# S J A S

## Somaliland Journal of African Studies

Volume 1

February 2015

# Contents

# Editorial Note

Dear Reader,

Let me start by welcoming you to the inaugural issue of the Somaliland Journal of African States (SJAS). This is a project put together with students and scholars of the Institute for Peace and Conflict Studies of the University of Hargeisa. The scope of the journal is African affairs at large, but with a particular focus on East Africa and the Horn.

This first issue is composed of four articles, selected from the nearly fifteen articles and book review proposals we received when the call for papers was open. The topics covered touch upon a wide range of issues, from the ECOWAS mission in Sierra Leone to the links between ethnicity and violence in Kenyan elections or to migrant domestic workers in South Africa. We hope that you will enjoy reading the articles we are presenting you in this first issue.

A last word of gratitude must go to scholars of IPCS, namely Abdi Zenebe, who welcomed this enterprise with both hands and always ensured our collaboration was cordial, productive and beneficial for all parts involved. The Editors, namely Jorge Campos-Tellez and Moges Demissie, and the anonymous Reviewing Board also worked hard to meet the goals set out for them, contributing to the overall quality of this first issue. Last but not least, I would like to thank the members of Advisory Board for accepting our invitation to join us. I am sure the journal will benefit greatly from their insight and experience.

We hope you enjoy reading this issue.

Kind regards,

Rodrigo Vaz
Editor-in-Chief, SJAS

# A Historical Overview Of Ecowas Intervention In Sub-Regional Conflicts: The Case Of Sierra Leone

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## Abstract

In West Africa, violent intra-state conflicts to the magnitude of the Liberian, and Sierra Leonean civil wars were new and unexpected. Such a stable country as Sierra Leone fell as a result of "apartheid styled" government. When violence broke out, it was thought and taken as one of those political disturbances that in no way could result in regime instability. With the war raging, ECOWAS bound by her own policy of non-interference in purely domestic matters and the international community watching without any serious commitment to the settlement, ECOWAS was the only option left to sub-regional leaders. ECOWAS, with the Liberian experience, intervened and helped restore order to Sierra Leone. This write-up traces the political history of Sierra Leone and gives an account of the conflict and the management of the conflict by ECOWAS.

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**Introduction**

The Economic Community of West African States (ECOWAS) will be forty years in 2015. This paper aims at bringing to the fore, the achievements of ECOWAS in the area of maintaining sub-regional peace and security. The West African sub-region has been one of the most politically unstable regions in the world. Amidst such situations of instability, the sub-regional body has been able to resolve one of the most devastating civil wars on the continent.

The rationale for this paper is to trace the path to the  resolution of the Sierra Leonean conflict. It also brings to the fore the major issue of intrastate conflict management which has replaced interstate conflicts after the demise of the Cold War. This study clearly brings out the issue of the sub-regional body's management of internal conflicts through intervention and the complexities involved.

**Theoretical Framework for Third Party Intervention in Conflicts**

Hampson[2] pointed out that various coercive and non coercive measures could be employed by third parties to affect the course of the management of conflict to culminate in the resolution of the conflict. This paper applied hard realism[3], soft realism[4] and the governance based[5] approaches to third party intervention in conflicts as the theoretical underpinnings to ECOWAS' interventions in sub-regional conflicts.

The third party to intervene, in the opinion of the hard realists, should use force to restore order in the political system. Such a third party to intervene in the conflict should be a 'great power'[6] because the forceful (militarized) mode of intervention would involve cost and the wielding of power. In the case of the Sierra Leonean conflicts, ECOWAS (through ECOMOG) played the role of the great power.

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2   Hampson, Fen. .O, "Parents, Midwife or Accidental Execution? The Role of third parties in Ending Violent Conflicts" in Crocker Chester, A., Hampson, Fen. .O, and Aall Pamela, (Eds) *Turbulent Peace: The Challenges of Managing International Conflicts.* United States Institute of Peace Press Washington DC. 2001

3   Hard realism approach stresses the intervention strategies that use force to restore order in a conflict situation. Such force according to Hampson (Ibid) could be threatened or actual.

4   Soft realism approach to conflict intervention believes that there is a critical role that the use of 'soft power' can play in conflict management. Soft power according to soft realism, is exercised by the use of strategies like mediation, negotiation and exchange of information

5   Governance-based approach to third party intervention in internal conflicts assumes that the causes of conflict are the denial and violation of human rights and the absence of the due process of law. To this school of thought, intervention by third party to conflict with the bid to manage it should be anchored in the tenets of liberal democracy (the rule of law).

6   Great power refers to the ability of the third party intervening to use its influence in terms of finance, military or any other means to influence the course of a conflict. This should be able to influence conflicting parties to cease hostilities and take what the intervener brings to the resolution table

The hard realism approach to third party intervention is applied to ECOWAS' (ECOMOG) interventions because it had at some point in the course of the intervention, been involved in the exchange of fire with rebels in their quest to restore the state of affairs to normalcy. ECOMOG was involved in exchange of fire with rebels in Sierra Leone. Hard realism is therefore appropriate to apply to the intervention of ECOWAS as a third party intervener in intra-state conflict.

Soft realism is another approach that third parties apply in interventions in intra-state conflict. Diplomatic approaches such as negotiation and mediation are rather encouraged by soft realism. This approach is seen as more effective if the third party managing the conflict is more powerful than the conflicting parties. The intervener just as the hard realists argue, should be a 'great power' to enable it to effectively manage the conflict. A stronger and more powerful third party is therefore required to make the conflict management more effective.

The third theoretical basis for this study is the governance-based approach to third party intervention in internal conflicts. To this school of thought, intervention by a third party to conflict with the bid to manage it should be anchored in the tenets of liberal democracy (the rule of law). Governance-based approaches see third party conflict management to largely include the creation of a participatory governance structures, the development of a new set of social norms, the establishment of the rule of law and democracy. Those things that third parties are to do, among other things, include the creation of a conducive environment for elections and the installation of a democratically elected government. In the quest to restore the tenets of democracy and good governance, attention should be paid to the issue of power sharing and all-inclusive systems of government as power sharing formulas provide safety nets for minorities and ensure that politics does not become a zero-sum game to avert losers coming back with arms to start a new conflict.

These three approaches to third party intervention in conflicts were used to examine ECOWAS' interventions. These three approaches were employed by ECOWAS either individually or in a complementary fashion. Frempong[7] noted that "ECOMOG's forceful intervention militarized ECOWAS' search for peace ..., but the diplomatic option was never abandoned. Instead, ECOMOG peacekeeping was paralleled by a vigorous diplomatic process which involved peace talks in several capitals across the sub-region and on two occasions in Europe"[8]. This assertion indicates the adoption of the three approaches to complement each other. At any particular point in time as the conflict raged, one of the three approaches was very useful. At times it was full hard realism (full scale military campaign) in practice and at other times, soft realism (peace conferences, signing of peace accords etc) was at play.

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7   Frempong, Kaakyire. D. A, "Trajectories of Sub-regional Conflict Management: An Assessment of ECOWAS", Paper presented at *CODESRIA's 30th Anniversary Grand Conference* Dakar, Senegal. 2003

8   Frempong 2003:13

The soft realism approach was employed in the Sierra Leonean conflict and was noted by Frempong[9] once again when he explained that, under sustained civic and military pressure at both national and international levels the AFRC and ECOWAS signed the Conakry Peace Plan which among other things, provided for: immediate cessation of armed hostilities; the reinstatement of the of the Kabbah government within six months; immunities to the junta leaders; cooperation between the junta and ECOMOG on disarmament, demobilization and reintegration; and modalities for broadening the power in Sierra Leone. Confidence building (Soft Realism) was extensively put to work in securing the disarmament of the rebels in Sierra Leone.

The governance based approach was also at play following the signing of the Lome Accord which was characterized by power sharing between the Kabbah government and the RUF. The RUF leader, Foday Sankoh was accorded the status of a vice president and some of his former rebel colleagues assumed ministerial positions.

**Methodology**

This paper is a desk research. The sources of data that this study used has been from both primary and secondary sources. The primary sources of data used included official documents of ECOWAS, both published and unpublished. Such ECOWAS documents include the Protocols, Accords, Agreements, Decisions and Reports. Other relevant information on the subject under study were also gathered from journals, magazines, feature articles in newspapers.

**ECOWAS and Conflict**

According to Ali[10] the causes of conflicts in Africa could be attributed to factors including the historical legacies of slave trade and colonialism; the nature of political contest; external intervention in the internal affairs of African states driven by brute economic motives; internal interventions driven by the motive of capturing the state and its coffers; human rights violations; ethnic as well as clan and other rivalries. He further identified the causes of civil wars to include lower per capita GDP, lower degree of openness of the political institutions, a higher degree of dependence on natural resources and high ethnic diversity. This diagnosis of the precursors to conflicts in Africa, is on point in relation to the Sierra Leonean conflict and other conflicts in the West African sub-region.

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9   Frempong 2003:13-14
10  Ali, A. G. A., , "The Economics of Conflicts in Africa: an Overview" in *Journal of African Economies* Vol. 9 No. 3. 2000.

Ukeje[11] was of the opinion that ECOWAS was not formed as a security co-operation entity but, the economic integration that motivated the formation of ECOWAS has not been achieved to the degree that was envisaged. He continued to stress that the motive of the members of the West African sub-regional that led to the formation of ECOWAS has not been achieved as envisaged. This notwithstanding, ECOWAS has achieved a lot in the politico-security sector. In fact, the revised Treaty of ECOWAS has provisions aimed at resolving conflicts within the sub-region. ECOWAS has not achieved much in the field of economic advancement largely due the fact that development cannot be possible, save in stable and peaceful environment.

Gebe[12] was also of the position that, the international system dynamics had made ECOWAS, an economic integration body to be involved in conflict management. Gebe[13] contended that, the 1975 Treaty did not make any provision for security concerns, hence the ratification of the Protocol on Non-Aggression (PNA) in 1978. The PNA itself was also inadequate because it did not make provision for intrastate conflicts which were to confront the sub-region later. The Protocol Relating to Mutual Assistance of Defence (PMAD) was also signed in 1981 but was also not implemented. On the protocols ratified as Gebe commented, Aning[14] also identified that all protocols on security were not implemented largely because of the lack of political will, lack of the resources and the wrong sense of prioritization. It was explained that, these factors have culminated in the inability of ECOWAS to put together an institutional framework to tackle sub-regional conflicts. This has been the main challenge the developing countries especially, African states have grapple with. Non-implementation of policies have cost the sub-region lives, infrastructure, loss of resources among others.

Cilliers[15] also pointed out a new paradigm in security matters that had emerged globally where regions were accepting responsibility and sharing the burden to police themselves, and not be under the delusion that the UN would be able to intervene to

11  Ukeje, Charles., "From Economic Cooperation to Collective security: ECOWAS and the Changing Imperatives of Regionalism in West Africa" in W. A. Fawole and C. Ukeje (Eds.) *The Crisis of the State and Regionalism in West Africa: Identity, Citizenship and Conflict*, Dakar: CODESRIA.  2005
12  Gebe, Yao. B., "ECOWAS Security Protocols and Conflict Management in West Africa: Lessons and the way Forward", Legon *Journal of International Affairs,* Vol. 1  No. 1, December 2004. Pp 1-25
13  Gebe 2005: 5
14  Aning, Kwasi. E., Peacekeeping under ECOMOG: A sub-Regional Approach" in J. Cilliers and G. Mills (Eds), *From Peacekeeping to Complex Emergencies Peace Support Mission in Africa.* The South African Institute of International Affairs, Johannesberg and the Institute for security Studies, Pretoria, July 1999. Pp 75-95.
15  Cilliers, Jakkie. "Regional African Peacekeeping Capacity-Mythical Constructs or Essential Tool?" in J. Cilliers and G. Mills (Eds*) From Peacekeeping to Complex Emergencies Peace Support Mission in Africa.* The South African Institute of International Affairs, Johannesberg and the Institute for security Studies, Pretoria . July 1999 . p 133-152.

resolve all conflicts. This was what ECOWAS did by helping to resolve the crises in the sub-region. ECOWAS however, suffered this delusion when it watched as the war raged in the sub-region. In Liberia, this delay resulted in the escalation of the conflict and the massive destruction that came along with it. ECOWAS was however, a bit swift in intervening in Sierra Leone.

**Political History of Sierra Leone**

Sierra Leone is located on the south west coast of Africa between Guinea and Liberia. Sierra Leone has a population of 5.743, 725 million people (as of July 2014) inhabiting a land surface of 71,740 sq. km. (27,699 sq. miles). Sierra Leone, like most West African countries, has many ethnic groups. There are however, fourteen (14) main ethnic groups, such as: the Temne, Mendes, Sherbros, Vais, Kissis, Mandingos, Limba, Kono, Kriole (descendants of freed Jamaican slaves who were settled in the Freetown area in the late-18th century), Loko, other 15% (includes refugees from Liberia's recent civil war, and small numbers of Europeans, Lebanese, Pakistanis, and Indians)[16].

After the abolition of slavery, there were about 16,000 freed men all over England who became a problem to the country. It was then decided by the government, aided by British philanthropists, notably Granville Sharp, William Wilberforce, and Thomas Clarkson that the Blacks freed by British law and called the "Black Poor" emigrated from Britain to Sierra Leone. In April 1787 about 500 blacks in Britain were taken to Sierra Leone. In January 1792 and September 1800, about 1,190 Nova Scotian Blacks and about 550 Maroons, respectively, emigrated from Canada to Sierra Leone[17]. For administrative purposes, Sierra Leone was divided into a colony and protectorate. The colony was British territory acquired by purchase under treaties entered into with local chiefs and tribal authorities. The rest of the country was a protectorate.

From the end of the nineteenth century until independence, there was conflict in Sierra Leone between colony Creole elites and protectorate African elites. "The Creoles, separatist in their political attitudes and aspirations, rejected political equality with protectorate Africans and the latter resented both the assertions of superiority by Creoles and their relative dominance in Sierra Leone politics prior to decolonization".[18]

In 1946, the Africans were able to make their voices heard when they formed the Sierra Leone Organization Society (SOS) under the leadership of Milton Margai and

16  https://www.cia.gov/library/publications/the-world-factbook/geos/sl.html

17  Abasiattai, Monday. B., "The Search for Independence: New World Blacks in Sierra Leone and Liberia, 1787-1847," *Journal of Black Studies*, Vol. 23, no. 1 (1992):107-116.

18  Kandeh, Jimmy. D., "Politicization of Ethnic Identities in Sierra Leone," *African Studies Review*, Vol. 35, no. 1 (1992):81-99.

