

STATE SOVEREIGNTY AND AFRICAN UNION'S INTERVENTION IN THE BURUNDI CRISIS

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Abstract

The paper examined the conceptual issues surrounding state sovereignty and intervention in African states with particular emphasis on the crisis going on currently in Burundi. The African Union hesitation to wade in and resolve the Burundian crisis is anchored on the need to respect or uphold the principle of nonintervention in the internal affairs of member states. The paper adopted the explanatory research design, documentary source of data collection and qualitative method of analysis as the analytical base of the study and anchoring our analysis on the principle of responsibility to protect, findings amongst others revealed that AU's hesitation to intervene in the Burundian crisis has more to do with the fact that most member states of the AU are governed by leaders who are desirous to stay in power beyond the constitutionally stated terms. Intervening in the Burundian transition crisis by the African leaders through the instrumentality of the AU, would ridicule their clinging to power in their various domains. Also democratic institutions like elected political offices and terms of offices which are constitutionally stated are not respected and the rules guiding them are not obeyed or observed, hence African states continuous experience of transition crisis as can be seen in the Burundian case. The paper recommends, among others measures that African leaders must accept the rules and regulations governing the democratization process in their respective countries.

Key Words: State Sovereignty, Non-intervention, Conflict Resolution, Transition Crisis, Burundi, Democratization

Introduction

On 25th, April 2015, the ruling political party in Burundi, the National Council for the Defense of Democracy-Forces for the Defense of Democracy (CNDD-FDD), announced that the incumbent President of Burundi, Pierre Nkurunziza who has been in power since 2005, would run for a third term in the 2015 presidential election. The announcement sparked protests by those opposed to Nkurunziza seeking a third term in office. Widespread demonstrations in the capital, Bujumbura, lasted for over three weeks with peoples' rights being trampled upon by the government force who was trying stamped out the protest. During that time the

country's highest court approved Nkurunziza's right to run for a third term in office despite the fact that at least one of the court's judges fled the country claiming he had received death threats from members of the government. As a result of the protests the government also shut down the country's internet and telephone network, closed all of the country's universities and government officials publicly referred to the protesters as "terrorists". Since April of 2015, tens of thousands of people have fled the country, hundreds of people have been arrested and several protesters and police have been killed while dozens more have been injured.

The African Union's interventions have been pursuant to the consent of the territorial State, or of a peacekeeping nature. However, where such an approach is inadequate to protect civilians or the government is a perpetrator, like the case of Burundi, there may be need to shift from consensual intervention to enforcement action as envisaged in Article 4(h) of the Constitutive Act. The tension between sovereignty and intervention is maintained within the African Union legal framework by enumerating the two principles without establishing a framework of complementarity and synergy between them. For instance, while Article 4(g) of the Constitutive Act reaffirms the principle of non-interference in a Member State's internal matters by another, Article 4(h) establishes the right of the African Union to intervene in a Member State due to genocide, crimes against humanity or war crimes.

In line with the brief exposition above, the AU Peace and Security Council (PSC) the continental collective decision making body on peace and security, in December 2015 in announced a precedent setting invocation of the AU's Article 4(h) authorizing the deployment of a military mission to Burundi to quell violence related to the dispute over the third term of the country's President Pierre Nkurunziza. The January 2016 summit marked a fresh consideration of the earlier decision. As soon as the Summit came to a close on 31st January 2016, those who followed the crisis in Burundi started expressing disappointment with the failure to authorize military intervention in the Burundian crisis. In a foreign policy article titled, "The Burundi intervention that wasn't" T.Y McCormick lamented that the Burundi decision threw the credibility of the AU into question. Expressing manifest disappointment at the unmet expectations that 'boots would soon be deployed to Burundi', South African's popular magazine the Daily Maverick declared, "African Union goes backwards on Burundi".

Most analysts have presented the case as clear manifestation of state or regime security trumping human security. The Peace and Security Council (PSC) one of the sensitive organs of the AU had recommended that an intervention force be sent to Burundi to curtail the rate of human right abuse and wanton killing and destruction of properties as a result of the protest that engulf the country when the President Pierre Nkurunziza announced his intention to run for a third term in office. The issue was tabled in Burundi's parliament and MPs unanimously rejected the AU's plan for deploying troops. Burundi was obliged to respond to the AU's request. To no one's surprise, Burundi called the AU bluff with a firm "no". In a letter addressed to the Commission Chairperson formally responding to the 17th December decision, Burundi's Minister of foreign Affairs rejected MAPROBU, describing it as an

invasion of force. The action of Nkurunziza and that of many other African leaders has thrown the little progress of democratic consolidation to the gallows as most Head of States in the Continent are coercively amending their country's constitutions to elongate the number of terms they will be in office. This was captured succinctly by Obama when he declared that: Nobody should be president for life. I don't understand why people want to stay so long, especially when they have got a lot of money. Sometimes you will hear leaders say 'I'm the only person who can hold this nation together.' If that's true, then that leader has failed to truly build their nation" (President Barack Obama addressing the Africa Union in 2015).

