Borders

Between Conflict and Integration

Border Governance in Africa in Times of Migration

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In Africa, Border governance plays an important role in conflict management as well as economic integration. However, despite increasing recognition of the need to effectively manage and govern borders, the efforts undertaken to date at the multilateral level have been undermined for various reasons.

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Borders in Africa are contested spaces that impact state and human security. Additionally, intra-regional cross-border migration predates colonialism in Africa. However, new post-colonial national borders and by inference the exclusive definitions of citizenship, ensured that African states resorted to mass expulsions of migrants considered to be foreigners or aliens as tools for managing national migration issues even as late as the 2000s. This strategy of mass expulsions of migrants as a means for controlling populations in some instances led to the exploitation of intra-communal and inter-community dynamics, and in the worst cases further strained already tense inter-state relations where border disputes previously existed.[1]

West Africa has a long history of designing sub-regional approaches to managing issues related to borders and migration since 1979. Although on paper and in theory West African states have sought after harmonious relations with varied levels of progress, mass expulsions of migrants by individual states have routinely occurred until the 2000s.[2] In spite of these setbacks, substantial progress has been achieved in the sub-region since the Economic Community of West African States (ECOWAS) was established in May 1975, particularly regarding the 90-days visa-free regime and the right to residence by ECOWAS Member States citizens.[3] While these policy interventions create an impression of the efficacy of ECOWAS's supranational influence, national governments remain at the center of border governance with virtually no roles for local government entities across borders. This conceptual and operational lacunae as to where and who controls border bedevils border management strategies and by extension migration policies and responses. However, the involvement of national governments in border governance in Africa has not resulted in national level legal reforms to harmonize international border and migration provisions with domestic policies. Operational agencies are, therefore, compelled to operate in the context of legal and procedural incoherence occasioned by a state of disharmony between national and international legal frameworks on borders and migration issues.

Border disputes directly affect the territorial dimension upon which sovereign authority is exercised, hence, the use of force by states dealing with such disputes. Furthermore, with just about a quarter of borders in Africa effectively demarcated and weak national capacity to control borders,[4] there are vast border spaces that are still not under legitimate sovereign control in the context of combatting transnational organized crime and illicit trade in small arms and light weapons (SALW), narcotics and fake medicines. In addition, curbing human trafficking and minimizing the existence of safe havens for recruitment towards radicalization, extremism and terrorism becomes difficult. While national border demarcation and control is important in ensuring effective sovereign control over specific border areas, transitional cooperative arrangements among local government entities located along national borders in Africa is equally critical in facilitating the attainment of a better quality of life for people through reduced cost of trade and economic growth in border regions.

The purpose of this paper is to explore the issue of border governance in Africa in times of migration. It highlights existing mechanisms

employed by the African Union (AU) and its regional economic communities (RECs) – particularly, the Economic Community of West African States (ECOWAS), for managing border relations and by extension security on the continent. The premise of the paper is that unlike Europe and parts of Asia where cross-border governance has helped to deepen integration and economic development, cross-border governance in Africa projects a twin approach; on the one hand for managing conflicts, and for the promotion of economic integration on the other. Border-related disputes tend to undermine trust relations among states and impede the quest for borderless areas that facilitate the attainment of economic integration.

The paper begins with a brief discussion of the challenges associated with borders in Africa. This is followed by a discussion of the concept of cross-border governance. The remaining sections focus on cross-border governance strategies for managing conflicts in Africa and for promoting economic integration which includes a sub-regional approach on migration in cross-border governance in Africa.

Border Disputes in Africa

The issue of borders has become a recurrent source of conflicts and disputes on the continent. This is because the national territorial boundaries presently in existence in Africa were drawn up during the scramble and partition of Africa by rival European colonizers. Therefore, borders in Africa do not reflect African political and cultural identities, realities and lived experiences.[5] However, the post-colonial independent African states maintained the 1884 Berlin conference boundaries, without any discernible alterations, a move which in the longer-term has come at a cost that continues to undermine and threaten security in Africa.