John Karafa-Smart.[19] The colonial authority in 1951, adopted a new constitution which called for parliamentary elections to elect people to occupy the 30 seats in the Legislative Council. The electoral competition was between the Sierra Leone People's Party (SLPP) and the National Council of the Colony of Sierra Leone (NCSL). The SLPP won the elections and Milton Margai was appointed to sit on the Executive Council together with five other people he had chosen including Albert Margai (his half brother) and Siaka Stevens. Milton Margai was appointed the first Prime Minister. Before independence was granted to Sierra Leone, there were calls for fresh elections and Milton Margai was able to convince the opposition parties to join the SLPP to form a union government. The leaders of the opposition parties were promised places in the union government.[20] Siaka Stevens was however, not in agreement and formed his own party, the All People's Congress Party (APC).

In April 1961, Sir Milton Margai, led the Sierra Leonean People's Party and won independence for Sierra Leone. In 1962, there was an election in which Milton Margai won and remained the Prime Minister until he died in 1964. His half brother, Albert Margai replaced him as the leader of the SLPP and the Prime Minister. His rule was arbitrary. He suppressed the opposition parties with detentions and intimidation. This aggravated ethnic tensions because the SLPP was dominated by the Mende in the south and the APC, by Temne in the north.[21]

The All Peoples Congress (APC) led by Siaka Stevens which was in opposition was made up of the working and lower middle class. In the March 1967 general elections, the Siaka Steven led opposition All Peoples Congress (APC), won the elections with 32 seats. The SLPP won 28 seats and the remaining 6 seats went to independent candidates. The independent candidates did not join the SLPP so it meant that the APC was to form the government because they operated the Parliamentary system of government. Without waiting for the results of the chiefs, the Governor General, Henry Lightto swore Siaka Stevens into office as the Prime Minister.

Brigadier David Lansana a close ally of Albert Margai whose party had failed to acquire a majority in the National Assembly, staged a coup to prevent alternation of power stating the reason to be the violation of the constitution by the Governor General for swearing in Stevens without waiting for the results of the chiefs. Siaka Stevens fled into exile in Guinea.[22]

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19  Aminu, Dramani. 2003. "International Intervention in Internal Conflicts in Africa: Respective Roles of the Economic Community of West African States (ECOWAS) and the United Nations (UN) in the Sierra Leone Peace Process (1999-2001)" M. Phil Thesis, Dept. of Political Science, University of Ghana. p 51
20  Aminu 2003, 57
21  Aminu 2003, 57
22  Aminu 2003, 57

Just two days later, some junior officers led by Lieutenant Colonel Juxon-Smith removed Lansana in a counter coup and formed the National Reformation Council (NRC) junta. On April 17 1968, a group of armed group of warrant officers and some soldiers of the other ranks of the army staged yet another counter coup saying they were motivated by popular resentment and refusal of the NRC to pay the army. Nine days after the counter coup, they restored civilian rule with Siaka Stevens as Prime Minister.

When the APC formed the government in 1968, it started to entrench itself.  From 1970, some coup attempts were made to topple the APC government. The first attempt to overthrow the government was made by Brigadier John Bangura. Another coup attempt involved Mohammed Sorie Forna and fourteen others, for which Foday Sankoh, the future RUF leader, was jailed. These coup attempts made the party do all it could to suppress the opposition and consolidate power. The APC's consolidation of power was sealed when Sierra Leone was declared a one-party state. By this time, the SLPP had been disabled by the arrest and detention of its leading members.[23]

Although Stevens had promised to resign from the presidency after the 1981 elections, he hanged on to power until 1986. When Stevens finally stepped down, he declined handing over to the incumbent Vice President, Ibrahim Koroma as stipulated by the constitution. Instead, he brought Major General Saidu Momoh into office as the president. The Momoh regime even though continued with the one-party agenda of his predecessor, later conceded to multi-party politics and slated elections for 1991. There were allegations of the Momoh government's intentions to rig the elections.[24]

The APC government forced some Sierra Leoneans into exile due to economic decline and massive unemployment which had immense toll on the youth of Sierra Leone. The disgruntled youth of Sierra Leone were recruited for military training in Benghazi, Libya and they were later to start an insurrection in Sierra Leone.[25] They sought to recruit and train cadres in the Yele area. The trained cadres left Freetown into the hinterlands.[26] Foday Sankoh, Abu Kanu and Rashid Mansaray formed a trio who traveled the length and breadth of Sierra Leone and Liberia. "It was during one of these trips that they allegedly came into contact with NPFL officials."[27]

It was in this context of a declining economy, coupled with massive youth unemployment and political intimidation of the opposition by the government that the

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23 Abdullah Ibrahim, "Bush Path to Destruction: The Origin and Character of the Revolutionary United Front/Sierra Leone," *The Journal of Modern African Studies.* Vol.36, No.2 (Jun., 1998): 206
24 Ibrahim , "Bush Path," 208
25 Ibrahim , "Bush Path," 209
26 Ibrahim , "Bush Path," 220
27 Ibrahim *, "Bush Path," 220*

Revolutionary United Front (RUF) led by Corporal Foday Sanko attacked Sierra Leone from Liberia with the support of the Liberian leader Charles Taylor in 1991.


**The Sierra Leonean Conflict**

The civil war erupted "when the RUF entered Eastern Sierra Leone at Bamaru in Kailahun District from Liberian territory controlled by Charles Taylor on 23 March 1991".[28] When the rebels entered Kailahun, as happened in Liberia, they were not taken serious and the people did not have the foresight to realize that a senseless and a protracted war was in the making, which was going to affect the political and social life of Sierra Leone forever. This was also the case with both the local and the international media who were speculating that it was a border war.

The Revolutionary United Front of Sierra Leone (RUF/SL) sought to mobilize the socially excluded and disgruntled youth underclass to form a 'people's army' to overthrow the All Peoples' Congress regime of President Joseph Momoh. The leader of the RUF/SL, was an army corporal, Foday Saybana Sankoh who was trained as a guerrilla fighter in Benghazi, Libya.[29]


Following the National Patriotic Front of Liberia (NPFL) technique, the RUF/SL chose to establish itself in the isolated border districts of Kailahun and Pujehun. Initially, the movement was assisted by hired Liberian fighters. The RUF/SL abducted and trained numbers of captured border-zone youths. Some came from the most remote and run-down schools in the country. Others were workers of alluvial diamond mining pits for Lebanese and Sierra Leonean merchant. Abductees cooperated with the movement to save their lives, but some found the movement's analysis of the breakdown of Sierra Leonean society meaningful and accepted guerrilla training willingly.[30]

The motives for the civil war were diverse. For the political exiles, students and the intellectuals, they wanted to overthrow the one-party rule of the All Peoples Congress which had dominated the political history of Sierra Leone from the years shortly after independence in 1961 for over twenty years and restore multi-party democracy. Charles Taylor on the other hand, wanted a "way of getting back at the Momoh's government in Sierra Leone for supporting ECOMOG and for allowing the ULIMO factions to operate out of the bases in Sierra Leone."[31] Could it be that Charles Taylor

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28  Osita, *West Africa's Trouble Spots*, 32-33.
29  Krijn Peters, and  Richards Paul, ""Why We Fight": Voices of Youth Combatants in Sierra  Leone,"  Africa: Journal of the International African Institute, Vol. 68, No. 2 (1998): 183-210 (1998). www.jstor.org/stable/1161278 Accessed  March 8, 2007.
30  Krijn and Paul,  "Why We Fight," 186.
*31*  Osita, West Africa's Trouble Spots, 33.

wanted Sierra Leone destabilized, so that he could get access to exploit the diamond reserves on the borders and enhance his illegal trade?

The Sierra Leonean conflict, just like the Liberian civil war (with the NPFL), started with just a small band of about hundred fighters (the RUF) and the number swelled rapidly. The RUF could not gain power until 1997 after six years of bloodshed and brutalities. Opposed to the RUF/SL was an ill-equipped government army, the Republic of Sierra Leone Military Force (RSLMF). Inexperienced junior officers quickly learnt to survive by copying RUF/SL guerrilla tactics, including the recruitment and training of under-age irregulars.[32]

On 29 April 1992, a pay revolt by some unpaid disgruntled war-front junior officers led by Captain Valentine Strasser later escalated into a full-scale coup in May 1992 against the Momoh presidency from within the RSLMF. The young coup-makers formed the National Provisional Ruling Council (NPRC).[33] The rebels believing they had radicalized the coup-makers at the war front, expected an invitation from the coup makers to share in some kind of government of national unity.[34] This expectation never materialized.

Captain Valentine Strasser had to grapple with continued rebel incursions. Strasser had to seek assistance from Nigeria, a private security company-Executive Outcomes (EO) and Kamajors (a Sierra Leonean militia).[35] The Chief of Defence Staff of the National Provisional Ruling Council (NPRC), Brigadier General Julius Maada Bio in a palace coup, ousted Strasser in January 1996 and organized elections in February 1996 where Ahmed Tejan Kabbah of the Sierra Leonean People's Party (SLPP) won.[36]

Kabbah, after some few months in office, started discussions with the RUF in Yamoussoukro, Cote d'Ivoire. The Yamoussoukro discussions led eventually to the signing of an Agreement in late 1996. The agreement broke down as the RUF could not agree on such crucial issues such as disarmament and the creation of a monitoring force. Just over a year later, on May 25, 1997, a coup led to the overthrow of Kabbah's presidency.[37] The new government formed was the Armed Forces Revolutionary Council (AFRC) and was headed by Major Paul Koroma. In an effort to halt further challenges Koroma invited the RUF to join him. The AFRC therefore became a joint junta of the junior officers of Sierra Leonean Army and the rebel RUF. This was the case because both the RUF and the regular army had a common interest.

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32 Krijn and Paul, "Why We Fight," 186.
33 *Krijn and Paul, "Why We Fight," 186.*
34 *Krijn and Paul, "Why We Fight," 186.*
35 Osita, *West Africa's Trouble Spots*, 33.
36 Bangura, Yusuf, "Strategic Policy Failure and Governance in Sierra Leone" *The Journal of Modern African Studies* Vol. 38, No. 4 (Dec., 2000): 555
37 Osita, *West Africa's Trouble Spots*, 34.

"They resented the Kamajor militia albeit for different reasons: the RUF because the Kamajor were attacking their positions with success, and the army because they saw the Kamajor as usurping their role as the national fighting force."[38]

Earlier in March 1997, Nigeria had signed a bilateral agreement with the Sierra Leonean government to train the Sierra Leone Army and the Presidential guard.[39] The Nigerian government therefore was bound by this agreement to assist the Sierra Leonean government in the face of the coup against the government. Nigeria intervened but could not achieve the desired success and called for support from other member states of ECOWAS.

A Peace Accord was signed in Conakry, Guinea on 23rd October 1997. This Accord failed due to lack of faith by the AFRC and Johnny Koroma in the document. The Nigerian led ECOWAS Monitoring Group (ECOMOG), aided by the Sierra Leone Civil Defence Force (CDF), led by Sam Hinga Norman, removed the military junta in February 1998, and President Kabbah, whose government had sought refuge in neighbouring Guinea, returned to Freetown on 10 March 1998 after ten months in exile.

The RUF/AFRC attempted to overthrow the government in January 1999. This resulted in fighting which spilled over to many parts of Freetown, the capital, resulting in over thousand dead and wounded. ECOMOG forces were able to drive back the RUF attack several weeks later. With the assistance of the international community, the government of President Kabbah and the RUF leader Sankoh negotiated and signed an agreement (Lome Peace Accord) in 1999. The Lome Peace Accord committed the rebels to lay down their arms in exchange for representation in a new government. It also included a general amnesty for all crimes committed during the war. The accord made Sankoh Vice President and gave other RUF members positions in the government, and called for an international peacekeeping force which would initially be under ECOMOG.[40]

On 22 October 1999, the Security Council established the United Nations Mission in Sierra Leone (UNAMSIL) with a force of 6,000 to cooperate with the Government and the other parties in implementing the Lome Peace Agreement and to assist in the implementation of the Disarmament, Demobilization and Reintegration plan (DDR). After the Lome Peace Accord, there were some brutalities by rebel groups. Some five hundred United Nations peace-keepers serving with the United Nations Mission in Sierra Leone (UNAMSIL), were captured by the rebel militia.[41] The Sierra Leonean Government, ECOMOG and UNAMSIL forces made failed attempts to free their men.

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38  Ibrahim , "Bush Path," 230
39  Osita, *West Africa's Trouble Spots*, 33.
40  "World    Report."    Human    Rights    Watch,    Last    Modified:    June    2001
      http://www.hrw.org/legacy/wr2k1/africa/index.html
*41  "World Report."*

In September 2000, an operation was carried out by British paratroopers to free British and Sierra Leonean soldiers taken hostage by the AFRC/ex-SLA.[42]

On 7 February 2000, the Security Council, by resolution 1289, decided to revise the mandate of UNAMSIL to include a number of additional tasks. It decided to expand the military troops to a maximum of 11,100 military personnel, including the 260 military observers already deployed. The Security Council again increased the personnel strength of UNAMSIL, to 13,000 military personnel. On 30 March 2001, a further increase was authorized to 17,500 military personnel, including the 260 military observers. The Council took this decision by its resolution 1346, and, by the same resolution, approved a revised concept of operations.[43]

A new cease-fire agreement was signed in November 2000 in Abuja. However, the Disarmament, Demobilization and Reintegration plan (DDR) as stipulated by the agreement was not implemented and the fighting continued. A second Abuja Agreement, in May 2001, set the stage for a resumption of the DDR and a significant reduction in hostilities. About 72,000 ex-combatants were disarmed and demobilized, although many still awaited re-integration assistance.[44]

In 2002, January 18, President Ahmad Tejan Kabbah declared the end of the decade-long civil war. On March 1, 2002, he lifted the four-year state of emergency and political activity begun in earnest towards multi-party elections. On May 14 the people of Sierra Leone went to the polls and re-elected President Kabbah and his Sierra Leone People's Party for a further five-year term. The elections were largely peaceful, though there were a few reports of violence and intimidation. The seventeen thousand-strong peacekeeping force of the United Nations Mission in Sierra Leone (UNAMSIL) completed disarmament of over forty-seven thousand combatants by the end of 2002.[45]

**Conflict Management**

**Abidjan Peace Accord**
The Abidjan Peace Accord was signed between the Sierra Leone People's Party (SLPP) government of Ahmad Tejan Kabbah, and the Revolutionary United Front (RUF) led by Foday Sankoh with the intention of ending the Sierra Leone Civil war on 20 November, 1996. The Abidjan Peace Accord was signed in Abidjan, Cote d'Ivoire. It is very important to note the fact that a neutral country in Cote d'Ivoire,

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42  *"World Report."*
43  "Security Council Resolution 1346." United Nation, Last Modified: June 2001 http://www.un.org/press/en/2001/sc7041.doc.htm
44  "World Report." Human Rights Watch, Last Modified: June 2001 http://www.hrw.org/legacy/wr2k2/africa/index.html
45  "World Report." Human Rights Watch. http://www.hrw.org/legacy/wr2k3/africa/index.html

was picked for negotiations between the warring parties. Such a neutral ground serve as a major step in building bridges towards peaceful conflict resolution.

