18, 2016. However, the process was not sufficient enough to diffuse political and electoral crises and prepare peaceful and transparent elections. The opposition, in particular the Union for Democracy and Social Progress (UDPS), contested the agreement and the legitimacy of President Kabila through the end of his second mandate on December 19, 2016.

Second, China's economic slowdown hit the country hard in 2015, which threatened a decade of exclusive economic growth. A year later, the country has entered a recession, mainly due to a continued drop in commodities prices. This has entailed macroeconomic disorders. Furthermore, the DR Congo faces internal shocks, such as sovereignty-related spending linked to insecurity in eastern DR Congo and funding the electoral cycle. Public finance is also under pressure in the run up to the 2018 presidential election. During the transition, the country might seek assistance from the IMF, which advised the country to implement an orthodox budget policy by not financing a fiscal deficit through the central bank. On the private sector side, the DR Congo, which emerged as an investment hotspot for the extractive industries, has to address a lack of investor confidence in the remaining time before the next presidential election. In such adverse context, the IMF recommended the country diversify export revenues, which has been restricted by the lack of electricity and infrastructure.

The DR Congo: Extreme Reliance on Commodities of a Fragile State in Central Africa

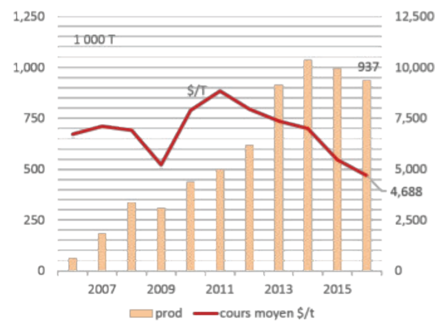
Despite a diversity of raw materials, the DR Congo's economy depends primarily on a few commodity exports, such as base metals. In the meantime, the country has attempted to address its conflict minerals issue in the eastern provinces facing insecurity. It is challenged by the impact of a commodity price slump, which also slows down ongoing reforms for improving the governance of the mining and hydrocarbons sectors.

The Copper-Cobalt Belt of the DR Congo in Turmoil

Since 2015, the global economic slowdown has mainly depressed commodities markets. From the first quarter of 2015 to the first quarter of 2016, they declined further. Copper declined by 11.8 percent, cobalt by 16.3 percent, and zinc by 50.3 percent. As a consequence, consumer nations, including China and other emerging countries, have reduced their consumption of

commodities, affecting rent-based economies, particularly the DR Congo. Referring to the Central Bank of Congo (BCC), from 2013 to 2014, a trade surplus decreased from $899,014,864.03 to $366,395,382.77. In 2014, official exports from the country amounted to $12,322,805,140.34, of which minerals and oil stood at $9,951,402,354, or 95.5 percent of the total country's export value. Mineral exports, mainly base metals (copper, cobalt, and zinc), produced by the Générale des Carrières et des Mines (GECAMINES SA) and its partners, accounted for 80.76 percent. Crude oil produced by Perenco represented 6.3% percent of the country's export value.

Pertaining to the mining sector, the DR Congo controls about ten percent and thirty-four percent of the world's copper and cobalt reserves, respectively, in the former Katanga province in sout-eastern DR Congo. In 2014, the DR Congo was the world's sixth-largest copper producer and the world's leading cobalt producer. In 2015, Katanga was split into four provinces: Haut-Lomami, Haut-Katanga, Tanganyika, and Lualaba. The newly created provinces, namely Haut-Katanga and Lualaba, are included in the so-called "copper-cobalt belt," the cornerstone of the country's industrial mining activities. Since 2015, the copper-cobalt belt has experienced a severe crisis, owing to a drop in base metal prices. This is the next major crisis the country faced after the global economic and financial crisis of 2008 and 2009. As a result, mining companies (GECAMINES SA and its partners) have reviewed their strategies. Most of them have temporarily interrupted their operations. For instance, Glencore Plc, a Swiss commodities trading company, suspended the activities of Kamoto Copper Company (KCC) in September 2015 for eighteen months. Other mining companies have delayed their investment projects. According to the Mining Chamber of the Fédération des Entreprises du Congo (FEC), a reduction of mining output has been noticed in the copper-cobalt belt. For example, copper production decreased from 265,636 tons to 234,313 tons from the first quarter of 2015 to the first quarter of 2016 (see Graph 1). The mining crisis already led to about 13,000 jobs lost among mining companies and their sub-contractors during the first quarter of 2016.



Graph 1. Copper Price and Production in the Copper-Cobalt Belt from 2007 to First Quarter 2016

Source: FEC, Chambre des Mines, Industrieminière en RDC, Premier Trimestre (2016): 1-17.

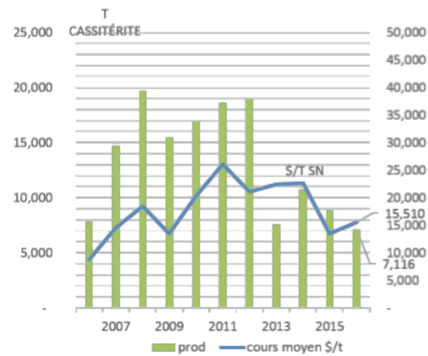
The mining sector's crisis in Haut-Katanga and Lualaba provinces has negatively impacted the provincial and national economies, including public finance. It has also contributed to the deepening social crisis in the copper-cobalt belt. The crisis has also contributed to the deteriorating business climate in the DR Congo. Paradoxically, it has also created favorable conditions for Chinese companies to invest in the copper-cobalt belt. For instance, on May 9, 2016, the China Molybdenum Co. (CMOC) purchased a fifty-six percent stake in Freeport-McMoRan Inc., an American mining company, in TenkeFugurume Mining (TFM) Holdings Ltd. for $2.65 billion. TFM is one of the world's largest copper and cobalt mines, located in Lualaba province. The Congolese authorities were not informed of such a mining deal and contested its validity as GECAMINESSA holds a twenty percent stake in TFM. On October 27, 2016, the government finally agreed on the sale of TFM by the CMOC. However, the TFM sale remains a complex economic and legal issue in a tense political and electoral environment.

Finally, the government has attempted to reform the extractive industries for better governance. First, from June 2007 to October 2010, the government launched a review of sixty-one mining contracts concluded between Public Sectors Enterprises (PSEs) and mining companies. However, the outcomes of the initiative were limited. The review of mining contracts was largely uncompleted and undermined by the impact of the global economic and financial crisis. Second, the government engaged in reform of the legal framework of the extractive industries. In 2013, it opted for a review of the 2002 mining code with the Word Bank's assistance. As of March 2015, the draft of the mining law was sent to the parliamentary session. Nonetheless, the commodity markets slump prompted the government to halt the review of the mining legal framework. Despite vast mineral deposits, the mining sector's contribution to fiscal revenues was limited over the past decade.

Focus on Conflict Minerals in Eastern DR Congo: Crisis of the Mining Sector in a Conflict-Affected Area

Given the longstanding security crisis in eastern DR Congo, the militarized economy still prevails and stresses the complexity of the mining sector's development in a conflict zone. As a matter of fact, the artisanal mining activities are carried out and often controlled by armed groups. The strategic minerals, namely cassiterite (tin ore), gold, coltan, and wolframite, are classified as conflict minerals. They have also been affected by a continued fall in prices. From the first quarter of 2015 to the first quarter of 2016, tin and wolframite prices dropped by 12.7 percent and 100 percent, respectively. During the same period, tantalum fell by 26.2 percent.

Beyond falling commodities prices, the country is confronted with the insufficient governance of conflict minerals (artisanal mining) in the eastern provinces due to insecurity. Besides military operations, a legal framework has been implemented to tackle the economic roots of conflicts in the eastern provinces since 2010. The objective of the framework consists of reshaping the organization of artisanal mining activities and curbing funding of armed groups in the eastern provinces. First, a six-month mining ban was implemented in the Maniema and Kivus provinces from September 2010 to March 2011. Second, US legislation (Section 1502 of the Dodd-Franck Act, July 21, 2010) was enacted in August 2012. Overall, it has entailed a de facto embargo on conflict minerals exports from North Kivu and South Kivu provinces as of April 2011. Since then, a difficult resumption of artisanal mining activities in eastern DR Congo is also limited by a continued deterioration of the security situation. It is also limited by insufficient donor support to the development of traceable exports of conflict minerals. The artisanal production of cassiterite reduced from about 19,000 tons to 9,000 tons between 2008 and 2015 (see Graph 2). In addition to the US legislation on conflict minerals (Section 1502 of the Dodd-Franck Act), passed on November 22, 2016, the European Union (EU) reached an agreement on a regulation related to conflict minerals with the aim to stop the financing of armed groups, through the trade of tin, tantalum, tungsten, and gold, in developing countries like the DR Congo. Thanks to the regulation the EU aims to guarantee sustainable sourcing for more than ninety-five percent of all EU imports of said minerals as of January 1, 2021.



Graph 2. Tin Price and Production of Cassiterite (Tin Ore) from 2007 to First Quarter 2016

Source: FEC, Chambre des Mines, Industrieminière en RDC, Premier Trimestre (2016): 1-17.

Moreover, security concerns and a lack of effective organization of artisanal mining are key obstacles to the development of the industrial mining activities in the eastern provinces. They limit mining companies' capacity to secure investments.

Impact of Commodities Slump on the DR Congo's Economy

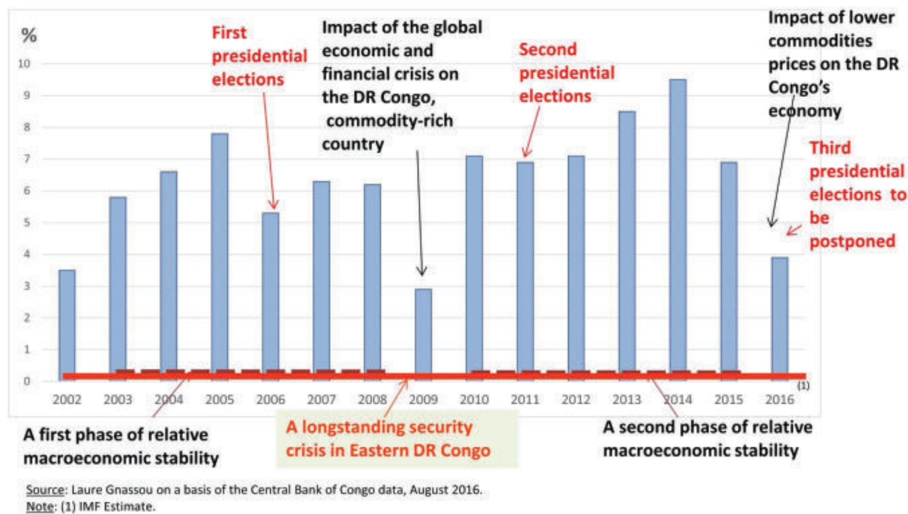
The DR Congo is exposed to external shocks, in particular the volatility of commodity prices. It is also confronted with internal shocks related to political and security developments. Altogether, public finance has been put under pressure since 2016.

The DR Congo: A Decade of a Non-Inclusive Economic Growth in Jeopardy

Since 2001, the country has embarked on the transition from a war economy to a peace economy, except in the eastern side of the country. Referring to the Central Bank (BCC), the annual growth rate rose from 5.8 pecent to 6.3 percent between 2003 and 2007. The country experienced relative macroeconomic stability. As of September 2008, however, it entered a recession caused by the international financial crisis. In 2014, the DR Congo GDP growth rate was estimated at 9.2 percent, which was the third-fastest growth rate in the world according to the IMF. That year, economic growth was driven by the primary sector (40.6 percent of GDP) including the extractive industries (22 percenet), the seconday sector (20.9 percent), and the tertiary sector (31 percent).

Nonetheless, as of mid-2015, the DR Congo has been severely affected by external shocks related to a drop in prices of its major export commodities, mainly resulting from the economic slowdown in China. On anuary 26, 2016, the country's macroeconomic turbulence prompted the Council of Ministers to adopt a matrix of 28 emergency measures to mitigate negative economic and financial trends. In such an adverse context, the IMF has pointed out that the country's growth rate is predicted to slow to 3.9% in 2016. For the second time since 2004, the DR Congo has entered into recession while facing a severe political and electoral crisis (see graph3).

