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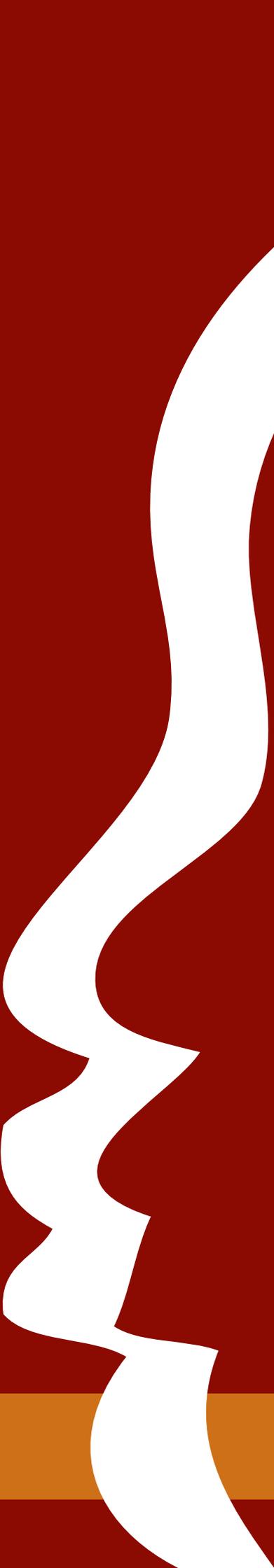
Presentation at the ALC Africa Debates: Between Justice and Terror

"Structural Dilemmas in the Nexus between Security and Justice"

Dr. Monica Juma

Dr. Monica Kathina Juma is Kenya's Ambassador Extra-Ordinary and Plenipotentiary to the Federal Democratic Republic of Ethiopia, the Republic of Djibouti and Permanent Representative to the African Union, Inter-Governmental Authority on Development (IGAD) and United Nations Economic Commission for Africa (UNECA).

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Jacaranda Avenue, PO Box 25742, Nairobi

+254 (0) 20387022500603

info@africanleadershipcentre.org

www.africanleadershipcentre.org

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By Dr. Monica Juma

Ambassador/Permanent Representative of Kenya to the African Union

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Biography

Dr. Monica Kathina Juma is Kenya's Ambassador Extra-Ordinary and Plenipotentiary to the Federal Democratic Republic of Ethiopia, the Republic of Djibouti and Permanent Representative to the African Union, Inter-Governmental Authority on Development (IGAD) and United Nations Economic Commission for Africa (UNECA).

Amb. Juma holds a Doctor of Philosophy from the University of Oxford, Master of Arts (MA) and Bachelor of Arts (BA) from the University of Nairobi and Certificate in Refugees Studies from Oxford University. She is also currently a Senior Research Fellow at the Department of Political Science, University of Pretoria (South Africa); an Associate with the African Programme of the United Nations-affiliated University for Peace, (Costa Rica); and an Adjunct Faculty member at the African Center for Strategic Studies of the National Defence University, Washington D.C., (United States of America).

Dr. Juma has also served as the Executive Director at the Africa Institute of South Africa (AISA), Pretoria, Executive Director at the Africa Policy Institute (API), Senior Policy Analyst at the SaferAfrica, Pretoria; and as a Research Associate at the International Peace Institute, New York. She was also Lecturer in Politics and Research Director at the Centre for Refugee Studies, Moi University, Kenya; and Management Analyst at the Office of the President, Republic of Kenya.

Currently, Dr. Juma serves on the advisory board of the Training for Peace Programme of the Ministry of Foreign Affairs, Norway and the Centre for the Study of Forced Migration, University of Witwatersrand, South Africa. She also serves on the editorial board of the Journal for Peace and Security (UPEACE), Kenyan Affairs, and is a founding member of the Africa Policy Institute (API).

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Introduction

The invitation for me to deliver the keynote address to the 2012 African Leadership Centre Debate series was humbling, daunting but also exciting. It was humbling especially when it became apparent that I would take the floor after an expose by the Bishop Desmond Tutu. Somewhere within me, I know that the order of things should have been the inverse: That I may, if I was going to share a platform with the Emeritus Bishop, amongst whose numerous caps is a Nobel Prize, would have been gratified and pleased enough to walk across the stage, before his statement, to ensure the props are in place before his grace. I continue to draw and learn from his wisdom and knowledge and today, as I sat listening to him, as I have done many other times, I continue to learn from every interaction and latch-on, whenever I have an opportunity to drawn from him. I am greatly honored to share his platform.