The accords sought out a broad range of goals:

1. A National Commission for the Consolidation of Peace was to be established.

2. A Neutral Monitoring Group was proposed, which would consist of 700 troops.

3. All RUF combatants would disarm, amnesty granted them and reintegrated back into society.

4. Foreign mercenary groups such as the government hired Executive Outcomes (EO) would leave the country after the establishment of the monitoring group.

ECOWAS established the National Commission for the Consolidation of Peace to see to the negotiation process to bring peace to trouble Sierra Leone. What seemed to have also helped was the inter-positioning of the ECOMOG force was meant to create a buffer zone to prevent escalation of the conflict. These processes were meant to help a disarmament process. ECOWAS recognized the fact that there were foreign mercenary groups that helps the warring parties to prosecute the war. This contravened ECOWAS provisions and ECOWAS should have brought stiffer punishment to bear on the parties that invited the mercenary groups.

**Conakry Peace Plan**

A meeting in Conakry of the Foreign Ministers on 27 June 1997 came out with a three-pronged strategy to overturn the coup d'etat in Sierra Leone. The first option was the use of dialogue and negotiations. The second would be the use of sanctions in the form of embargo on the Sierra Leonean government when the first option fails. The final action that was left to the ECOWAS if the first two options do not work effectively would be the ultimate use of military force.[46] The moves made by ECOWAS to resolve the conflict started with the soft realism approach. There was the use of dialogue and negotiations to resolve the conflict. ECOWAS was able to bring together, the parties to the conflict as the 'big power' to the negotiation table. Koroma was however, not willing to give power back to the civilians after the negotiations led by ECOWAS had failed to yield any results.

ECOWAS continued using the soft realism approach when ECOMOG made efforts to broker a peace settlement in Conakry in October 1997, but the failure of the

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46 Yusuf, "Strategic Policy" 555.

AFRC/RUF regime to honor the Conakry commitment led ECOMOG to start a military campaign (hard realism) to remove the junta from power. The terms of the negotiations were not respected by the conflicting parties. Having had enough of Johnny Paul Koroma's obduracy to return stolen power, ECOMOG in February 1998 intensified military campaign against him. With the failure to resolve the conflict through the first round of negotiations, the Guinea (Conakry) meeting was followed by a second one in the Abuja, Nigeria. ECOWAS showed so much commitment to soft realism. All efforts were made to resolve the conflict through dialogue as the tenets of soft realism prescribes.

**The Abuja ECOWAS Summit, 1998**

At the ECOWAS summit held at Abuja, Nigeria, from 28 to 29 August, a decision was taken to extend ECOMOG actions to Sierra Leone.[47] The AFRC had a serious legitimacy problem as the regime was very unpopular at home and did not enjoy support from the people of Sierra Leone. The regime's problems compounded when the international community also lashed it as illegitimate. ECOWAS dispatched troops to Sierra Leone and urged Freetown to restore the constitutionally elected government of President Ahmed Tejan Kabbah."[48] Koroma along with some of his men fled Freetown while others looked to their allies for assistance.

Responding to the unfolding regional crisis brought on by cross-border raids, the ECOWAS Defense and Security Commission in December 2000 proposed to deploy a force of some 1,700 troops to secure the borders between Guinea, Sierra Leone, and Liberia.[49] ECOWAS intervention at this point had moved from the use of soft realism to hard realism where there was the deployment of armed forces to enforce peace.

**Lome Peace Accord, 1999**

ECOWAS' diplomatic efforts at resolving the conflict were intensified after the counter-attack in January 1999 by the RUF. With the assistance of the international community, President Kabbah and the RUF leader Foday Sankoh negotiated yet another Accord, the Lome Peace Accord, which was signed on 7 July 1999. The accord made Sankoh Vice President and gave other RUF members positions in the government, and called for an international peacekeeping force which would be under both ECOMOG and the United Nations. The Lome Peace Accord among other things, had these as steps to ensure the resolution of the conflict.

The two sides to the conflict were to ensure that a total and permanent cessation of hostilities.

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47  *Yusuf, "Strategic Policy" 555.*
48  Ibrahim, "Bush Path," 233
49  *"World Report." 2002*

a. The Cease-Fire Monitoring Committee (CMC) was to monitor the ceasefire

    i.    The Article 3 (1) of the peace accord also called for the transformation of the RUF/SL into a Political Party.

    ii.    The Lome Peace Accord called on the Government of Sierra Leone to make room for members of the RUF/SL to hold Public office (positions in parastatals, diplomacy and any other public sector). The Chairmanship of the Board of the Commission for the Management of Strategic Resources, National Reconstruction and Development (CMRRD) was offered to the leader of the RUF/SL, Foday Sankoh. He was therefore to enjoy the status of Vice President and was therefore answerable only to the President of Sierra Leone. One of the senior cabinet appointments, three other cabinet positions and four posts of Deputy Minister was also to be occupied by the RUF/SL.

    iii.    The Government of Sierra Leone shall grant Corporal Foday Sankoh, all combatants and collaborators in respect of anything done by them in pursuit of their objectives absolute and free pardon, up to the time of the signing of the present Agreement.

    iv.    The Accord set up a neutral peace keeping force comprising UNOMSIL and ECOMOG that was to supervise the disarmament of all combatants of the RUF/SL, CDF, SLA and paramilitary groups.

    v.    The restructuring, composition and training of the new Sierra Leone armed forces will be carried out by the Government with a view to creating truly national armed forces, bearing loyalty solely to the State of Sierra Leone, and able and willing to perform their constitutional role.

Each party was mandated to ensure that the terms of the Agreement, and written orders requiring compliance, are immediately communicated to all of its forces.

There was provision by the sub-regional body to get the rebels to share power. This has the tendency to end the conflict but an issue that needs to be considered when making such concessions is to consider the possibility of creating a situation whereby there would be the budding of rebel groups. Such groups would all fight for a share of power when care is not taken to condemn rebel activities. A rebellion should not be made to 'feel' legitimate.

**Other Military Groups**

One characteristic feature of the Sierra Leonean conflict was the role of other military groups. Both local and foreign military support was sought in the Sierra Leonean conflict. "President Kabbah and the Nigerian-led ECOMOG force, with the knowledge of the British High Commissioner of Sierra Leone, Peter Penfold, employed the services of Sandline International to prosecute the war against the AFRC and the RUF."[50] Sandline International formed part of the fighting force,

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50  Ero, Comfort., (2000), "ECOMOG: A model for Africa?" *Monograph* No. 46, (2000): 58-70. http://www.issafrica.org/uploads/Mono46.pdf

along with Nigeria and the 'Kamajors'.[51] A combiation of these three forces fought against the rebels and reinstalled Kabbah's government in March 1998.[52]

Conflict has the tendency to evolve and degenerate when it is not resolved early. The case of the other military forces emphasizes this point. In the course of the conflict, several hitherto 'uninterested' parties developed interest in the conflict and they came in to fight for a cause they had come to believe in. The degeneration of the conflict even saw the 'Kamajors' militia fighting along side, regular armed force from Nigeria. It is quite interesting to note how an the ethnic based militia group, the 'Kamajor', could be accepted to collaborate to fight against rebels. The 'Kamajor' in itself, was an unlawfully constituted group that should not have been admitted to prosecute the war alongside the regular armies of Sierra Leone and Nigeria.

ECOMOG's forceful military intervention in search for peace in Sierra Leone was also complemented by diplomatic approaches as well. At any particular point in time as the conflict rages, one of the three approaches was very useful. At times it was full hard realism (full-scale military action) in practice and at other times, soft realism (peace conferences, signing of peace accords and agreements, round table discussions etc) was at play. The soft realism approach was employed in the Sierra Leonean conflict when under sustained civic and military pressure at both national and international levels the AFRC and ECOWAS signed the Conakry Peace Plan. This was complemented by the use of the governance-based approach which provided for the reinstatement of the of the Kabbah government within six months; immunities to the junta leaders; cooperation between the junta and ECOMOG on disarmament, demobilization and reintegration; and modalities for broadening the power in Sierra Leone. Confidence building (Soft Realism) was extensively put to work in securing disarmament of the rebels in Sierra Leone.

The governance based approach was also at play following the signing of the Lome Accord which was characterized by power sharing between the Kabbah government and the RUF. The RUF leader, Foday Sankoh was accorded the status of a vice president and some of his colleagues assumed ministerial positions.

The hard realism approach has the tendency to prolong the conflict. It has the tendency to prolong violent conflicts when the parties to the conflict do not see the third party intervener as a great power. In the case of ECOMOG, the rebel forces in were engaged in direct combat with them. When any of the parties perceive victory is within its reach, it will all that it could to win, hence the perpetuation of the conflict. In a complementary manner, ECOWAS employed the soft realist approach to get the rebels to the negotiation table for negotiations based on the governance approach where there were agreements to power sharing and democratization through elections. ECOWAS intervention strategies have varied with the different conflicts. In Liberia and Sierra Leone, soft realism was employed but when it did not yield the expected

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51  An ethnically based civil defence force
52  Comfort, "ECOMOG: A Model for Africa?" 60

results, hard realism was used and it ended with the governance based approach which sought to establish democracy and good governance. In Guinea-Bissau, the hard realism was not used by ECOWAS (Senegal and Guinea went unilaterally), but was swift in using the governance based and the soft realism approach to resolve the impasse.

**Intra-Community Dynamics In Sierra Leone**

"Clashes on the Sierra Leone-Liberia border and Charles Taylor's decision to exploit instability in Sierra Leone forced ECOMOG, in particular, Nigeria, to deploy troops on the border of both countries in 1991."[53] The Liberian government under Charles Taylor was accused of having a hand in fueling the Sierra Leonean crisis by supporting the RUF, a charge it persistently denied. President Taylor, in turn, accused Sierra Leone and Guinea of providing a safe haven to Liberian rebels with the intention of destabilizing his government. In September 2000, tensions rose between Liberia, Guinea, and Sierra Leone, each accusing the other of supporting rebel activity. A crisis in the region was prompted when Guinean President Lansana Conte publicly accused refugees of rebel activity against his government, resulting in round-ups, detentions, and violence against Sierra Leoneans and Liberians in Guinea.[54]

Liberia has had a long fraternal relationship with Sierra Leone. As close neighbours, both countries share many cultural, economic and social similarities. This bond was sealed in 1973 when the two countries along with Guinea formed the Declaration of the Mano River Union. This document contains amongst other provisions, the Non-aggression Pact and Good Neighbourliness Treaty. Moreover, since 1990, Sierra Leone has opened her doors to Liberia by hosting thousands of Liberians who fled their home from fighting in Liberia.

Nigeria also took a unilateral decision to intervene to reinstate the deposed president Kabbah. This unilateral decision by Nigeria, a sub-regional power, questions her intentions. Was Nigeria pursuing her own interest in Sierra Leone or Nigeria was only guarding democracy within the sub-region. Why did Nigeria interfere in the internal affairs of a sovereign state under the pretext of an agreement to train the army and the presidential guard?

**Conclusion**

The conflict in Sierra Leone showed that dictatorship and lack of institutional arrangement  have been a major factor in stimulating conflicts in West Africa. Similarities could be drawn across war ravaged countries in the sub-region. Samuel Doe in pre-war (1992) Liberia and Charles Taylor in post-war (1997) Liberia ruled arbitrarily and this contributed to the civil wars in Liberia. Siaka Stevens and Joseph Momoh were also very dictatorial and ruled without regards to institutional

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53   Comfort, "ECOMOG: A Model for Africa?" 60
54   *"World Report." 2001*

arrangements and respect for human rights in Sierra Leone.

It has also been realized that there is a disturbing trend of some governments within the community continuously supporting armed factions and rebels in other member countries causing instability. Examples include Burkina Faso and Cote d'Ivoire supporting the NPFL of Charles Taylor in Liberia against Doe; Liberia and Burkina Faso assisted the RUF in Sierra Leone. Nigeria, Sierra Leone and Guinea also backed anti-NPFL factions in Liberia fighting against their governments. This support has been in terms of supplying arms, bases, training and even combatants etc.

A sub-regional hegemon like Nigeria is needed to initiate action aimed at solving sub-regional conflicts.

ECOMOG peace-keepers were always deployed before logistical and financial arrangements were made. This always results in the call for international assistance in managing sub-regional conflicts. ECOWAS member states already have huge financial commitments, so in order to ensure the prompt response to calls for troops, ECOWAS should make available funds for deployment and logistics;

Lastly, from the accounts of conflicts in the sub-region, it could be deduced that ECOWAS as a sub-regional actor, has not learnt or has failed to apply lessons learnt from prior peacemaking efforts in undertaking new operation.

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# Impact Of Economic Partnership Agreements (EPA) On African Economy: A Legal Perspective

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## Abstract

Over the years, African countries have enjoyed preferential and non-reciprocal trade treatment from the European Union. Under this relationship, the EU grants tariff free access to almost all African exports to the EU markets, without requiring African countries to give reciprocal access to the EU in return. This relationship was sustained under the EU-ACP Trade Agreement signed in Lome, Togo. However, in 2000, the EU proposed a reciprocal trade agreement in the form of Economic Partnership Agreements with African countries on the ground that the preferential trade agreements under the Lome conventions were not compatible with the WTO rules which required reciprocity. This work examines the legal framework and impact of the proposed EPAs, highlighting its fiscal implications and effect on the development of African economy. The work finds that the EU and African countries are at significantly different level of development. Therefore, signing a reciprocal trade agreement with the EU have adverse effects on African economy resulting in loss of government fiscal revenues, disruption of regional integration among African countries and extinction of infant industries which are likely to die off as a result of harsh competition from relatively cheaper and better quality products from the EU. Hence EPA should be made a development strategy to pull the people of Africa from abject poverty to respectable human development index, the EU should also provide EBA market access to all SSA countries signing EPAs.

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**Introduction**

Economic Partnership Agreements are legally binding bilateral contracts between the European Union and individual African countries (McDonald, 2013). EPAs represent a fundamental shift in the trading relations between the two parties, from a non-reciprocal preferential trading regime under which ACP countries could export almost freely to the EU while maintaining their own restrictions on EU imports, to one requiring reciprocity in liberalization, albeit with a certain degree in asymmetry in commitments, in line with rules of the World Trade Organizations.

