

DEVOLUTION AS PANACEA TO
DEEPLY DIVIDED MULTI-ETHNIC
(NATIONAL) STATES: THE
KENYAN EXAMPLE

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OUTLINE

Introduction

The Theoretical Framework

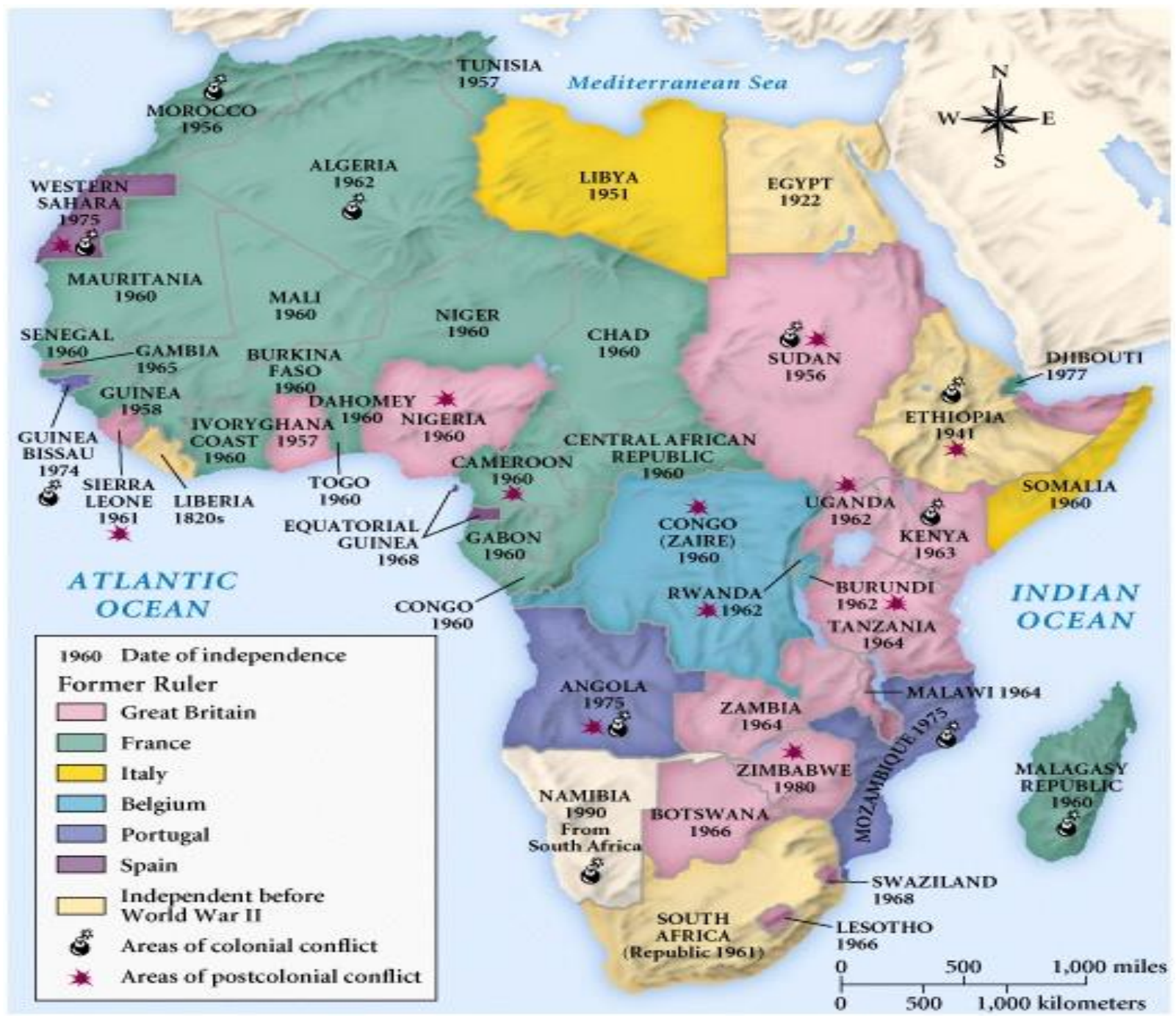
The Ethnic as a malignant category in Africa