Secondly, today's invitation was daunting; daunting because the focus of today's debate is weighty. The nexus between justice, terror and development, is a subject matter that many a great scholar and leader continues to reflect upon, grapple with, and that can mean the difference between a person`s, community's or country`s survival or peril. Thus, beyond the theoretical and conceptual debates, it can be literally a matter of life and death.

But today's task is also an exciting one for me. It is exciting because it brings me in touch with the future as embodied in the spirit, methodology and body of the African Leadership Centre alumni and fellows gathered here today; a future that is encapsulated in the possibilities that the future holds and presents for Africa. Each one of us here will recall the screaming headline of *The Economist* about 10 years ago that referred to Africa as, "The Hopeless Continent", a decade later, in 2011, the same *Economist* in a headline acknowledged "Africa Arising!." Reputed analysts and treatises on the global trends today assemble convincing evidence that Africa is the next growth pole of the world. So we, Africans and Africa, are standing at cross-roads. But the road we take will determine whether these predictions come true or whether it will be another false start for our continent, our people, or our future.

I believe in the possibility of Africa being at the helm, and this is why, more than the other two reasons, I agreed to commune with you and to share some of my thoughts towards dealing with what has become Africa's greatest threat to its realization, its being, namely the inability/capacity to create, sustain peace and human security. I conceive of peace and human security in its broadest sense, as articulated by Koffi Annan (then UNSG) in 2005, **In Larger Freedom, Towards Development, Security and Human Rights for All,** as the freedom from want, freedom from fear, and freedom to live in dignity. The theme of today's debate between justice and terror in my view captures the essence of this threat.

In the light of these broad evolving issues, I would not pretend to be exhaustive. I shall therefore attempt a broad brush and hopefully engage in some interactive dialogue with participants.

Through time, the history of people and societies is one of a struggle in search for justice and pursuit of happiness (freedoms). But these have been framed largely within two strands that have formed the basis for the evolving normative frameworks. These are the notions of political (participation) and development (economic/growth issues). Over time however, these two elements have come to be mediated by a spectrum of other factors that occur concurrently, threatening the larger freedoms at the national, regional, continental and even global levels. In my view, this concurrence poses critical dilemmas for the pursuit of the full potential of societies in general and Africa in particular. It is my thesis that the nexus between justice, terror and development is an omnibus of several structural dilemmas that Africa must deal with, if we are to claim this century and the future.

Structural Dilemmas in the Nexus between Security and Justice

Allow me to focus on five of these dilemma, which represent rather than include all, and I do so in no particular order of priority. These select dilemmas for the purpose of today's address are as follow:

a) The dilemma of inclusion

b) The dilemma of demographic explosion in the face of limited growth

c) The dilemma of combating terrorism in the context of numerous international, cross border crimes and vulnerabilities

d) The dilemma of terror versus justice, and

e) The dilemma of bridging the security development divide

Before I speak to these dilemmas, I wish to draw attention to one actor that is central to them all – and that is the state and the manner in which its presumed role has changed and, in some cases, diminished from the form theoretically constructed. As conceived, the modern state is the key and perhaps only actor in the provision and guarantee of justice, protection from terror and also acts as an engine/facilitator of development. Its fragility overtime resulted out of, and led to, increased competition against its primary role as the lead agency for the positive change of society. For instance, until the 1990s, in particular after November 2000, research on terror and terrorism was outside "mainstream academic work". In political terms, a key attribute defining statehood was the ability to have a monopoly of the means of violence. So terror was associated with state terrorism and a whole set of concepts related to extra judicial /extra institutional terror where the state was accused of subverting or using state power to terrorize! The other framework for studying terror was in extra ordinary situations such as refugee situations where the state was largely absent and where even here, the agents of terror were formerly closely associated with the state. So the discourse focused on recommendations on how to separate armed/terror elements (non-civilian elements) from the humanitarian character of the camps.