In 2016, the country experienced renewed inflationary pressures. From June 14, 2015, to July 17, 2016, the annual inflation increased from 1.38 percent to 2.37 percent. From August 29 to November 18, 2016, it skyrocketed from 3.68 percent to 10.31 percent. As a consequence, the Congo Franc (CDF) has been low against the US dollar (USD). From June 12, 2015, to June 16, 2016, the CDF against the USD depreciated from CDF 924.83 per USD 1 to CDF 964.2 per USD 1. On November 28, 2016, it was officially traded at CDF 1,165.78 per USD 1. Given political instability, a rising monetary depreciation was to be expected, despite several foreign exchange auctions recently conducted by the BCC. In this context, from June 2015 to June 2016, the central bank's gross international reserves dropped from $1.598 billion to $1.019



Graph 3. The Evolution of Growth Rate from 2002 to 2016

billion in just over one month of imports. On August 27, 2016, they stood at only $929.79 million, given lower export earnings. Despite the implementation of the austerity measures of January 2016, a lack of coordination of macroeconomic policies is observed. As of matter of fact, the central bank has faced difficulties for conducting a strict monetary policy. On September 28, 2016, it unsuccessfully increased the benchmark interest rate from two to seven percent to prevent higher inflation and defend the national currency.

The country has been on the path to economic recovery since 2004. Nonetheless, a decade of a non-inclusive growth rate is put in jeopardy, owing to the commodities markets slump and political turmoil. The United Nations Development Program (UNDP) stressed that, in 2014, 87.7 percent of the population lived below $1.25 a day. The same year, the country ranked 176 out of 188 countries in reference to the UNDP Human Development Index (HDI). Therefore, a sharp fall in commodities prices has contributed to increased social tensions throughout the country. Since the welfare state barely exists, in particular in eastern DR Congo, the country has been exposed to a longstanding humanitarian crisis with about 1.9 million Internally Displaced People (IDPs) and returnees as of September 30, 2016.

Beyond the political and security crises, the newly formed government of unity, led by Prime Minister Badibanga, will have to address the economic recession. It might seek the Breton Woods institutions' assistance during the transitional period leading up to the next presidential

elections. Other countries' driven economies have already requested support, in particular Nigeria and Suriname. However, it is worth noting that the last three-year economic program between the DR Congo and the IMF ended in December 2012. Since then, the IMF has established a policy dialogue and technical assistance with the country.

Public Finance Under Pressure Following Commodities Markets Slump and Political Crisis

As of January 1, 2016, the government started executing a limited 2016 state budget, estimated at $9,080,681,622. As it faced difficulties for mobilizing domestic revenues given a continued drop in commodities, on May 4, 2016, the council of ministers adopted a draft law amending downward the 2016 state budget. A month later, Parliament adopted a revised budget of $6,800,000,000, which was reduced by twenty-two compared to the 2006 state budget. On June 29, 2016, President Kabila promulgated the said budget.

Identifying Budgetary Constraints Pressuring Public Finance in 2016 and 2017

Besides falling commodities prices, the DR Congo is also confronted with key internal shocks: (i) funding of the electoral cycle; (ii) an increase in sovereignty-related spending, owing to the recurrent security crisis in eastern DR Congo, particularly in North Kivu province; and (iii) the costs linked to the decentralization process, the so-called "decoupage," dividing the country from eleven provinces to twenty-six newly created provinces in 2015. Although fiscal decentralization is a prerequisite to guarantee the financial viability of the new provinces, additional fiscal tensions have emerged between provinces and the central government since 2015. They continue to fuel the political crisis. Altogether, these internal shocks are major budgetary constraints, which increase pressure on the state budget's yearly execution.

The 2017 draft budget was only estimated at $4.5 billion due to the commodities markets slump. On October 25, 2016, it was presented to Parliament. Key priorities of the 2017 state budget proposal are broadly similar compared to those of 2016 fiscal year. First, funding of the electoral process is critical, although presidential elections are likely to be held in April 2018. Donors' financial assistance is needed for the preparation of free, fair, transparent, and peaceful elections. Second, insecurity prevailing in the eastern provinces, notably North Kivu, might prompt the government to further fund war efforts. The aforementioned priorities are internal shocks, which will keep putting a tremendous pressure on public finance in 2017. In this case, Parliament could not adopt the 2017 budget before the end of 2016. It would have to adopt

a law authorizing the opening of provisional credits to guarantee the continued functioning of the state. The provisional credits would represent one-twelfth of the revised 2016 state budget per month for a prior de of three months. However, the longer the country can go without the 2017 state budget, the more of a problem it will become given key electoral challenges during the transitional period. Overall, the country might experience severe budgetary slippages in 2016 and 2017. In response, the IMF advised the government to implement an orthodox budget policy by not financing fiscal deficit by the central bank.

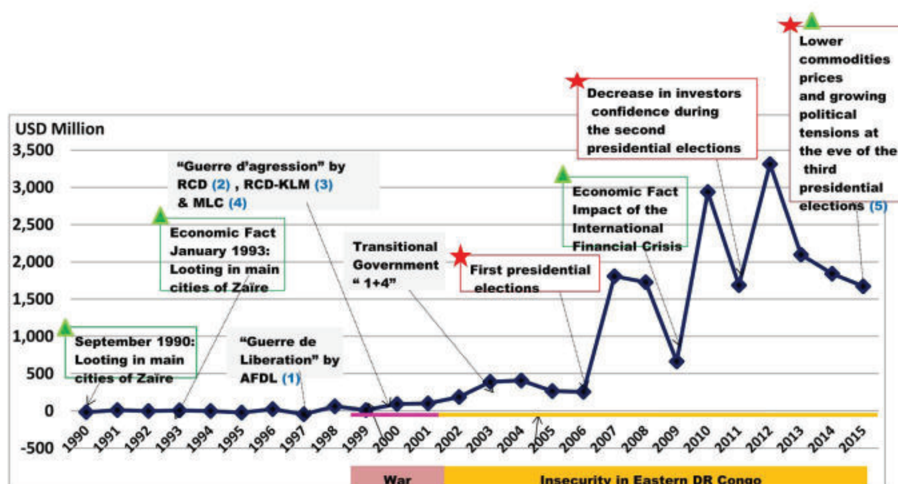
Business Climate under Pressure in the DR Con-gofacing Political and Electoral Crises

Given its attractiveness, the DR Congo has progressively emerged as an interesting investment hotspot for the extractive industries in the Great Lakes region. Referring to the UNCTAD, in 2014, Foreign Direct Investment (FDI) flowed to the DR Congo reached only $2.063 billion, down 1.7 percent compared to 2013. In 2015, it was only estimated at $1.673 billion. According to the IMF, a decrease in FDI flows to the DR Congo was due to the "wait and see" attitude of the private sector in leading up to the presidential elections, which were supposed to be held on November 27, 2016. Nonetheless, the 2016 presidential elections have been postponed until April 2018, according to the African Union-facilitated agreement in October 2016.

Political opposition has expressed concerns in regard to the third electoral cycle's organization since 2006 by regularly calling for strikes throughout the country. From January 16 to 20, 2015, civil unrest was observed in the main cities (Kinshasa, Goma, and Bukavu), which led three business associations, in particular the Federation des Entreprises du Congo (FEC), to denounce violence related to the economic activities' disruption. On August 23 and September 19, 2016, the opposition called again for a national strike. In response, the police prevented three times demonstrations against President Kabila, whose second term was due to expire on 19 December 2016. Major investment projects might be postponed owing to lower commodities prices associated with political and security crises in 2016 and 2017. FDI flows to the DR Congo could significantly dropped in the coming years (see Graph 4).

Overall, the DR Congo is confronted with a growing country risk. According to the World Bank, in 2016 the country only ranked 184 out of 190 countries, stressing that investors' confidence vis-à-vis the DR Congo remains critical. In 2016, the country entered a recession, contributing further to a deterioration of the country's business climate. On June 17, 2016, the DR Congo received a long-term rating at B3 with a stable outlook. Nevertheles, it could downgrade the rating due

Graph 4. Evolution of FDI Inflows from 1990 to 2015



Source: Laure Gnassou, Experienced Economist on basis of UNCTAD, The 2016 World Investment Report, June 2016.
(1): AFDL: "Alliance des Forces Démocratiques pour la Libération du Congo" led by Laurent-Désiré Kabila, former Head of State (May 1997- January 2001).
(2): RCD: "Rassemblement Congolais pour la Démocratie" led by Azarias Ruberwa, former Vice-President during the Transition (2003-2006)
(3): RCD KLM: "Rassemblement Congolais pour la Démocratie/ Kisangani Mouvement de Libération" led by Antipas Mbusa Nyamwisi, former Foreign Affairs Minister during the Transition.
(4): MLC: "Mouvement de Libération du Congo" led by Jean-Pierre Bemba, former Vice-President during the Transition (2003-2006).
(5): On 11 May 2016, the DRC Constitutional Court stressed that the 2006 constitution authorized the president to remain in office until the installation of the newly-elected president. Therefore, the presidential elections, scheduled in November 2016, will take place in April 2018 according to the African Union-facilitated agreement of 18 October 2016 .

to the institutional weakness resulting from the political and electoral crises, as well as insecurity in eastern DR Congo.

What Next?: Constraints Related to Economic Diversification of the DR Congo

Most African countries move toward translating the objectives of the 2030 agenda and the AU agenda 2063 into their national development policies. These agendas are critical for shaping the structural transformation of African economies. The DR Congo's economic diversification is limited by insufficient infrastructure and energy supply. Nevertheless, the country has progressively reformed its legal framework to liberalize its energy sector. Furthermore, it has started to promote regional transport projects to further enhance its economic integration in Africa.

Addressing Energy Security in the Country

Although the DR Congo is a commodity-rich country, its energy supply model is rather limited. It has opted in favor of the hydropower development. The country's energy potential is estimated at 100,000 megawatts (MW). In 2011, its installed capacity was only 2,442 MW,

leading to an acute supply power crisis throughout the country. According to the Word Bank's 2014 developmental indicators, in 2011 only nine percent of the population had electrical power. The energy supply deficit has particularly hampered the country's industrial activities, notably in the copper-cobalt belt. In response, the country reformed its energy legal framework. On June 17, 2014, President Kabila promulgated the law n°14/011 on the electricity sector's liberalization. This led to end a forty-four-year state monopoly on energy supply provided by the "Societé Nationale d'Electricité" (SNEL). This law aims to foster the country's economic growth.

Through the Public Private Partnership (PPP), investors are likely to contribute to the rehabilitation of about five hundred hydroelectricity sites owned by the SNEL. They participate in building new energy power projects, including grand Inga, estimated at about $80 billion, in the Kongo Central province. It represents about forty percent of the country's energy potential, corresponding to 44,000 MW. It comprises the rehabilitation of Inga 1 (351 MW), Inga 2 (1,424 MW), and the development of Inga 3 (4,800 MW). Grand Inga development is a major asset of the energy policy in Africa, in particular South Africa. So far, investors and the government have focused their efforts on developing Inga 3, of which the energy levels are allocated as follows: (i) 2,500 MW for South Africa; (ii) 1,300 MW for extractive industries of the copper-cobalt belt; and (iii) 1,000 MW for the population. On March 24, 2014, the World Bank approved $73 million for funding hydropower projects, including the construction of an Inga 3 dam. It has already allocated six percent of its financial assistance to the country's energy sector. On July 25, 2016, the World Bank suspended funding to hydropower projects due to a divergence of strategies pertaining to Inga 3 development. Its decision occurred while the country has embarked in political and electoral crises. However, donor support to the energy sector's reform is crucial to provide affordable, reliable, and sustainable energy, which a key prerequisite for reaching a sustainable socioeconomic development.

Weak Infrastructure Development

Despite its strategic location in Central Africa, the DR Congo remains confronted with transport and logistics infrastructure deficits. It only possesses two international ports located in Matadi and Boma (Kongo Central province). Being a semi-landlocked country, there is a rising pressure for developing national and regional infrastructure projects to enhance trade flows within the country and vis-à-vis the rest of the world. The country plans to become a regional trade hub in Africa by developing key regional corridors. First, the northern corridor links the copper-cobalt belt to Durban port (South Africa). It is the main

corridor for mining companies exporting raw materials from the said belt. Second, the central corridor joins the central, and southeastern provinces (Kasai, Kasai-Central, Kasai-Oriental, Lomami, Haut-Lomami,Lualaba, and Haut-Katanga) to Dar-El-Salam port (Tanzania). Third, the northern corridor connects the eastern provinces (Tshopo, North Kivu, and South Kivu) to Mombasa port (Kenya). Fourth, the rehabilitation of the Lobito corridor between the central,and southeastern provinces (Haut-Lomami, Lualaba, and Haut-Katanga) and Angola is underway. However, the DR Congo's involvement in developing corridors also has political and security implications with neighboring countries.

Conclusion

The DR Congo is at a crucial juncture on its path from a conflict economy to stabilization and reconstruction. After a decade of a exclusive growth, the country entered a recession in 2016. Beyond the negative impact of commodities markets on its economy, the country faces major challenges, including the political and electoral crises, as well as insecurity in the eastern provinces. In such context, the upcoming economic, political, and security developments in the DR Congo must be closely monitored during the transitional period leading up to the 2018 presidential elections.