Devolution as a panacea to the five manifestations of ethnic malignancy

Introduction



- Discussions on Constitutional design is currently a trending topic in Kenya.
- Since 1997, Kenyan Constitutional law has been dominated by concerns of design.
- Constitutional theory, constitutional interpretation and implementation of design have only regained relevance in the years after 2010.
- This paper falls squarely within the constitutional design arena.



Country	Year of Independence	Former Ruler	Conflict Type
TUNISIA	1957	France	Colonial
MOROCCO	1956	France	Colonial
LIBYA	1951	Italy	Independent before WWII
EGYPT	1922	Great Britain	Independent before WWII
ALGERIA	1962	France	Colonial
WESTERN SAHARA	1975	Spain	Postcolonial
MAURITANIA	1960	France	Colonial
MALI	1960	France	Colonial
NIGER	1960	France	Colonial
CHAD	1960	France	Colonial
SENEGAL	1960	France	Colonial
GAMBIA	1965	Great Britain	Colonial
BURKINA FASO	1960	France	Colonial
GUINEA	1958	France	Colonial
IVORY COAST	1960	France	Colonial
DAHOMEY	1960	France	Colonial
NIGERIA	1960	Great Britain	Colonial
GUINEA-BISSAU	1974	Portugal	Colonial
SIERRA LEONE	1961	Great Britain	Colonial
LIBERIA	1820s	Independent before WWII	Independent before WWII
TOGO	1960	France	Colonial
EQUATORIAL GUINEA	1968	France	Colonial
CAMEROON	1960	France	Colonial
GABON	1960	France	Colonial
CENTRAL AFRICAN REPUBLIC	1960	France	Colonial
CONGO (ZAIRE)	1960	Belgium	Colonial
RWANDA	1962	Belgium	Colonial
UGANDA	1962	Great Britain	Colonial
KENYA	1963	Great Britain	Colonial
SUDAN	1956	Great Britain	Colonial
ETHIOPIA	1941	Great Britain	Colonial
DHIBOUTI	1977	France	Colonial
SOMALIA	1960	Great Britain	Colonial
ANGOLA	1975	Portugal	Colonial
ZAMBIA	1964	Great Britain	Colonial
MALAWI	1964	Great Britain	Colonial
TANZANIA	1964	Great Britain	Colonial
BURUNDI	1962	Belgium	Colonial
MOZAMBIQUE	1975	Portugal	Colonial
NAMIBIA	1990	From South Africa	Colonial
BOTSWANA	1966	Great Britain	Colonial
ZIMBABWE	1980	Great Britain	Colonial
MALAGASY REPUBLIC	1960	France	Colonial
SWAZILAND	1968	Portugal	Colonial
LESOTHO	1966	Portugal	Colonial
SOUTH AFRICA (Republic)	1961	Independent before WWII	Independent before WWII

Introduction



- One of the biggest concerns for many Constitutional designers in Africa, like in many parts of the world, is the management of differences.
- These differences are race, sex, ethnic or social origin, religion, class, marital status, health status, colour, age, disability, culture, dress, language, birth, or gender.
- Most political instability and civil unrest in Africa is dominated by one category of difference: **“the ethnic.”**

The Theoretic Framework

Weber focused on the “monopoly” of legitimate use of violence to define statehood.



Ali Mazrui focused on his Triple Heritage theory: encompassing the indigenous, the Islamic, and Euro-Christian to address statehood questions in Africa.

To understand and analyze Africa’s political situations and its various constitutional designs, you either choose Max Weber or Ali Mazrui.