When in the early 1990s at a meeting looking at the application of the international humanitarian law, one presenter argued strongly for the need to focus attention to non-state actors in particular mercenaries for training and to hold them accountable for the observance of humanitarian law, he was met with both disbelief and horror. How could anyone even imagine a situation where mercenaries were acceptable and acknowledged operators in any scene. Well, today we stand with the so called "private" security companies and see around the world bold analysis of private security operators participating in legitimate and politically authorized operations as partners.

Thus the state is no longer the only actor nor is it, in some cases, the most influential or powerful.

1. **Dilemma of inclusion in the face of state fragility (the sum total of which is the failure or weak democratization processes)**

Without a doubt we have a continent that has made significant progress in the democratization project. Nonetheless, there are persistent/structural challenges that hinder consolidation of gains and the full realization of the freedoms of participation and tolerance in our own governance. Significant to this challenge is the struggle for guaranteeing modalities of inclusion of what are increasingly diverse constituencies in terms of opinions, preferences, demographics, ethnicities, etc, protected by the democratic gains. Constructed upon the logic of minority domination of the majority, the modern African state has seen subversion of governance mechanisms in favor of the elite. Concurrently, local mechanisms of governance have been emasculated, marginalized, criminalized or destroyed. This together with the lack of effective judicial systems to provide credible and timely process for resolving differences have seen low level disputes spiral into violent and deadly conflicts. The result of this has been growing challenge (and in some cases illegitimacy of, against states/governments, resultant political and security environments that enhance the leverage by extremist groups, in the name of the demand for inclusion or accountability. One needs to cast their minds to any situation of unrest on the continent to find that the main rationale for whatever action is being advanced by outlawed groups is framed as a "demand for inclusion."

This challenge points to the necessity of transforming state institutions/rebuilding of the state in order to increase its responsiveness to people's needs for participation and accountability rather than creating waves of fragility. Countering extremism in Africa, therefore, must be linked to building stronger, more legitimate states. This is so because, while state security operations can neutralize extremists in the short term, they are an insufficient long-term counter extremism strategy unless these are coupled with opportunities for moderates to engage in the political process.

2. **The Dilemma of the African population explosion versus the limited growth (gap)**

A critical dilemma in today's Africa relates to its demographic explosion versus the growth gap. Estimates indicate that more than half of all Africans will live in cities by 2025. This rapid pace of urbanization is creating a new locus of fragility in many African states – as evidenced by the burgeoning slums around many of the continent's urban areas – and the accompanying rise in violence, organized crime, and the potential for instability. These evolving threats, in turn, have profound implications for Africa's security sector. As rightly observed by Cruise O'Brien 'Africa's young people are very poorly equipped to make their opposition effective: with their limited resources they are easily manipulated by their elders' (Obrien, & Donal, 1996)[1].

In contemporary Africa, this is inextricably connected with what Paul Richards, in his study of the role of youth in the Sierra Leonean civil war, has described as 'the crisis of [African]

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[1] Cruise O'Brien, Donal (1996) 'A Lost Generation? Youth Identity and State Decay in West Africa.' In: Werbner, R and Ranger, T, (eds.), *Postcolonial Identities in Africa.* Zed Books (London), pp. 55-74.

youth'(Richards,1995)[2]. Indeed the argument has been made that 'the youth factor. . . . may take over from ethnicity' as the new axis about which African politics rotates (Richards, 1995)[3]. What is significant though is the similarities in these two factors. That like ethnicity, generational identities have been manipulated and instrumentalized by Africa's patrimonial elite. Oft times the youth (like ethnic groups/tribes) have become a ready reservoir of armies, mercenaries, child soldiers etc, and are used to mete violence and terror in societies. Like the tribal/ethnic analysis, the story of the youth is one of powerlessness of Africa's (young) people in the face of economic globalization, which has transformed them into pawns in the elite struggle for state power.