Endnotes can be found online at http://apj.fas.harvard.edu/

Economic Integration in Africa: Past, Present, and Future

AATMIK GUPTA

Abstract

This paper studies and evaluates the progress of economic integration in Africa. It analyzes the reasons for slow implementation of economic integration policies in the past twenty years. The piece also examines current levels of regional integration. It concludes by exploring key prospects and challenges for African regional economic integration in the future.

Introduction

Regional integration has been a long-standing objective of African political leaders. Policy experts have, for years, emphasized the need for regional economic integration. In this case, integration means the reduction of tariffs and other trade barriers between countries belonging to a certain regional group with the objective of boosting intraregional trade.

There is a broad consensus among policymakers that economic integration and increased intraregional trade have the potential to catalyze significant growth and development in Africa. This article briefly examines the rationale for and history of economic integration in Africa. It then analyzes the present levels of integration across the continent, and concludes by exploring key challenges and opportunities the future may hold for the processes of regional economic integration.

When discussing the importance of intraregional trade in Africa, economists refer in particular to the theory of comparative advantage. The theory states that countries engaged in international trade specialize in goods they can more efficiently produce (i.e. at a lower opportunity cost) than other countries.

Current data indicates that raw commodities and natural resources account for eighty-three percent of African exports. This means African countries have a comparative advantage over key trade partners, the European Union (EU), and China in resource extraction. At the same time, these trade partners have a comparative advantage in producing finished and processed goods; African nations, consequently, import large quantities of consumer goods from them.

The resulting economic system is often dubbed "neo-colonialist" for its startling resemblance to the economic frameworks enforced by imperial powers in the early twentieth century. Africa functions as a supplier of raw materials and a market for finished products. Its economies possess an unhealthy dependence on resource extraction and lack the industrial development and value-added mechanisms required for sustained growth.

Bolstering intraregional and intra-African trade is perhaps the ideal way to achieve the much-needed diversification of the African economy. While trading with each other, African nations would no longer possess a comparative advantage in the production of primary goods. This would incentivize the growth of other sectors and aid in the development of industry, providing African countries with more stable paths to prosperity.

There is also considerable empirical proof to support this conclusion. Recent data from the African Development Bank showed that sixty-seven percent of intra-African exports between 2005 and 2010 consisted of manufactured or value-added products. For exports to the EU, the figure was thirty-two percent; for US exports eighteen percent; and for exports to China a mere fourteen percent. With this in mind, the importance of intra-African trade for export diversification in the continent appears to be an incontrovertible reality (*see Graph 1*).

Graph 1

The Need for Economic Integration

Convinced of the benefits of regional integration, the members of the African Union signed the Abuja Treaty in 1991. The treaty laid out a roadmap for the establishment of the African Economic Community AEC), with harmonized economic policies and laws. More importantly, the treaty recognized eight Regional Economic Communities (RECs) to serve as building blocks in this process, which integrated and coalesced into the AEC.

The treaty also set clear targets for achieving different levels of integration. It predicted individual RECs would form free trade areas and customs unions by 2017. The treaty believed this would lead to the establishment of a continental customs union by 2019, a common market by 2023, and eventually, a monetary union by 2028.

Despite the countries' initial enthusiasm, the project suffered from deeply apathetic implementation. Countries were unwilling to sacrifice tariff revenues to establish free trade areas. Furthermore, there was little public interest in this grand undertaking, and consequently, politicians were unwilling to take on the laborious task of negotiating with a host of neighbors to achieve united policies. Another key problem was the lack of monitoring and evaluation mechanisms, which exacerbated the slow implementation.

Still, by the late 2000s, African nations' interest in regional

economic integration experienced a resurgence. In the last ten years, the share of intra-African trade has slowly, but steadily, increasing, driven by the dprogress toward integration among certain RECs, particularly in southern and eastern Africa. A heartening development was the creation of a tripartite free trade agreement in 2015, which included twenty-six member nations of three different RECs. Even though the agreement has yet to be finalized and ratified, it is an important symbol of the renewed interest in regional integration.

Another recent reaffirmation of African interest in economic integration came in the form of Agenda 2063, the African Union's flagship framework for guiding the continent's economic and social development over the next fifty years. The framework prioritizes the creation of a continental free trade zone by 2017 (negotiations for which are in progress). It also commits to a similar timeline for regional integration as the Abuja Treaty, making only minor two-year postponements for the establishment of the common market and monetary union.

The Present Scenario

With these recent developments in mind, it is natural to have an optimistic outlook on the future of African economic integration. While this optimism is unfounded, one must remember the share of intra-African in total trade, around sixteen percent, is still one of the lowest in the world.

Furthermore, there is significant heterogeneity among different regional economic communities, in terms of both policies enacted and actual trade levels. Using these two metrics, this section seeks to analyze the levels of economic integration of all eight RECs. The following eight Regional Economic Communities are officially recognized by the African Union (*see Figure 1*):

1. The Arab Maghreb Union (AMU/UMA)
2. The Economic Community of West African States (ECOWAS)
3. The East African Community (EAC)
4. The Intergovernmental Authority on Development (IGAD)
5. The Southern African Development Community (SADC)
6. The Common Market for Eastern and Southern Africa (COMESA)
7. The Economic Community of Central African States (ECCAS)
8. The Community of Sahel-Saharan States (CENSAD)

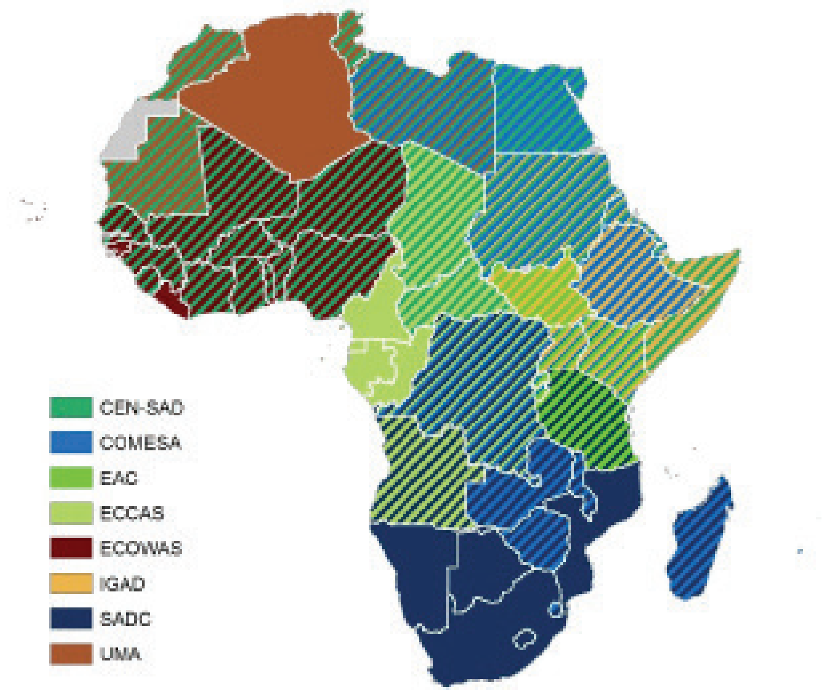


Figure 1: Regional Economic Communities of Africa

An REC's integration level is classified in two broad categories. The first level is a free trade area (FTA). Participation in a free trade area puts countries under the broad obligation of minimizing and ultimately abolishing tariffs on goods imported from other countries in the FTA. Countries are also expected to eliminate any non-tariff barriers inhibiting trade within the FTA. Nevertheless, the exact requirements and policies an FTA possesses are flexible; FTAs operate under different rules and enjoy differing levels of integration.

The second level of integration is a customs union, which generally follows after an FTA is in full force. Countries participating in a customs union not only liberalize trade with each other, but also impose a common external tariff on any country outside the union that attempts to trade with them.

REC Analysis: Policies Enacted

Let us now examine the policies enacted in different RECs with the goal of regional economic integration.

Four of the eight RECs have functioning FTAs: COMESA, EAC, ECOWAS and SADC. The AMU is currently finalizing

a free trade agreement, while ECCAS has also formalized a free trade agreement that has yet to be fully implemented. IGAD and CENSAD are still not close to finalizing a Free Trade Agreement. Thus, even a quick glance informs us that half of Africa's RECs aren't close to establishing even the most basic form of regional integration, making one more cynical about the establishment of a continent-wide FTA as early as 2017 or 2018.

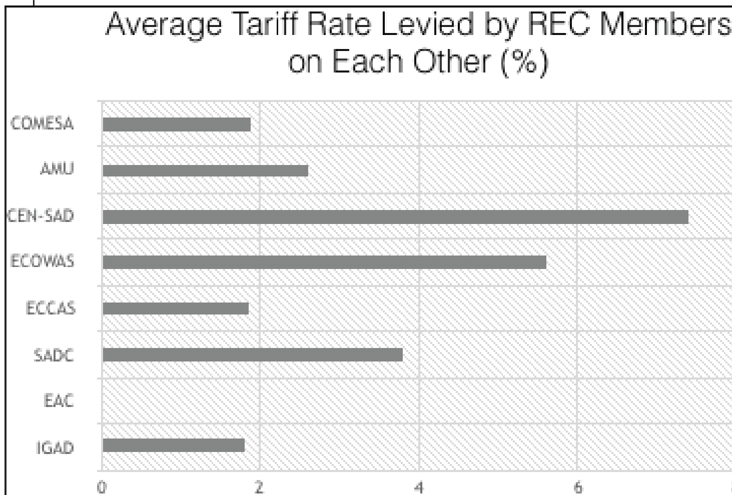
However, one can glean even more interesting information by closely studying the actual levels of tariff liberalization carried out by RECs (*see Graph 2*). One accurate measure of this is the average tariff levied by REC members on imports from other countries of the same REC. The fully liberalized EAC is the clear winner with an average rate of 0.0 percent. More interestingly, the second rank is held by the IGAD, with a 1.8 percent average, even though the REC has no formal FTA. It is followed by ECCAS, which too, has only a fledgling FTA with a 1.86 percent average rate. On the other hand, the seemingly well-integrated SADC and ECOWAS charge significantly higher tariffs on average: 3.8 percent and 5.6 percent, respectively. Only CENSAD fares worse, with an average rate of 7.4 percent.

Of the eight RECs, only two have established customs unions: EAC and ECOWAS. COMESA has finalized a customs union, which hasn't yet been fully implemented. Therefore, it is unlikely the Abuja Treaty's target of all RECs operating as customs unions by 2017 will be achieved.

REC Analysis: Levels of Trade

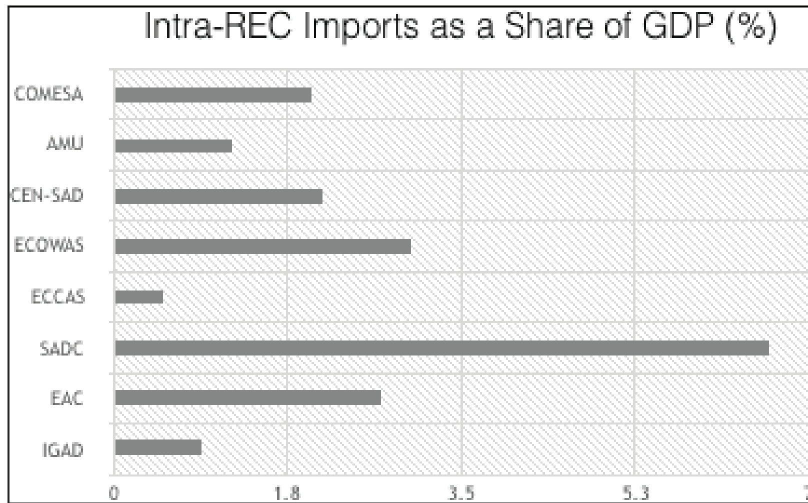
Though it is important to consider the policies enacted by different RECs, an equally important measure of economic

Graph 2



integration is intraregional imports as a share of GDP (*see Graph 3*). While trade share is affected by tariffs and trade policies, it also accounts for other important extrinsic factors, such as cultural and linguistic similarities, infrastructure levels, etc.

pro-integration policies, continue to maintain high tariffs, but still have high shares of intraregional imports. It is also strange how formally non-integrated RECs such as the IGAD and ECCAS continue to have small shares of intraregional trade, despite charging low tariffs.



Graph 3

Under this metric, the outlier is SADC, for which intraregional imports make up 6.6 percent GDP. It is followed by ECOWAS (3.0 percent) and EAC (2.7 percent). The worst performers are the AMU (1.2 percent), IGAD (0.9 percent), and ECCAS (0.5 percent).

Thus, we are faced with three sets of data—the policies enacted, the average tariff rates, and the intraregional import shares—which all seem to lead to differing narratives. It is initially confusing as to how RECs like the SADC and ECOWAS, that have passed

The resolution of this apparent dilemma is simple: the reduction of non-tariff barriers and the facilitation of trade are as important as tariff reductions. Formally integrated RECs are able to jointly target non-tariff barriers through agreements and treaties with relative ease. Thus, they are better able to foster intraregional trade with higher tariffs.