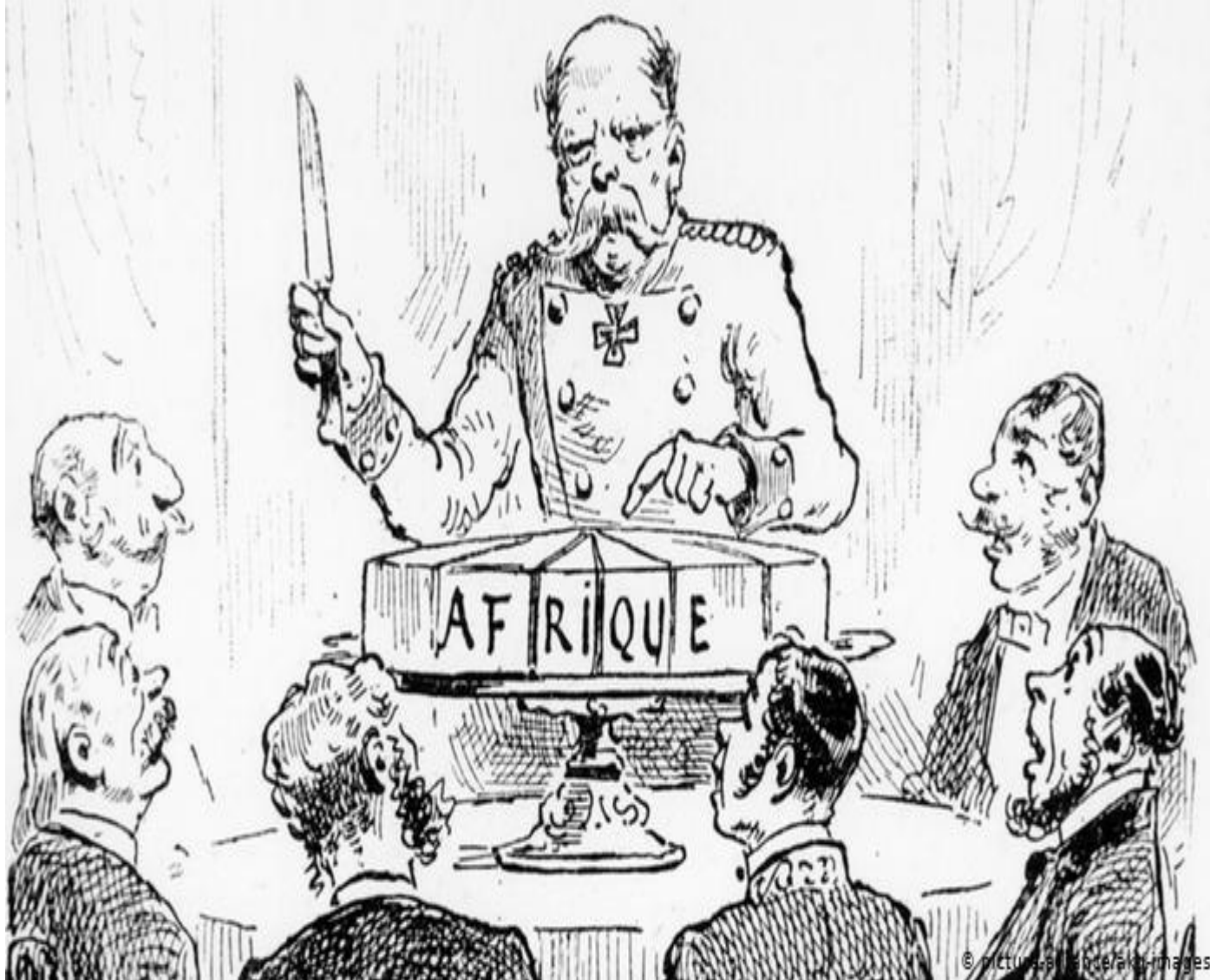
I choose Mazrui



Causes and Outcomes of Ethnic malignancy in Africa

1. Imperialism and the killing of African Nationalities.
2. “Negative” Ethnicisation as a tool of imperial rule.
3. The forced imposition of Eurocentric Westphalian Statehood in Africa.
4. The effects of malignant ethnicity on State formation in Africa.
5. The effects of malignant ethnicity on “Autonomy Claims in Africa.”