In fact, several border-related wars have occurred throughout the post-independence period. For example, in North Africa, the border wars or skirmishes between Algeria and Morocco began in 1963 and continue to affect relations between the two countries to date. This is evidenced by the construction of a border wall by Morocco along parts of its border with Algeria. In East Africa, Somalia and Ethiopia were engaged in border-related battles in 1961, 1964, and from 1977 to 1978. Additionally, Ethiopia and Eritrea clashed from 1998 to 2000. In West Africa, Mali and Burkina Faso had their border-related wars in 1975 and from 1985 to 1986. Again, Nigeria and Cameroon contested the Bekasi Peninsular from the mid-1970s through the mid-1990s; also, Nigeria and Chad clashed in a similar vein in 1983. Senegal and Mauritania fought from 1989 to 1990[6] and Ghana and Côte d'Ivoire are currently contesting ownership of oil and gas deposits along their maritime border.[7] Most of the border-related conflicts have been worsened by the discovery of strategic natural resources that stretch across international boundaries.

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Over time, the issue of borders has become an important discursive factor in African peace and security politics. This can be seen by the acknowledgment of the insertion of Article 3 of the Charter of the defunct Organization of African Unity (OAU); Article 4c of the African Union Constitutive Act (2000) and the special focus on the issue in the Cairo Declaration of July 1964. Despite the recognition of the importance of borders in Africa's international relations, challenges abound. In 2007, when the AU discussed its new border program, it established that only a quarter of the boundaries on the continent had been effectively demarcated. An AU Executive Council endorsement of the above-mentioned AU Border Programme (AUBP), initially established 2012 as the target year by which all of its borders would have been demarcated. This

Colonial: Not only in terms of border demarcation, colonialism has left its traces. Source: © Finbarr O'Reilly, Reuters.

deadline was extended to 2017, but that aim by all indications will not be achieved in 2017.[8]

Cross-Border Governance

Border governance expresses the cooperative relationships among local government entities co-existing along national borderlines in furtherance of their mutual development.[9] The cooperative relationship can be bilateral but also multi-lateral – involving several local government entities in a border region. Proponents of cross-border governance argue that reduction of trade costs across borders stimulates trade and growth on both sides of a common border though several factors affect the distribution of the effects.[10] By targeting local government entities as focal institutional actors, the concept places territorial spaces beyond the immediate borderline environment under *one* geographical zone to pursue common economic development objectives.[11]

Furthermore, the strategy highlights inter-state cooperation at the local government level within border regions with decreased importance of national state governments. By promoting this kind of cooperation, cross-border governance also provides transparent and cooperative tructures – often involving national actors – that steer such cooperation. In this regard, Deppisch (2012) establishes five factors that influence governance capability in cross-border regions. First, is the extent to which the border region becomes both financially and politically autonomous in responding to its own needs rather than reacting to decisions driven from the respective national capitals. From this perspective, the influencing factors for effective cross-border governance include: the actors involved in making and implementing decisions including local political and administrative actors, but also power brokers, the manner in which the relationships between the actors are managed in a way that generates trust among local

government entities across borders, the rules of engagement that identifies the strengths of each local government entity and shapes the relationships between the participating entities, the cooperation and decision-making processes and spatial institutional features which highlights among many other things shared interests across borders, external interests in cross-border governance and funding possibilities.

In Africa, as a result of historically contested borders, border governance is conceived as a dual strategy, first, for managing conflicts, and second, for deepening integration on the continent. However, due the historical, strategic and political importance of borders, the potential conflict-generating aspects of border management have placed it squarely under the purview of national governments rather than local government entities. Elements of cross-border governance for managing conflicts in Africa include the use of binding legal instruments and protocols which among many other deliverables, have inspired the setting up of several joint national boundary commissions. This also includes the adoption and implementation of the AU Border Programme (AUBP) in 2007 which outlines implementation modalities for effective cross-border governance in Africa.[12]

Elements of cross-border governance for economic integration in Africa include the use of the regional economic communities (RECs) and Member-States of the AU to champion, i.e. varieties of cross-border cooperation and migration management regimes expressed in the form of regional protocols on refugee and migrant workers' rights as well as on free movement of persons across national borders. These latter strategies aim at introducing shared norms that could guide national level cross-border governance including migration management.

Cross-Border Governance as Conflict Management

Before 2007 when the AU Border Programme (AUBP) became operational,[13] five critical AU legal instruments underpinned cross-border governance among African states. These were:

the 2000 Constitutive Act of the AU which respected existing national borders; Resolution AHG/Res.16(I) on border disputes between African States, adopted in July 1964; Resolution CM/Res.1069(XLIV) on peace and security in Africa through negotiated settlement of boundary disputes, adopted in July 1986; Decision

CM/Dec. 666(LXXVI), adopted in July 2002, which provides for the delineation and demarcation of African boundaries by 2012; and Decision of the 8th Ordinary Session of Heads of State and Government of the African Union, adopted in January 2007, which encouraged the Commission to pursue efforts towards the structural prevention of conflicts, especially through the implementation of the AUBP.