The importance of non-tariff measures to economic integration is of particular interest and importance. Current roadmaps to integration place a disproportionate focus on liberalizing tariff regimes. While

this is an indisputably important and contentious issue, the key barrier to liberalization is lack of political capital. On the other hand, while few are ideologically opposed to the reduction non-tariff barriers, difficulties in planning and implementation make it equally hard to accomplish.

Keeping this in mind, the next section of the paper—on future prospects and challenges—examines issues of tariff policy, but focuses largely on non-tariff measures and related policies.

Future Prospects and Challenges

Considering the widespread acceptance, at least among experts, of the need for greater economic integration in Africa, the key point of contention has been over how governments can best bring about such integration.

This section of the paper highlights four focal areas that offer both opportunities and challenges in the quest for regional economic integration. In particular, it focuses on relatively under-explored policies that are nevertheless essential to economic integration.

Rationalizing and Streamlining Membership of RECs

Too many cooks spoil the broth, and too many RECs hamper economic integration. The surfeit of regional groups in Africa has led to multiple overlapping memberships and duplicated initiatives, greatly reducing the efficacy of RECs in the quest for economic integration.

Around half of the African Union's fifty-four member nations are part of two or more Regional Economic Communities. These include nations who belong to more than one of the eight officially recognised RECs, as well as countries that are part of a recognized REC, while also being members of other regional groups. For example, many countries in central Africa belong not only to ECCAS, but also to the Central African Economic and Monetary Community (CEMAC). While ECCAS is the REC recognized by the AU, CEMAC is a powerful alliance in its own right, with its members using the CFA franc as common currency.

Multiple membership of RECs undermines the standardization of policies RECs seek to achieve. Countries take advantage of their multiple memberships to pick and choose policies espoused by different RECs at will, increasing confusion and red tape instead of reducing them. At the same time, regional institutions and schemes become less effective as resources are allocated twice over to achieve the same objectives.

Rationalization of RECs—i.e. the removal of overlapping memberships—is essential for

strengthening these groupings. It will improve adherence to regional policies and also increase efficiency of resources deployed toward regional integration.

Efforts at rationalization have been attempted, but have been largely unsuccessful. At this point, rationalizing RECs is no longer just important, it is necessary. The Abuja Treaty calls on RECs to establish customs unions by 2017. By the very nature of customs unions—that is, a common external tariff—no country can belong to two customs unions. Keeping this in mind, the African Union should once again instigate an effort to end multiple membership of RECs, highlighting the economic advantages of doing so. Only by achieving this essential clarity can the vision of African economic integration further progress.

Building Up Regional Transport Systems to Boost Trade

Africa's weak transportation infrastructure is one of the most significant barriers to trade within the continent. Transportation costs are the highest in the world, particularly in the landlocked countries. Road transport is one of the primary means of trade, but the continent's underdeveloped road networks impede the expansion of intra-African trade.

Although Africa's road network has increased by over twenty percent in the last decade, there remain strong regional disparities. Southern Africa has the longest road network on the continent, while north and central Africa have the least-developed networks. Thus, Africa's landlocked countries, which rely most heavily on road networks, have the weakest road networks as well.

New programs, such as Program for Infrastructure Development in Africa (PIDA) have focused on infrastructure development, but these focus on flagship projects and further efforts are needed. Countries in Africa's interior, in particular, should attempt to formulate regional and interregional frameworks for road corridor development. Considering the manifold advantages, RECs should give such policies an equal priority in trade liberalization.

It is also important to consider that in spite of road improvements, traffic can encounter obstacles. The multiple checkpoints and delays on African roads inhibit regional trade and integration. An extreme example is the Lagos-Abidjan Highway, which has sixty-nine checkpoints—seven checkpoints for every one hundred kilometers.

An interesting way of combating such problems, which has been implemented by ECOWAS, it to set up a monitoring system along its roads. Another interesting step to reduce transport costs and times, taken by the SADC, has been the introduction of one-stop border posts. Border posts have since been emulated by other RECs. Such border posts integrate customs processes and other checks for countries on both sides of the border, significantly reducing delays.

Ultimately, the improvement of both the underlying infrastructure and further monitoring and enhancement of transport facilities is key for encouraging intra-African trade.

Enhancing Public Support for Economic Integration

One of the reasons for Africa's lackluster performance in regional economic integration over the past twenty years has been lack of public enthusiasm for such policies. Dreams of economic integration and pan-Africanism may enthrall policymakers, but they do not appear to excite the public.

There is perhaps a need to increase awareness about the benefits of economic integration. This should hopefully provide the added political impetus for making an integrated Africa a reality.

An effective ways of garnering such support could be a pan-African advertising campaign conducted under the aegis of the African Union. Keeping in mind the considerable scholarly support for economic integration, it should not be difficult to convince African citizens of its importance.

A more novel way of gaining support would be to emulate Rwanda's example of organizing regional integration-related competitions in schools. Educating the youth is an effective way to increase awareness and galvanize support for integration.

Confronting Poverty and Regional Disparities

Regional economic integration is often touted as a tool for poverty alleviation. Less obvious, perhaps, is the link between high levels of poverty and lower levels of economic integration. ECCAS and IGAD—the two least integrated RECs based on intra-REC import share—both encompass poor regions of central Africa.

Such regions have extremely low levels of industrial development and also often lack a sizable, skilled workforce. In such conditions, intraregional trade is unlikely to flourish with equal ease when compared to a more prosperous region like southern Africa. This is what makes the REC "building block" model of African integration necessary. While regional integration should be fully encouraged, one cannot discount inescapable regional differences when measuring the pace of integration.

Regions such as these should be given special attention during negotiations for the planned Continental Free Trade Zone. The principle of variable geometry should be held in mind and RECs should be given protections that allow them to develop at their own pace. Otherwise, reckless policymaking will leave regions economically and industrially crippled. They will be unable to develop their own economies due to aggressive competition from more developed African countries.

Conclusion

This paper has sought to examine the progress of Africa's economic integration over time. It is clear that African economic integration has the potential to drive significant growth. However, the implementation of this grand agenda has proven to be a difficult task.

Despite a newfound optimism among policymakers, it is evident Africa is still far behind the rest of the world in intraregional trade. The continent's many regional economic communities have been partially successful in some cases, but counter-productive in others.

African governments need to rapidly improve their track records if they aspire to match the economic integration targets set out in the Abuja Treaty and Agenda 2063. To realize they're part of a united Africa with a flourishing, diversified economy, they must simplify the continent's many regional groupings and enhance its transport infrastructure while garnering popular support for an inclusive and carefully planned continental integration strategy.

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Endnotes can be found online at http://apj.fas.harvard.edu/

Gihembe refugee camp in northern Rwanda on World Refugee Day,
Hillel Bavli, Harvard Graduate School of Art and Sciences

Construction of Multidimensional Poverty Index of Kenya Using the Alkire-Foster Method

BY WAMAITHA MUKUI AND LUCY MUTHONI

Abstract

In this paper, we use one specification of the Alkire-Foster approach, which is referred to as the Global Multidimensional Poverty Index (MPI), to calculate the poverty index of Kenya. This index was computed for 104 countries in Alkire and Santos (2010) and launched as a prominent feature of the annual United Nations Development Program (UNDP) Human Development Report, replacing the previous Human Poverty Index of the UNDP.

The novelty of this paper is that it seeks to reconstruct the poverty index, which is used in Kenya's revenue allocation formula. Currently, the country is using a modification of Human Development Index as used by UNDP, which gives weights to different aspects of deprivation, a method that has been dubbed "Lucy's model," (named after the person who developed it in December 2015) and was approved for use by the Commission for Revenue Allocation to distribute funds from the national government to county governments, by the National Assembly of Kenya on March10, 2016.

The paper compares the allocations arrived at by both Lucy's Model and Alkire-Foster method in terms of equality of means, variances, correlations, and other statistical tests of significance in differences between two or more data sets.

Keywords

Multidimensional poverty, unidimensional poverty, deprivations, AF method.

Introduction

Background

Defining poverty as a phenomenon of multiple dimensions goes back to the seminal work of Amartya Sen. In practice, however, the vast majority of empirical work on poverty uses a one-dimension measure of wellbeing, usually household income or expenditure. This is also the case in Kenya, although the conceptualization of poverty in the country has steadily evolved since 2003. In terms of defining multidimensional poverty measure, several possibilities have been proposed in theoretical and empirical literature.

Poverty is a multifaceted concept that includes social, economic, and political elements. Generally, poverty is viewed in three dimensions, which are standards of living, health, and level of education. The human development index is commonly used by the United Nations development program to calculate the poverty index of countries and rank them in order of the most developed country to the least. In 2010, a new method was used to calculate the poverty index of 104 countries. This method is known as the Alkire-Foster (AF) method. This method is used to measure acute poverty by calculating the proportion of people who experience multiple deprivations and also by calculating the intensity of those deprivations. The deprivations are based on indicators that explain the three dimensions stated. The approach also satisfies several desirable properties, or axioms, including decomposability, which makes it particularly suitable for policy analysis and targeting.

The AF method is an accurate method for calculating the poverty index and it helps in making policies that are used to target the poor people in a country. This paper seeks to construct the multidimensional poverty index of Kenya by calculating the poverty index of Kenya's forty-seven counties then ranking from the wealthiest to the poorest.

Motivation for the Study

The motivation of this study is to reconstruct the poverty index of Kenya, which will guide the national government on how to share revenues among counties for the purpose of poverty reduction. Poverty index is one of the factors considered in Kenya's Revenue Allocation Formula, and it is calculated as a modification of HDI index. The modified formula is termed as Lucy's model, and is expressed as follows:

$$CA_i=0.46PN_i+0.27ES_i+0.17PI_i+0.07LA_i+0.02FE_i+0.01DF_i$$

Where CA_i is the revenue allocation for the ith county, PN_i is the population factor, ES_i is the equal share factor, PI_i is the poverty index, LA_i is the land area factor, FE_i is the fiscal effort factor, and DF_i is the development factor.

In the model above, it is worth noting the poverty index bears one of the largest weights. The poverty index above was

calculated using the human development index, which is used by the United Nations to calculate the poverty levels and development standards of a country or particular region. The Human Development Index is a welfare index that combines the aggregate dimensional achievements of all people into one overall score. In other words, this method identifies the poor and ignores the data of the non-poor.

The Alkire-Foster (AF) method is a new approach that actually determines the number of people who are poor and the number of deprivations they have. This is important for economic policies since governments can use this information to plan and cater for the poor in the economy. With the AF method, policymakers can identify the poorest people and the aspects in which they are most deprived. This information is also vital in investing resources where they are likely to be most effective at reducing poverty. Policymakers can identify which deprivations constitute poverty and which are most common among and within a group, so policies can be designed to address particular needs. The AF method integrates many different aspects of poverty into a single measure, reflecting interconnections among deprivations and helping to identify poverty traps.

The AF method is also quicker in showing the effects of policy change, outside of income alone. For example, if a new social program aimed at increasing good education is introduced to an area, it will be a long time before any positive return from education is reflected in an income measure. In contrast, a multidimensional poverty measure that includes child enrollment and achievement could reflect a reduction in this aspect of poverty relatively quickly because it measures it directly. Different dimensions, measures, and cutoffs can be used to create measures tailored to specific uses, situations, and societies. This method can be used to create poverty measures to target poor people as beneficiaries of conditional cash transfers or services, and for the monitoring and evaluation of the programs. The AF method also shows the intensity of poverty and the measures created using the AF method are transparent. This means they can be quickly and easily broken down by region or social group.

Literature Review

This chapter covers literature on the Global Multidimensional Poverty Index (MPI). Multidimensional measures provide an alternative lens through which poverty may be viewed and understood. How we measure poverty can influence

how we come to understand it, how we analyze it, and how we create policies to influence it. For this reason measurement methodologies can be of practical relevance, according to Alkire and Foster.

Recently, Alkire and Foster attempted to offer a practical approach to identifying the poor and measuring aggregate poverty. The Alkire-Foster methodology is perhaps best seen as a general framework for measuring multidimensional poverty, since many decisions are left to the user. These include the selection of dimensions, dimensional cutoffs, dimensional weights, and poverty cutoff. This flexibility makes it particularly useful for measurement efforts at the country level—and even at the county level, as in the case of Kenya. These decisions can fit the purpose of the measure and can embody normative judgments regarding what it means to be poor a respective country. As this is quite a departure from the traditional unidimensional and multidimensional poverty measurements, further elaboration may be warranted. The method delivers an aggregate poverty measure that reflects the prevalence of poverty and the joint distribution of deprivations. Useful partial indexs are reported that reveal the intuition and layers of information embedded in the summary measure.