This paper seeks to examine the issues surrounding Burundi's refusal to accept the request of the PSC to send in an intervention force and AU's lackluster attitude towards enforcing the principle of intervention in Burundi, especially when there have been allegations of human rights abuse and other forms of violence, bearing in mind that the AU is the first regional organization to include the principle of military intervention in member states in situations where the citizens of the state in question is being threatened either by the government or other opposition forces within the state. The paper is divided into seven parts namely; sovereignty and intervention conceptualized; Burundi: historical background; the current Burundian crisis; the African Union (AU) intervention framework; the AU and Right of intervention; Challenges to the deployment of intervention force in Africa; and conclusion.

Theoretical Framework

The failure by the AU to forcefully intervene in the Burundian crisis and the constant manifestation of human rights abuse, killing, destruction and displacement of people, and properties could be seen through the telescope of the responsibility to protect also known as R2P. The Responsibility to Protect (R2P) is a global political commitment which was endorsed by all member states of the United Nations at the 2005 World Summit to prevent genocide, war, crimes, ethnic cleansing and crimes against humanity. The principle of the Responsibility to Protect is based upon the underlying premise that sovereignty entails a responsibility to protect all populations from mass atrocity crimes and human rights violations. The principle is based on a respect for the norms and principles of international law, especially the underlying principle of law relating to sovereignty, peace and security, human rights, and armed conflict. The Responsibility to Protect provides a framework for employing measures that already exist (i.e., mediation, early warning mechanisms, economic sanctions, and Chapter VII powers) to prevent atrocity crimes and to protect civilians from their occurrence. The authority to employ the use of force under the framework of the Responsibility to Protect rests solely with United Nations Security Council and is considered a measure of last resort. The United Nations Secretary-General has published annual reports on the Responsibility to Protect since 2009 that expand on the measures available to governments, intergovernmental organizations, and civil society, as well as the private sector, to prevent atrocity crimes (Wikipedia, 2017).

The Responsibility to Protect consists of three important and mutually-reinforcing pillars, as articulated in the 2009 Report of the Secretary-General on the issue, and which build off of paragraphs 138 and 139 of the 2005 World Summit Outcome Document and the intergovernmental agreement to the principle:

- i. The protection responsibilities of the state;
- ii. International assistance and capacity-building;
- iii. Timely and decisive response.

The foundations of the responsibility to protect, as a guiding principle for the international community of states, lie in:

- i. obligations inherent in the concept of sovereignty;
- ii. the responsibility of the Security Council, under Article 24 of the UN Charter, for the maintenance of international peace and security;
- iii. specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law;
- iv. the developing practice of states, regional organizations and the Security Council itself.

R2P is a relatively new and novel concept. Yet it has deep roots not only in human rights, humanitarian, and refugee law, but also in the very notion of sovereignty. Tomas Hobbes's seventeenth century masterpiece, *Leviathan* recognized that the sovereign power had an obligation to protect the people under its rule. Sovereignty was, and remains, a two-way street through which loyalty is offered by the population in return for order and protection (Luck, 2009, pp.13-14). Thus, R2P seeks to reinforce one of the essential elements of statehood and sovereignty: the protection of people from organised violence. It does not, in fact, challenge the sovereign authority of states to do something that any of them would admit to wanting to do in the first place. The principle of state responsibility, what the Secretary-General calls the bedrock of R2P, is both politically and legally legitimate and consistent with the core claims of sovereignty (Luck, 2009, p.14). R2P is limited to the four crimes and violations listed in the Outcome Document from the 2005 World Summit – genocide, war crimes, ethnic cleansing, and crimes against humanity. Three of the four – all except ethnic cleansing – had been included five years earlier in the Constitutive Act of the African Union (Article 4(h)). It declared “the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity”. As in the UN's subsequent Outcome Document, this right was reserved for the Union, to be decided on a high-level inter-governmental basis, of course, not for individual states or ad hoc groupings of them (Luck, 2009, p.13).

The lackluster attitude of the African Union to intervene in Burundi despite clear evidence of human right abuse and killing of her own citizens by the Burundian government can be properly understood within the failure of the invocation of the doctrine of the responsibility to protect which is clearly stated in its constitutive Act.

Sovereignty and Intervention Conceptualized

Sovereignty is the full right and power of a governing body over itself, without any interference from outside sources or bodies. In political theory, sovereignty is a substantive term designating supreme authority over some polity. It is a basic principle underlying the dominant Westphalian model of state foundation. There are two major types of sovereignty; internal which is the relationship between a sovereign power (the state or government) and its own subjects; and external sovereignty concerns the relationship between a sovereign power (state or government) and other states in the international system.

