

Bonaya Adhi Godana: A legacy of leadership, scholarship and diplomacy

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Abstract

This article delves into the life, career, and enduring impact of Bonaya Adhi Godana, a prominent Kenyan legal luminary, scholar, politician and diplomat. This article chronicles Dr Godana's contributions to scholarship, leadership and diplomacy together with his rise from humble beginnings to becoming a key figure in Kenya's political landscape and Africa's international law. As a critical thinker and insightful policymaker, Dr Godana's ideas and perspectives shaped discussions on foreign policy, constitutional matters, and the role of the executive. The article also examines the tragic circumstances of his untimely death in a plane crash, reflecting on the profound loss felt by the nation. Through his legacy of service, Dr Godana continues to inspire discussions on effective governance, citizen participation, and the complex interplay between leadership and foreign affairs.

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Introduction

In the history of African scholars of international law is an unsung figure whose life's work and profound contributions have unjustly remained in the shadows, obscured by the relentless passage of time. Bonaya Adhi Godana, a distinguished legal luminary, stands as a testament to the often-overlooked brilliance that lies within the annals of Kenyan history. His remarkable life, exceptional scholarship, and enduring legacy deserve to be brought to the forefront, for he is a man whose unwavering dedication to the rule of law, the pursuit of peace, and the advancement of international legal thought has left an indelible mark not only in Kenya and Africa but also the entire world.

Bonaya Adhi Godana is an understated icon of Kenyan excellence in international legal scholarship and practice. Among the first graduates from the then newly established Faculty of Law at the University of Nairobi, he earned his Bachelor of Laws in 1973, becoming the first to earn first class honours. He completed his Master of Laws in 1976, also from the University of Nairobi. In 1984, he graduated from the Graduate Institute of International Studies in Geneva with a PhD in law, having studied Africa's international river systems.

In 1985, he published *Africa's shared water resources: Legal and institutional aspects of the Nile, Niger and Senegal river systems*. An avid Africanist international law thinker, Dr Godana was one of the founding members of the African Association of International Law (AAIL), and its first Deputy-Secretary-General and Treasurer, in 1986. He taught international law at the University of Nairobi in the late 1970s and throughout the 1980s and served from 1986 to 1988 as the Chairman of the Public Law Department in the Faculty of Law. His PhD research in fresh water international law was not only ahead of his time, but is still so today.

Dr Godana was deeply committed to serving his country, having been an integral part of the momentous lawmaking events of the 1990s and 2000s that have shaped contemporary Kenya. He was as a member of the Parliamentary Select Committee on Constitutional Review. From

2002 to his death in 2006 he was the deputy leader of the opposition Kenya African National Union (KANU) party. He was the Member of Parliament for North Horr Constituency (1988-2006). He died on 10 April 2006 in a Kenya Air Force plane crash. 13 other people were also killed in the crash while three survived. He was Kenya's foreign minister January 1998 until 2001.

Undoubtedly, Dr Godana remains today a great symbol of cutting edge legal scholarship and commitment to civic duty.

Early life

Bonaya Godana was born into modest beginnings in the arid expanses of Dukana on 2 September 1952, in Marsabit District (now Marsabit County) along the Kenya-Ethiopia border. He grew up as an ordinary child of a nomadic family. Herding camels was the main occupation of the Gabra community in the environs of the Chalbi Desert. At the time, his Gabra community was barely known beyond the then Marsabit District. As a herdsboy, he experienced first-hand, the challenges faced by marginalised communities and the pressing need for social change.

Education

As part of what was referred to as the Northern Frontier District during the British colonial days and in the immediate post-independent Kenya, Marsabit – especially far-flung areas like Dukana – was so remote that inhabitants did not consider themselves Kenyans. Moreover, the area was afflicted by commonplace banditry and cattle rustling. In Dukana, which is more than 600 km away from Nairobi, there were no learning institutions in the 1960s when Dr Godana was starting school.¹

¹ Kenya Yearbook Editorial Board 'Dr Bonaya Adhi Godana – A rare gem from Marsabit' Moi cabinets, *Kenya Yearbook*, 1 May 2022.

The nearest primary school was at the North Horr trading centre, a distance of about 70 km from his home. Catholic missionaries worked jointly with chiefs and community elders to help mobilise young children, mainly boys, to go to school. Gabra elders picked young Bonaya to join the school. His sterling academic achievement remains a model for students from the region. He placed Marsabit Boys High School on the national academic map after he scored a six-point distinction in his O' levels. He proceeded to Meru School for his A' levels where he scored three straight As, qualifying for admission at the University of Nairobi Faculty of Law.

