Programme Point Sud 2014

Peace Through Institutions?
Constitutional Choices for Divided Societies

Stellenbosch (South Africa) – 14th to 15th November 2014

Report

Organisers

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Themes and Objectives

The workshop took place on 14 and 15 November 2014 at the Stellenbosch Institute for Advanced Study (STIAS) in Stellenbosch, South Africa. The goal of the workshop was to assess the potential of African constitutions to promote peace and reduce the risk of violent conflict. To achieve this goal the workshop brought together 16 scholars from Malawi, South Africa, Zimbabwe, Nigeria, Austria, and Germany, and included the attendance of four students from the University of Stellenbosch. The participants examined the topic from a wide variety of theoretical, empirical, methodological, and disciplinary perspectives. The workshop was organized around panel presentations, which were followed by an in-depth review of individual presentations by a discussant. The participants then discussed the presentations in an open debate.

Methodology and Results

I. Introduction
After welcoming notes by Prof. Dr. Pierre du Toit (University of Stellenbosch) and Dr. Marko Scholze (Point Sud), Prof. Dr. Andreas Mehler (GIGA Hamburg) and Prof. Dr. Christof Hartmann (University of Duisburg-Essen) opened with a discussion of the workshop's main theme, constitutional choices for divided societies. Academic debates on this topic normally revolve around two institutional strategies, consociationalism and integrationism, and their application to divided societies. In regard to the conference venue, Mehler and Hartmann assess that South Africa is a particularly good example for the debate as it has a long history of institutional engineering and it has applied several characteristics of consociationalism after the end of the Apartheid, which was further discussed in the third panel of the workshop (see below).

The main assumption of this workshop was that particularly in Africa's ethnically heterogeneous societies institutional choices may be a sound strategy to engineer peace. However, as Mehler showed, constitutional engineering targeted to regulate or transform violent conflict in divided societies is rather rare in sub-Saharan Africa. Instead, radical constitutional engineering with the aim to foster long-term peace plays only an important role where the international community in the form of the UN or other mediators were active: in cases where external actors intervened, constitutional change was more "radical" or complete than in cases in which such an actor was absent or less prominent. He criticized that this creates certain issues such as the question of ownership of constitutional choices, the sustainability of institutions, and the problem of adaptation of blueprint solutions that might not fit the local conflict situation.

II. Second Panel: Constitutional Opportunities for Peacebuilding
The second panel discussed constitutional opportunities for peacebuilding with presentations by Gilbert M. Khadiagala (University of the Witwatersrand), Julia Strasheim (GIGA Hamburg), Boniface Dulani (University of Malawi), and Nadine Ansorg (GIGA Hamburg). The presentations all touched upon the issues of elite versus broader civil society participation in peacebuilding, as well as the question of long-term processes of sustainable peace. The first presentation by Gilbert M. Khadiagala compared processes of constitutional reform in Kenya and Zimbabwe, and he highlighted the difficulties of drafting constitutions for democratic and civilian rule when military leaders are involved in a constitutional process through power-sharing arrangements. This finding was complemented by the second presentation given by Julia Strasheim, who studied the role of interim governments in post-conflict peace processes. She found that power-sharing deals in an interim government are not a predictor of peace. Instead, it is equally important that interim governments consult civil society actors to create transparent and accountable transition periods. The third presentation by Boniface Dulani added to this "bottom-up" perspective. It looked at the micro-foundations for presidential term limits in Africa by analyzing survey data from the Afrobarometer. The presentation stressed that among the strongest determinants for supporting presidential term limits is education. Finally, the presentation by Nadine Ansorg analyzed first statistically and then by comparing Gambia and Botswana the determinants of peace, moving beyond a pure negative operationalization of the concept. She found that in particular the implementation of social welfare programs might account for sustainable peace in countries in regions that are prone to war.