Sovereignty has been re-conceptualized as state responsibility to protect its 'vulnerable populations'. The international community assumes such responsibility only when the state in question has failed to exercise it. The focus is placed on the rights of populations in need rather than on the rights of the interveners. Therefore, since the state exercises the key responsibility to protect, thus sovereignty remains a fundamental principle. Only when a state is not able or intently fails to exercise the responsibility to protect, does an international obligation to rescue civilians facing harm triumph over the rights of the sovereign state (Terry, 2004, p.16-17). Respect for state sovereignty, that is, territorial integrity and political independence is fundamental to the stability, security, and progress of the international system as stated by Annan (1998, p.56) cited in Kiiza (2010). This is enshrined in article 2(7) of the U.N. Charter: states are obliged not to intervene in affairs considered to be within the domestic jurisdiction of an independent state, Department of Public Information (1973, p.7). Intervention for human protection purposes, including military intervention in severe situations, is justified when civilians are faced with catastrophe, and the state in question is not in position or is unconcerned with ending civilian suffering, or is itself the instigator. Such an internal situation interpreted to constitute a threat to international peace and security in order to justify enforcement action is provided under chapter VII of the U.N. Charter. This emerging notion for military intervention for purposes of human protection also draws support from various legal instruments. These include fundamental natural law principles; provisions of human rights under the U.N. Charter; the Universal declaration of Human Rights and the Genocide Convention; the Geneva Conventions and additional protocols on international humanitarian law; the Statute of the international Criminal Court; and many other international human rights and human protection agreements and covenants. The level of legitimacy attached to intervention usually requires responses to such questions like the purpose, means, exhaustion of other alternatives of resolving the conflicts, level of response in relation to provocative situation and the authorizing agency, (Evans et al , 2001, p.16).

Humanitarian intervention has been defined by the Danish Institute of Foreign Affairs as "coercive action by States involving the use of armed force in another State without the consent of its government, with or without authorization from the UN Security Council, for the purpose of preventing or putting to a halt gross and massive violations of human rights or international humanitarian law." This brings to the fore the debate on how the right to forcefully intervene in order to rescue

or stop the killing and human rights abuse has negated the respect for the sovereignty of states if and when the state has been found wanting in these areas. This is so because the concept of sovereignty does not only mean being independence from other states, but that every sovereign state has a duty and responsibility to protect and provide an enabling environment for its citizens to aspire and make their dreams come true.

Kardas (2001, p.5) as cited in Kiiza (2010) observes that, during the Cold War intervention was regarded as illegal since it breached norms of sovereignty and self-determination. The shift in focus of Article 2(4) to 2(7) of the U.N. Charter has subjected the provision to 'reinterpretation', whereby a government committing serious atrocities against its own people or a state collapsing into anarchy cannot invoke international law in defense of military intervention into its internal affairs, (Kiiza, 2010, p.23).

Burundi: Historical Background

Wedged between Tanzania, the Democratic Republic of the Congo, and Rwanda in east- central Africa, Burundi occupies a high plateau divided by several deep valleys. The original inhabitants of Burundi were the Twa, a Pygmy people who now make up only 1% of the population. Today the population is divided between the Hutu (approximately 85%) and the Tutsi, approximately 14%. While the Hutu and Tutsi are considered to be two separate ethnic groups, scholars point out that they speak the same language, have a history of intermarriage, and share many cultural characteristics. Traditionally, the differences between the two groups were occupational rather than ethnic. Agricultural people were considered Hutu, while the cattle-owning elite were identified as Tutsi. In theory, Tutsi were tall and thin, while Hutu were short and square, but in fact it is often impossible to tell one from the other. The 1933 requirement by the Belgians that everyone carry an identity card indicating tribal ethnicity as Tutsi or Hutu increased the distinction.

Since independence from Belgium, the landowning Tutsi aristocracy has dominated Burundi. Burundi was once part of German East Africa. Belgium won a League of Nations mandate in 1923, and subsequently Burundi, with Rwanda, was transferred to the status of a United Nations Trust Territory. In 1962, Burundi gained independence and became a kingdom under Mwami Mwambutsa IV, a Tutsi. A Hutu rebellion took place in 1965, leading to brutal Tutsi retaliations. Mwambutsa was deposed by his son, Ntaré V, in 1966. Ntaré in turn was overthrown the same year in a military coup by Premier Michel Micombero, also a Tutsi. In 1970–1971, a civil war erupted, leaving more than 100,000 Hutu dead.