If, on the other hand, there is data on achievements in several dimensions distributed across a population, it is important to ask, who is poor and how should overall poverty be measured in this setting? If the underlying concept of poverty admits a natural way of aggregating the various dimensions into an overall variable, then a unidimensional methodology can be used. In a unidimensional approach, the poor are identified by a single cutoff; overall poverty is evaluated using a unidimensional measure, such as the Foster, Greer, and Thorbecke (FGT) class. The FGT class of index is a traditional measure of poverty that basically involves aggregating various dimensions into an overall variable and viewing through a unidimensional lens.

However, if an aggregate variable cannot be plausibly constructed, and instead there are several important distinct dimensions, how can we identify the poor and measure poverty in this case? Bourguignon and Chakravarty propose the use of dimension-specific lines (called deprivation cutoffs in Alkire and Foster's work) as the basis for determining who is deprived and in which dimension. Alkire and Foster then posit the existence of an identification function, which determines whether a person is deprived enough to be called poor, and a poverty measure, which evaluates how much overall poverty exists. Axioms analogous to the ones used in the unidimensional case can ensure that the measure properly reflects poverty and that it can be decomposed by subgroup. The axioms also ensure the poverty measure is consistent with the identification function.

Much of the research in this area has been concerned with

finding an appropriate poverty measure, rather than devising new methods of identifying the poor. Two benchmark identification approaches are discussed by Atkinson: the union and intersection approaches. Under union identification, a person who is deprived in any dimension is considered poor. Under intersection identification, only persons who are deprived in all dimensions are considered poor. Both approaches are easy to understand and have useful characteristics, such as being able to be applied to ordinal variables. However, they can be particularly ineffective at separating the poor from the non-poor. In a recent study by Sabina Alkire that uses ten dimensions to identify the poor in India, the union approach identifies 97 percent of the population as poor, whereas the intersection approach identifies 1 percent of the population as poor. Such a range of values is common in many studies. Bourguignon and Chakravarty's discussion on concerns of identification functions show tradeoffs are being made between continuous dimensional variables. However, this leads the discussion back to the original question of whether a coherent aggregate variable can be constructed from the individual dimensions. If the answer is no, as postulated above, then it may be somewhat difficult to justify the aggregation needed for a general identification function. If yes, there may be good reason to explore a unidimensional method.

One important omission in this literature is proper discussion of the axiomatic structure for identification functions (or, more generally, for overall methodologies) that could help guide the construction of new identification techniques. Too little attention has been paid to developing practical alternatives to the union, intersection, and unidimensional identification approaches.

General Framework of the AF Methodology

AF Method compared to the Human Development Index (HDI)

The AF methodology is a general framework for multidimensional poverty measurement, which can be filled in different ways. The dimensions and cutoffs could vary, as could the weights and poverty cutoff. The measure could be applied at different levels. For example, a poverty measure could be implemented at the village, state, or national levels. The specific choice of measures might vary: one institution might implement a measure with cardinal data to reflect the depth of poverty or inequality among the poor, whereas another could only have ordinal data available and would report the adjusted headcount ratio and the breadth of poverty. In sum, the AF approach is a flexible framework and can give

rise to a number of concrete applications whose shapes depend upon the purpose for which they are designed.

There is a chance the AF method might be confused with the Human Development Index (HDI), which aggregates across achievements in health, education, and standard of living. In fact, the two measure very different things. The AF methodology (and its particular example of the MPI) measures poverty; it identifies who is poor and ignores the data of the non-poor. In contrast, the HDI is a welfare index based on three marginal distributions that combine the aggregate dimensional achievements of all people (not just the poor) into one overall score. While the HDI may be limited in terms of data, dimensions, and methodology, it has helped bring into view people's achievements in nonmonetary spaces, and made it possible for other categories of multidimensional measures (such as poverty measures) to be envisioned.

Who Chooses the Parameters?

The AF methodology is a general framework for measuring multidimensional poverty, an open source technology that can be freely altered by the user to best match the measure's context and evaluative purpose. As with most measurement exercises, it will be the designers who will have to make and defend the specific decisions underlying the implementation, limited and guided by the purpose of the exercise and commonly held understandings of what that purpose entails. Traditional unidimensional measures require decisions that are qualitatively similar. For example, should the variable be expenditure or income? What should the poverty cutoff be? Other implementation choices are less apparent, but can likewise be important for final results. Robustness tests are crucial both for ensuring results obtained are not unduly dependent upon the calibration choices and for allowing these choices to be made in the first place. The calibration of choices will depend upon the purpose of the measure, such as the space in which poverty is evaluated, the relevant comparisons across time or populations that the measure will inform, or the particular programs or institutions that will be evaluated. Calibration choices also reflect data and resource constraints.

Enabling people to choose parameters according to a range of processes provides an essential flexibility and adaptability to allow the measures to be tailored to institutional, cultural, and data-specific circumstances. In addition, the AF methodology is relatively transparent and this feature can be helpful when parameters are set by (or at least opened to) public debate. It uses explicit indicators, weights, and cutoffs, so that serious shortcomings in the choice of parameters can be debated and changed. To counterbalance and inform this flexibility, the use of dominance results and of

robustness and sensitivity tests, which will show whether key points of comparison are robust to a range of plausible parameter choices.

Missing Dimensions of Poverty in Data

Human development is the process of expanding freedoms that people value and have reason to value, according to Sen. If we understand development to be the key process of expanding the freedoms that people value and have reason to value, then a key aspect of assessing these freedoms is to measure them in a manner that is consistent and comparable over time and space. There are a number of reasons why an initiative to identify and advocate a small set of indicators for important but non-standard dimensions of human development may be both useful and feasible.

First, more such data exists than in any previous generation, to such an extent that more data is present in some countries than can be fully analyzed. The indicators are generated by household surveys and community-based surveys, as well as censuses and demographic and social surveys. Thus, there is a wealth of experience with non-standard indicators that can inform the selection of technically accurate and cross-culturally comparable indicators.

Second, a number of initiatives are already exploring how to measure capabilities and how to structure national and regional assessments. Individual researchers working to advance capability measurement are developing surveys and undertaking studies using both micro and primary data. Community-based monitoring systems have incorporated and explored missing indicators related to capabilities and functions. This initiative to shortlist missing key indicators of human development for international data collection has drawn upon and endeavored to support such initiatives.

Third, these dimensions may be important triggers of human development in other dimensions (and oversight of them may also block or slow poverty reduction in other spaces), because each of these dimensions seems to be casually interconnected with other aspects of poverty in complex ways. The lowest-ranking countries in terms of the HDI are countries in or emerging from violent conflict. It has been repeatedly argued that empowerment is instrumentally significant for poverty reduction, and addressing social exclusion and disrespect by caste, religion, age, race, or other categories seems an inescapable part of addressing poverty.

Fourth, the missing dimensions are arguably intrinsically important—hence their selection. Multidimensional poverty measures can illuminate certain issues better (i.e. targeting, and distribution of acute poverty) if data are aggregated firstly across dimensions, and secondly across individuals. For the HDI, data are aggregated across all individuals for each domain. However, a

distinct advantage emerges if the data are all available from the same survey or from surveys that can be matched at the individual level.

Grounds for Indicator Selection

First, the indictors need to be internationally comparable. This is particularly important, as there is a dearth of information available on comparative indicators of the missing dimensions. Second, the indicators seek to assess not only the instrumental, but also the intrinsically valuable aspects of the dimensions. Third, it is essential to select indicators that would be able to identify changes in the dimension over time. Fourth, and crucially, the choice of the indicators draws on experience with particular indicators to date; that is, how frequently these indicators have been previously fielded and found to be adequate measures for research purposes.

Missing Dimensions

Having pointed out the need for additional poverty data, there are specific dimensions that are valued by poor people and have policy relevance. The following describes the rationale behind the five dimensions that have been selected.

Employment Quality

Employment is certainly not a new dimension of wellbeing, but it is sometimes forgotten in human development and poverty reduction policies, or at least not considered in sufficient depth. Employment is the main source of income for most families in the world. Having a good and decent job is generally associated with being out of poverty, however poverty is defined. Additionally, employment can give a sense of self-respect and fulfillment. There is hence no question as to the importance of employment as a fundamental aspect of individual wellbeing. However, existing employment data generally focuses on formal employment and overlooks the kinds of employment open to poor people, as well as indications of the potential meaning of employment. Lugo proposes five indicators of employment: informal employment, income from self-employment, occupational safety and health, and under- and overemployment. The final indicator relates to quantity; it seeks to determine the level of discouraged unemployment, that is, people who would like to be working but have stopped looking for a job.

Agency and Empowerment

Agency has been defined as “what a person is free to do and achieve in pursuit of whatever goals or values he or she regards as important.” More simply, it is defined as “someone who acts and brings about change.” The opposite of a person with agency is someone who is coerced, oppressed, or passive. Agency and its expansion

(empowerment) recur as a variable that is of intrinsic and instrumental importance to impoverished communities. Building on a growing body of empirical research, Ibrahim and Alkire, propose a "short list" of indicators aimed at capturing the individual and collective facts of agency. In brief, they use decision-making questions to identify perceptions of control. Who makes decisions about different areas of household life and whether the respondent could if he or she chose. To measure the extent to which people feel themselves to be coerced, and/or acting on their own initiative, the article proposes, uniquely, autonomy measures from psychology that have been tested across cultures and recently in poor communities. Other questions explore the extent to which individuals feel empowered to bring change at both the individual and communal levels.

Physical Safety

One of the greatest impediments to human security in the post-Cold War era is not war fought by the armed forces of nation states, but violence perpetrated by individuals, groups, and state actors within nations' internal borders. Violence undoes the development gains achieved in area such as education, health, employment, income generation, and infrastructure provision. Further, it impedes human freedom to live safely and securely, and can sustain poverty traps in many communities. However, violence is not inevitable to human interaction. Most multi-ethnic, multi-religious, and poor people live in peace. There is need for reliable and comparable data of violence against both person and property to greater inform our understanding of these concepts.

The Ability to Go About Without Shame

Shame and humiliation are essential to the understanding of poverty, yet internationally comparable data on these dimensions are missing. Based on existing indicators from related fields, Zavaleta proposes eight indicators to measure specific aspects of shame and humiliation. Indicators for measuring shame have been selected from the HIV/AIDS-related stigma literature, from literature on discrimination, and from instruments used in psychology. The first indicator relates to the shame of being associated with poverty, or the stigma of poverty. The second indicator relates to shame proneness, which refers to the "tendency to experience the emotion of shame in response to specific negative events." Shame proneness is particularly relevant because it affects social relationships, self-respect, and the ability to go about without shame—all aspects of capability poverty. Indicators of humiliation refer to that experience in response to external events and to the internal experience of humiliation. The questions on external humiliation center on respectful treatment, unfair treatment, discrimination, and

perceptions that one's background impedes mobility; the question on internal humiliation seeks to gauge levels of accumulated humiliation at the individual level.

Psychological Wellbeing

The final aspect pertains to psychological and subjective states of wellbeing, which have clear intrinsic and instrumental value. They are a key component of the other dimensions proposed here, as well as an end result of their attainment. Moreover, they stand to contribute a richer perspective to the understanding of human experience and values, and particularly the importance of its non-material components. There are two approaches: perceptions of the meaning of life and the ability to strive toward excellence in fulfilling this idea.

In conclusion, it is important to recognize the limitations of this exercise of attaining missing data. The eventual goal is not merely to measure poverty, but rather to create a framework for research and policy that will lead to lasting poverty reduction.

Methodology

This chapter outlines the research methodology the study will adopt. It looks at the research design, population of the study, sampling methods used, data collection techniques, and data analysis techniques.

Research Design

This study will adopt a descriptive approach of poverty indexes in Kenya. The main reason for this selective, descriptive research design is because it provides a knowledge base when little is known. It also allows one to establish a relationship between variables.

Data

Secondary data will be employed in this study. The data used for this analysis is from the census, conducted by the Kenya National Bureau of Statistics in 2009. As noted, our choice of data is guided by the objective of establishing comparability with the global MPI estimates presented in Alkire and Santos' work and the UNDP 2010 report. A key advantage of the MPI methodology is it is based on a consistent methodology that seeks to use comparable data that facilitates international comparison. This data is also available at the Commission for Revenue Collection in Kenya.

Population Sampling

The study focuses on all forty-seven counties of Kenya. Data from the 2009 population census will be used. The forty-seven counties are heterogeneous in terms of their population sizes.

