



## **REPORT OF PROCEEDINGS**

**5<sup>TH</sup> JUNE, 2015 AT PROTEA HOTEL KAMPALA**

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**STON Infosheet 57- Series 35, 2016**

### **Abstract**

On April 24<sup>th</sup> 2015, the ruling party in Burundi, the National Council for the Defense of Democracy-Forces for the Defense of Democracy (CNDD-FDD), endorsed President Pierre Nkurunziza as its candidate for the Presidential elections. President Nkurunziza has held power since 2005 and was credited for steering Burundi out of civil war however the decision to seek a third term in office prompted violence in the country

and over 15,000 people fled Burundi due to fears of civil unrest. The high number of refugees and internally displaced persons (IDPs) created an insecure population due to porous borders which threatened to impact regional peace and security in East Africa. It is against this background that Advocates Coalition for Development and Environment (ACODE) in partnership with the International Conference on the

Great Lakes Region (ICGLR) sought to explore how the conflict in Burundi could be resolved peacefully given the implications for regional peace and security. To this end, ACODE organized the 57<sup>th</sup> State of the Nation (STON) platform under the theme: *“Electoral Violence, Peace, and Security in the Great Lakes Region: The Case of Burundi”*. A number of recommendations emerged from the discussions, chief among them the need for the East African Court of Justice to provide legal clarification on whether the limit on presidential terms had been breached.

## Introduction

ACODE, in partnership with ICGLR, organized the 57<sup>th</sup> STON Platform to share information on how the conflict in Burundi could be resolved through peaceful means. This necessitated a broader cross-section of participants including regional members of

the Board of Trustees of ACODE, international partners including EU and United Nations agencies, Ambassadors, High Commissioners from member countries of the East African Community (EAC), and representatives from civil society organizations. The two speakers for the STON session were eminent scholars and security experts from Tanzania and Burundi, respectively. Ambassador Ambeyi Ligabo of the ICGLR presented on the session theme; *‘Electoral Violence, Peace, and Security in the Great Lakes Region: The Case of Burundi’*, and Professor Mwesiga Baregu of St. Augustine University, Tanzania, presented on *“Elections in Burundi and their Implications for Peace and Security in the Great Lakes Region”*. The overall objective of the dialogue was to bring together key actors to discuss the electoral violence in Burundi and identify strategies for violence reduction in light of the implications for regional peace and security. The specific objectives of



Image 1: Participants at the 57<sup>th</sup> STON session

the 57<sup>th</sup> STON were;

- To engage a cross section of key stakeholders in the region in a well facilitated, non-partisan conversation about the violent conflict in Burundi and how it could be resolved.
- To promote a deeper understanding of the nature, causes, and actors in the conflict to inform conflict resolution interventions.
- To identify the regional peace and security implications of violent conflicts and the growing number of refugees and IDPs connected to Burundi.
- To generate policy options and ideas about how to deescalate electoral violence in Burundi, drawing lessons of electoral violence prevention from the East African sub-region.

## Background

Elections and the pursuit of democratic governance are of major importance for the regional and international community, particularly for countries impacted by protracted violent conflicts. Violent conflicts in the Great Lakes Region have a spillover effect as conflicts cross borders to destabilize neighboring countries. The International Crisis Group has pointed out that a return to violence in Burundi would not only have destabilizing consequences nationally but would most likely

jeopardize peace-building efforts in other countries in the region. In particular, any increase in refugees and IDPs creates increasingly insecure populations and, as a result of porous borders, regional security threats.

Although there is a provision in the Constitution of Burundi which can be interpreted to allow for a third term (as asserted by the Constitutional Court of Burundi), analysts have pointed out that this is a breach of the Arusha Peace and Reconciliation Agreement (APRA) of 2000 which is credited for bringing peace and ending civil war in Burundi. The elections in Burundi therefore, presented a challenge to regional peace and security as they have the potential to spark violence. With more than 15,000 Burundians having fled to neighboring countries, fearing the resurgence of violence, elections demonstrate the democratic effectiveness of the country and determine its future as either a democratic or authoritarian<sup>1</sup> state. This impacts Burundi and the Great Lakes Region as a whole and is the background against which ACODE, in partnership with ICGLR, organized the 57<sup>th</sup> STON Platform.

## Presentations

### **Ambassador Ambeyi Ligabo, International Conference on the Great Lakes Region (ICGLR), Burundi**

Ambassador Ligabo of the ICGLR presented on; *'Electoral Violence,*

<sup>1</sup>IPI Global Observatory (2015) '15 Elections to Watch for Peace and Security in 2015', available online.