III. Second Panel: Constitutional Reform in Institutional Areas
The second panel explored constitutional reforms in different institutional areas. Presenters were Webster M. Zambara (Institute for Justice and Reconciliation (IJR) Cape Town), Josephat Tshuma (Law Society Zimbabwe), and Nkwachukwu Orji (GIGA Hamburg). The presentations all dealt with the question how institutional change can foster peace in societies that are highly divided and prone to (renewed) outbreak of violence. In his presentation, Webster Zambara compared the transitional justice processes in South Africa and Zimbabwe and asked for the potential to bring societies forward and reconcile antagonistic groups in a society. In regard to South Africa, he found that coming to terms with the past in the Truth and Reconciliation Commission and the amnesty for past deeds was a good way to deal with South Africa's violent and highly discriminating history. However, he concluded that the situation in Zimbabwe is different as it faces major political and socioeconomic problems that exacerbate the process of transitional justice. This finding was also confirmed in the presentation of Josephat Tshuma. He reported from the legal and constitutional situation in Zimbabwe, asking whether constitutions matter for peace. Tshuma argued that a constitution should be there to protect the weak and restrict the excesses of the ruling elite. This, he explained, was not the case in Zimbabwe, where the constitution was used as tool by the ruling elite for its own ends. He was in line with Webster Zambara when he criticized the state of impunity of supporters of the president, who granted amnesty to perpetrators of violent acts in the aftermath of electoral violence in 2008. Moving from transitional justice to questions of electoral engineering, Nkwachukwu Orji elaborated in his presentation on constitutional choices in Nigeria: While already in 1946 the British colonial administration realized the problem of regionalism, necessary follow-up reforms were not implemented after independence. Thus, the problems of regional domination and strongholds of minority groups persist until today. He claimed that the change to a PR electoral system is the best strategy to avoid domination of the dominant regional groups.

IV. Third Panel: South Africa – An African Exception?
The third panel focused on the case of South Africa and explored its constitutional features, historical experience, and socio-demographic particularities in relation to the country's experience and chances for peace. Presentations were given by Erwin Schweitzer (University of Hamburg), Salomé Teuteberg (University of Stellenbosch), and Charl Swart / Nicola de Jager (University of Stellenbosch). The presentations all dealt with challenges of South Africa's society in the post-Apartheid time. In his presentation, Erwin Schweitzer discussed the situation of the Khoe-San people, a minority that was the first group to settle in the area of today's South Africa. Although they have a long settlement history, they were denied their right to acquire land even after Apartheid had ended. It was only last year when Jacob Zuma, current president of South Africa, acknowledged Khoe-San culture and identity and promised to recognise traditional leaders and settler areas before the hitherto cut-off date for land claims in 1913. In a second presentation, Salomé Teuteberg elaborated on the negotiations that lead to the post-Apartheid constitution in South Africa. She made the different negotiating positions obvious and revealed how the result of today's constitution came into being. The paper by Charl Swart, presented by Nicola de Jager, dealt with contending interpretations of the rule of law in South Africa. As Nicola de Jager presented, there were numerous occurrences that caused the author to doubt the rule of law in South Africa: Taking the "Kill the boer" hate-speech with Julius Malema as example, the author elaborated that there are different perceptions of the rule of law in South Africa, a liberal rule of law and a social rule of law. As Swart followed the trials on the Malema case, he criticized that there is no consensus on the key element of the constitution, the rule of law. Hence, he saw a serious threat to peace in the country, as there is no agreement on how to structure a democratic South Africa.

V. Fourth Panel: Internal and External Dynamics of Constitutional Reforms
The final panel dealt with questions about internal and external dynamics of constitutional reform with presentations by Felix Haass (GIGA Hamburg) and Martin Goeke (Universität Duisburg-Essen). The first presentation by Felix Haass stressed the role of foreign aid flows in post-conflict situations and the relationship between external resources and domestic post-conflict democratization. He identified power-sharing institutions as an important moderator of the impact of foreign aid. Martin Goeke's presentation highlighted the role of party-switching as an essential feature of democratic governance, especially in divided societies as was exemplified with a case study of Lesotho. He stressed the importance of the party system for conflict management in Africa's countries, but also points to the problem of opportunistic behaviour of parliamentarians that often switch parties during a legislation period. In 2011, 30 of 47 African countries had regulation against party switching; it was, however, concluded that they are not always effective.