This, however, is as much a pyrrhic victory as any, since prematurely opening markets translates into African agricultural and non-agricultural production finding it very difficult to compete with the most likely cheaper, perhaps better quality and even larger supply of goods and services from European countries. For the past few years, the European Union has pressured African Union Member States to conclude EPA negotiations or face the withdrawal of the preferences they currently enjoy under the LOME conventions (Magsig, 2014; Hinkle et al, 2005). This is mainly because the non-reciprocal and preferential trade agreements under the LOME conventions are incompatible with the World Trade Organization rules (Matambalya and Wolf, 2001). On April 16, 2013, the European Parliament reversed an earlier decision to wait until the beginning of 2016; the deadline has now been brought forward to October 1, 2014 (Magsig, 2014).

Thus, since the current EU approach, ostensibly, doesn't fully consider how EPAs impact issues of global importance such as Africa's regional integration, these negotiations can be deemed fatally flawed. The arbitrary deadlines set are, first off, much too premature; and especially expose individual sub Saharan African countries much too susceptible to demands from third countries like those in Asia and America for the kind of reciprocity afforded European suppliers.

Therefore, if Africa is going to ameliorate the negative impact of EPAs, the AU must respectfully insist that deadlines, such as the October 1, 2014 one, be postponed, allowing for various prerequisites that will enable an equitable negotiated conclusion since the region will be a collective like the EU. This ample time and leeway should also allow AU Members to develop consensus between them and all major trading partners on how best to integrate Africa into global supply chains and distribution networks.

This research examines the impact of the prospective Economic Partnership Agreements (EPAs) being negotiated between African, Caribbean and Pacific countries on one hand and the European Union on the other hand. It also evaluates the potential economic and fiscal implications of such agreements on African trade to determine whether it translates to a boost or a setback on the continent's economy. The paper also considers both the economic and developmental implications of EPAs as well as Africa's regional integration. The paper however recognized the economic

and fiscal backlash that would arise from EPAs and to proffer a comprehensive recommendation, there is the need for a synergy between governments of developing and least developed countries of Africa, international and intergovernmental organizations and the private sector in negotiating favourable and workable EPAs geared towards the economic growth and regional integration of African economy.

**The Fundamental Questions**

This paper deals with the following fundamental questions:

First, to what extent can it be said that Economic Partnership Agreements with the European Union impacts positively on African trade and integrate African countries into the global economy? In order to address this pertinent question, we reviewed the debate surrounding the signing of the Economic Partnership Agreements by African countries and then peculiar aspects of the African economy which require critical analyses before deciding whether or not it is recommendable to adopt the EPAs. This is based on the premise that African countries are not all in the same development category being that while some are developing countries, many others are classified as least developed countries.

Despite the traditional reasons for adoption of Economic Partnership Agreements and the acceptance by several analyst of the need for a balanced and non-discriminatory trade agreement between members of the World Trade Organization in line with Article XXIV of the General Agreement on Tariffs and Trade (GATT), these justifications may be largely inconsistent with the conditions that exist between unequal trade partners, especially those involving least developed countries.

The arguments of the European Union that free trade EPAs are the only way to meet WTO requirements and to integrate African countries into the global economy will be assessed. Developing countries have a right to special and differential treatment under WTO rules. Any new trade agreement between the EU and ACP countries must preserve and expand this right. The European Union argues that Economic Partnership Agreement is a remedy rather than a problem.

Second, to what extent is the introduction of Economic Partnership Agreements influenced by the quest of the European powers to favour the European economy and its industrialization, whilst impoverishing under-developed and least developed countries that were once their colonial territories?

This focuses on the ex-British West African colonies, with emphasis and specific examples from Nigeria and Ghana.

This paper remarks that the EPA process ignored the economic structures, aspirations and ideologies of the colonies. The EU is using the EPA negotiations to push through agreements on investment, government procurement and competition policy that developing countries rejected at WTO negotiations in 2003. These agreements would reduce the policy space available to African governments. EPAs threaten regional integration, a central plank of African development strategy since political independence. This strategy has sought to ameliorate the economic problems created by the colonial fragmentation of Africa into many nation states with little economic coherence. The EPAs" configuration process has created new regional groupings that are inconsistent with, and undermine, existing African economic and political blocs.

Reducing regional integration to trade liberalization destabilizes the broader socio-economic and political objectives of existing bodies.

Third, what alternatives are available to African countries other than the Economic Partnership Agreements? This looks at other alternatives outside Economic Partnership Agreements that are available to African countries.


**Theoretical framework**

Although there is a considerable body of literature on the EPAs, most papers focus on policy options rather than assess the trade and welfare effects of the EPAs. We gathered five main studies in the recent past that evaluated the impact of the EPAs:

In the first study, Hinkle and Schiff (2004) investigated the effects of an EPA on sub-Saharan African countries. They observed that the liberalization of trade in services which can be part of an EPA agreement will benefit Sub Saharan Africa in terms of consumer gains in sectors such as transportation, telecommunication and finance.

Kiringi, *et al* (2005) evaluates the gains and losses associated with EPAs for ACP countries. They predict a decrease in the production of natural resources, energy and cotton and production increases in fishing, animal products, livestock, crops, sugar, oilseeds, vegetables and cereals for Sub Saharan Africa if a Free Trade Agreement (FTA) with the European Union was signed. However, in case of full reciprocity, production losses in fishing, livestock and vegetables are to be expected. With respect to manufacturing in the SSA countries, they find a decline in heavy industry, medium tech and low tech-industry, clothing and textiles under full reciprocity, but increases in clothing, textiles and agriculture production under a FTA.

More so, Milner *et al* (2005) analyzed the impact of EPA on Tanzania, Uganda and Kenya. The authors find the expected consumer gains and production losses but, more importantly, they identify Kenya as a country where losses outweigh benefits, mainly due to the fact that Kenya's manufacturing sector will be negatively affected by EU competition.

Again, Busse and Grobmann (2007) analyzed the impact of EPAs on West African countries. They find that in most cases trade creation effects outweigh the trade diversion effects. They also find a negative impact on the government deficit.

Fontagne et al (2008) investigate the impact of EPAs for all six ACP regions. Their results show increased exports of vegetal production, livestock, agro food and textiles to the EU and big increases in imports from the EU in the range of 20 to 40 percent in textiles, metallurgy, primary products and other industries. Huge decreases in tariff revenue between 70 to 80 percent are found for all six regions except for the Pacific where the tariff revenue seems to be unimportant.

**The Methodology**

This research employs the qualitative approach. Materials such as journals, contemporary books, newspapers, internet sources and decided cases and statutes are utilized. It reviews the trade aspects of the WTO Agreement and the impact on EU-African trade relationship. We also lay emphasis on the major drivers of the regional markets of Africa which are generally developing countries.

**State of EPA Negotiations**

The European Union started negotiating EPAs with six ACP regions, which were self defined by the ACP countries in 2003 (Vollmer, 2009). These regions include the Caribbean (CARIFORUM), Central Africa (CEMAC), South-East Africa (ESA), West Africa (ECOWAS), Southern Africa (SADC), and the Pacific. The trade structure of these regions often reflects dependency on just a few products. The top four exported products of the six ACP regions are West Africa: mineral oil, cocoa, fish and timber. Southern Africa: diamonds, mineral oil, aluminum and fish. Central Africa: mineral oil, timber, bananas and cocoa. East Africa: textiles, fish, diamonds and sugar. Caribbean: ships, corundum, ethanol and sugar. Pacific Region: palm oil, sugar, copper and coffee.

In most cases, these products account for at least two-thirds of total exports. The schedule for negotiations was tight, since the WTO waiver expired in December 2007. In most cases this was insufficient time to finalize full EPAs, thus interim agreements were concluded, in many cases on a sub-regional or bilateral level. Negotiations toward full EPAs continue. The course of negotiations differs between the regions. For the Caribbean region, a full EPA including trade in services has been finalized in December 2007. The agreement implies a market opening of 61 percent within 10 years and 82.7 percent within 15 years. The members are: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Surinam, and Trinidad and Tobago.

For Eastern and Southern Africa two sub-regional interim agreements were concluded with the East African Community (EAC) and Eastern and Southern Africa (ESA). The agreement for EAC implies a market opening of 64 percent within 2 years, 80 percent within 15 years and 82 percent within 25 years. The members are: Burundi, Kenya, Rwanda, Tanzania, and Uganda. The extent of market opening differs among the members of the other agreement between 80 percent for Comoros and 97 percent for Seychelles. The members are: Comoros, Madagascar, Mauritius, Seychelles and Zimbabwe. The other countries of this region can use market access to the EU under the Everything but Arms initiative for LDCs. They include Djibouti, Eritrea, Ethiopia, Malawi, Somalia, Sudan, and Zambia.

The sub-regional interim agreement for Southern Africa implies a market opening of 86 percent within 2 years except for Mozambique which is required to open 80.5 percent within one year. The members are: Botswana, Lesotho, Mozambique, Namibia, and Swaziland. Unfortunately South Africa did not enter the agreement yet. From a development perspective it would be extremely helpful if the major economic driver of the region formed part of the agreement. Angola can continue to use market access through Everything but Arms.

In the Pacific region a sub-regional interim agreement has been concluded with Papua New Guinea and Fiji. It implies a market opening of 88 percent within 15 years in the case of Papua New Guinea and 80 percent in the case of Fiji. The other non-LDCs of this region include Cook Islands, Marshall Islands, Micronesia, Nauru, Niue, Palau, and Tonga. Trade in goods is relatively unimportant for this region; the agreement is therefore expected to have its focus on trade in services. East Timor, Kiribati, Samoa, Solomon Islands, Tuvalu, and Vanuatu can use market access under Everything but Arms.

In Central Africa, only a bilateral agreement with Cameroon could be finalized in early 2008. The agreement includes market opening of 80% within 15 years. The remaining non-LDCs of this region are Congo-Brazzaville and Gabon, both continuing to negotiate own stepping stone agreements. Chad, Central African Republic, DR Congo, Equatorial Guinea, and Sao Tome are granted market access under Everything but Arms.

In West Africa, bilateral agreements have been signed only with Cote d'Ivoire and Ghana. The agreements imply market opening of 70 percent within 10 years for Cote d'Ivoire and 80 percent within 15 years for both Cote d'Ivoire and Ghana. The vast majority of exports of the region come from Nigeria which is a non-LDC where exports are dominated by oil and gas. The other countries of this region include Benin, Burkina Faso, Cape Verde, Gambia, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Senegal, Sierra Leone, and Togo, all of which are LDCs and can use market access under Everything but Arms.

**The Legal and Legislative Framework for the Formation of Economic Partnership Agreements**

The European Union and the ACP countries have a long history of development cooperation which began with post-colonial relations. The succeeding conventions, Yaoundé I&II and Lomé I-IV, formed the basis of their relationship and guided a transformation from the "right to independence" towards a "right of development" (Brown, 2002). Under the Lomé conventions, these initially mainly economic North-South relations have also become more and more political, introducing issues of human rights, democracy, good governance, and the rule of law. Despite these

comprehensive development policies, the ACP countries did not perform as well as expected. They even performed worse than other developing countries outside the ACP. Together with the growing opposition in the WTO against this non-reciprocal regime, the EU was forced to rethink its development strategy. Thus, on 20 November 1996, the European Commission adopted its Green Paper on relations between the EU and the ACP countries. This paper was intended to launch a wide-ranging debate, involving all actors in the development policy area, and aimed to assure that post-Lomé relations clearly consider the multi-polar liberalizing international scene. The ultimate goal was to establish a new regime that would be WTO compatible and make development resources more efficient.

After overlong and intense debates the new EU-ACP Partnership Agreement was finally signed in Cotonou, Benin, on 23 June 2000. The Cotonou Agreement focused on four main areas: political co-operation, aims of development co-operation, use of aid and a new trade regime. The successor of the Lomé Convention implied new elements to the quite disappointing relationship between the EU and the ACP block, particularly, in the area of trade co-operation (ECDPM, 2014). The trade regime is being negotiated with six regional groups (Caribbean, Pacific and four African regions: CEMAC; East and Southern Africa; ECOWAS; and SADC), and is deliberated to change gradually. During the first phase, from 2000 to the end of 2007, the current rules under the Lomé IV Convention are to be maintained in a slightly modified form. According to Stevens (2006), this preparatory period is justified within the WTO by a waiver, and has to be used to negotiate the Economic Partnership Agreements which replace the one way trade preferences granted by the EU under Lomé with reciprocal ones. This new agreement was meant to enter into force on 1 January 2008, with a transition period to become full Free Trade Agreements (FTAs) at the latest by the end of 2020 (Rocha, 2003). Apart from joining EPAs, Least Developed Countries (LDCs) will be entitled to maintain a non-reciprocal trade relationship under the Everything but Arms (EBA) scheme (Brenton, 2003).

ACP countries which are non-LDCs may become members of the EU's new Generalized System of Preferences (GSP+), which is unilaterally offered to all developing countries and can also be unilaterally withdrawn (Hurt, 2003). However, in practice none of these regimes will be a better alternative for the ACP countries, due to political strains and some obstacles, including more stringent rules of origin. The recent proposal of the EU, to remove all remaining quota and tariff limitations on all imports from all ACP regions as part of the EPA negotiations, backs this argument (European Commission, 2014). This offer will apply immediately following the signing of an agreement, with a phasing-in period for rice and sugar. It gives all APC countries the same full access to the EU market that all LDCs have right now under the EBA system. The only country not allowed to participate in this deal is South Africa, where a number of competitive products will still have to pay import duties.

**Compatibility with WTO Laws**

The compliance of the Economic Partnership Agreements with the rules of the WTO, one of the main reasons for the introduction of reciprocity into the preferential relations between the ACP countries and the European Union is still a subject of controversy.

With the expiration of the waiver which justified the Cotonou Agreement at the end of 2007 and the unlikelihood of obtaining a new one at the World Trade Organization (Bassilekin, 2007), the Economic Partnership Agreements have to be designed to be fully compatible with WTO rules, especially Article 36 (1) of Cotonou Agreement. This principle has to be seen in the light of Art. 39 (3) of the Cotonou Agreement which states that WTO rules have to be interpreted in a flexible way to take the different levels of development in the various ACP countries into account. This provision is in line with the EU's opinion that the existing WTO rules are flexible enough for the trade framework between the two parties. In contrast, ACP countries call for a modification of the WTO regime, which would not only affect EPAs, but also other North-South agreements.

The Most Favoured Nation (MFN) clause which is the cornerstone of the General Agreement on Tariffs and Trade (GATT), obliges each member state to extend any advantage given to another state unconditionally and instantly to all other WTO members (Mavroidis, 2005). This obviously is contrary to the principle of special and differentiated treatment the EU and the ACP nations agreed on in Cotonou. An exception of this rule is the "Enabling Clause" which was adopted in 1979 as part of the Tokyo Round of the GATT. This provision allows developed countries to grant enhanced market access to developing countries that also extend the market access granted to developed countries (Bosche, 2005). However, this special and differentiated treatment applies to all developing countries and cannot be provided exclusively to the ACP block. Thus, the Enabling Clause is not applicable to EPAs (Desta, 2006).