Imperialism and the killing of African Nationalities.



- European Imperialism through colonialism and neo-colonialism in Africa has many tragic consequences.
- Nativization caused the tribalization of African historiography. This is wherefrom African nations are called tribes while European nations are nations properly called.
- “Deploying notions of “ethnicity” and “tribe” is a tactic to corral Africans into primordial nomenclatures, thereby avoiding a recognition of their pre-colonial formations as nations.”
Kalundi Serumanga.

Why are 34 million Oromo in Ethiopia an ‘ethnicity’, and 5.77 million Danes a ‘nation’?

- African communities deserve the name nations like other communities outside of the third world.
- It should be a problem that only communities in the global south are described as “tribes” or “ethnicities.”
- African communities must be recognized and self-identify as nations.
- Thus, the Kikuyu of Kenya, the Igbo of Nigeria, the Dinka of Southern-Sudan, the Oromo of Ethiopia, the Somali of Kenya and Somalia are all nations.

The Dangers of Multi-National Self-Identification

- Are you proposing as many countries as there are nations in Africa?
- Are you proposing a coinciding of nations with sovereign territory?
- Some answers
- The Somalia example.
- The secessions-based examples: the Igbo of Nigeria; Oromo of Ethiopia.
- Self-determination through autonomy: National (ethnic) Federalism, decentralization, devolution.

“Negative” Ethnicisation as a tool of imperial rule.



- The Ethnic categorization created for imperial expediency is then inherited in the post-colonial Africa and used as a tool to create political gain. This is done through rigorous ethnic mobilization and ethnic-nationalization.
- This is the second source of negative ethnicity. The quest of seeking thy political kingdom and all these things will be added unto you leads us to negative ethnicization. But imperialism had already created fertile ground for this occurrence.
- Majimboism in Kenya broke down mainly because of this rhetoric of negative ethnicization.
- Moi partly maintained a centralized and imperial Presidency using the same rhetoric.

The forced imposition of Eurocentric Westphalian Statehood in Africa.

Summer 1995]