The AUBP broadly aims at ensuring structural prevention of conflicts and deepening the integration processes of the AU through the pursuit of specific objectives. These objectives include

Escape: For various reasons, including a large number of armed conflicts, millions of people are on the run in Sub-Saharan Africa. Source: © Siegfried Modola, Reuters.

the delimitation and demarcation of African boundaries where borders are yet to be demarcated, reinforcing the integration process within the framework of the RECs and other large-scale cooperation initiatives, local cross-border cooperation, building up the capacities of member states in border management, as well as in border studies and research, and advising the Commission and other organs of the African Union on border-related matters.

The AUBP is inclusive of an implementation modalities which consist of assistance to Member-States, working with local stakeholders through the RECs and seeking to mainstream cross-border issues in further external assistance to Africa, as well as assistance to African countries to develop their capacities in the areas of border delimitation, demarcation and management and carrying out an inventory of African institutions that offer related training, forging partnerships of local, state and international partners that have records on African boundaries, and helping to mobilize resources for implementing the AUBP.[14]

Border Security[15]

Border security is a factor of border management. International borders are a security issue for all governments. States are recognized under international law by their capability to maintain their boundaries, secure their territories, and protect their citizens. The ability to secure national borders is one of the criteria used to classify states as strong, weak and failed. According to Wafula Okumu, border security can imply several things, which include but are not limited to border control, border management, border monitoring, and border protection. Usually, border security has been used to mean border control, which seeks to facilitate or limit the movements of people, animals, plants, and goods in and out of a country. Border control is divided into two main categories: securing borderlines (activities along the boundary), and controlling ports (harbors, border posts and airports) of entry.

> **The cooperation between border security agencies, border communities and border officials is still very weak in Africa.**
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For the purposes of the discussion, Wafula's arguments are particularly germane, in the sense that such border security seeks to ensure "territorial sovereignty by enforcing the boundary" and by protecting "it through permanent surveillance.... Border enforcement and surveillance include also the systems that allow the state to trace the movement and use of goods and data and especially the actions of people once they are in the national territory."[16] However, in most parts of Africa, there are unanswered questions about the capabilities of states to secure national borders by balancing the need to facilitate the transfer of legitimate goods and movement of persons with the prevention of cross-border crime. Inter-agency cooperation among border security agencies such as customs, immigration, police, intelligence agencies etc. is weak in Africa. There is also the additional challenge of poor cooperation between border officials and border communities. Linked to the perennial challenges of poverty in border regions and extensive but unmanned border-lines, criminals rather endear themselves to border communities in order to outwit national border security officials. There is no doubt that, any discussion of border security in Africa must also recognize what elsewhere has been termed as the usage of "securitization" processes, first for fortifying of borders and tightening of controls; and using such processes also for responding to cross border security dilemmas.[17]

Additionally, the need to recognize the potential unintended insecurities that may arise from the manner in which border security issues are managed. Overall, several factors contribute to this, not least the low level of investment in "national" security priorities and the negligence

of border security and poor, or lack of, management of African borders. These weaknesses have all largely contributed to a prevalence of threats involving cross-border crimes, such as violent extremism, narcotics and human trafficking, and the proliferation of small arms and light weapons.

Cross-Border Cooperation and Governance

Local cross-border cooperation has only just begun developing in Africa. The AU adopted the African Union Convention on Cross-Border Cooperation on 14th June 2014. This Convention defines cross-border cooperation as "any act or policy aimed at promoting and strengthening good-neighborly relations between border populations, territorial communities and administrations or other stakeholders within the jurisdiction of two or more States, including the conclusion of agreements and arrangements useful for this purpose."[18] The objectives of the Convention are to promote cross-border cooperation at local, sub-regional and regional levels; seize the opportunities arising from shared borders and address the related challenges; facilitate the delimitation, demarcation and reaffirmation on intestate borders, in conformity with mechanisms agreed upon by the parties concerned; facilitate peaceful resolution of border disputes; ensure efficient and effective border management; transform border areas into catalysts for growth, socio-economic and political integration of the continent and promote peace and stability through the prevention of conflicts.[19]

The Convention was immediately open for signature after it was adopted. It requires a minimum of 15 State party ratifications to enter into force. However, only Niger had submitted its instrument of ratification to the Chairperson of the AU so far. This failure by AU member states to deposit the ratified instruments relating to this Convention reflects a much wider malaise faced by the AU in getting its member states to ratify and deposit the legal instruments that member states have voluntarily agreed to implement.