3. The dilemma of combating Terrorism and/or eradicating other crimes/versus implications for other freedoms.

There is a growing reality of the intimate relationship between terrorism and related scourges such as drug trafficking, illicit proliferation and trafficking of small arms and light weapons, corruption, and money laundering. This concurrence is as dangerous as terrorism itself. They serve as vehicles for terrorism, and it is now widely believed that terrorism cannot be eradicated without eliminating these linkages. Perhaps the most worrying trends are the global networks and strengthening linkages between these criminal networks and "legitimate" structures of power. For instance, in a number of cases, drug networks have threatened not only societies but the functioning and/or existence of states and governments. We have since March 2012 been dealing with two such cases in the situations of Mali and Guinea Bissau. The co-existence of these international crimes have translated into the militarisation of societies in general, but more specifically, it has meant intense brutalisation of populations especially vulnerable groups. Women and girls have become a particular target in these situations. Today the looming crisis is one of millions of women and girls being trafficked, raped, physically abused and violated, etc. While this is worse in situations of conflict, it is critical to note that such crimes occur even in peacetime.

As I shall be arguing a little later, addressing these challenges adequately would require a concert of action from the local, national, regional, continental and global levels.

4. The of dilemma of justice and peace versus terror

This dilemma has got complicated especially with the momentum around the war against terrorism. The significant challenge here, which has been the focus of the terrorism debate, is that of balancing national security with civil liberties. Ever since the events of 9/11 the so called 'war on terror' has radically changed the nature of public and political debate. As Tony Blair famously said, 'the rules of the game have changed' (Wintour,

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[2] Richards, Paul **(**1995) Rebellion in Liberia and Sierra Leone, A crisis of youth? in: Furley, Oliver (ed*.): Conflict in Africa*, I.B. Tauris Publishers, London, S.134-170.

[3] *Ibid*

2005)[4]. In his view and in the opinion of many others questions of justice and freedom need to be understood in a different light. Indeed majority of leadership were so persuaded by this view that a number of laws have been instituted that would have been unthinkable a decade ago across the world. Debates on terrorism interrogate the construction of the 'terrorist threat' as well as the responses fashioned for it. Among the arguments proffered is that "the challenge of violent extremist can be better countered, by an approach which takes greater account of historical and ongoing injustices." But as terror threats become more widespread this dilemma is far from over.

5. The dilemma of bridging the Security-Development Divide

While Africa has registered some progress in the search for peace, it is still prone to conflict – even if the character of these conflicts has become more localized. A look across the conflicts of Africa indicates a common denominator: the widespread and lethal use of small arms and light weapons introduced into underprivileged, and often desperate, populations. A combustible fusion of poverty, anger, and despair often plague these communities due to the desperately low standards of living. While research has indicated no direct link between poverty and terrorism, the co-existence of the precarious existence, creates vulnerabilities in way that such populations can be manipulated. Once they break, armed conflicts reinforce the very conditions that led to their instigation. The vicious cycle that these interconnected threats create not only endangers individuals on the African continent but, in an era of globalization, it ultimately challenges the wider planet.

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[4] Wintour Patrick (2005). "Blair vows to root out extremism: Lawyers and Muslim groups alarmed". *The Guardian,* August 6.Available at http://www.guardian.co.uk/politics/2005/aug/06/terrorism.july7

What Has The World Done In Responding To These Dilemmas?

I now wish to turn to what the world has done to respond to these dilemmas, with a special focus on Africa within the framework of the African Union with which I am more familiar.

There have been numerous efforts to evolve common African positions on most of these issues in response to the challenges on the ground. In this case, I wish to draw your attention to a number of commitments that form a normative framework stipulating the norms, standards and response mechanisms – from the Common African Defense Security Policy; to an institutional mechanism to respond to the various crises at the governance, security – including terrorism, conflict prevention management and resolution, developmental – aspirations for integration, etc. However, a critical challenge has been one of the gap between the normative frameworks and implementation on the ground. Some people in describing what could be the most significant institutional dilemma of the AU argue that it is like building a house when you are already in or mending a plane in flight. The African Union has no benefit of developing and then testing its frameworks. When the AU deployed in Darfur, in 2004, the African Union Peace and Security Council, which ideally should have mandated the operation, had not been launched, neither did Department of Peace and Security have a planning or logistics element. It has been a steep learning curve – under intense scrutiny both within and beyond the continent.

Specific to the nexus that I spoke to above – namely justice, terror and development – I wish to make reference to the issue around universal jurisdiction, in particular the ICC. This gathering will know that the African Union is in the process of creating an African Court whose mandate would be to deal with international crimes including crimes against humanity, war crimes etc, to be based in Arusha. This effort has been hailed by some but also criticized by others who argue that Africa is trying, "owing to its nature of condoning impunity" to subvert the work of the International Criminal Court.