The justification for these discriminatory agreements is contained in Article XXIV of GATT. It allows members of the WTO to establish free trade areas and custom unions within certain rules. As stated above, EPAs are designed to form FTAs between the EU and the regional ACP groups, and thus are covered by Article XXIV of GATT. There are two key requirements for the formation of FTAs under this provision which are both determined rather vaguely, viz;
  (a)     The Time Frame
  (b)     The Scope of Liberalization

**Fundamental Principles and Objectives of EPAS**

Economic Partnership Agreements are based on the principle that an open trade regime is a prerequisite for growth. This is because it increases domestic competition, attracts investment, promotes diffusion of technology, stimulates co-operation and learning processes and leads to economies of scale (Meyne, 2008. The overall goal of the Economic Partnership Agreements, which should be achieved with these principles, is the sustainable development of ACP countries, their integration into the global economy and eradication of poverty. EPAs set out to help ACP countries integrate into the world economy and share in the opportunities offered by globalization (European Commission, 2014). In specific, the trade regime should promote sustained growth, increase the production and supply capacity, encourage the structural transformation and variance of the ACP economies, and support regional integration.

In essence, Economic Partnership Agreements are FTAs with an additional financial dimension, helping to implement the trade regime, which are based on the following principles: first of all, EPAs must be development tools contributing to the goals mentioned above and not self-purposed. They also oblige ACP countries to progressively open their markets for products from the EU. Financial aid provided by the European Development Fund and the European Investment Bank will mitigate the negative impacts of trade liberalization, e.g. loss of tax revenues (ECDPM, 2014). In addition, both parties agreed that special and differentiated treatment should be provided to all ACP countries, especially for LDCs and small, landlocked and island states (European Commission, 2014). Finally, EPAs must be compatible with WTO rules and designed in the light of evolutionary nature of these regulations, and they have to support and reinforce the regional integration process of ACP countries. The principle mechanism by which EPAs seek to achieve these goals is through opening up, or liberalizing, the trade regimes between the EU and the ACP and through promoting trade relations amongst the ACP regional groups which the EU encouraged to establish free trade areas or customs unions. Some authors have argued that the EU"s motivation for promoting EPAs is rather self-serving; the aim is to secure continued access to and a privileged position in Africa's markets (Farrell, 2005). They went further and claimed that the EU aims for an enhanced market access by gradually liberalizing trade barriers with regard to imports from EU member states (Busse et al, 2004 and Dihm, 2007). Indeed, the EPAs provide for a liberalization of African markets, albeit in a much slower speed than is required by the EU.

In practical terms, EPAs can be said to be designed to benefit African countries in two major ways. First, is the integration into the world economy and secondly, the furthering of sustainable development within the countries.

## Integration into the Global Economy

According to Farrell (2005), the first aspect of integration into the global economy would be facilitated by the EPAs; the marginalization of African economies would be averted. This point is supported by Borrmann and Busse (2007) who claimed that one of the major aims of the Cotonou Agreement that provides for EPA negotiations is the gradual and smooth entering of ACP countries in general and African countries in particular.

## Regional Integration

A central developmental objective of developing countries in all ACP regions has been to strengthen their markets through regional integration. This priority is supported by the Cotonou Agreement, which states that EPA negotiations shall take into account ACP regional integration processes and build on current initiatives (Article 37, number 5 of Cotonou Agreement). Simply put, regional integration entails the increase in economic, institutional and political linkages between countries that share geographic proximity (South Centre, 2007). It is the move towards greater interdependence between countries through the removal of barriers and constraints to ease co-operation, including through reduced trade barriers. In regard to economic regional integration, there are various stages of interdependence that range from relatively weak integration arrangements to relatively strong and robust arrangements. Broadly speaking there are five stages of economic integration: a Trade bloc, a Free Trade Area (FTA), a Customs Union, a Common Market and an Economic and Monetary Union, which is the highest form of economic interdependence. In this context, the EU has argued that an EPA will enhance and rationalize regional integration by providing greater credibility to the process and by locking in policy reforms. However, there is concern whether EPA negotiations are actually supporting or undermining regional integration in Africa.

## Regional Dimension of EPAS and Revenue Implications

One of the biggest concerns throughout the EPA negotiations has indeed been their regional dimension. As such, since the beginning of the negotiations in 2002 a great deal of emphasis has been put on ensuring that EPAs ultimately serve to enhance efforts at promoting intra-regional trade and furthering regional integration. Analyses on this aspect of the topic will be focused on the ECOWAS and CEMAC region.

As negotiations on the EPAs continue, some countries in each of the regions have signed interim EPAs (IEPA) with the EU. In the West African region, two countries, Ghana and Cote d'ivoire have signed interim EPAs with the EU. This, however, disrupts the regional integration process. This is because those member states that did not sign an IEPA with the EU will have to erect new barriers against imports from

Ghana and Cote d'Ivoire in order to prevent imports of EU goods through their borders. Concluding a comprehensive EPA in the ECOWAS region has been difficult owing to the fact that most of the countries in the region are LDCs which would rather remain under the EBA scheme which grants duty and quota free access to all their exports except arms. For these LDCs, opening their markets to the EU under the EPA reciprocal regime will not be of benefit to them since they already enjoy unrestricted access to the EU market under the EBA. On the other hand, Nigeria rejected the signing of an EPA. Nigeria's argument is that the EPA will have a long-term negative impact on the continent's efforts towards industrialization and job creation (Aganga, 2014). This is in addition to the fact that the EPA will amount to huge loss of fiscal revenue and will negate the objectives provided in the Nigeria Industrial Revolution Plan (NIRP) recently launched in Nigeria. Because Nigeria refused to sign the EPA, its exports to the EU now come under the standard GSP arrangement, which entails higher tariffs. Even though the Nigerian Government has twice applied to be placed on the GSP+ status, the EU has rejected the applications purely for political reasons. Some studies have suggested that in absolute terms, the decline in tariff revenue in West Africa will range from less than US$10 million in Guinea-Bissau to more than US$682 million in large and protected Nigeria. However, results also show that while Nigeria is likely to lose a significant amount of revenues, accounting incidentally for more than 25% of its revenue from trade taxes, these losses are relatively marginal, given the importance of oil royalties and other resource-related revenue in the country's budget. If one considers total tax revenue therefore, Nigeria would thus appear to be among the countries the least likely to encounter important adjustment costs following trade liberalization in the case of an EPA.

**The Potential Impact of Trade Liberalization on Fiscal Revenues**

The expected impact of trade liberalization on fiscal revenues can be looked at in static or dynamic terms. In a static framework, the impact on import tax revenues depends on the direct impact of changes in import prices on import demand, and therefore on trade tax revenues. As customs duties on most imports from Europe decline and are ultimately eliminated under an EPA, EU imports that were previously taxed will enter ACP markets duty-free once an EPA is in place, thus potentially reducing trade tax revenues. Trade liberalization under an EPA will also make some products cheaper to import from the EU than other countries still subject to customs duties; any trade diverted from non-EPA origins to the benefit of EU imports also contributes to lower customs revenues (Bilal et al, 2012).

**Obstacles to the Incorporation of Human Rights into Economic Partnership Agreements**

As noted, the Cotonou Agreement explicitly incorporates human rights as an essential element of the European Union-African partnership. However, the Agreement does not explicitly incorporate the right to development. More significantly, the Cotonou Agreement primarily restricts the scope of human rights to political dialogue and to consultations where dialogue fails. This is so because human rights concerns are not explicitly included in the other four pillars of the European Union-African partnership as contained in the Agreement. These are: involvement of civil society, the private sector and other non-State players; poverty reduction within the context of objectives and targets agreed at the international level such as the Millennium Development Goals; the economic and trade cooperation framework; and the rationalization of financial instruments and a system of flexible programming. However, as noted below, other provisions of the Cotonou Agreement could be construed to suggest that at least some human rights are intended to be cross-cutting concerns within the other pillars of the European Union-African co-operation under the Agreement.

**Economic Partnership Agreements and the Right to Development**

EPAs are being negotiated within the framework of the Cotonou Agreement. As an essential part of the Cotonou Agreement, EPAs have the following development objectives: poverty reduction, promotion of sustainable development and facilitation of the integration of ACP countries into the global economy through trade. The Cotonou Agreement does not specifically incorporate the right to development in its substantive text. However, the Agreement makes human rights an essential element and one of the five pillars of the European Union-ACP partnership, and it incorporates most of the rights contained in the Declaration on the Right to Development. While human rights are not explicitly made a part of the other four pillars of the partnership, certain provisions of the Agreement that positively impact human rights could, arguably, be read as cross-cutting all the five partnership pillars.

**Alternatives to Economic Partnership Agreements**

Although the EPAs offer considerable potential benefits for sub-Saharan African countries, implementing free trade with the EU will, as discussed earlier, pose a number of policy and administrative challenges for SSA countries, including among others, replacing lost tariff revenues, avoiding serious costly trade distortions and liberalizing internal trade within SSA's regional economic communities (RECs). Another reason to think long and hard about the development impact of the EPAs is that they may very well set the pattern for future trade relations between SSA and

other industrial and middle income countries. There is, therefore, the need for African countries to explore other alternative trade arrangements. This chapter will examine these alternatives in the light of the peculiarities of African economy, put forward recommendations that would facilitate a more development friendly trade arrangement and provide a general conclusion of the work.

**Conclusion**

This research examined the meaning, scope and implications of signing a reciprocal trade agreement in the form of EPAs between African countries and the EU. The work noted the legal framework of the EPAs and their compatibility with WTO rules. This study also highlighted the fiscal revenue implications of implementing an EPA and its consequences on the right to development. The work pointed out that the EPAs could be quite beneficial economically for SSA if they can be used to leverage important policy reforms. The necessity for the SSA countries to liberalize imports from the EU to improve their access to the EU market also provides an opportunity for them to integrate into the global economy, to strengthen regional integration in Africa, to accelerate their trade-related reforms under potentially favourable conditions and to lock in these reforms in a way that makes them credible to prospective investors (Hinkle and Newfarmer, 2005). Also, the technical and financial assistance from the EU could provide more generous support than is often available for countries undertaking trade reforms.

However, the EPA process also entails serious risks for Africa. This paper noted that reciprocal trade liberalization between rich developed countries and poor developing countries, is a major threat to poverty reduction and development. Developing countries governments must be allowed to protect and promote infant industries in order to develop their economies and eradicate poverty. Reciprocal trade liberalization which is at the heart of proposed economic partnership agreements between the European Union and African countries would inflict substantial damage on emerging African industrial sectors and close off the policy space governments need to ensure long-term national development.

EPAs implicate further problems, especially in the long run. The major problems here are crucial institutional incapability's inherent in most developing countries, the threatening of regional integration, as well as the expectation to lose a considerable amount of tariff revenues due to trade liberalization. Also there are no specific dispute mechanisms provided in the event of any dispute arising between the two parties.

**Recommendations**

The EPAs are far apart from the original development agreements envisaged by ACP countries in the context of the Cotonou Agreement. For Africa, the major challenge in its negotiation of the EPA with the EU is to have an agreement that addresses the

continent's longstanding condition of poverty and underdevelopment. In order to accomplish this, the EPA should be made to be not just a trade agreement but also a development strategy to pull the people of Africa from abject poverty to respectable human development index. The logical and fair way to achieve this objective is to benchmark EPAs with clearly defined development indicators. In other words, if signed, the agreement will only continue if defined levels of development are attained at given periods by African countries.

Since discriminating under EPAs between the exports of the LDC and non-LDC members of the same customs union or free trade area could undermine regional integration efforts in SSA, the most development-friendly option would be for the EU to provide EBA market access to all SSA countries signing EPAs.

Also, the WTO should revise the enabling clause, article xxiv and other related articles of the WTO to allow for development friendly trade agreements between developed and developing countries. Reciprocity should be based on the attainment of objective socioeconomic indicators rather than on arbitrary time frames and percentage of traded goods. An independent dispute settlement mechanism should be incorporated in the EPAs to ensure free and fair determination of disputes which may arise in the course of the EPA arrangement.

African countries should insist on the exclusion of some sensitive products which would be exposed to severe competition from relatively cheaper EU goods. These include goods which are produced by infant industries and products which attract high tariff revenues to the government. With the rapid growth of several emerging markets like China and India, African countries can also explore the opportunity of a more enhanced trading relationship with these countries.

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# Labour Migration in Africa: Migrant Domestic Workers in South Africa

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## Abstract

Increasing membership in domestic workers' organizations and an effective usage of their bargaining power make positive changes through campaigns and existing dialogue with the government, but at the same time domestic workers remain the most vulnerable group of the labour force. Migrant domestic workers face even more challenges and are often exploited due to their irregular situation, they remain exposed to such violations as human trafficking, sexual abuse, forced labour, etc.

The Convention 189 has created a momentum for a change, hence, new ways to improve protection of labour rights and working conditions of domestic and migrant domestic workers. Such instruments as bilateral labour agreements between South Africa and neighbouring countries need to be revised and include provisions of cooperation between countries of origin and destination, mutual monitoring of the implementation and provision of adequate response to domestic workers' protection needs. Creation of the standards and regulation instruments has been an important step in ensuring decent work for migrant domestic workers, but the most important should be the enforcement of created tools in order to achieve concrete improvements in human and labour rights of domestic workers.

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**Overview of labour migration trends**

According to UN DESA, the number of migrants last year reached 232 million comparing to 175 million in 2000 and 154 million in 1990[58]. The increasing trend in migration can be summarized by the main push and pull factors: on one hand - raising unemployment rate, poverty and income gaps, and unequal distribution of the population worldwide that stimulate migration and on another – raising educational standards, higher wages, improvement of social and labour protection systems in more developed countries that attract potential migrants. In case of South Africa, in particular, the average annual rate of change of international migrants over 2000-2013 has increased by more than 2 %[59]. The trend of increasing migration to South Africa can be explained by greater work possibilities and higher economic development despite the world economic crisis that has severely influenced the country: in 2013 South Africa's economy was ranked 33rd in the world with a gross domestic product of 350,630 million of US dollars[60], leaving behind its neighbours in the region. Despite the relatively high unemployment rate[61], mainly related to the structural market changes, South Africa attracts migrant workers by a number of jobs opportunities and higher wages. Needless to say that a global job crisis and deficit employment opportunities stimulate migration for work, but at the same time deteriorate a nature of jobs migrants normally undertake in countries of destination, as incoming workforce doesn't have a choice but to take less attractive jobs.