On November 1st, 1976, Lt. Col. Jean-Baptiste Bagaza led a coup and assumed the presidency. He suspended the constitution and announced that a 30 member Supreme Revolutionary Council would be the governing body. In September 1987, Bagaza was overthrown by Major Pierre Buyoya, who became president. Ethnic hatred again flared in August. 1988, and about 20,000 Hutu were slaughtered. Buyoya, however, began reforms to heal the country's ethnic rift. The Burundi Democracy Front's candidate, Melchior Ndadaye, won the country's first democratic

presidential elections, held on June 2nd, 1993. Ndadaye, the first Hutu to assume power in Burundi, was killed within months during a coup. The second Hutu president, Cyprien Ntaryamira, was killed on April 6th, 1994, when a plane carrying him and the Rwandan president was shot down. As a result, Hutu youth gangs began massacring Tutsi; the Tutsi controlled army retaliated by killing Hutus.

Instead of responding to the country's adverse natural environment by adopting pro-growth policies, Burundi leadership have isolated the country even further through its catastrophic governance. From the early 1960s, poor governance has been at the heart of Burundi's dismal economic performance. Putting the state at the centre of economic activity the ruling elite have ensured that their hold on political power guarantees them total control over the economy and its rents. Although the country is poor there are 'rents to sovereignty' that have motivated policy choices. The sovereign has appropriated part of foreign aid and international borrowing. The leaders have allocated public investment and public employment to benefit members of their group. Even taxation of the domestic economy and the organisation of markets have been shaped not to encourage production and growth but to generate rents enjoyed by those in power (Nkurunziza and Ngaruko, 2005). Most of post-colonial Burundi's history has been dominated by military dictatorships. Three military Tutsi presidents from Rutovu, a commune of the Southern province of Bururi, have been at the helm of the country for 34 years out of 41 since the country's independence in 1962. Increasingly, the leadership's greed and poor governance have generated grievances which, in turn, have led to a cycle of civil wars. From independence, the country has recorded five episodes of civil war that have claimed more than 500,000 lives and have produced about a million refugees. The latest civil war has been raging for ten years so it is hardly surprising that the country's economy is currently in tatters.

The Current Burundian Crisis

On 25th, April 2015, the ruling political party in Burundi, the National Council for the Defense of Democracy-Forces for the Defense of Democracy (CNDD-FDD), announced that the incumbent President of Burundi, Pierre Nkurunziza who has been in power since 2005, would run for a third term in the 2015 presidential election. The announcement sparked protests by those opposed to Nkurunziza seeking a third term in office. Widespread demonstrations in the capital, Bujumbura, lasted for over three weeks. During that time the country's highest court approved Nkurunziza's right to run for a third term in office despite the fact that at least one of the court's judges fled the country claiming he had received death threats from members of the government. As a result of the protests the government also shut down the country's internet and telephone network, closed all of the country's universities and government officials publicly referred to the protesters as "terrorists". Since April of 2015, tens of thousands of people have fled the country, hundreds of people have been arrested and several protesters and police have been killed while dozens more have been injured. On 4th, May 2015 the Vice-President of the Constitutional Court fled the country following alleged death threats from senior

figures in the government. The judge claimed that most of the seven judges on the country's highest court believed it would be unconstitutional for Nkurunziza to be elected again. United States Secretary of State John Kerry also stated on 4th, May that Nkurunziza's nomination "flies directly in the face of the constitution." Following the departures of four of the seven judges who sit on Burundi's constitutional court (including the Vice-President), the remaining judges approved Nkurunziza's right to run for a third term in office. Members of the opposition described the court's ruling as "manipulated."

On 13th, May, a coup was announced, led by Major General Godefroid Niyombare, while President Nkurunziza was in Tanzania attending an emergency conference about the situation in the country. By the next day the coup collapsed and government forces reasserted control. On 11th December, almost 90 people were killed in attacks on state targets and strategic military locations.

Critics of the president said his actions jeopardize a peace deal that has kept ethnic tensions in check since the Burundian Civil War ended in 2005 and that Nkurunziza is not constitutionally permitted to seek a third term in office. However, his supporters argue that his first five (5) year term should not count because he was elected by a parliamentary vote rather than a popular vote. The crisis that erupted posed a grave danger to the fragile stability of Burundi and could lead to refugee's crisis and instigation of instability in neighbouring countries which has the same ethnic coloration with Burundi.

The African Union (AU) Intervention Framework

The historical background of AU would suffice here. The formation of African Union (AU) was proposed at a summit of the Organization of African Unity (OAU) in Libya in 1999. Subsequently, the OAU Heads of State and Government supported the establishment of the African Union in its predecessor's place. The purpose of the AU was to accelerate the integration of the continent to enable it to play an increased role in international affairs whilst also addressing social, economic and political problems in Africa. The Constitutive Act of the African Union was adopted at the Lomé Summit in 2000, and the AU was officially launched at the 1st Assembly of its Heads of State and Government in Durban in 2002. The Union currently has 53 members and covers most of the African continent (Tavares, 2010). Amongst the key objectives of the African Union is to "promote peace, security and stability on the continent" (Constitutive Act of the African Union, 2000). To this end, the Union has undertaken peace support operations to help regulate and mediate in conflict situations such as Burundi, Sudan, Somalia and the Comoros.