The argument from the AU perspective is that the facts and reality are far from this perception, and point to the following.

a) The base instruments of the AU, in particular the Constitutive Act, Art 4 (h) pronounces itself on the place of Africa as far as serious crimes, war crimes and crimes against humanity are concerned. The Union in fact gives itself the right of intervention and those that have followed the development of international instruments will confirm that the Right to Protect originates from Africa.

b) Specific to the Rome Statute, Africa comprises the largest constituency of State Parties to the ICC, and this act in itself is demonstrative of the continent`s desire to deal with serious crimes including crimes against humanity and war crimes. However a number of concerns have been expressed by the continent and its assembly in relation to the manner in which the ICC has so far, conducted itself as follows:

i. Significant for this discussion is the failure of the ICC to have a comprehensive view of the dilemmas and challenges on the continent.

Because of the concurrence of the dilemmas I have spoken about above the path Africa has taken is one of attempting to deploy a range of tools in the search for peace, justice and development. The argument has therefore been made that while justice may be sought and done, it is imperative that it be seen to be done and that it does not tilt the balance of forces in disfavor of processes that may be deployed concurrently in search of sustainable peace and development.

ii.   There has also been strong argument for sensibilities in terms of timing of action. This argument is also not new, in fact the use of the various forms of justice and reconciliation takes cognizance of the necessity to balance between timing for certain actions. It was this argument that guided the Assembly decisions that sought deferral requests from the United Nations Security Council, particularly in the case of Sudan. The weight of opinion on the continent was that the peace negotiations in Darfur were at a critical place and any arrest of the President carried the risk of derailing these and probably worsening the situation for both those affected immediately but also the region. Furthermore, there were other legal arguments about the basis for subjecting a non-state party to the Rome Statute; and the legality of overriding other international laws relating to sitting presidents. In the case of Kenya, the argument lay on the principle of subsidiarity which is the basis for the operation of the ICC as the court of a last result. In this case, argument was made that the new constitution provided a basis for the country to deal with its post election violence experience, and that in the light of the Rome Statute it should be given the opportunity to do so.

iii.   There has also been a significant thrust in favour of the deployment of localized mechanisms, seen as more cost effective and perhaps relevant to the realities on the ground. Those holding this position take the view that, African societies on the whole have limited exit options and therefore must be encouraged to create and use mechanisms and support for co-existence, while eliminating any situations that could lead to similar crimes.

Conclusion

The nature and scale of the challenges posed by dilemmas in the nexus between justice, terror and development is complex and the consequences go beyond the individual, society and or state, to fundamentally threaten the broader freedoms. For instance, the collapse of security – perpetrates insecurity beyond the epicenter of conflict – we are all familiar with the regional conflict formation studies and arguments. When one looks at terror – these have become regional/global links; the failure of development has dominal effects that go beyond the starting point of the crisis.

Tackling this, therefore calls for a concert of action from the local, national, regional and global levels that deals with not just the root causes but proximate causes, and that addresses extraneous factors. It also calls for a shift in the manner in which we transact business – in terms of global pacts and common positions and shared values and giving meaning to principles such as that of mutual accountability at the local, national, regional and global levels. The concert of action has to target the individual, community and state – in other words we need to speak to the need to transform society and its norms of what is necessary to guarantee the freedom from want, freedom from fear and freedom to live in dignity including in determining how and by whom to be governed.

Crucial to this concert of action is the role of robust knowledge production to establish the relationship of these factors and the various drivers of change that are required to initiate and sustain transformation of societies. The role of research that asks the right questions to obtain the right answers; that builds theories from African realities and is relevant to the practical needs of the African peoples is crucial and cannot be emphasized enough.

A second critical actor is the state in terms of its role in facilitating the web of action. This will only be effective after conscious efforts that transform the state to make it respond to the aspirations of the "larger freedoms" of the people. This is why most Pan-Africanists applaud and support the attempts by many African countries to transform and respond to the demands of their people. I believe that this transformation of society and its institutions is central to the journey of Africa claiming its rightful place in this and the next century.

Thank you for your kind attention.