In consequence to the above mentioned trends, over the last years there is an increasing number of international migrant workers in the domestic sector. The ILO estimated that there are at least 52.6 million people[62] who work as domestic workers around the world, which makes 4-10% of the workforce in developing countries and around 1-2.5% in developed countries[63]. This trend is characterized by extensive feminization and increase of demand for domestic work. The overall estimate undercounts workers employed in the domestic sector due to the difficulties to capture an accurate data, however, one of the most recent assessments gives a global number close to 100 million domestic workers[64].

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[58] Population Facts, No. 2013/2, United Nations Department of Economic and Social Affairs, Population Division, p.1

[59] *Ibid*, p.3

[60] World Bank database, Gross domestic product ranking

[61] According to the ILO Unemployment rate per country in 20013: South Africa – 24.88%, Namibia – 16.92%, Botswana – 22.88%, Zimbabwe – 5.35%, Mozambique – 8.35%, Lesotho – 29.6% and Madagascar – 3.55

[62] ILO in Action: Promoting Decent Work for Domestic Workers, INWORK Publication, ILO, Geneva, 2014, p.2

[63] Decent Work, Decent Life for Domestic Workers: An Action Guide, ITUC, 2010. p.15

[64] Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection, ILO, Geneva, 2013, p.19

Increasing number of migrant domestic workers is related to a series of global economic and demographic transformations. Thus, domestic work became an integral part of expanding global care economy, including not only such household chores as cooking or cleaning, but also child and aging population care as well as care for ill and disabled. Mainly it is related to an increase of women's labour force participation along with insufficient welfare state provisions. Moreover, in high-income countries we observe such demographic trends as low birth rate and rising number of aging population, which can be translated as unbalanced proportion of productive working population sustaining a large part of out of labour force population. This demographic phenomenon is also linked to differences between high and low income countries, which explains not only growing number of national domestic workers, but also increase in labour migration. Consequently, in developing countries domestic worker employment constitutes between 4 and 10 % of total employment and in post-industrialised countries – at least 2.5 %[65]. There are also proves of further expansion of the domestic work sector, despite the fact that it is often considered an informal sector. As an example, the Bureau of Labour Statistics of the United States estimates that demand for home and health care work will increase by 50 % in the period of 2008-2018 due to growing older population[66]. In the industrialized countries of the global North, the care sector needs to increase by 79 % in order to meet a growing demand[67].

In most developing countries the increasing demand for domestic work is interlaced with insufficient state welfare provisions and emerging need for alternative provision of household services. Considering a significant poverty gap between rural and urban areas in developing countries, we observe a constant flow of migrant workers from poor rural areas who seek better job opportunities in big cities. This trend overlaps with the process of globalization and leads to upsurge of migrant workers' flow across national borders. The bright example of such processes is SADC (Southern African Development Community) region: apart from rural-urban migration within South Africa, there is also an influx of migrant workers from the neighbouring countries. Thus, transnational migrants coming from Lesotho, Zimbabwe and Mozambique constitute the largest number of migrant workers employed in domestic sector. Perceiving South Africa as an economic powerhouse of the region, migrant workers try to escape economic and political turmoil in their countries of origin.

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[65] Contributions of migrant domestic workers to sustainable development, UN Women, 2013, p.9

[66] Unity for Dignity: Expanding the Rights to Organize to Include Human Rights at Work, Excluded Workers Congress, 2010, p.18

[67] Social Care of Older People and Demand for Migrant Workers, Isabel Shutes, Policy Primer of the Migration Observatory, University of Oxford, 2011, p.3

**Exploitation and vulnerability of migrant domestic workers**

Having traced a trend of increasing labour migration, it is necessary to highlight a migration pressures in Africa, particularly important due to the overall bulk of African migration. Within the African region it is estimated to be almost two third of the total migration flows[68]. Therefore, a high number of migrants faces not only the shortage of employment opportunities or widening gap of income, but also challenges related to decent work conditions and risk of exploitation.

Domestic workers appear to be the most vulnerable group of labour migrants due to dominating informal practices as well as insufficient protection under national law of a country of destination. South Africa, as one of the largest receiving countries of migrant domestic workers in Sub-Saharan Africa, in this context remains in a meagre position when it comes to labour migration governance and struggles to find an adequate response to the high migrants' influx.

One of the important steps in ensuring decent work for domestic workers was an introduction of the Sectoral Determination No.7 in 2002 under the Basic Conditions of Employment Act (No. 75 of 1997), which established the main set of standards, including minimum wage, working conditions, overtime and leave pays. Ratification of the ILO Domestic Workers Convention 189 followed in 2013 and is currently in force, however, there are still challenges in the implementation and enforcement of the adopted tools.

Considering particularities of a domestic work sector and challenges of labour migration governance, it is important to acknowledge widespread violations of human and labour rights that migrant domestic workers face. Given that informal economy dominates employment of most of the countries of Sub-Saharan Africa[69], domestic workers become a part of informal sector due to the tight South African regulations on migration. As a result, migrant domestic workers become particularly vulnerable and exposed to violations. Being employed in a private household, they experience not only risk of violence, but also lower wages, lack of health insurance, excessive working hours and exploitation. Moreover, difficulty to regulate employment relations is often correlated with the fact that migrant domestic workers live-in: working and living in a private household, especially in cases related to care provision, implies close and very personal relations. The situation aggravates in case of irregular status of a migrant domestic worker, which puts him/her in a weak position when it comes to claiming labour rights.

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[68] Protecting the rights of migrant domestic workers, Making Decent Work a Reality for Domestic Workers in Africa: a regional knowledge sharing forum, Briefing Note No.4, ILO, Dar es Salaam, Tanzania, 2013, p.2

[69] Domestic Workers: From Modern-Day Slavery to Equal Rights, Briefing No. 30, Decent Work – Decent Life, Solidar, 2011, p.6

Predominately, domestic workers are women, meaning they face discrimination and abuses on the gender basis, including physical and sexual exploitation, mistreat, forced labour, etc. Furthermore, female domestic workers, living in private households, are isolated from their families and support systems[70]. These challenges overlap with an existing informality of the domestic work sector and inefficient regulations, which tend to be more restrictive than protective for domestic workers[71].

An average hourly pay for a female worker in South Africa is generally lower comparing to the one of a male workers, according to the UNDP estimation[72]. Taking into account a gender segregation issue in South Africa and a gender pay gap, women become more vulnerable even though they might be more qualified.

In addition to mentioned above violations, verbal abuses are frequently reported, including inappropriate language, shouting and insults[73]. Being excluded or having a lack of access to the local community, migrant domestic workers become isolated and, thus, unprotected. Lack of information and awareness of their rights contributes greatly to continuation of exploitations and mistreatments.

**Social and economic importance of migrant domestic workers**

An importance of domestic work is generally diminished, despite its increasing importance in the labour force of the countries of destination and economic support to the countries of origin.

In the country of destination migrant domestic workers contribute to the revitalization of the labour market. By providing a sustainable support to a household, they make possible to free up time for the household members to be actively involved in productive or leisure activities that enhance the social and economic well-being of the family[74]. On a larger scale, receiving nation's government profits from reduction of the care service costs, foreseen for children, persons with disabilities and aging population, as those migrant domestic workers who undertake the caregivers duties are being paid from the income of their employers - households. Members of the family, being able to return to the labour market and delegate their household duties to domestic workers, are in their turn contributing to the economic development of the country. Furthermore, considering South Africa's requirement to have a standardized

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[70] Moving towards Decent Work for Domestic Workers: An Overview of the ILO's Work, D'Souza, ILO Bureau for Gender Equality working paper 2/2010, Geneva, p.v

[71] Action against sexual harassment at work, Haspels, N., Kasim, Z.M., ILO, Bangkok, 2001, p.56

[72] The Gender Pay Gap over Women's Working Lifetime, One Pager Number 20, Poverty Centre, UNDP, 2006

[73] Female labour migrants and trafficking in women and children, ILO Series on Women and Migration, No.2, ILO, Geneva, 2002, p.23

[74] Domestic Workers Count Too: Implementing Protections for Domestic Workers, a briefing kit, UN Women, ITUC, 2013, p.50

employment contract for migrant workers, it is important to ensure public awareness of the trilateral benefits of such legal practices: domestic workers are under labour rights protection, their employers receive services that allow them to increase their economic or leisure activity and the state benefits from the consumption expenditures, payments to welfare funds, social security and taxes[75]. Failure to ensure an adequate implementation of labour laws, regulations and standards leads to increase of the shadow economy as domestic work remains an informal sector.

The origin countries benefit significantly from the economic and social remittances. According to UN Women report on Migration, Remittances and Gender-Responsive Local Development in Africa, women migrant workers are typically saving and send back home a greater share of their earnings than men and are more likely to invest in schools, hospitals and local development through migrants' and diaspora networks[76]. IOM Sub-African regional estimate of remittances, in line with general sample of migrant women, estimates 79 % of African women sending money back home on a regular basis – generally a higher proportion of the income, even if generally earning less than men[77]. In Sub-African context this trend can be explained by a traditional gender role women take in a family, meaning they become a subject of a pressure from to remit and support their families back home[78]. Having a strong sense of responsibility to sustain the family, women tend to accept difficult working and living conditions. On another note, regardless who is remitting, women are commonly the main recipients as, due to their role in a family, they are perceived as better managers, investing not in themselves, but in children, household or community wellbeing[79]. As a result, in Lesotho over 95% of the households with male migrant members, typically working on mines in South Africa, and 90% with female migrant members, half of whom working as domestic workers in South Africa, list remittances as a source of household income. Remittances are estimated to be around 25% of Lesotho's GDP, however, they are not used on luxury consumption or as an S&M investment, but mostly as a necessary income to meet the households' subsistence needs. The same figures – close to 90% - in Swaziland and Zimbabwe show a great significance of migrant remittances to basic needs and household subsistence[80].

Even though the social value of domestic workers is hard to measure, by exempting women from the household duties they provide an important live-in support to families. At the same time, domestic work sometimes perceived as a reaffirmation of

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[75] *Ibid*, p.51

[76] Migration, Remittances and Gender-Responsive Local Development, UN Women and UNDP, 2010, p.14

[77] Gender, Migration and Remittances, IOM, Geneva, 2011, p.5

[78] *Ibid*, p.2

[79] Migration, Remittances and Gender-Responsive Local Development, *Op.cit.*, pp. 14-15

[80] Migration, Remittances and "Development" in Lesotho, Jonathan Crush, Southern African Migration Programme, Cape Town,2010, p.52-57

class-based society or a deteriorating effect on gender equality[81] and this is valuable argument in the debate for decent work for migrant domestic workers, as only through insuring adequate working conditions and labour rights it is possible to have a suitable protection of workers' rights as well as push forward for the formalization of domestic work sector.

**Protection mechanisms for migrant domestic workers in South Africa: good practices and challenges**

In South Africa, domestic workers rights are protected by the Sectoral Determination of 2002 of the Basic Conditions of Employment Act No.75 of 1997, amended in 2005. The Sectoral Determination establishes minimum wage, and specifies working conditions such as hours of work, overtime pay, salary increases, deductions, annual and sick leave. According to the UN Women report, the establishment of a minimum wage did not result in a decrease in demand for domestic work, neither in an increase of unemployment. Thus, in South Africa, the increase of average wage paid to domestic workers has not resulted in any significant employment loss[82]. In addition, maximum working hours preview that domestic workers have no more than 45 hours per week and their minimum age should be 15 years old, which implies that employers are obliged to verify domestic workers' age by requesting an identity document or birth certificate[83]. Another important achievement in South Africa, often used as an example of good practices in the region, is introduction of standard employment contract that outlines terms and conditions of work for domestic workers. It includes a detailed description of the type of work and duties, working hours and leave days, rate of overtime pay, wage and method of payment, deductions and conditions to terminate the contract. Having undertaken an important step in legal provision of decent work for domestic workers, protection of migrant domestic workers remains an important issue, despite the fact that South African legislation foresees the possibility of obtaining a work permit for the purpose of domestic work. Tightening regulations the immigration policy becomes more selective and restrictive. Migrant domestic workers, mainly from the neighbouring countries such as Lesotho, Zimbabwe and Namibia[84], tend to enter South Africa with short-term visitors visas and overstay, becoming irregular migrant workers. In these cases, the government of South Africa has to deal with, often unexpected, social costs, namely increase of illegal recruitment, lowering labour standards, expansion of irregularity, human rights violations, etc.

Social protection policies for domestic workers also include the Unemployment Insurance Amendment Act (2003) and the Domestic Works Skills Development

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[81] Contributions of Migrant Domestic Workers to Sustainable Development, *Op.cit.*, p.33

[82] *Ibid*, p.17

[83] Domestic Workers Count Too: Implementing Protections for Domestic Workers, *Op.cit.,* p.39

[84] *Ibid,* p.39

Project[85]. The Unemployment Insurance Amendment Act previews 1% of the monthly salary contribution to the Unemployment Insurance Fund and consequently provides a support to those domestic workers who become unemployed because of illness, dismissal or retrenchment. It also covers maternity benefits, depending on contributions of domestic workers. As for the Domestic Workers Skills Development Project, it previews training and competency attaining events that provide nationally recognized qualification standards for domestic workers. Even though the social protection policies, as well as the Labour Relations Act, cover all domestic workers regardless their migrant status, it is evident that only those migrant domestic workers have an access to social protection benefits in case they have a regular status in South Africa.

**ILO response to migration of domestic workers**

Labour migration is not only an integral part of the ILO global agenda, but is also an important issue of its Decent Work Agenda. Among important instruments, introduced by the ILO, there are Migration for Employment Convention No.97 and Convention on Migrant Workers No.143. However, an important step towards insurance of labour rights and adequate working conditions for migrant domestic workers was made with on September 2013 when the Convention Concerning Decent Work for Domestic Workers No.189 came into legal force.

Recognizing domestic work as a regular work gives domestic and migrant domestic workers the same rights as for representatives of any other profession. South Africa has been one of the first countries to ratify the Convention 189 and now undertakes further steps to move from paper to practice. The government ensures a constant monitoring of the domestic workers treatment and provides human and financial resource. Accordingly, labour inspectors are being trained to monitor homes-workplaces for the domestic workers and to verify compliance of individual households not breaking their privacy at the same time[86].

Important role in the implementation of the Convention 189 in South Africa plays the Global Action Programme on Migrant Domestic Workers and Their Families[87], funded by the EU and implemented by the ILO. By providing constant consultancy assistance, the Programme not only promotes human and labour rights of migrant domestic workers, but also provides an important liaison between the stakeholders: workers and employers organizations, government and civil society. The GAP concentrates mainly on the migration corridor Zimbabwe/Lesotho – South Africa and

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[85] Legal Protection for Migrant Domestic Workers, *Op.cit.*, pp. 131-238
[86] Domestic Workers Count Too: Implementing Protections for Domestic Workers, *Op.cit.,* p.40
[87] Global Action Programme on Migrant Domestic Workers and Their Families, ILO, project description - http://www.ilo.org/global/topics/labour-migration/projects/WCMS_222567/lang--en/index.htm

within its broader objectives provides a support in strengthening the capacity of trade unions and domestic workers organizations.