Alkire Foster Method

This is the method that will be used to calculate the poverty index:

- **Step 1:** Choose the unit of analysis. In this case, the unit of analysis will be at the county level.
- **Step 2:** Choose dimensions. In this case it will be the level of schooling, level of health care, and standard of living.
- **Step 3:** Choose Indicators. These are chosen for each dimension on the principles of accuracy (using as many indicators as necessary so that the analysis can properly guide policy) and parsimony (using as few indicators as possible to ensure ease of analysis for policy purposes and transparency). Level of education is indicated by the number of people who are completely illiterate, the number of people who have been educated up to the primary level, and the number of people who have been educated up to the secondary school level. Health care is indicated by the number of people not immunized and the number of people who go through home deliveries. Standard of living is indicated by the number of people living in poor sanitation, the number of people who cannot access clean water (clean water is as far as a 30-minute walk) and the number of people who use inferior fuel.
- **Step 4:** Set poverty lines. A poverty cutoff is set for each dimension. This step establishes the first cutoff in the methodology. Every person can be identified as deprived or non-deprived with respect to each dimension.
- **Step 5:** Apply poverty lines. This step replaces the person's achievement with his or her status with respect to each cutoff.
- **Step 6:** Count the number of deprivations for all the dimensions.
- **Step 7:** Set the second cutoff. Assuming equal weights for simplicity, set a second cutoff "k", which gives the number of dimensions in which a person must be deprived in order to be considered mutidimensionally poor. Robustness tests can be performed across all values of k.
- **Step 8:** Apply k to obtain the set of poor persons and censor all non-poor data. The focus is now on the profile of the poor and the dimensions in which they are deprived.
- **Step 9:** Calculate the headcount, H. Divide the number of poor people by the total number of people.

- **Step 10:** Calculate the average poverty gap, A. A is the average number of deprivations a poor person suffers. It is calculated by adding the proportion of total deprivations each person suffers and dividing by the total number of poor persons.
- **Step 11:** Calculate the adjusted headcount, M. If the data are binary or ordinal, multidimensional poverty is measured by M, which is calculated as H times A. Headcount poverty is multiplied by the "average" number of dimensions in which all poor people are deprived to reflect the breadth of dimensions.

A systematic overview of the multidimensional methodology of Alkire and Foster's work in (2007) and (2011) is used to describe the poor people using a 'dual cutoff' method. In this work, there is construction of poverty measures and each measure is drilled down to unfold distinctive partial indexes that can illuminate policy questions. Decompositions are exhibited that explain and clarify the aggregate poverty level. What follows will assume the range of dimensional variables has been selected and data are available in the form of a $n \times d$ data matrix Y for n persons and $d \geq 2$ dimensions.

Identification

In unidimensional analysis, identification is normally accomplished by the use of a poverty line or threshold, with poor people being identified as those whose resource or achievement variable falls below the poverty line. In the multidimensional measurement setting, where there are multiple variables, identification is a substantially more challenging exercise. This part of the AF method is most commonly overlooked or misunderstood. Therefore, it is important to begin by understanding the basic elements of the AF method dual-cutoff identification approach.

Deprivation Cutoffs

A vector $z = z_1,...,z_d$ of the deprivation cutoffs (one of each dimension) is used to determine whether a person is deprived. If the person's achievement level in a given dimension j falls short of the respective deprivation cutoff z_j the person is said to be deprived in that dimension; if the person's level is at least as great as the deprivation cutoff, the person is not deprived in that dimension.

Weights

A vector $w = w_1,...,w_d$ of the weights or deprivation values is used to indicate the relative importance of the different deprivations. If each deprivation is viewed as having equal importance, it leads to a benchmark case where all weights are one and the sum to

the number of dimensions *d*. If dimensions are viewed as having differential importance, this is reflected by the sum of a vector whose entries equal *d* but can vary from one with higher weights, indicating greater importance. Deprivation values affect identification as they determine the minimal contributions of deprivations that will identify a person as being poor; they also affect aggregation by altering the relative contributions of deprivation to overall poverty.

Deprivation Counts

A column vector $c = (c_1,...,c_n)'$ of deprivation counts reflects the breadth of each person's deprivation. The ith person's deprivation count c_i is the number of deprivations experienced by *i* (in the case of equal weights), or the sum of the values of the deprivations experienced by *i* (in the general case).

Poverty Cutoff

A poverty cutoff *k* satisfying $0 < k \leq d$ is used to determine whether a person has sufficient deprivations to be considered poor. If the ith person's deprivation count c_i falls below *k*, the person is not considered poor; if the person's deprivation count is *k* or above, the person is identified as poor. Note that when *k* is less than or equal to the minimum weight across all dimensions we have a union identification. When $k = d$, the intersection approach is being used. The deprivation count and poverty cutoff can also be expressed as percentages of *d*.

Identification Function

The identification function summarizes the outcome of the above process and indicates whether a person is poor in Y given deprivation cutoffs *z*, weights *w* and poverty cutoff *k*. If the person is poor, the identification function takes on a value of one; if the person is not poor, the identification function has a value of zero.

One of the interesting properties exhibited by the AF method approach is its applicability, even when one or more variable are ordinal. All cardinalizations of the ordinal variable (found by applying a monotonic transformation to the variable and its cutoff) yield identical conclusions regarding whether a person is deprived in the dimension and whether the person is poor. This expands the potential reach of the methodology by allowing it to be meaningfully applied to data with lower-level measurement properties.

The Alkire-Foster Multidimensional Poverty Index

The MPI is an extension of the one-dimensional class of decomposable poverty measures proposed by Foster, Greer, and Thorbecke in 1984. It emerged from the dimensional adjusted poverty headcount ratio proposed by Alkire and Foster in 2007. The index is made up of two components: the poverty headcount, H, and an adjustment measure, A, that represents the number of deprivations suffered

on average by the poor.

$$MPI = H \times A \quad (1)$$

Where;

$$H = \frac{q}{n} \quad (2)$$

This is simply the total number of poor, q, divided by the total population, n. Since this study is using data from a representative household survey, and since it wants to adjust for variations in household size (notably to ensure the measurement takes into account poorer households typically have more members), a weight $w_i = s_i \times h_i$ is applied where s_i is the sample weight and h_i is the household size; w_i could be normalized so that $\sum_{i=1}^{n} w_i = n$

The total number of poor people is given by:

$$q = \sum_{i=1}^{n} w_i \rho_k (y_i; z) \quad (3)$$

This is the sum of individuals identified as poor using a dual cutoff approach represented by $\rho k(y;z)$, where $y_i = (y_{i1},\ldots,y_{ij}\ldots \ldots \ldots,y_{id})$ represents the profile household *i's* achievements across *d* dimensions. The first cutoff is given by z_j, which is the deprivation threshold in each dimension, $j = 1,\ldots,d$ of poverty that separates the deprived from the non-deprived. The second cutoff is represented by *k*, which is the number of deprivations required in order for the individual to be considered mutidimensionally poor. At one extreme when $k = 1$, the identification cutoff is equal to the union approach, whereby poverty is defined as being deprived in just one dimension. At the other end, $k = d$ is equal to the intersection approach, where one is defined as mutidimensionally poor only if deprived in all dimensions. The poverty status of an individual is defined as a dichotomous variable equal to one if the number of deprivations counted c_i, for each individual $c_i \geq k$, and zero if not.

It is useful to organize the multiple dimensions *d* according to *T* partitions with respective sizes: $d_1, d_2, \ldots \ldots \ldots \ldots, d_T$, with $d = d_1 + d_2 + \cdots + d_T$. Each partition can be thought of as representing a domain containing d_t nested dimensions. Domains, or broad dimensions, considered in multidimensional welfare analysis vary in terms of how many are included and how these are defined. The MPI, however, uses three: health, education, and material standard of living. Previously, the terms domains and dimensions have been interchangeably used, a practice from which this paper seeks to depart. Specifically, a formal distinction between domains and dimensions is introduced to extend the use of the MPI. This enables us to differentiate between domains and deprivations that occur exclusively in one domain, as opposed to deprivations that occur across several domains. This is particularly important for the MPI, which has several indicators in a single domain, notably the one capturing material standard of living, that tend to be highly correlated. In the extended application of the MPI, the multidimensional poverty status first needs to be defined by the condition $ci \geq T$, where the multidimensional cutoff *k* is equal to the number of domains

T. We then need to include an additional condition in which the number of deprivations counted *ci* includes non-zero values for each dimension. Formally, *ci* can be composed by dimensions as $c_i^{d1} + c_i^{d2} + \cdots + c_i^{dT}$. The second condition holds if $c_i^{di} \geq 0 \forall t$. This definition is more restrictive than the one only based on the first condition since it excludes individuals with T deprivations, but without deprivation in at least one dimension indicator of any domain. The multidimensional cutoff for this alternative will be denoted by k^*, and an individual is considered to be multidimensionally poor when $c_i \geq k^*$.

Since H is sensitive to the number of dimensions in which a poor person is deprived, as a poverty measure on its own it violates a principle that Alkire and Foster refer to as "dimensional monotonicity," which states that if a poor person becomes newly deprived in an additional dimension overall poverty should increase.Therefore, H is adjusted by a measure of the number of deprivations a poor person suffers, reflecting the intensity of A of poverty:

$$A = \frac{1}{qd} \sum_{i=1}^{n} w_i \, c_i^* \qquad (4)$$

Where c_i^* indicates we are only counting deprivations for individuals for whom $c_i \geq k$. It is possible to assign different weights w^d to the dimensional deprivations in order to reflect differences in the importance attached to each of the multiple dimensions of poverty. In that case, c_i is the weighted number of deprivations in which the individual is deprived. The MPI is automatically adjusted to reflect the weighting scheme.

$$c_i = \sum_{j=}^{d} P_{zj} \left(y_i \, , \omega_j^d \right) \qquad (5)$$

Where

$P_{zj}(y_i \, , \omega_j^d) = \begin{cases} \omega_j^d \; if \, y_{ij} < z_j \\ 0 \end{cases}$ and 0 otherwise.

The MPI can be decomposed by the subgroup:

$$MPI = \sum_{l=1}^{L} \varphi^l \, MPI^l \qquad (6)$$

Where φ^l is the population share of subgroup l (i.e.n^l/n). This type of decomposition is useful for developing poverty profiles as it allows for identifying which subgroups have higher levels of poverty. In turn, this is useful for purposes of targeting anti-poverty interventions. Equation (1) can also be used to evaluate the contribution π_l of each subgroup to overall poverty:

$$\pi_l = \frac{\varphi^l MPI^l}{MPI} \qquad (7)$$

A useful complementary analysis is to decompose MPI by dimension and assess the contribution to overall poverty levels by each dimension:

$$\pi_j = \frac{\frac{1}{nd} \sum_{i-1}^{n} c_{i,j}^*}{MPI} \qquad (8)$$

Where $c_{i,j}^*$ is the same as $P_z(y_i, w_j^d)$ when $c_i \geq k$ and equals zero otherwise. While the MPI is sensitive to the number of deprivations of poverty, it is not sensitive to the depth of poverty. If a person becomes more deprived in one dimension the measure will not change. The depth and severity of poverty can be assessed using other members of the Alkire and Foster class of poverty measures, or others, such as those suggested by Bourguignon and Chakravarty

in 2003 and Tsui in 2002. For purposes of this paper the incidence of poverty is focused on as represented by the MPI.

For purposes of the MPI, three domains, or broad dimensions, will be considered: health, education, and standard of living. Two dimensions or indicators will be retained in the health domain and the education domain, while six dimension indicators will be considered for the standard of living domain. Some of the indicators will be drawn from individual sections of the surveys and other household sections. The MPI thus applies a unitary definition of the household, whereby all members of a given household are afforded the same poverty status and intra-household inequality is not considered. The unitary household definition poses certain challenges when it comes to comparing two distributions of multidimensional poverty when household sizes are different.

The weights are set such that each broad dimension is equally weighted at 1/3, and using nested weights, each indicator dimension is also weighted within each broad domain. The issue of which weights to apply is of considerable importance in compiling dimensional indexes, as indicated by Decanq. For purposes of the MPI, the Alkire and Santos 2010 method of using equal weights across domains to ensure a methodology that enables international comparability is used.

Ranking Test: Mann-Whitney U Test

The Mann-Whitney U test is a non-parametric test that can be used in place of an unpaired t-test. It is used to test the null hypothesis that two samples come from the same population, or alternatively, whether observations in one sample tend to be larger than observations in another. Although it is a non-parametric test it does not assume that the two distributions are similar in shape.

Carrying Out the Mann-Whitney U Test

Suppose there is a sample of n_x observations $x_1, x_2, \dots \dots, x_n$ in one group (from one population) and a sample of n_y observations $y_1, y_2, \dots \dots, y_n$ in another group (from another population). The Mann-Whitney test is based on every observation y_j in another sample. The total number of pair-wise comparisons that can be made is $n_x n_y$.

If the samples have the same median, then each x_i has an equal chance (a probability of 0.5 percent) of being greater or smaller than each y_j. Therefore, the procedure is as follows:

1. Arrange all observations in order of magnitude.

2. Under each observation, write down *X* or *Y* (or some other relevant symbol) to indicate from which sample they come.

3. Under each *x* write down the number of *ys* to the

left (smaller than it); this indicates $x_i > y_j$. Under each y write down the number of xs to the left; this indicates $y_j > x_i$.

4. Add up the total number of times $x_i > y_j$, denote by U_x. Add up the total number of times $x_i > y_j$, denote by U_y. Check that $U_x + U_y = n_x n_y$.