At the University of Nairobi, Godana's brilliance earned him a first-class honours degree in law in 1976. Godana worked briefly at the University of Nairobi as a tutorial fellow in the Faculty of Law. The university then sponsored him to do a master's degree in law at the University of London, after which he returned to the University of Nairobi to teach for a while, before pursuing postgraduate studies at the Graduate Institute of International Studies of the University of Geneva between 1980 and 1984.² There, he immersed himself in international law. Upon his return to Kenya, he served as the Chairman of the Public Law Department in the Faculty of Law.³

Scholarly work and international law: African international law built on positive cooperation rather than negative coexistence

Dr Godana was a highly respected scholar and researcher.⁴ This is evident in his book, *Africa's shared water resources: Legal and institutional aspects of the Nile, Niger and Senegal river systems*, published in 1985. The

² Internet Archive Wayback Machine, 'Members of Parliament: Profile' 15 May 2006, [www. Parliament.go.ke](http://www.Parliament.go.ke), 28 July 2023.

³ Abdulqawi Yusuf, Zidane Meriboute and Mpanzi Sinjela, 'Tribute to the memory of Dr Bonaya Adhi Godana (1952-2006) & Dr Andronico Oduogo Adede (1936-2006)' 13(1) *African Yearbook of International Law Online / Annuaire Africain de droit international Online*, 2005, 1-7.

⁴ Yusuf, Meriboute and Sinjela 'Tribute to the memory of Dr Bonaya Adhi Godana (1952-2006) & Dr Andronico Oduogo Adede (1936-2006)' 1-7.

book is a study of the legal and institutional management of Africa's fresh water sources with a focus on the three major rivers; the Nile, Niger and Senegal. These rivers have an advanced legal and institutional framework of cooperation, which outlines the major problems in the field of the legal and institutional water resources in Africa.⁵

Dr Godana's starting point was the affirmation that Africa's shared water resources are not static or stagnant bodies but dynamic ones. Tijan Salah noted that Dr Godana's view of this dynamism meant that these shared water resources create both positive and negative spill-over effects among states in the form of, for example, floods and pollution, especially pronounced in lower basin states.⁶ Salah notes that such effects generate tensions and disputes, which can lead to conflict among states, thus, accentuating need for cooperation and conflict resolution effective mechanisms.⁷

Dr Godana believed deeply in harmonious international relations and worked as a scholar and practitioner to advance these ideas. In *Africa's shared water resources*, he argued for an 'appropriate kind of public international law [as] one of cooperation involving positive obligations, in place of the classical international law of coexistence which [rests] on a set of prohibitions. Cooperation ... brings into operation the 'principle of equitable utilisation'.⁸ Considering he expressed these views in 1985, and in light of contemporary challenges on sharing of resources among African states, his thought was clearly prescient.

In *Africa's shared water resources*, Dr Godana advocated an African approach to international water law. He highlighted that colonial rule imposed legal regimes without sensitivity to local African legal regimes and usages and the political susceptibilities of independent sovereign

⁵ Gamal Badir, 'Africa's shared water resources: Legal and institutional aspects of the Nile, Niger, and Senegal river systems by Bonaya Godana', *American Journal of International Law*, 1986, 17.

⁶ Tijan Salah, 'Africa's shared water resources: Legal and institutional aspects of the Nile, Niger and Senegal river systems by Bonaya Adhi Godana Review', 24(1) *Canadian Journal of African Studies*, 1990.

⁷ Salah, 'Africa's shared water resources - Review'.

⁸ Badir, 'Africa's shared water resources - Review', 17.

states. The resulting regimes were, therefore, largely, and in one case, that of the Senegal river system, entirely of an inter-territorial nature.⁹ This book was a timely piece addressing the steadily growing pressure on existing water resources. This issue was so dire that the nomads of Sahel had to relocate continuously as the Sahara Desert was gradually eating away more and more pastures each year.¹⁰

Dr Godana highlights that Africa is running out of fresh water and that every effort must be made to not only conserve available supplies but to utilise them to the greatest advantage for their dependants.¹¹ However, the solution of sharing rather than competing has yet to be recognised by the competitive nature of self-serving nation states, and 'the legal principles and rules governing such cooperation and its institutional implementation have yet to be sufficiently developed and established in general international law'.¹²

In 1986, he participated in the Inaugural Conference of the African Association of International Law in Lusaka and was one of the founding members of the Association. He was then elected Deputy Secretary-General and Treasurer of the Association. In this capacity, he provided a lot of encouragement and support to the work on the *African Yearbook of International Law* and followed with great interest its continuous publication and development.

In 1999, Dr Godana also co-authored with Patrick W Wargute and Arid Lands and Resource Management Network in Eastern Africa, *The impact of insecurity on resource use and the environment in northern Kenya: A case of Marsabit District*.¹³

⁹ Frederick Parkinson, 'Africa's shared water resources: Legal and institutional aspects of the Nile, Niger and Senegal river systems by Bonaya Adhi Godana - Review', 59(3) *Africa: Journal of the International African Institute*, 1989.