**Domestic workers' movement**

Domestic workers in South Africa are estimated to be 888,000 according the 2010 Labour Force Survey, which means they consist 7% of total formal employment[88]. Increasing number of domestic workers for the past decades has led to strengthening the organization of workers' unions, such as South African Domestic Services and Allied Workers Union (SADSAWU).

This organization not only tackles the "invisible" problem of domestic and migrant domestic workers by empowering them and fighting for their rights, but also makes an important input into implementation of national labour legislation and international conventions. For instance, in consequence of proactive measures undertaken by SADSAWU, an issue of domestic work was put on the table in South Africa. In March 2012 the leaders of SADSAWU camped outside the South African parliament overnight demanding the ratification of the Convention 189. Having publically presented an open letter to the President's office, they have managed to attract attention of the media and civil society which has led to the cabinet's approval of the ratification later on that year[89].

Increasing membership in domestic workers' organizations and an effective usage of their bargaining power make positive changes through campaigns and existing dialogue with the government, but at the same time domestic workers remain the most vulnerable group of the labour force. Migrant domestic workers face even more challenges and are often exploited due to their irregular situation, they remain exposed to such violations as human trafficking, sexual abuse, forced labour, etc.

The Convention 189 has created a momentum for a change, hence, new ways to improve protection of labour rights and working conditions of domestic and migrant domestic workers. Such instruments as bilateral labour agreements between South Africa and neighbouring countries need to be revised and include provisions of cooperation between countries of origin and destination, mutual monitoring of the implementation and provision of adequate response to domestic workers' protection needs. Creation of the standards and regulation instruments has been an important step in ensuring decent work for migrant domestic workers, but the most important should be the enforcement of created tools in order to achieve concrete improvements in human and labour rights of domestic workers.

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[88] You Know Your Rights: a basic guide for domestic workers in South Africa, Global Network Africa, LRS and SADSAWA, Labour Force Survey, 2010
[89] Claiming Rights. Domestic Workers' Movements and Global Advances for Labour Reform, Human Rights Watch, ITUC, IDWN, 2013, p.27

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# Exploring the gap between ethnicity and violence by looking at both top-down and bottom-up pressures in Kenyan elections from 1992-2007

*Nicholas Angelo Zanette[90]*

## Abstract

As John Lonsdale states, "ethnicity is a world-wide social fact; all human beings make their cultures within communities that define themselves against *others*".[91] However, ethnicity has come to play a more defining role in everyday politics on the African continent, more so than anywhere else in recent times. As a result, this paper will attempt to explore how ethnicity has been a stronger mobilising force than nationalism specifically in the case of post-Independent Kenya. The paper will attempt to explore the gap between ethnicity and violence, where the two are often assumed to go hand in hand, by arguing that mobilisation on ethnic grounds not only comes from elite-led, top-down pressures, but that the less explored, bottom-up factors play just as important a role.

We will explore both the 1992 and 2007 elections in depth as the primary cases. This is due to the significance held by these individual events. 1992 because it was the first election with a return to multi-party politics in the country and 2007, due to the unprecedented violence that followed, leaving the country on the precipice of civil war. However, we will use the 1997 and 2002 elections in between to illustrate how the events of 1992 and 2007 are connected and not isolated events in Kenya's past, with 2007 being the culmination of twenty-five years of political tension building up.

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[91] Lonsdale, J (1994) " Moral Ethnicity and Political Tribalism", in Kaarsholm, P & Huttin, J, *Inventions and Boundaries: Historical and Anthropological Approaches to the Study of Ethnicity and Nationalism.* Roskilde, Denmark: Roskilde University Press. p.131.

**Acronym Key**

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|---|---|
| **KADU** | **Kenya African Democratic Union** |
| **KANU** | **Kenya African National Union** |
| **IMF** | **International Monetary Fund** |
| **NAK** | **The National Alliance** |
| **NARC** | **National Rainbow Coalition-Kenya** |
| **PNU** | **Party of National Unity** |

**Introduction**

As John Lonsdale states, "ethnicity is a world-wide social fact; all human beings make their cultures within communities that define themselves against *others*".[92] However, ethnicity has come to play a more defining role in everyday politics on the African continent, more so than anywhere else in recent times. As a result, this paper will attempt to explore how ethnicity has been a stronger mobilising force than nationalism specifically in the case of post-Independent Kenya. The paper will attempt to explore the gap between ethnicity and violence, where the two are often assumed to go hand in hand, by arguing that mobilisation on ethnic grounds not only comes from elite-led, top-down pressures, but that the less explored, bottom-up factors play just as important a role.

In order to achieve this, we will focus on a 25-year period in the country's post-independence history, spanning over four key elections: 1992, 1997, 2002 and 2007. This will be done because, while agreeing that ethnicity has been a stronger mobilising force than nationalism, this paper will also attempt to show how ideas of ethnicity are not only constructed by actors, but that they are often moulded and changed instrumentally around election times to have maximum effect, by both those in power at the elite level, and local actors at a grassroots level.

It will not be possible to understand the snapshot in Kenya's history that we have chosen to focus on without analyzing the Kenyan state under colonial rule and in the immediate years that followed independence, as these experiences had a lasting effect on its modern day politics. Thus, following a section on the historical background that will show how a number of the theories talked about in the theoretical framework

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[92] Lonsdale, J (1994) " Moral Ethnicity and Political Tribalism", in Kaarsholm, P & Huttin, J, *Inventions and Boundaries: Historical and Anthropological Approaches to the Study of Ethnicity and Nationalism*. Roskilde, Denmark: Roskilde University Press. p.131.

section of this paper, came about, we will have a further three sections focusing on the elections mentioned above.

We will explore both the 1992 and 2007 elections in depth as the primary cases. This is due to the significance held by these individual events. 1992 because it was the first election with a return to multi-party politics in the country and 2007, due to the unprecedented violence that followed, leaving the country on the precipice of civil war. However, we will use the 1997 and 2002 elections in between to illustrate how the events of 1992 and 2007 are connected and not isolated events in Kenya's past, with 2007 being the culmination of twenty-five years of political tension building up.

**Theoretical Framework**

The majority of writing on ethnic mobilisation on the African continent has been written arguing a realist and state centric perspective that explains the mobilisation, or actions of masses as elite led, or influenced from the top-down. Kenya is not an exception to this, with the numerous reports published on the elections in question from sources ranging from the Commonwealth Observers Group to Africa Watch, all publishing reports critical of the political elite as the sole culpable actors. As mentioned above, this paper will look at the idea of ethnicity, defined as referring to group with a common identity that may include, culture, history and background and sometimes language,[93] from both a more instrumental and constructivist point of view.

From a constructivist belief of ethnicity, we will work with John Lonsdale's idea that, although the primordial view of ethnicity being inherited cannot be totally dismissed, it is through human habits of social interaction that a system of moral meaning and ethnic reputation is created along with an imagined community.[94] While from the instrumentalist angle, these meanings "are also reinvented everyday, to meet new needs",[95] and used strategically at key moments for political gain. Both the work of Gabrielle Lynch and Sarah Jenkins will support with these ideas as well as take them further while focusing specifically on post-Independent Kenya as an empirical study introducing the idea of ethnicity and violence stemming from bottom-up mobilization as a result of exclusionary politics and the 'guest/immigrant' metaphor.[96] Both the plasticity and durability of these ideas will support our argument as we see how these narratives change during election periods in the case of Kenya.

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[93] Gherghina, S & Jinglau (2011) "Explaining Ethnic Mobilisation in Post-Communist Countries", *Europe-Asia Studies*, 63(1), p. 51.
[94] Lonsdale (1994) "Moral Ethnicity & Political Tribalism", p. 131.
[95] Ibid. p. 131.
[96] Jenkins, S (2012) "Ethnicity, Violence and the Immigrant-Guest Metaphor in Kenya", *African Affairs*, 111(445), p. 576.

Theories exclusive to Kenyan politics championed by the various actors struggling for control of the states resources must also be examined and analysed with regard to this discussion. From the time of the independence struggle, the two theories that were competing at the time were firstly, the more nationalist leaning *Harambee,* a call to pull together, championed by Kenya's first president Mzee Jomo Kenyatta. Secondly, and arguably the more durable, is *Majimboism*, or regionalisation, which has been at the heart of Kenyan political discussion till this day, embracing Kenya's ethnic diversity and essentially why "the career of nationalism ended at independence".[97] Ethnicity, not just in Kenya, often leads to neopatrimonial styles of governance and Kenya under Kenyatta through to Kibaki was no exception. Thus, exploring this theory will also serve to help explain how in Kenya's case, ethnicity has been a stronger mobilizing force. Finally, it is fundamental to look at these key debates in relation to the duality of interactions between both structures and actors.

**Historical Background and Evolving the Theoretical Foundations**

This section will look briefly at the historical background of the Kenyan state under British colonial rule and the years following independence in order to give the historical context, as well as show how events in this period greatly affected the future of Kenyan politics and society. It will also explore a bit further how the main theories attributed to Kenyan party politics worked.

Gabrielle Lynch acknowledges that it was the primordial idea of late 19th Century Europeans that Africans all belonged to a tribe as being crucial in justifying the colonial missions that took place.[98] Lonsdale supports this statement when he uses a metaphor of Europeans African tribes being akin to "differently coloured billiard balls",[99] all with their own cultures, languages and so on. This helps us to understand the reasons for the British style of indirect rule, where by it relied on the chiefs of these so-called separate tribes, along with their authority over an area of *ethnic territory* to administer the local people on behalf of the British administration.

This paper supports the idea of both Lynch and Trence Ranger that far from there being just a primordial explanation for the existence of African tribes, ethnicity was fostered in a much more constructive approach. Their idea suggests that it was the colonial structures that were in place at the time that were responsible for the creation of empty boxes labelled, for example, 'Kikuyu' or 'Kalenjin', but that it was then the

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[97] Kagwanja, P (2003) "Facing Mount Kenya or Facing Mecca? The Mungiki, Ethnic Violence and the Politics of the Moi Succession in Kenya, 1987-2002", *African Affairs*, 102, p.49.

[98] Lynch, G (2013) "The Politics of Ethnicity", in Cheeseman, N, Anderson, D & Scheiber, A, *Routledge Handbook of African Politic*, Oxford, UK: Routledge. p. 96.

[99] Lonsdale (1994) "Moral Ethnicity & Political Tribalism", p. 132.

role of African actors to fill these empty boxes with ideas of what it meant to be Kikuyu or Kalenjin.[100]

In the case of Kenya, as we will find thought out this paper, the fertile area known as the White Highlands, or Rift Valley has often been at the centre of controversies along the years. Access and control of resources often determined movement of ethnic groups, and the British settlers who occupied the Highlands did so by moving the native pastoral Kalenjin and Maasai communities off the land. These pastoral communities were not favoured as labourers by Europeans; therefore they brought in workers from the neighbouring areas to work the land. This resettling of people by the colonial experience can be seen as the sowing of the seeds for Jenkins' 'guest and immigrant' metaphor that we will explore later on, where by tensions between locals and those not from a particular area grew.

At the time of Independence, Mzee Jomo Kenyatta's KANU party led the calls for the, soon to be, new nation to rally behind the more nationalist idea of *Harambee*, advocating a strong central government and the pulling together by the citizens to build a new nation. The opposition at the time, KADU, "feared that the economically dominant Kikuyu, and to a lesser extent, Luo communities, would ascend to a position of political predominance, and marginalise others".[101] It was therefore natural that KADU took a stance that protected the interests of the smaller communities under the banner of *Majimboism*, "which would allow semi-autonomous regions, based on ethnicity, to have substantial decision-making power".[102] It was the Kalenjin who led this alliance, and included in their ranks was Daniel arap Moi who would go onto succeed Kenyatta, as will be seen below.

Upon winning the elections, KANU quickly scrapped any talks to include aspects of *Majimboism* into the new Kenya. As well as this, Kenyatta, through various government-sponsored settlement schemes, made European settler farms available for redistribution. However, "the majority of people that took advantage of this programme were Kikuyu".[103] Specifically, Kikuyu that had been brought in to work the land, and were now able to purchase portions for themselves.

This competition for available land grew intensely, while the Kalenjin and Maasai, whose 'ancestral' land it was, were often unable to purchase any. Thus, it can be seen

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[100] Ranger, T (1993) "The Invention of Tradition Revisited: The Case of Colonial Africa", in Ranger, T & Vaughn, O, *Legitimacy and the State in Twentieth Century Africa*, Basingstoke, UK: Macmillain, p. 27.
[101] Lynch, G (2011) *I Say To You: Ethnic Politics and the Kalenjin in Kenya*, Chicago, USA: University of Chicago Press, p. 72.
[102] Africa Watch (1993) *Divide and Rule: State Sponsored Ethnic Violence in Kenya*, USA: Human Rights Watch, p. 6.
[103] Keller, E (2014) *Identity, Citizenship, and Political Conflict in Africa*, Indiana, USA: Indiana University Press, p. 111.

how Jenkins' idea of 'guests and immigrant' began to inseminate itself into everyday discourse, especially concerning the issue of land distribution.

Upon Kenyatta's death in 1978, Moi became Kenya's second President. Following an attempted military coup in 1982, his leadership became extremely authoritarian and relied on patrimony, while also outlawing any other political party, and thus turning Kenya to a one-party state, which continued until the early 1990's.

**Return to Multi-Party Politics and the 1992 Election**

This section will look at the violence in the build up to, and during, the 1992 elections that saw Kenya return to multi-party politics. It will attempt to show how, contrary to numerous reports; it was not purely a cause of elite-led ethnic mobilisation, but that local, bottom-up factors played a crucial role that would continue to linger in Kenyan society until this day.

It is necessary to understand "two important elements of Kenyan society: first that ethnicity is a typical mode of thought in everyday life and social interaction, and second that ethnicity and land are inextricably linked".[104] As we have seen above the main issue was focused around the Rift Valley region, and it was much the same at the turn of the nineties. The fall of the Soviet Bloc saw the call for numerous African states to work towards democracy, with Kenya not an exception. This pressure came from both within the state, from opposition groups, and from outside voices such as the IMF and World Bank. A number of academics such as Ajulu and Kagwanja interpret the move towards multi-party politics as being a threat to Moi's personal wealth.[105] Due to the neo-patrimonial style of governance that Moi had employed over the years, the 1992 elections essentially represented a zero-sum game for him, KANU and the Kalenjin people that were his clients.