5. Calculate $U = \min(U_x, U_y)$.

6. Use statistical tables for the Mann-Whitney U test to find the probability of observing a value of U or lower. If the test is one-sided, this is the p-value; if the test is two-sided, double the probability to obtain the p-value.

Note that if the number of observations is such that $n_x n_y$ is large enough (>20), a normal approximation can be used with $\mu_U = \frac{n_x n_y}{2}, \sigma_U = \sqrt{\frac{n_x n_y (N+1)}{12}}$, *where* $N = n_x + n_y$.

Analysis and Discussion

Comparing the Allocations

The money allocated toward counties by the Kenyan National government every fiscal year is roughly Kshs. 300,000,000,000; eighteen percent of this amount (Kshs. 54,000,000,000) is channeled toward poverty alleviation and reduction in each of the forty-seven counties.

According to Lucy's model, which uses the HDI to calculate the poverty index, the largest allocation toward poverty alleviation would go to Turkana County. The largest allocation of money using the AF method would go towards Nairobi County (see Figure 1).

Figure 1: Poverty Allocations by Alkire-Foster's Method vs. Lucy's Model

Principal Component Analysis of the Allocations

Principal Components Analysis
Date: 10/25/16 Time: 07:00
Sample: 1 47
Included observations: 47
Computed using: Ordinary correlations
Extracting 2 of 2 possible components

Eigenvalues: (Sum = 2, Average = 1)

Number	Value	Difference	Proportion	Cumulative Value	Cumulative Proportion
1	1.894789	1.789577	0.9474	1.894789	0.9474
2	0.105211	---	0.0526	2.000000	1.0000

Eigenvectors (loadings):

Variable	PC 1	PC 2
ALLOCATIONS_AF...	0.707107	-0.707107
ALLOCATIONS_FR...	0.707107	0.707107

Ordinary correlations:

ALLOCATIONS	AF_METHOD_	ALLOCATIO...
ALLOCATIONS_AF...	1.000000	
ALLOCATIONS_FR...	0.894789	1.000000

Figure 2: Principal Components Analysis

The correlation between the allocations derived from the AF method and the allocations derived from the HDI method is 0.894789. The variance between both sets of allocations is 0.707107, whereas the covariance is -0.707107, 0.707107 (see Figure 2).

Test of Equality of Means Between the Allocations

The mean of the allocations derived from the AF method and the allocations derived from the HDI is the same at 1.15. The standard deviations significantly vary, as well as the standard error of the means (see Figure 3). This may be due to the difference in the poverty indexes according to both methods. For example, according to the AF method the county with the largest poverty index is Nairobi, and according to the HDI the county with the largest poverty index is Turkana. Therefore, the difference in allocations is significant and this can be explained by the difference in the standard deviation and the standard error of the mean.

Test for Equality of Means Between Series
Date: 10/25/16 Time: 07:01
Sample: 1 47
Included observations: 47

Method	df	Value	Probability
t-test	92	2.01E-15	1.0000
Satterthwaite-Welch t-test*	70.06504	1.61E-15	1.0000
Anova F-test	(1, 92)	4.05E-30	1.0000
Welch F-test*	(1, 70.065)	2.59E-30	1.0000

*Test allows for unequal cell variances

Analysis of Variance

Source of Variation	df	Sum of Sq.	Mean Sq.
Between	1	2.67E-12	2.67E-12
Within	92	6.07E+19	6.60E+17
Total	93	6.07E+19	6.53E+17

Category Statistics

Variable	Count	Mean	Std. Dev.	Std. Err. of Mean
ALLOCATI...	47	1.15E+09	1.01E+09	1.48E+08
ALLOCATI...	47	1.15E+09	5.39E+08	78664308
All	94	1.15E+09	8.08E+08	83359170

Figure 3: Test for Equality of Means Between Series

Test of Equality of Variances Between the Allocations

The standard deviations of the HDI and the AF method significantly varies. The Bartlett weighted standard deviation is 8.13 (see Figure 4). This means the variations are significant for the allocations that are generated for each county by using both the AF method and the HDI.

Correlogram of Allocations

The data in the analysis was lagged at 4. Autocorrelation is the highest at lag 3 with autocorrelation function (ACF) of 0.074, which alternates and becomes negative in the fourth lag. Partial autocorrelation is evident at lag 4 only with partial correlation function (PACF) of 0.8206. The probability that the AF method and HDI are auto

Figure 4: Test for Equality of Variances Between Series

Test for Equality of Variances Between Series
Date: 10/25/16 Time: 07:01
Sample: 1 47
Included observations: 47

Method	df	Value	Probability
F-test	(46, 46)	3.540529	0.0000
Siegel-Tukey		2.714722	0.0066
Bartlett	1	17.08802	0.0000
Levene	(1, 92)	9.653196	0.0025
Brown-Forsythe	(1, 92)	6.217628	0.0144

Category Statistics

Variable	Count	Std. Dev.	Mean Abs. Mean Diff.	Mean Abs. Median Diff.	Mean Tukey-Siegel Rank
ALLOCATI...	47	1.01E+09	7.63E+08	7.31E+08	39.85106
ALLOCATI...	47	5.39E+08	4.32E+08	4.32E+08	55.14894
All	94	8.08E+08	5.98E+08	5.81E+08	47.50000

Bartlett weighted standard deviation: 8.13e+08

Figure 5: Correlogram of Allocations

Date: 10/25/16 Time: 07:01
Sample: 1 47
Included observations: 47

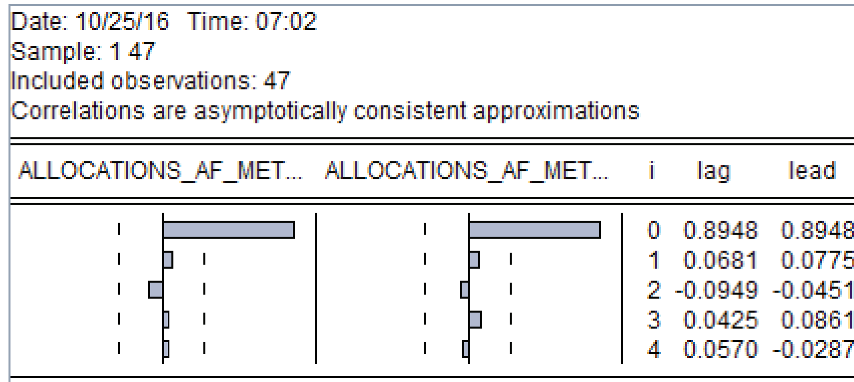
Autocorrelation	Partial Correlation		AC	PAC	Q-Stat	Prob
		1	0.067	0.067	0.2255	0.635
		2	-0.077	-0.082	0.5327	0.766
		3	0.074	0.086	0.8204	0.845
		4	-0.002	-0.021	0.8206	0.936

correlated varies between 0.635 and 0.936, which is high (see Figure 5). This is attributed to the fact the same data was applied to both methods and the indicators used in both methods are the same.

Cross-Correlogram of Allocations

The highest significant correlation is at lag zero which is 0.8948 (see Figure 6).

Figure 6: Cross-Correlogram of Allocations


Date: 10/25/16 Time: 07:02
Sample: 1 47
Included observations: 47
Correlations are asymptotically consistent approximations

ALLOCATIONS_AF_MET...	ALLOCATIONS_AF_MET...	i	lag	lead
		0	0.8948	0.8948
		1	0.0681	0.0775
		2	-0.0949	-0.0451
		3	0.0425	0.0861
		4	0.0570	-0.0287

Ranking Test Results

To check if there is a difference in ranking between the Alkire-Foster method and the Human Development Index, the Mann-Whitney U test is applied. The null hypothesis states there is no difference between the rankings of counties using both methods. The alternative hypothesis states there is a difference in the rankings of counties using both methods. The results from the test show. The test carried out is a two-tailed test with a 95 percent level of significance. Therefore,. The decision is to reject the null if . In this case, Therefore, the decision is to fail to reject the null hypothesis. The test validates the null hypothesis, which means there is no difference between the rankings of counties using both methods.

Discussion of Results

From the results above, the county with the largest poverty index using the Alkire-Foster method is Nairobi County, while the county with the largest poverty index using the Human Development Index is Mandera County. This is because the Alkire-Foster method uses a dual-cutoff approach; it is biased toward the size of the population. If the county population is large, the poverty headcount and the poverty index tend to be large since there are a large number of households in a county with a large population.

The Human Development Index is a method based on weights assigned to the different indicators that characterize poverty. This means if a county has a large number of people that lack in a certain aspect (e.g. many people who are illiterate), then when multiplied by a certain weight the county will be considered poor in that aspect.

The HDI fails to specify the number of people who are completely deprived in a particular aspect. It generalizes poverty and fails to identify the truly poor people in a particular

aspect. This can be shown by the deviations in allocations in each county. The money allocated using poverty index derived from the Alkire-Foster method is less in most of the counties than the money allocated using the poverty index derived from the Human Development Index. This is a clear indication the Alkire-Foster method is more objective since it targets the truly poor people in each county. It is worth noting the total amount of money allocated to poverty alleviation is the same in both methods.

The results prove that the Alkire-Foster methodology identifies who is poor and ignores the data of the non-poor. The HDI is a welfare-based index based on marginal distributions that combine the aggregate dimensional achievements of all people into one overall score Alkire.46

The correlation of the allocations derived from the AF method and the allocations derived from the HDI method is 0.894789. This is a strong, positive correlation between the allocations from both methods. The correlation of the AF method indexes and HDI method indexes is 0.471475, which is moderate. This means the two indexes have a moderate correlation, explaining the difference in the poorest counties from both methods.

Conclusion

The two main objectives of this study were to reconstruct Kenya's poverty index using the Alkire-Foster Method and compare the difference between the poverty allocations arrived at by AF method and Lucy's model allocations. Based on the results of the study, we aimed to offer suggestions for improving the poverty index used in Lucy's model.

We constructed the Kenyan poverty index using the AF method and data from the Commission for Revenue Allocation. The cutoffs described in the methodology were used and from this we were able to come up with the indexes shown in Appendix A.

The correlation between the allocations arrived at using both the AF method and the HDI in Lucy's model is 0.894789—which is quite high—indicating a strong positive correlation between the allocations from both methods. When we tested the significance of the difference in ranking, the results from the test show with a score of. The test validates the null hypothesis, which means there is no difference between the rankings of counties using both methods.

In conclusion, we find that though both methods indicate different counties as the neediest (Nairobi-AF method, Mandera-HDI; Lucy's model), there is no statistically significant difference between the allocations arrived at by both models. We cannot offer suggestions for the improvement of Lucy's model given the results of the study.

Appendix A: Poverty Indexes by Alkire-Foster Method

County	PI (AF Method)
BARINGO	0.011795040
BOMET	0.015756143
BUNGOMA	0.051083904
BUSIA	0.015941833
ELGEYO-MARAKWET	0.004028614
EMBU	0.006594597
GARISSA	0.017788094
HOMA-BAY	0.031143334
ISIOLO	0.000664133
KAJIADO	0.012215570
KAKAMEGA	0.068857921
KERICHO	0.014117713
KIAMBU	0.033004206
KILIFI	0.039435142
KIRINYAGA	0.005577941
KISII	0.029046053
KISUMU	0.022540348
KITUI	0.033384776
KWALE	0.014870893
LAIKIPIA	0.003967731
LAMU	0.000285003
MACHAKOS	0.031021464
MAKUENI	0.024198070
MANDERA	0.054155499

County	PI (AF Method)
MARSABIT	0.003725859
MERU	0.042395773
MIGORI	0.024611453
MOMBASA	0.010572368
MURANG’A	0.021764831
NAIROBI CITY	0.089287034
NAKURU	0.045913698
NANDI	0.014381295
NAROK	0.028158550
NYAMIRA	0.008637370
NYANDARUA	0.007345022
NYERI	0.008595484
SAMBURU	0.002266359
SIAYA	0.019689301
TAITA-TAVETA	0.001973413
TANA-RIVER	0.002521441
THARAKA-NITHI	0.004224201
TRANS-NZOIA	0.020162449
TURKANA	0.043079641
UASIN-GISHU	0.015785752
VIHIGA	0.007934874
WAJIR	0.023367883
WEST POKOT	0.012131929