*Peace, and Security in the Great Lakes Region: The Case of Burundi*. The ICGLR attributed the root causes of the conflict in Burundi to a failure of political actors to respect fundamental democratic principles and a failure to adhere to constitutionalism. Ambassador Ligabo explained that Burundi was at a dangerous stage and required urgent political dialogue to discuss immediate action as it stood “on the precipice of a dangerous apex”.

The ICGLR consulted widely on the crisis in Burundi and political actors, especially those in opposition, felt that APRA and the Burundi Constitution were being violated by the Government of Burundi with the blessing of the judiciary arm of the state. The judiciary was perceived as an “appendage of the executive” and freedom of political association

and meeting were perceived to have been violated.

Ambassador Ligabo noted that the limitation principle of the terms of presidency, understood within the context of APRA, was the crux of the issue in the on-going conflict in Burundi. The President of Burundi, President Nkurunziza, had argued that his 1<sup>st</sup> presidential term could not count because he was elected to office by Parliament; it was the 2<sup>nd</sup> presidential term that he was to be elected through adult suffrage. Although the Burundi Constitution stipulates that one cannot be President for ten years, the Constitutional Court sided with the President of Burundi.

The conflict had led to glaring divisions within Burundi, though Ambassador Ligabo emphasised



Image 2: Ambassador Ambeyi Ligabo prepares to present at the 57th State of the Nation Platform

that these fractures weren't based on ethnicity. While the government portrayed an image of calm, this was misleading as private radio stations and private media outlets in Bujumbura had been closed. Ambassador Ligabo described the situation in Burundi as *"tense"* whilst *"rumours circulated"* due to a lack of independent sources of information as refugees continued to flow from Burundi among on-going demonstrations whilst business and economic activities were disrupted. He postulated that, if President Nkurunziza pursued a third presidential term, disruptions as a result of the pursuit of elections were likely and would result in economic stagnation. Ambassador Ligabo encouraged Burundi to pursue honest and transparent elections, promote national unity within states and institutions, encourage political diversity and freedom of association, and guarantee peaceful demonstrations.

Ambassador Ligabo warned of the regional implications, highlighting that business will likely suffer among ICGLR states due to civic opposition. He also cautioned that unforeseen ethnic confrontation was likely to arise in Burundi and spread to neighbouring countries. The movement of people from Burundi was a problem for neighbouring countries due to the ever increasing number of displaced persons. Member states therefore need to review bilateral positions with Burundi which may force other countries to intervene. The European Union, United States,

and others have taken already taken a hard stance against the situation in Burundi which may lead to the denial of foreign donor support. Ambassador Ligabo concluded his discussion stating that over 51% of the national budget is funded by donors; continued sanctions would therefore have devastating impacts on Burundi and the Great Lakes Region as a whole.

### **Professor Mwesiga Baregu, St. Augustine University, Tanzania**

On the topic of, *"Elections in Burundi and their Implications for Peace and Security in the Great Lakes Region"*, Professor Baregu rooted his regional analysis of electoral violence, peace, and security in the issue of constitutions without constitutionalism, which he termed a *"familiar paradox in African politics"*. The crisis in Burundi can be understood as a failure to adhere to constitutionalism wherein constitutions are treated as mere ritual both during the constitution-making process and during application.

Professor Baregu described constitutionalism as a political culture that places the advancement of the ends of society at the core of the exercise of public power, and submits that power to popular control for the pursuit of those ends. He noted that the failure of constitutionalism in the region often occurs at two levels: first, at the constitution making level (as demonstrated by the examples of Kenya and Tanzania<sup>2</sup>) and second, at the level of political

<sup>2</sup> The examples of a failure of constitutionalism in Kenya were cited by Professor Baregu as the failed constitutional referendum in 2005 that led to post election violence in 2007. In Tanzania, a stalled constitution making process was later blocked by incumbent rejection of people's views including term limits and recall of Members of Parliament.



*Image 3: Prof. Mwesiga Baregu listening to responses after his presentation at the 57<sup>th</sup> State of the Nation Platform*

practice (as demonstrated by the conflict in Burundi). The failure of constitutionalism can be attributed to the heritage of the colonial state and to the apparent failure of regional governments to evolve a cogent idea of the commonwealth (defined as the happiness, health, and safety of all the people in a community or nation). The failure to practice constitutionalism is not unique to Burundi. Previously in 2005, Uganda eliminated two term limits on presidency whilst Kenya had a failed constitutional referendum which led to post-election violence in 2007. At the time of reporting, Rwanda was set to debate the elimination of two term limits for President Kagame to run for a third term in 2017 and Parliament in the Democratic Republic of Congo was set to amend the constitution for President Kabila to run for a third term in 2016.