That said the Convention provides a continental framework for local government entities located along national borders to establish cooperative arrangements that anchor the development of specific border regions. Once again, State Parties are required by the Convention to lead in taking a number of measures including national level legal reforms incorporating provisions of the Convention into national law and sensitizing local government administrations along national borders to access the opportunities provided under the Convention. The Convention also clarifies that activities pertaining to cross-border cooperation will be undertaken by local territorial communities or authorities defined by the domestic laws of state parties. The areas of cooperation as set forth by the Convention cover joint mapping and geographical information, including survey, as well as dimensions of socio-economic development such as transportation, communication, trade, agro pastoral activities, handicrafts, energy resources, industry, health, sanitation, drinking water, education and environmental protection. Additionally, border territorial communities could also cooperate in the areas of cultural activities and sports. The same can be said of security, especially, combatting of cross-border crime, terrorism, piracy and other forms of crime, as well as de-mining of border areas and institutional development in all areas.[20] Furthermore, the Convention establishes a Border Programme Fund to finance cross-border cooperation initiatives on the continent.

> **Bilateral cross-border cooperation has proven more successful than efforts undertaken at the multilateral level**
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Although the above-mentioned Convention has not yet entered into force, bilateral cross-border cooperation in Africa predates the Convention. For example, Communes in Benin such as Adjara and Ifangni in the Department of L'Oueme, headquartered in Porto Novo, has a

Migration: Two per cent of all Africans live as migrants in other African countries. Source: © Radu Sigheti, Reuters.

Treaty on Trans-Border Cooperation with the local government in Ogun State headquartered in Abeokuta, Nigeria with the endorsement of the two State parties.[21] An interesting region is the Liptoka / Tillabéri region where a great deal of cross-border activities exist between Niger, Mali and Burkina Faso.

Free Movement of Persons

Intra-regional migration management policies in West Africa were prompted by a spate of mass expulsions of migrants by countries in the sub-region prior to 1979 when the first set of ECOWAS protocols on free movement of persons, residence and establishment was adopted. As stated, these expulsions of migrants were underpinned by exclusionary definitions of citizenship and the need to control national populations. Prior to 1979, Côte d'Ivoire expelled non-Ivoirians in 1958 and 1964. Senegal followed suit in 1967. Ghana expelled Nigerians in 1969. Sierra Leone and Guinea-Conakry did the same in 1968.[22] Sub-regional migration management policies, however, did not immediately abate the feature of mass expulsions of migrants

in the sub-region. Among many other incidents in the sub-region, Ghana closed its borders with Togo in September 1982. Nigeria expelled nearly 1.5 million migrants in 1983 and 700,000 Ghanaians in 1985. Côte d'Ivoire also expelled 10,000 Ghanaians in 1985 while Senegal deported 500,000 Mauritanians in 1990.[23]

In spite of the above, West Africa has the highest rate of intra-regional migration in Africa. Approximately three per cent (i.e. 7.5 million) of West Africans are migrants.[24] Two per cent of Africans reside in other African countries as migrants.[25] The two broad factors that underpin intra-African migration in West Africa are discriminatory policies around issues of citizenship, as well as conflicts that combine to cause refugee and internally displaced persons (IDP) situations; and the existence of economic opportunities, particularly, in the agriculture and extractive sectors that combine to attract migrants. In both cases, Côte d'Ivoire expels and also attracts migrants. Among many other factors, its introduction of the concept of "ivorite" in the 1990s which excluded citizenship rights to migrants and their descendants was linked to the series of post-elections-related violence that bedeviled that country. At the same time, Côte d'Ivoire is the world's leading producer of cocoa alongside its neighbor, Ghana. Thus, cocoa and coffee and the oil boom in Nigeria combine to attract migrants into Nigeria, Ghana and Côte d'Ivoire.