Appendix B: Poverty Indexes by Lucy's Model

County	PI (LNF)
BARINGO	0.0207376224
BOMET	0.0200914965
BUNGOMA	0.0270298910
BUSIA	0.0184203234
ELGEYO-MARAKWET	0.0103980195
EMBU	0.0130963157
GARISSA	0.0257039025
HOMA-BAY	0.0302572738
ISIOLO	0.0044140450
KAJIADO	0.0202085850
KAKAMEGA	0.0349231529
KERICHO	0.0189801493
KIAMBU	0.0282422752
KILIFI	0.0320465496
KIRINYAGA	0.0110786765
KISII	0.0245369095
KISUMU	0.0247058716
KITUI	0.0301530962
KWALE	0.0210968327
LAIKIPIA	0.0099663700
LAMU	0.0025889848
MACHAKOS	0.0284671227
MAKUENI	0.0248016747
MANDERA	0.0458866294
MARSABIT	0.0112521568
MERU	0.0315341078
MIGORI	0.0247011611
MOMBASA	0.0164538961
MURANG'A	0.0238309924
NAIROBI CITY	0.0421147467
NAKURU	0.0335683452
NANDI	0.0183739978
NAROK	0.0303429736
NYAMIRA	0.0143705917
NYANDARUA	0.0121814639
NYERI	0.0142100272
SAMBURU	0.0089179940
SIAYA	0.0221005326
TAITA-TAVETA	0.0069101391
TANA-RIVER	0.0094341149
THARAKA-NITHI	0.0106739335
TRANS-NZOIA	0.0213039003
TURKANA	0.0409373504
UASIN-GISHU	0.0168914782
VIHIGA	0.0118903015
WAJIR	0.0287610083
WEST POKOT	0.0214130171

Appendix C: Indexes from the Richest to the Poorest

County	PI (AF Method)
LAMU	0.000285003
ISIOLO	0.000664133
TAITA-TAVETA	0.001973413
SAMBURU	0.002266359
TANA-RIVER	0.002521441
MARSABIT	0.003725859
LAIKIPIA	0.003967731
ELGEYO-MARAKWET	0.004028614
THARAKA-NITHI	0.004224201
KIRINYAGA	0.005577941
EMBU	0.006594597
NYANDARUA	0.007345022
VIHIGA	0.007934874
NYERI	0.008595484
NYAMIRA	0.008637370
MOMBASA	0.010572368
BARINGO	0.011795040
WEST POKOT	0.012131929
KAJIADO	0.012215570
KERICHO	0.014117713
NANDI	0.014381295
KWALE	0.014870893
BOMET	0.015756143
UASIN-GISHU	0.015785752
BUSIA	0.015941833
GARISSA	0.017788094
SIAYA	0.019689301
TRANS-NZOIA	0.020162449
MURANG'A	0.021764831
KISUMU	0.022540348
WAJIR	0.023367883

County	PI (LNF)
LAMU	0.0025889848
ISIOLO	0.0044140450
TAITA-TAVETA	0.0069101391
SAMBURU	0.0089179940
TANA-RIVER	0.0094341149
LAIKIPIA	0.0099663700
ELGEYO-MARAKWET	0.0103980195
THARAKA-NITHI	0.0106739335
KIRINYAGA	0.0110786765
MARSABIT	0.0112521568
VIHIGA	0.0118903015
NYANDARUA	0.0121814639
EMBU	0.0130963157
NYERI	0.0142100272
NYAMIRA	0.0143705917
MOMBASA	0.0164538961
UASIN-GISHU	0.0168914782
NANDI	0.0183739978
BUSIA	0.0184203234
KERICHO	0.0189801493
BOMET	0.0200914965
KAJIADO	0.0202085850
BARINGO	0.0207376224
KWALE	0.0210968327
TRANS-NZOIA	0.0213039003
WEST POKOT	0.0214130171
SIAYA	0.0221005326
MURANG'A	0.0238309924
KISII	0.0245369095
MIGORI	0.0247011611
KISUMU	0.0247058716

Appendix C: Indexes from the Richest to the Poorest cont.

County	PI (AF Method)
MAKUENI	0.024198070
MIGORI	0.024611453
NAROK	0.028158550
KISII	0.029046053
MACHAKOS	0.031021464
HOMA-BAY	0.031143334
KIAMBU	0.033004206
KITUI	0.033384776
KILIFI	0.039435142
MERU	0.042395773
TURKANA	0.043079641
NAKURU	0.045913698
BUNGOMA	0.051083904
MANDERA	0.054155499
KAKAMEGA	0.068857921
NAIROBI CITY	0.089287034

County	PI (LNF)
MAKUENI	0.0248016747
GARISSA	0.0257039025
BUNGOMA	0.0270298910
KIAMBU	0.0282422752
MACHAKOS	0.0284671227
WAJIR	0.0287610083
KITUI	0.0301530962
HOMA-BAY	0.0302572738
NAROK	0.0303429736
MERU	0.0315341078
KILIFI	0.0320465496
NAKURU	0.0335683452
KAKAMEGA	0.0349231529
TURKANA	0.0409373504
NAIROBI CITY	0.0421147467
MANDERA	0.0458866294

Appendix D: Allocations to Counties by Both Methods

	County	Poverty Index	Allocations (AF Method)	Allocations From Lucy's New Model	Deviation
1	BARINGO	0.01179504	636,932,182.72	1,119,831,607.52	(482,899,424.80)
2	BOMET	0.015756143	850,831,715.87	1,084,940,812.43	(234,109,096.55)
3	BUNGOMA	0.051083904	2,758,530,833.71	1,459,614,111.40	1,298,916,722.30
4	BUSIA	0.015941833	860,859,001.70	994,697,466.28	(133,838,464.58)
5	ELGEYO-MARAKWET	0.004028614	217,545,164.06	561,493,052.48	(343,947,888.43)
6	EMBU	0.006594597	356,108,250.52	707,201,047.84	(351,092,797.32)
7	GARISSA	0.017788094	960,557,079.68	1,388,010,736.83	(427,453,657.16)
8	HOMA-BAY	0.031143334	1,681,740,050.74	1,633,892,786.67	47,847,264.07
9	ISIOLO	0.000664133	35,863,206.39	238,358,427.39	(202,495,221.00)
10	KAJIADO	0.01221557	659,640,800.12	1,091,263,591.32	(431,622,791.19)
11	KAKAMEGA	0.068857921	3,718,327,722.44	1,885,850,254.80	1,832,477,467.64
12	KERICHO	0.014117713	762,356,476.55	1,024,928,060.74	(262,571,584.18)
13	KIAMBU	0.033004206	1,782,227,127.71	1,525,082,860.68	257,144,267.03
14	KILIFI	0.039435142	2,129,497,646.23	1,730,513,676.47	398,983,969.77
15	KIRINYAGA	0.005577941	301,208,838.17	598,248,528.56	(297,039,690.39)
16	KISII	0.029046053	1,568,486,837.65	1,324,993,114.47	243,493,723.18
17	KISUMU	0.022540348	1,217,178,788.01	1,334,117,065.74	(116,938,277.73)
18	KITUI	0.033384776	1,802,777,900.73	1,628,267,192.61	174,510,708.12
19	KWALE	0.014870893	803,028,201.63	1,139,228,967.68	(336,200,766.05)
20	LAIKIPIA	0.003967731	214,257,462.31	538,183,978.22	(323,926,515.91)
21	LAMU	0.000285003	15,390,149.17	139,805,181.66	(124,415,032.49)
22	MACHAKOS	0.031021464	1,675,159,038.89	1,537,224,623.51	137,934,415.38
23	MAKUENI	0.02419807	1,306,695,805.20	1,339,290,433.49	(32,594,628.28)
24	MANDERA	0.054155499	2,924,396,930.41	2,477,877,985.35	446,518,945.06
25	MARSABIT	0.003725859	201,196,368.65	607,616,466.56	(406,420,097.91)
26	MERU	0.042395773	2,289,371,741.40	1,702,841,818.83	586,529,922.57
27	MIGORI	0.024611453	1,329,018,451.58	1,333,862,700.97	(4,844,249.38)
28	MOMBASA	0.010572368	570,907,849.10	888,510,391.94	(317,602,542.84)
29	MURANG'A	0.021764831	1,175,300,871.93	1,286,873,588.63	(111,572,716.70)
30	NAIROBI CITY	0.089287034	4,821,499,856.16	2,274,196,322.12	2,547,303,534.04

Appendix D: Allocations to Counties by Both Methods cont.

	County	Poverty Index	Allocations (AF Method)	Allocations From Lucy's New Model	Deviation
31	NAKURU	0.045913698	2,479,339,678.58	1,812,690,641.01	666,649,037.57
32	NANDI	0.014381295	776,589,906.49	992,195,880.07	(215,605,973.58)
33	NAROK	0.02815855	1,520,561,689.47	1,638,520,576.03	(117,958,886.56)
34	NYAMIRA	0.00863737	466,417,984.61	776,011,952.59	(309,593,967.98)
35	NYANDARUA	0.007345022	396,631,174.75	657,799,053.05	(261,167,878.31)
36	NYERI	0.008595484	464,156,156.69	767,341,470.24	(303,185,313.55)
37	SAMBURU	0.002266359	122,383,383.79	481,571,674.42	(359,188,290.63)
38	SIAYA	0.019689301	1,063,222,258.07	1,193,428,762.73	(130,206,504.66)
39	TAITA-TAVETA	0.001973413	106,564,299.02	373,147,509.42	(266,583,210.40)
40	TANA-RIVER	0.002521441	136,157,803.15	509,442,206.57	(373,284,403.42)
41	THARAKA-NITHI	0.004224201	228,106,828.05	576,392,409.40	(348,285,581.35)
42	TRANS-NZOIA	0.020162449	1,088,772,252.98	1,150,410,616.74	(61,638,363.75)
43	TURKANA	0.043079641	2,326,300,597.67	2,210,616,920.90	115,683,676.76
44	UASIN-GISHU	0.015785752	852,430,584.79	912,139,825.29	(59,709,240.50)
45	VIHIGA	0.007934874	428,483,186.37	642,076,280.56	(213,593,094.19)
46	WAJIR	0.023367883	1,261,865,695.46	1,553,094,445.73	(291,228,750.28)
47	WEST POKOT	0.012131929	655,124,170.63	1,156,302,922.06	(501,178,751.44)
48			**54,000,000,000.00**	**54,000,000,000.00**	

Appendix E: Results of Mann-Whitney Ranking Test

COUNTY	PI	Rank
BARINGO	0.000285003	1
BOMET	0.000664133	2
BUNGOMA	0.001973413	3
BUSIA	0.002266359	4
ELGEYO-MARAKWET	0.002521441	5
EMBU	0.002588985	6
GARISSA	0.003725859	7
HOMA-BAY	0.003967731	8
ISIOLO	0.004028614	9
KAJIADO	0.004224201	10
KAKAMEGA	0.004414045	11
KERICHO	0.005577941	12
KIAMBU	0.006594597	13
KILIFI	0.006910139	14
KIRINYAGA	0.007345022	15
KISII	0.007934874	16
KISUMU	0.008595484	17
KITUI	0.00863737	18
KWALE	0.008917994	19
LAIKIPIA	0.009434115	20
LAMU	0.009966370	21
MACHAKOS	0.010398019	22
MAKUENI	0.010572368	23
MANDERA	0.010673934	24
MARSABIT	0.011078676	25
MERU	0.011252157	26
MIGORI	0.01179504	27
MOMBASA	0.011890301	28
MURANG’A	0.012131929	29
NAIROBI CITY	0.012181464	30
NAKURU	0.01221557	31
NANDI	0.013096316	32
NAROK	0.014117713	33
NYAMIRA	0.014210027	34
NYANDARUA	0.014370592	35
NYERI	0.014381295	36
SAMBURU	0.014870893	37
SIAYA	0.015756143	38
TAITA-TAVETA	0.015785752	39
TANA-RIVER	0.015941833	40
THARAKA-NITHI	0.016453896	41
TRANS-NZOIA	0.016891478	42
TURKANA	0.017788094	43
UASIN-GISHU	0.018373998	44
VIHIGA	0.018420323	45
WAJIR	0.018980149	46
WEST POKOT	0.019689301	47
	0.020091497	48
	0.020162449	49
	0.020208585	50
	0.020737622	51
	0.021096833	52
	0.021303900	53
	0.021413017	54
	0.021764831	55
	0.022100533	56
	0.022540348	57
	0.023367883	58
	0.023830992	59
	0.02419807	60
	0.024536910	61
	0.024611453	62
	0.024701161	63
	0.024705872	64
	0.024801675	65
	0.025703903	66
	0.027029891	67
	0.02815855	68
	0.028242275	69

Appendix E: Results of Mann-Whitney Ranking Test cont.

COUNTY	PI	Rank
	0.028467123	70
	0.028761008	71
	0.029046053	72
	0.030153096	73
	0.030257274	74
	0.030342974	75
	0.031021464	76
	0.031143334	77
	0.031534108	78
	0.032046550	79
	0.033004206	80
	0.033384776	81
	0.033568345	82
	0.034923153	83
	0.039435142	84
	0.040937350	85
	0.042114747	86
	0.042395773	87
	0.043079641	88
	0.045886629	89
	0.045913698	90
	0.051083904	91
	0.054155499	92
	0.068857921	93
	0.089287034	94

Endnotes can be found online at http://apj.fas.harvard.edu/

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