VI. Final discussion
Andreas Mehler and Christof Hartmann wrapped up the workshop by discussing substantive implications and thoughts about extending the existing Institutions for Sustainable Peace network to include African scholars in order to bring in additional and different perspectives and expertise from African countries.

The workshop succeeded in achieving its goals in three respects worth noting: First, there was an agreement that political institutions—and their formal regulation through constitution and informal constitutional practice—are important prerequisites for the prevention of violence in divided societies. Although the specific impact of institutions varies by area and country, the participants identified generalizable patterns. Power-sharing, for instance, was found to be a

short-term solution to many conflicts. Yet it also does not seem to bring about longer peace on average (Strasheim) and provides a breeding ground for renewed conflict in Zimbabwe and Kenya (Khadiagala). And even though it might nudge post-conflict countries towards democracy in the immediate aftermath of civil conflict, a closer inspection reveals that this short-term democratization is only superficial and largely donor-driven (Haass, Mehler). A further finding was that formal constitutional rules are often undermined by informal (extra-) constitutional practices; examples for this practice were presented with case studies of different interpretations of the rule of law within South Africa (de Swart) or floor-crossing practices in several countries of Southern Africa (Goeke).

Second, the workshop provided an excellent opportunity for younger scholars to engage with more senior colleagues including across disciplinary boundaries. Six participants were either in their pursuit of their doctorate or Post-docs and even though most participants had a background in political science, perspectives from law and ethnology complemented the political science approaches very well. It also provided the opportunity for post-graduate students from the local university, University of Stellenbosch, to attend the presentations and engage in the discussions.

Sustainability of the Event

The workshop laid the ground for a future collaboration and networking among African and European scholars on the topic of institutions for sustainable peace. This offers the chance to extend the already existing ISP network to the African continent and to include insights and perspectives from African scholars. It is our hope that thanks to the funding of DFG future opportunities for collaboration discussed at the workshop will indeed materialise in the future.

Participants

1. Dr. Nadine Ansorg   Political Science, GIGA Hamburg
2. Dr. Boniface Dulani   Political Science, University of Malawi
3. Prof. Dr. Pierre vdP du Toit Political Science, University of Stellenbosch
4. Kabelo Gildenhuys M.A.   Political Science, University of Stellenbosch
5. Dr. Martin Goeke   Political Science, Universität Duisburg-Essen
6. Felix Haass M.A.   Political Science, GIGA Hamburg
7. Prof. Dr. Christof Hartmann Political Science, Universität Duisburg-Essen
8. Dr. Nicola de Jager   Political Science, University of Stellenbosch
9. Indiana Jones M.A.   Political Science, University of Stellenbosch
10. Prof. Dr. Gilbert Khadiagala Anthropology, Wits University Johannesburg
11. Riska Koopman M.A.   Political Science, University of Stellenbosch
12. Prof. Dr. Andreas Mehler   Political Science, GIGA Hamburg
13. Yandisa Ncombo M.A.   Political Science, University of Stellenbosch
14. Dr. Nkwachukwu Orji   Political Science, GIGA Hamburg
15. Reanne Olivier M.A.   Political Science, University of Stellenbosch
16. Dr. Erwin Schweitzer   Anthropology, University of Hamburg
17. Julia Strasheim M.A.   Political Science, GIGA Hamburg
18. Salomé Teuteberg M.A.   Political Science, University of Stellenbosch
19. Dr. Josephat Tshuma   Law Society Zimbabwe
20. Webster M. Zambara   Institute for Justice and Reconciliation (IJR) Cape Town