Furthermore, intra-regional migration in West Africa is anchored by introduction of policies of ECOWAS to deepen its integration agenda concerning migration, citizenship and safe tax havens for products originating from its member-states.[26] Cast in the context of deepening economic integration, these policies discussed below seek to ensure among many other things, the creation of a single market, a borderless sub-region, abolition of visas and entry permits, introduction of ECOWAS travel certificates, introduction of harmonized immigration and emigration forms, and the establishment of national committees to monitor ECOWAS programmes on free movement of persons.

On 29 May 1979, ECOWAS adopted the protocol relating to free movement of persons, residence and establishment which provided a 15-year time frame within which all obstacles to free movement in the sub-region should be removed.[27] Two subsequent protocols in 1986 and 1990 granted the right to residence[28] and establishment[29] respectively to citizens of ECOWAS member-states. In relation to the above, in 1985, ECOWAS again adopted the code of conduct for implementing the protocols on free movement of persons, residence and establishment. The three protocols mentioned enjoins member-states to among many other things, grant 90 days visa-free access to citizens from other ECOWAS member-states, establish migrant services to deal with migrant issues and recognize the right of other ECOWAS nationals to carry out economic activities in the territory of a member-state. Additionally, in 1982, ECOWAS adopted the citizenship code and followed up with a decision in the same year to amend its founding Treaty of 1975 to link the citizenship code to the Treaty and for that matter, grant community citizenship to nationals of all its 15 member-states.

These protocols unlocked a series of norms in the sub-region though some fundamental challenges remain. For example, the 90-days visa-free requirement is operational in all Member States along with a uniform passport regime which became fully operational in 2015. However, varied and in some cases, cumbersome procedures still exist regarding access to the right to residence and establishment. Member States are yet to introduce the required measures to allow for other nationals to exercise their right to residence and establishment. As a related study on Ghana[30] shows, clear national policies on migration are missing which allows for ad hoc handling of migrant issues. Additionally, there is weak coordination among ministries and government departs involved in managing migration issues which often results in duplication of efforts. Moreover, there is lack of accurate data on migration at the national level.

Despite progress relating to free movement of persons, residence and establishment, fundamental challenges remain.

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In the face of these challenges, ECOWAS adopted the Common Approach on Migration at its 33rd Session of the Authority of Heads of State and Governments in Ouagadougou on 18 January, 2008. The Common Approach on Migration refers to Article 59 of the revised ECOWAS Treaty (1993) which states that "citizens of the community shall have the right of entry, residence and establishment and Member States undertake to recognize these rights of community citizens in their territories in accordance with the provisions of the protocols thereto." In addition, the ECOWAS Common Approach on Migration refers to a number of related regional and international legal instruments on migration, refugee rights, the rights of migrant workers and the ECOWAS General Convention on Social Security. However, while the prescriptions of these other regional and international legal instruments have become binding on Member States as a result of their direct endorsements of same or their endorsements to the Common Approach on Migration, minimal legal reforms have taken place at the national level to harmonize the international provisions with existing national laws, putting further pressure on operational agencies that manage migration issues on a daily basis. There is lack of harmony between national legislation on one hand, and the array of related regional and international norms. The emerging disharmony creates gaps for exploitation by migrants on hand, and abuse by national law enforcement agencies, on the other. Conflict-related refugee situations and intra-regional migration cases are managed within these complicated legal and procedural framework.

Conclusion

Governing Africa's borders in a manner that draws on the advantages of cross-border activities at the local level remains a topic for the future. There is still an over centralization of governance and management strategies and planning taking place from the center devoid of the operational and experiential realities of local communities far removed from the center. Though there is an increasing recognition by Africa's multilateral institutions, namely the ECOWAS and AU about the need to manage and govern their inherited borders in a manner that reduces tensions and conflicts, several issues seem to undermine the efforts undertaken at multilateral levels. The first is the notion of the "national" and the perception that national must trump the "multilateral" leading to very low levels of accession and compliance with official instruments. Second is the increasing securitization of cross border challenges as necessarily posing existential threats to states. Third are the lacunae between the decisions taken and their implementation and the levels of citizen involvement in the implementation of such decisions. With over a hundred international boundaries on the continent, governing and managing Africa's borders in a manner that reduces tensions and conflicts and exploits the opportunities for deepening integration processes will continue to occupy African states in their bilateral dealings and also at the regional and continental levels.

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12 Cf. AU 2007, n. 8.

13 Cf. African Union Border Programme, n. 4.

14 Ibid.

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