One of the AU's objectives was to enhance the security and readiness of Africa to respond to armed conflicts in Africa. Subsequently, the Constitutive Act (2) was adopted in Lomé in 2000; it established the AU and mandated the new organization, as continental guardian, to develop a new African Peace and Security Architecture (APSA). The primary role of the AU was stipulated in Article 3 of the AU Constitutive Act: to maintain continental peace and security. The AU was created to avoid over-reliance on UN peacekeeping operations (PKOs) by seeking 'African

solutions to African problems’.

The AU significantly departed from the OAU’s reluctance to intervene in states’ affairs. Indeed the AU embodies an interventionist and activist stance towards peacekeeping. It explicitly declares in its mandate that the organization will intervene in conflicts on the continent through PKOs, even when a peace agreement or cease-fire agreement is not in place. The AU is convinced that in certain conflict situations in Africa, it is not possible to negotiate peace agreements without first establishing a certain degree of stability. The organization once again departed from the position of the OAU, since the OAU intervened only in conflicts if they were invited by the parties to the conflict. In contrast with the OAU, the general belief of the AU is that the protection of civilians should not be sacrificed at the expense of sovereignty. Currently the organization is acknowledged as the world’s only regional organization that explicitly claims the right to intervene in a member state in response to grave humanitarian and human rights grounds, such as war crimes, genocide and crimes against humanity (Kobbie, 2009).

The Peace and Security Council (PSC), a new organ, is intended to provide a more robust mechanism than its predecessor, the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution. The PSC was established by a Protocol adopted in Durban in July 2002. This organ is responsible for dealing with the scourge of conflicts that has forced millions of Africans, including women and children, into a drifting life as refugees and internally displaced persons, deprived of their means of livelihood, human dignity and hope. The PSC, which operates at the levels of ambassadors, ministers, and heads of State and government, is composed of fifteen members, five elected for two years and five others for three years. It is expected to consider the right to intervene when a situation so warrants and make appropriate recommendations to the Assembly of the Union for possible intervention. The addition to Article 4 (h) was adopted with the sole purpose of enabling the African Union to resolve conflicts more effectively on the continent, without ever having to sit back and do nothing because of the notion of non-interference in the internal affairs of member States. It should be borne in mind that the Peace and Security Council was intended, and should be able, to revolutionize the way conflicts are addressed on the continent.

In accordance with the provisions of the Constitutive Act, the Assembly will decide on intervention at two levels: on its own initiative (Article 4 (h)) and at the request of a member State (Article 4 (j)). This approach is expected to facilitate decisions on intervention, since the Assembly is not obliged to wait for the consent of the member State concerned, as is now the case with the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution of Conflicts. Article 4 (j) refers, unlike Article 4 (h), to member States and not to a member State, and therefore does not expressly restrict the right to request intervention of the Union to the member State concerned.

When setting up the African Union, the heads of State thus intended to endow their continental organization with the necessary powers to intervene if ever the spectre of another Rwandan genocide loomed on the horizon.

The AU and Right of Intervention

The African Union's interventions have been pursuant to the consent of the territorial State, or of a peacekeeping nature. However, where such an approach is inadequate to protect civilians or the government is a perpetrator, like the case of Burundi, there may be need to shift from consensual intervention to enforcement action as envisaged in Article 4(h) of the Constitutive Act. The tension between sovereignty and intervention is maintained within the African Union legal framework by enumerating the two principles without establishing a framework of complementarity and synergy between them. For instance, while Article 4(g) of the Constitutive Act reaffirms the principle of non-interference in a Member State's internal matters by another, Article 4(h) establishes the right of the African Union to intervene in a Member State due to genocide, crimes against humanity or war crimes. In addition, there are similar opposing provisions in the African Union Peace and Security Council Protocol. Article 4(e) of the Protocol affirms the sovereignty and territorial integrity of Member States and Article 4(f) prohibits Member States from interfering in the domestic affairs of another State. However, on the other hand, Article 4(j) of the Protocol reaffirms the African Union's right of intervention in a Member State due to genocide, crimes against humanity or war crimes. And the violent killing and destruction of lives and properties in Burundi is enough reason to invoke the Article 4(h) of the AU's legal framework in order to stop the Burundian government from massacring its own citizens because of Nkurunziza's desire to remain in power beyond two terms which he has completed.