As a member of the Constitutional Review Commission (CRC) in Tanzania,

### **Tenets for a Culture of Constitutionalism**

- Sovereignty rests in the people who are the ultimate source of public authority
- Habitual normative respect and adherence to the spirit and letter of the constitution
- Voluntary consent of the citizens confers legitimacy on the state and is assured through regular free, fair, and peaceful elections
- Major decisions are reached through an inclusive and participatory political system through appropriate institutions rules and procedures
- Transparency, openness, and accessibility of public authority
- Orderly, consensual peaceful resolution of conflicts promotes consistency and predictability in political practice

Professor Baregu commented on the stalled constitution-making process in Tanzania which was blocked by the incumbent rejection of peoples' views (including term limits and right of recall of Members of Parliament). Professor Baregu explained that the CRC was largely successful in drawing up a draft by consensus and succeeded in being inclusive, participatory, and consensual to the extent that there was no minority report or alternative draft. However, the Constituent Assembly (CA), responsible for ratifying the changes, removed 80% of the transformative clauses leaving the current constitution with few of the popularly nominated clauses; ultimately favoring the decisions made by the ruling party. As a result, the CA split during the ratification process, which saw one third of the members boycott the process due to intimidation. At the time of writing, elections in Tanzania remained scheduled for October although without the expected constitution.

In his concluding remarks, Professor Baregu attributed the root cause of the conflict in Burundi as the drive to maintain power. At the most recent EAC summit, members pressed for the postponement of Burundian elections for at least one and a half months, called on all parties to end violence and exercise restraint, and urged the government to create conducive conditions for the return of refugees. However, as Professor Baregu highlighted, discussion on the third term issue was evaded. While the conflict in Burundi was made to appear to be a constitutional crisis, he argued that it was a failure

of constitutionalism. The Burundi Constitution (2005) stipulates that 'the President is elected by universal suffrage for a mandate of five years, renewable once'. Moreover, the Burundian ideal of peace and national unity is tightly tied with APRA. Prof Baregu concluded that the explicit intention of APRA was to impose a two term limit on the presidency, regardless of the manner in which a president was elected.

## Conclusion

The presentations and plenary discussions at the 57<sup>th</sup> STON Platform provided deep insights on the conflict in Burundi and its implications for the Great Lakes Region, even though participants did not reach consensus regarding the "constitutional correctness" of President Nkurunziza pursuing a third term of presidency. Debates addressed whether the utilisation of pre-existing constitutional gaps is wrong if a long stay in power is what the constitution allows for, leading some to question whether "constitutional confusion" was a useful tool for maintaining power. Other participants noted that leaders must respect constitutional contracts and step down once their time is complete, regardless of popularity. In the long term, a regional review and promotion of constitutionalism was deemed important however responsibility was placed on ICGLR member states to intervene with the support of the East African Court of Justice to determine the legality of the actions taken by President

Nkurunziza on pursuing a third presidential term.

## Policy Recommendations

- **East African Court of Justice to Provide Legal Clarification:** An interpretation of APRA and the Burundi constitution needs to be sought from the East African Court of Justice to decide whether President Nkurunziza was contradicting the constitution by running for a third presidential term. The East African Court of Justice could also provide guidance about mitigating the questionable independence of Burundian courts.
- **Regional Action:** In the interest of promoting constitutionalism, regional leaders should persuade President Nkurunziza not to run for a third term and to isolate him if he defies them. Actions from regional leaders are increasingly important given the accumulating impacts on regional peace, governance and security.
- **Postponement of the Burundian Elections:** In the interest of free, fair, peaceful, and credible elections (particularly in

light of members of the Burundian Electoral Commission fleeing the country<sup>3</sup>), it was recommended that internal dialogue among all stake-holders be resumed, that those arrested in the street protests be released, and that restrictions on independent media be eased.

- **Burundian Solutions:** The people of Burundi should be supported to address issues in order to create an environment where the aspirations of Burundian citizens thrive. This requires frank and honest discussions about the incentives for seeking solutions through violence and by localizing the issues and the solutions.
- **Promote Constitutionalism:** In the medium to long term, a regional conference on 'Entrenching Constitutionalism in East Africa' should be arranged to initiate a program for promoting constitutionalism in the region. This could be organized under the EAC to inculcate values of constitutionalism among the youth by integrating issues of constitutionalism at all levels of curricula and adopting resolutions and protocols promoting constitutionalism at regional and AU levels.

<sup>3</sup> 'Election official flees crisis-hit Burundi', published 30th May 2015, Al-Jazeera; available online

*The full report on these findings can be accessed on ACODE's online information center at:*

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