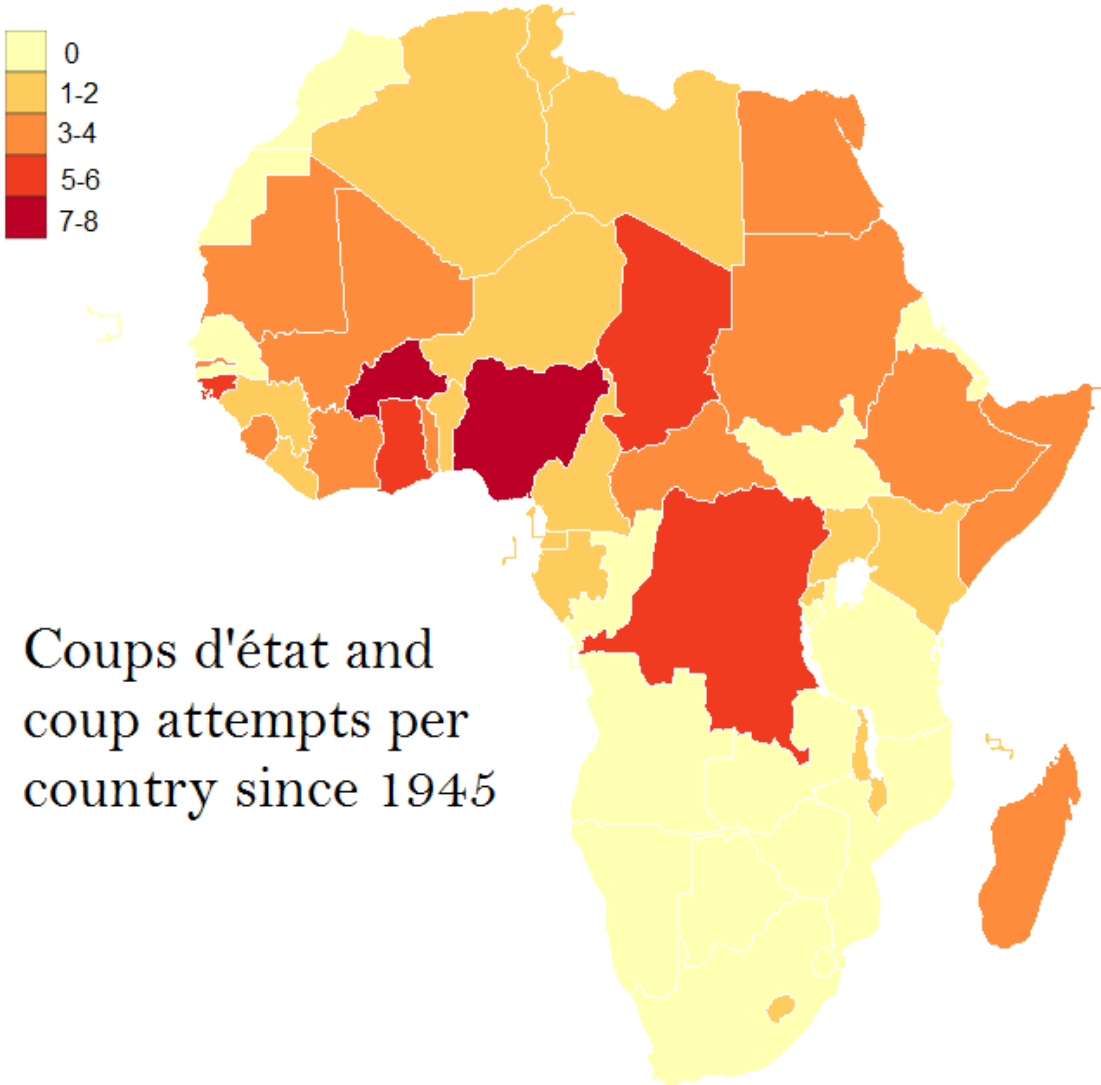
Why Redraw the Map of Africa

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- Makau Mutua, ‘Why Redraw the Map of Africa: A Moral and Legal Inquiry.’
- The redrawing here might mean more integration than federalism.
- Each nation having its own State might not necessary be the answer. The example of S. Sudan has shown.
- The compromise here seems to be more autonomy for nations in Africa.
- This might in fact mean that strong “ethnic”-federalism should be supported in Africa. Kenya’s quasi ethnic-federalism.

The Effects of Imperialism/Eurocentrism on State formation in Africa.



- Coups d'états
- Secession Claims in Africa.
- Post-colonial civil unrest and conflicts.
- Lose of cultural identity (language & legal systems).
- Terrorism: Salafi Jihadism

Devolution can:

- Avert the possibility of violent coup d'états: Why didn't this work in Nigeria?
- Lessen the clamour for secession.