There is a failure to effectively address the dilemma between State sovereignty and intervention for humanitarian purposes within the AU legal framework, as could be gleaned from the Burundian case. Burundi has been embroiled in a violent political crisis since April 2015 after president Pierre Nkurunziza sought a constitutional change to run for a third-term. Hundreds of people have died in the past few months and at least 200,000 have been forced to flee the country into neighboring countries after clashes between the government and anti-Nkurunziza forces. Things deteriorated after reports security forces allegedly executed people in the streets of the capital Bujumbura. "If the situation continues, the African Union and international community cannot sit by and watch genocide if it is going to develop into that genocide."

Surprisingly, the first intervention mission of the AU since its formation was the African Union Mission in Burundi (AMIB), which was predominantly a peace operation. This was the first intervention wholly initiated and implemented by African Union members. AMIB was established to supervise the 2 December 2002 ceasefire agreement, including earlier ones, by the Transitional Government of Burundi and the rebels. The issue begging for clarification is the refusal of the AU to send in troop to Burundi to stop the government headed by Nkuruziza from killing his own citizens he has sworn by the constitution to protect.

This failure boiled down to the emergence and nature of the state in post-colonial Africa. Despite the conflicts that has been going on between the Tutsi and Hutu which is creation of the colonial government headed by the Belgium, the state

that emerge after independence took on the character of the departing colonialist and became elitist and strived to continue to domination of the African society the same way and manner which the colonial government did. The character of the ruling class also demonstrate weakness and corruption towards addressing the developmental needs of the African society, rather the post-colonial state sought perpetuation in power even against the constitutional stipulated terms, thereby leading to more crisis within the African society. because a majority of the African state are headed by leaders who has one way or the order manipulated their constitution to elongate their stay in power, they now invoke the framework of non-intervention of internal affairs of member states, even when the state in question is the perpetrator of the violent act, thereby betraying the Article 4(h) of the same framework.

Burundi signed and ratified the protocol creating the PSC and thus is legally bound to accept and implement any decision of this body, and the intervention in this time of crisis should not need Burundi's approval. This, though, is a contentious issue within the AU, and other international organizations, who are dependent on their member states for troops contributions. International law relating to state sovereignty adds further complications. After giving the Burundian government 96 hours to approve the deployment, the PSC expressed its determination to invoke Article 4(h) of the African Union (AU) Constitutive Act. This stipulates "the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity". The PSC recommended such an intervention to the Assembly, which ultimately decides on the deployment.

The AU has only once deployed troops under Article 4(h). This was in support of the trial of the former President of Chad, Hissene Habre, on charges of political killings and torture of thousands of civilians between 1982 and 1990. The AU has thus set itself a very high threshold: Article 4(h) was not even used in the situation in Darfur. The likelihood of a deployment in Burundi has always very low. But when the Assembly could not agree, the issue was passed to the AU Heads of State Summit on 27-28 January 2016.

The United Nations Security Council visited Burundi a week before the African leaders met. They left the country stressing the urgency of addressing the situation in Burundi before it deteriorated further and possibly took on ethnic dimensions. The government in Bujumbura countered that their concern was misplaced. The Council members were worried by President Nkurinziza's lack of willingness to compromise on either the deployment of any AU troops or on the inclusiveness of the dialogue with the opposition. Some had high hopes that the AU Summit might break this impasse. This did not happen due to the fact that most heads of government of member state are nursing similar ambition of staying beyond the constitutionally prescribed term limit.

Challenges to Deployment of Intervention Force in Africa

The right of intervention by decision of the African Union, as provided for in the Constitutive Act, was born out of the inglorious record of massacres, gross and

massive violations of human rights and large population displacements that have made the African continent host to the greatest number of refugees and displaced persons in the world, due to factors ranging from conflicts to bad governance, poverty, failed States and others. However, the provision on the right of intervention, though well intended, has not been so easy to decide upon or implement, since the transformation of OAU to AU.

AU like the OAU, decision to intervene is made on the basis of consensus though the Peace and Security protocol also stipulated that a decision on the part of two-thirds majority of the Assembly of the Heads of State is required for intervention purposes. In practice, most of the critical decisions on intervention are made at the level of the Permanent Representative Council (PRC). The Assembly usually rubber-stamps the decision made by the PRC. The AU followed this procedure in deploying a peacekeeping force to monitor a ceasefire in Burundi in April, 2003. Also, there is a strong preference for soft tools and positive incentives. The AU only encourages rather than threaten the offending state. They often opt for mediation and prefer it over other forms of intervention. The direct result is that mediation has become a popular conflict resolution mechanism within the AU. Even with mediation, the AU always uses the less intrusive aspect of it. It often opts for facilitation style of mediation and rarely employs manipulations or even formulation styles of mediation. For instance, in its intervention in Burundi and Comoros, the AU applied many facilitation mediation techniques including short-term missions to evaluate the situation, election observation missions, appointment of envoys, setting up of in-country missions/offices, and establishing reconciliation conferences (Tieku, 2009).