Peter Kagwanja further explains this elite-led, top-down process that led to ethnic mobilisation, where by he argues, that, Moi and his government were responsible for a form of "informal repression or quasi-legitimization of sectarian violence for political gain".[106] His view is a realist one, whereby, the state, in order to continue acting as the main dispenser of patronage, was required to remain in control of state power. As more institutional accountability was required with the change to multi-party politics approaching, Moi chose to politicise ethnicity.[107]

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[104] Jenkins, S (2012) "Ethnicity, Violence and the Immigrant-Guest Metaphor in Kenya", p. 578.
[105] Ajulu, R (2001) "Kenya: One Step Forward, Three Steps Back: The Succession Dilemma", *Review of African Political Economy*, 28(88), p. 199
[106] Kagwanja, P (2003) "Facing Mount Kenya or Facing Mecca? ", p. 25.
[107] Ajulu, R (2001) "Kenya: One Step Forward, Three Steps Back", p. 197

A number of independent reports written on the 1992 election such as the Akiwumi Report, the Report of the Commonwealth Observer Group and the Africa Watch report also offer a realist analysis of events, where top-down processes are the only explanations offered for the violence that occurred. This violence was a sort of ethnic cleansing that occurred in the Rift Valley, where by "young armed men attacking farms inhabited by members (supporters) of opposition ethnicities".[108] These young men were predominately Kalenjin and were referred to as the Kalenjin warriors, while the occupiers of the farms were, more often than not, Kikuyu, Luo or people of other ethnicities that had brought land in the Rift Valley under the settlement schemes. These groups of armed attackers were more often than not organised, funded and coordinated by members of Kalenjin elite, under false call for majimboism, which had almost tuned into a primordial euphemism for claiming back 'ancestral' land from non Kalenjin and Maasai. The state's use of violence served two main purposes; firstly to unite the previously fractious Kalenjin to vote as one, and next, to undermine the political opposition by displacing its support base.[109]

However, as we have stated is our aim, we must not take such explanations as adequate to understanding the ethnic clashes that occurred in 1991-92. Firstly, the independent reports published on the events were always going to be hyper critical of Moi and his regime due to the amount of aid his government received, thus in order to propagate change, he is the natural focal point of their criticism. Both Ajulu and Kagwanja acknowledge that there was more than just elite-led mobilization involved. In Kagwanja's admission that the state exploited ethnic grievances, he inevitably implies that grievances existed prior to the elections themselves, and they are grievances of everyday life.

It is these everyday grievances that manifest themselves to form the bottom-up pressures that Jenkins, Lynch and Lonsdale talk about, and that this paper believes are just as necessary a process when leading to ethnic mobilisation. Lynch argues that these everyday experiences such as ethnic bias, corruption and marginalization drive people towards ethnic solidarity,[110] much the same way Lonsdale interprets Jean-Francois Bayart's argument that, "ethnicity can be a local triumph over national failure".[111] Such marginalisation, of non-Kalenjin or unfair privileges received by the Kalenjin serve as precursors for the creation of ideas of 'us Vs them'. It mobilises communities against each other in order to seek what they interpret as justly theirs.

The 1991-2 violence in Kenya saw just this; long-standing grievances over land issues whereby by constructed ideas that 'others' were benefiting from their ethnic identity led people to support their own ethnic leaders, with the aim of attempting to benefit themselves. Coupled with this was the political elite who managed to see the

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[108] Africa Watch (1993) *Divide and Rule* p. 2.
[109] Kagwanja, P (2003) "Facing Mount Kenya or Facing Mecca? ", p. 26.
[110] Lynch, G (2013) "The Politics of Ethnicity, p. 103.
[111] Lonsdale, J (1994) "Moral Ethnicity & Political Tribalism", p. 133.

instrumental value of these ethnic ideas to mobilise support for themselves, with ultimately the realist goal of securing power in mind.

**1997 & 2002, Moi's Era Continues**

This section will look at the two elections in the period between this paper's main focus of 1992 and 2007. It will explore how these two elections played a crucial role in the build up to the events 2007 by showing how yet again, it is at times of elections that ethnic ideas get transformed and heightened from both a top-down and bottom-up perspective to have maximum effect in search of political outcomes.

The interim period once the violence of 1992 had settled was relatively calm in Kenya as the KANU government continued to run Kenya with its firm, centralised grip over the countries resources. However, as the 1997 elections approached, Ajulu argues that mass mobilisation occurred around an anti-Kalenjin and anti-Moi sentiment.[112] Feelings that were ever present in 1992, that certain ethnic groups were favoured over others and the continual frustration of marginalisation led people to mobilise around the idea of preventing Moi from a third term in office. As this paper suggests, it was a combination of both top-down and bottom-up factors that resulted in ethnic mobilisation for political gain, even in 1997. As well as in the controversial Rift Valley region, Kenya's coastal corridor provided an example of where these top-down and bottom-up grievances met.

Ajulu agrees on the presence of Jenkin's "guest-immigrant" metaphor, where by, prime land around the coastal region was brought up by people not "native" to the area. This caused bottom-up grievances such as "great political resentment to ordinary people from the province",[113] as feelings of losing out on opportunities available in their *ancestral* land to other ethnic groups. At the same time, it is crucial to note that these feelings are ever present in day to day life, but that in times of political tension, such as elections, the issue of land is easily politicised by the elite, and ethnicity is instrumentalised to mobilise voters in campaigns such as the one at the Coast against the upcountry people, where the slogan *wabara wao* (upcountry people back to their homes) was popularised by political elite. [114]

Post the 1997 election, in which Moi retained power, saw a number of the "same issues recur: economic stagnation, reports of corruption and land grabbing".[115] These local complaints, as we have seen before, manifested in two ways: Firstly, ethnic groups who were non-Kalenjin came together in what was a bottom-up mobilization of ethnic groups with the common aim of preventing KANU's continuation in the 2002 election. While at the same time, opposition politicians, "took to heart the hard

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[112] Ajulu, R (2001) "Kenya: One Step Forward, Three Steps Back", p. 202
[113] Ajulu, R (2001) "Kenya: One Step Forward, Three Steps Back", p. 211
[114] Ibid, p.211
[115] Lynch, G (2011) *I Say To You*, p.176.

lesson of the 1992 and 1997 elections that fragmentation along ethnic lines was the main reason for their failure to dislodge KANU".[116] Thus, an initial inter-ethnic alliance know as NAK responded to the bottom-up feelings of years of neglect under Moi and KANU.

So, the opposition to KANU gathered momentum through the meeting of top-down and bottom-up methods of mobilisation. While, Moi, under intense pressure to step down, was unable to manipulate ethnic identities as he had done previously, this time turned to generational identities. Kagwanja analyses his strategy from a top-down perspective, as most of his pieces do, where by a generational sentiment was whipped up under the endorsement of the youthful Uhuru Kenyatta as the KANU presidential nominee.[117]

Kagwanja uses Cruise O'Brien to support his top-down, elite driven view of mobilisation by suggesting that Africa's population are ineffective at making their opposition count and are easily manipulated by elite.[118] This paper feels that this view is rather limited and takes any credit away from the general populations ability as actors to influence political decisions.

Instead, Lonsdale offers a more complete view that can be applied to the 2002 election case where by, the final coalition know as NARC, led by Mwai Kibaki won with a landslide, ending KANU's 39 year rule. He suggests that political tribalism, flows down from the elite where communities are pitted in direct competition with one another, a skill Moi performed with great success. While moral ethnicity, creates communities from within the structure and is often the only form of accountability that African's have over the state.[119] Thus, as in 2002, the NARC coalition was able to respond to the countries general feeling of frustration and capitalise on this to oust KANU.

**2007 and Kenya on the brink of Civil War**

This final section of the paper will analyse the how the events of the 2007 elections and the violence that followed, much the same as in previous years, resulted from the ethnic mobilisation of Kenyan's where top-down and bottom-up factors met. It will agree with Sarah Jenkins' analysis of the guest-immigrant metaphor, supported by Lynch, which came about through analysis of these events. Even though their work

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[116] Kagwanja, P (2006) "Power to Uhuru: Youth Identity and Generational Politics in Kenya's 2002 Elections", *African Affairs* 105(418), p.57.
[117] Kagwanja, P (2006) "Youth Identity and Generational Politics in Kenya's 2002 Elections", p.57
[118] Ibid, p.53
[119] Lonsdale, J (1992) "The Moral Economy of Mau Mau: Wealth, Povery & Civic Virtue in Kikuyu Political Thought", in Berman, B & Lonsdale, J *Unhappy Valley: Conflict in Kenya and Africa: Book Two: Violence & Ethnicity*, London: James Currey, pp. 466-67.

was not yet written, we have applied these ideas to the previous elections, as shown above to explain events, as the ideas have fitted with our argument and are transferable. It may be that previous elections had an elite driven centric view of ethnic mobilisation as they were treated as isolated events. However, after the scale of 2007, those that have analysed Kenya's political history since independence have observed that these events are far from isolated, but connected, and that bottom-up narratives play just a crucial a role.

2007 saw an incredibly heated contest, with the current president, Kibaki on a PNU ticket against Raila Odinga of ODM, who, "for the first time since independence, presented the electorate with a clear policy choice: between the current centralised form of government (PNU) and the devolved or federal system (ODM)".[120] Tension mounted as the results were delayed, however, contrary to initial results showing Odinga in the lead, Kibaki was declared the winner amidst claims by the opposition of rigging and being robbed.

Sarah Jenkins has the most thorough analysis of events that can be "understood as a bottom-up performance of narratives of ethnic territorial exclusion operating alongside more direct elite involvement".[121] These narratives centre on ethnic 'others' as being both 'immigrants' and 'guests', and in much like the previous elections we have seen, also revolve around territorial identity.[122] She also supports our argument that such ideas are heightened at times of political transition in Kenya with one of the main reasons being the zero-sum game that neopatrimonial politics results in. Threatened with the prospect of being marginalised, politics becomes a life or death question, much like it was for the Kalenjin community under Moi.

Ideas of ethnic territoriality are imagined or created by local actors on a daily basis and become embedded into society and communities becoming rather durable over time. Jenkins illustrates how the ritual of returning the deceased to their *ancestral* home for burial is an example of how this occurs in Kenya. Another, she argues, and in doing so, goes one step further than Lonsdale's three classifications of how claims to land entitlement occur in Kenya, is by suggesting 'domination', along with the already existing, understanding, controlling and working.[123] The domination factor occurs when ethnic enclaves are formed by migration of people to major cities and town in search for work, where by one ethnic groups becomes the dominant one.

As a result, the more *plastic*, or more easily changing idea that both she and Lynch agree on, of *guests*, *immigrants* or *ethnic others* come to light. This occurs when the

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[120] Harniet-Sievers, A & Peters, R (2008) "Kenya's 2007 General Election and its Aftershocks", *Africa Spectrum*, 43(1), p.136.
[121] Jenkins, S (2012) "Ethnicity, Violence and the Immigrant-Guest Metaphor in Kenya", p. 576.
[122] Ibid. p.576.
[123] Ibid. p.593.

*host* community *welcomes* members of ethnic communities onto what they perceive as their territory. The crucial factor in this is that these "so-called foreigners do not enjoy the same kind of naturalised claims as *locals*",[124] and are often given second-class citizen treatment. Coupled with this, *guests* are also expected to conform to rules of hospitality, particularly in terms of following with the political wishes of the host community.[125]

Returning to the idea of Kenyan politics being a zero-sum game goes a long way to explain how tensions arise from the complex dynamics at work that we have just described. Hostility arises when *host* communities become suspicious or jealous of *guests* and *immigrants* that may be perceived as profiting unduly from land that is 'not theirs'. 2007 saw this in abundance with tension raised against the Kikuyu who were seen as benefitting much the same way that the Kalenjin had done so under Moi and KANU's rule. All of a sudden, someone who in times of low political tension was seen as a welcomed guest, all of a sudden, with the stakes on the line, becomes an unwelcome intruder. Jenkins stresses the fact, that it is not important whether the *immigration* population is involved in politics, but whether it does so in direct opposition to the *host's* political orientation.[126] That is when tensions arise, and this is how it happened in 2007 across the country. Harniet-Sievers et al, also agree with Jenkins and Lynch that it was these, "long-standing conflicts over land and social injustice (that) fuelled the violence".[127]

However, as we have said, it was the meeting of elite-driven and bottom up pressures that contributed to events of 2007. From a top-down view, "evidence suggests that, as in the past, ethnic entrepreneurs and political brokers played a significant role in instigating the violence".[128] Those that were able to play on the local narratives and instrumentalise ethnic differences further fuelled the violence that left close to 1500 deaths and over half a million people displaced and the country gripping onto the edge of descending into civil war.

**Conclusion**

This paper has attempted to show how, over the course of Kenya's post-Independence history since returning to multi-party politics; ethnicity has been used as an extremely effective mobilising factor. This has been done, contrary to the majority of studies focusing on elections before 2007, by the meeting of both elite-driven and top-down pressures and bottom-up, local level, everyday issues. The fundamental aspect has

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[124] Lynch, G (2013) "The Politics of Ethnicity, p. 101.

[125] Jenkins, S (2012) "Ethnicity, Violence and the Immigrant-Guest Metaphor in Kenya", p. 577.

[126] Ibid, p. 584.

[127] Harniet-Sievers, A & Peters, R (2008) "Kenya's 2007 General Election and its Aftershocks", p.131.

[128] Keller, E (2014) *Identity, Citizenship, and Political Conflict in Africa*, p. 122.

been to acknowledge the presence of both pressures from opposite directions and the complex forms that they take, and how they differ over time.

The paper has also tried to link these four major points in the countries history, by arguing that they have not been independent of each other but rather inextricably flow from one to the next, with the events of 2007 being the culmination of 25 years of tension building up. Over the years, ethnicity has been interpreted as primordial, where by certain communities have claimed land as being theirs*, ancestrally*. Elite politicians have capitalised on such narratives to instrumentalise these ideas of ethnicity and manipulate communities against each other, in order to gain power, in forms of political tribalism. Yet, it is impossible to ignore the roots of all this laying with the colonial experience, while "more recently, economic underdevelopment and declining resources have sparked off all manner of ethnic rivalries".[129]

Both Mwakikagile and Jenkins agree when they conclude their analysis, by noting that the tribe remains a defining feature of almost every African society, and while old tensions still linger, the potential for implosion is not too far off.[130] It is the fact that the narratives we have looked at hold both durable and synthetic features that pose a problem for the potential for further violence and the prospect of democracy in Kenya.[131]

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[129] Ajulu, R (2001) "Kenya: One Step Forward, Three Steps Back", p. 211
[130] Mwakikagile, J (2007) *Kenya: Identity of a Nation*, South Africa: New Africa Press, p.165.
[131] Jenkins, S (2012) "Ethnicity, Violence and the Immigrant-Guest Metaphor in Kenya", p. 576.

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