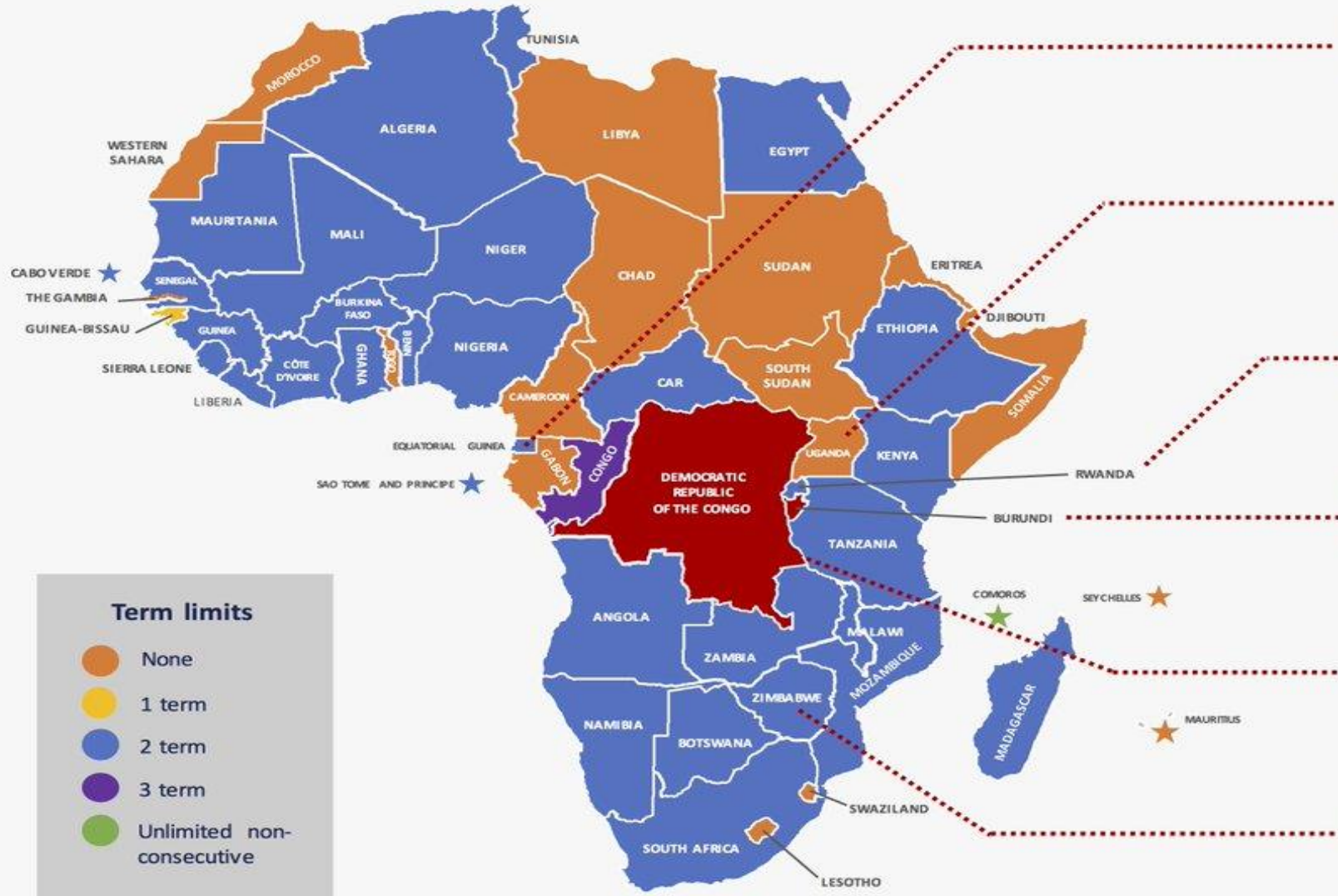
The effects of malignant ethnicity on “Autonomy Claims in Africa.”

- Post-colonial armed conflicts
- The rise and rise of the imperial presidentialism in Africa.
- Authoritarianism and dictatorships.
- Term limits extensions: Life presidents
- Sham electioneering

Devolution can:

- Reduce the focus on president as source of executive power.
- Local legitimate force: “polyopoly of legitimate use of force.”
- While devolution/federalism cannot deal with terms extensions, it reduces focus on executive presidential power.

Democracy under threat: Presidential term-limit extensions



2011 referendum allows Obiang to extend his 37-year rule to 2019



Museveni bidding to extend his 30-year rule by abolishing presidential age limit



2015 referendum allows Kagame to extend his 16-year rule to 2025



Nkurunziza ran for a 3rd term despite two-term limit



Violence threatens elections; Kabila may not step down after his two terms end in Dec.



Constitutional review allows Mugabe to extend his 36-year rule to 2023

- **Thank you!**
- **Any Questions?**
- **Any Comments?**