However, while the facilitation style has the greatest influence on reducing tension and creating lasting peace, it takes too long to have any meaningful impact on the process and it is heavily dependent on the availability of information regarding parties' intentions and capabilities. Also, none of the AU members are allowed to criticize the offending state in public and the AU does not tolerate any public rebuke of offending state by non-African entity. Such criticisms usually encourage AU members to rally behind the offending state or the African state being criticized. Also, the success or failure of intervention depends on sub-regional powers such as Algeria, Tanzania, Ethiopia, Nigeria, and South Africa. The AU's interventions in Comoros and Burundi were relatively successful primarily because of the leadership of Tanzania and South Africa. The AU has been unable to impose any modicum of order and peace in Darfur region because of the absence of real support from African regional powers. None of the five states—Algeria, Egypt, Libya, Nigeria and South Africa—which pays seventy-five percent of the regular budget of the AU back the mission, have stem up to take the leadership role in the resolution of most conflicts in Africa.

In the Burundian case, AU's peace and Security Council took the unusual step of authorizing a peace keeping force to the country without being invited. The 5,000 strong personnel are tasked with "the protection of civilian populations under imminent threat" and the "creation of the necessary conditions" for a peaceful resolution. The force has been given a mandate of six months to fulfill this objective.

The AU gave Burundi until December 22nd to comply with the decision. But the refusal by the government to welcome the peace-keeping force puts it at loggerheads with the continent's largest political body. Erastus Mwencha, deputy chairman of the African Union Commission, called the reaction "sad" and suggested that the AU has been forced to intervene only after the government demonstrated an inability to protect its own people. The AU did not send any observers to Burundi for the July 2015 elections. Only after the polls closed did it deploy around twenty military and human rights observers. The number was supposed to increase to a total of 50 human rights and 50 military observers, but by late 2015 that had not happened. As the crisis deepened, the AU Peace and Security Council (PSC) tried to stop its escalation. On 17th December 2015, the PSC authorized the deployment of a force of 5,000 troops. The Mission Africaine de Prévention et de Protection au Burundi (MAPROBU) was mandated for six months with the option to renew. It was tasked to prevent any deterioration of the security situation, to monitor its evolution and report developments on the ground (and) to contribute, within its capacity and in its areas of deployment, to the protection of civilian populations under imminent threat. This was a groundbreaking move for the AU, as it was the first time the organization authorized the deployment of a force against the wishes of a host country. The hesitant UN Security Council, unsure of what it should do, welcomed the action by AU in Security Council Resolution (S/Res/2248 (2015)).

Burundi rejected the decision by the African Union (AU) to send in troops to the east African country saying the presence of such a force in the country will be perceived as an "invasion and occupation force". We will not allow foreign troops in Burundi. We don't need them," Gervais Abayeho, a presidential spokesman told Al Jazeera. "We have a legal and democratically elected government that should be consulted before making such decisions."

The failure or hesitation of the AU to act by sending an intervention force into Burundi is a clear indication of the weakness of the organization and its inability in resolving conflicts among member states. This in essence has led to retardation of development within the continent. There is a clear manifestation of the presence of civil or constitutional despots in most African states who find pleasure in tampering with their country's constitution to elongate their stay in power beyond the constitutionally approved terms. The AU appears to be a captive to the internal politics or interests of member states, foreign powers, and host governments. These circumstances have prevented it from acting effectively with governments such as Sudan, Ivory Coast, Libya and recently Burundi, out of fear of reaction from key African member states or foreign powers. This uncertainty has undermined AU intervention credibility and recalls OAU's weakness in intervening in the conflicts within and between member states. This lack of member states' political will is a major impediment to the effective deployment of security forces for intervention purposes. African peacekeeping or intervention requirements are being addressed in an ad hoc manner, with states acting independently, reflecting the same inabilities and weaknesses that characterized the OAU. This is as a result of the unwillingness of both African and non-African leaders to risk the loss of soldiers in poorly understood

countries where there may be no perceived strategic national interests at stake. This appears to be the very same mistakes of the OAU, whereby foreign countries prefer to deal with states, rather than with continental organizations such as the AU (Kobbie, 2009).

List of African Leaders who have stayed long in Power

S/N	Name of President/ King	Country	Years in Office
1	Mohamed Abdelaziz	Western Sahara	1976-2016
2	Teodoro Obiang Nguema	Equatorial Guinea	1979-2016
3	José Eduardo dos Santos	Angola	1979-2016
4	Robert Mugabe	Zimbabwe	1980-2016
5	Paul Biya	Cameroon	1982-2016
6	Omar al-Bashir	Sudan	1986-2016
7	King Mswati III	Swaziland (Monarch)	1986-2016
8	Yoweri Museveni	Uganda	1986-2016
9	Blaise Compaore	Burkina Faso	1987-2014
10	Idriss Déby	Chad	1990-2016
11	Isaias Afwerki	Eritrea	1991-2016
12	Yahya Jammeh	The Gambia	1994-2016
13	King Letsie III,	Lesotho (Monarch)	1996-2016
14	Denis Sassou Nguesso	Republic of the Congo	1997-2016
15	King Mohammed VI	Morocco (Monarch)	1999-2016
16	Abdelaziz Bouteflika	Algeria	1999-2016
17	Ismail Omar Guelleh	Djibouti	1999-2016
18	Abdoulaye Wade	Senegal	2000-2012
19	Paul Kagame	Rwanda	2000-2016
20	Joseph Kabila	Democratic Republic of Congo	2001-2016
21	Abdelkader Taleb Omar	Sahrawi Arab Democratic Republic	2003-2016
22	Pierre Nkurunziza	Burundi	2005-2016
23	Faure Gnassingbé	Togo	2005-2016
24	Salva Kiir Mayardit	South Sudan	2005-2016
25	Ellen Johnson Sirleaf	Liberia	2006-2016
26	Ernest Bai Koroma	Sierra Leone	2007-2016

Source: Compiled by the Authors

Looking at the table above, one can see why it has been very difficult for the AU to invoke Article 4 (h) in its various attempts to resolve conflicts within the continent. More than half of the African head of states and governments are made up of despots who derive pleasure in constitutional manipulations in enhancing their political dominance in their states.

The refusal of the AU to send in troop to Burundi to stop the government of Burundi headed by Nkuruziza from killing his own citizens he has sworn to protect. This failure boiled down to the emergence and nature of the state in post-colonial Africa. Despite the conflicts that has been going on between the Tutsi and Hutu which is creation of the colonial government headed by the Belgium, the state that emerge after independence took on the character of the departing colonialist and became elitist and strived to continue to domination of the African society the same way and manner which the colonial government did.

The character of the ruling class also demonstrate weakness and corruption towards addressing the developmental needs of the African society, rather the post-colonial state sought perpetuation in power even against the constitutional stipulated terms, thereby leading to more crisis within the African society. Because a majority of the African state are headed by leaders who has one way or the order manipulated their constitution to elongate their stay in power, they now invoke the framework of non-intervention of internal affairs of member states, even when the state in question is the perpetrator of the violent act, thereby betraying the Article 4(h) of the same framework. The Ugandan President, Yoweri Musuveni has been the one leading the mediation process in the Burundian crisis. Musuveni's involvement in the mediation does not have the support of the actors involved in the conflict, considering Musuveni himself has succeeded in amending the Ugandan constitution to remove term limits and is now serving a third term in Uganda. Now, the question begging for answer is, how can someone who just manifested despotic characteristics be able to persuade another person not to do the same?

Conclusion

This paper has shown that the AU has failed to carry out intervention responsibilities that require robust enforcement action, rather focusing only on peaceful and consensual approaches even where they are manifestly inappropriate and inadequate. Political settlements in some cases has proven inefficient in ending conflicts and protecting civilians in places like Darfur in Sudan, resulting in a proliferation of peace agreements between the parties to the conflict and an endless cycle of mass atrocities. Forceful intervention is not panacea, but a crucial option where mass atrocities are being committed especially by the state against its own citizens (Kabau, 2012). In a sense, the subsequent conduct by the AU contradicts the spirit of the responsibility to protect concept, which envisages appropriate intervention (including enforcement action) in a timely and decisive manner, if peaceful means are inadequate.

Therefore, there is need for "a robust and borderless" intervention mechanism in the African continent based on the fragile human rights protection record in most member states, which has on some occasions permitted commission of crimes against humanity and war crimes against civilian populations. Furthermore, despite the fact that peaceful negotiations and consensual intervention has played significant role in ending some conflicts, they also has proven to be inadequate or inappropriate in many other situations. The reality of the potential of their inadequacy or inappropriateness

in some circumstances demonstrates that the AU should have the capacity to be flexible and respond appropriately as any situation may require, from peaceful negotiations to enforcement action in deserving situations such as Burundi. The African Union's interventions have been pursuant to the consent of the territorial State, or of a peacekeeping nature. However, where such an approach is inadequate to protect civilians or the government is a perpetrator, like the case of Burundi, there is need to shift from consensual intervention to enforcement action as envisaged in Article 4(h) of the Constitutive Act, in order to prevent or stop the killing of citizens and destruction of properties within the state. Also, African leaders should and must imbibe the spirit of democracy that allows for inclusive politics that would give room for members of the opposition and the civil society to make their own contribution to the development of the African economy.

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