¹⁰ Parkinson, 'Africa's shared water resources - Review'.

¹¹ Badir, 'Africa's shared water resources - Review', 1986, 7.

¹² Bonaya Godana, *Africa's shared water resources: Legal and institutional aspects of the Nile, Niger, and Senegal river systems*, Frances Pinter, 1985, 7.

¹³ Centre for Basic Research, Kampala, 1999.

Political journey and diplomacy

Bonaya Godana's political journey was one marked by distinction, dedication, and service. In 1988, Dr Godana was elected to Parliament to represent the newly-created North Horr Constituency, which was carved out of Marsabit North during a review of constituency boundaries in 1986.¹⁴ During this time, Dr Godana showcased his brilliance and acumen. President Moi appointed him as an assistant minister in various ministries. He worked in Health, the Office of the President and later, Foreign Affairs.¹⁵ His astute leadership qualities and commitment to public service quickly gained recognition, propelling him to the distinguished position of Deputy Speaker, a role he skilfully held until 1997.

Following his remarkable tenure as Deputy Speaker, Godana's acumen in diplomacy and international affairs caught the attention of the government, leading to his appointment as Assistant Minister of Foreign Affairs in 1997. In this role, he represented Kenya on the global stage, fostering diplomatic relations and contributing to regional and international cooperation.

In January 1998, Dr Godana was appointed as Kenya's Foreign Minister. Dr Godana was the first person from Marsabit since independence to be appointed a Cabinet Minister, and especially to the important role of Foreign Affairs Minister. His appointment coincided with a need for Kenya and Ethiopia to repair their deteriorating relations. The presence of members of the Oromo Liberation Front (OLF) in Kenyan territory was a point of particular concern for Ethiopia, but for Kenya, the transborder communities – both the Gabra and Borana communities who occupy Moyale and other parts of Marsabit are Oromo speakers. They share names and have even intermarried over the years. In some ways, the situation of transboundary communities and transboundary water resources were similar: neighbour states needed to adopt a position of cooperation rather than competition to maintain prosperous

¹⁴ 'Moi cabinets: The Nyayo era' *Kenya Yearbook*, 2022, 90.

¹⁵ 'Dr Bonaya Godana – A rare gem from Marsabit' *Kenya Yearbook*.

relations. And none was better placed to advance such foreign policy as Dr Godana.¹⁶ Later, in 2001, Dr Godana assumed the crucial role of Minister for Agriculture, taking on the immense responsibility of overseeing a vital sector in Kenya's economy.

Throughout his political career, Dr Godana remained steadfast in his commitment to the Kenya African National Union (KANU) party. From 2002 until his untimely passing in April 2006, he held the significant position of Deputy Leader of the opposition KANU party. As Deputy Leader, he played a pivotal role in shaping the party's vision and strategies.

Dr Godana played a vital role in the activities of the Inter-Parliamentary Union, particularly with respect to the protection of human rights in Africa, and in the then Organisation of African Unity, whereas as Foreign Minister of Kenya, he actively campaigned for an active role of the organisation in the settlement of internal conflicts such as those in neighbouring Sudan and Somalia, and significantly contributed to the ongoing efforts to craft a new constitution for Kenya.

As a senior Marsabit politician, Dr Godana was revered by many, especially in North Horr Constituency. One of his notable achievements was the establishment of a local non-government organisation – Pastoralist Integrated Support Programme – which today is a lifeline to thousands of nomadic communities in Marsabit. This support programme remains functional and has transformed the livelihoods of people in the community through development projects like digging boreholes and building water reserves to curb the water scarcity situation. The programme also provides bursaries and scholarships to students pursuing secondary and tertiary education. This can be attributed to the hardship Dr Godana's faced as a regular herdsboy in a marginalised Gabra community.¹⁷

¹⁶ 'Dr Bonaya – A rare gem from Marsabit' *Kenya Yearbook*.

¹⁷ 'Moi cabinets: The Nyayo era,' *Kenya Yearbook* 92.

Constitution making and the democratisation of foreign policy

Dr Godana possessed an exceptional acumen for generating profound and innovative ideas that often shed new light on complex matters. This was depicted when Dr Godana chaired the plenary proceedings of the Bomas Constitution of Kenya draft. He engaged in a thoughtful exploration of the concept of the constitutionalisation of foreign policy and diplomacy in an address to the Constitution of Kenya Review Commission (CKRC) titled, 'Constitutionalisation of foreign policy and diplomatic relations'.¹⁸

Dr Godana laid out the current constitutional landscape in Kenya, asserting that foreign affairs are the prerogative of the president, who holds the power to negotiate treaties and other international relations. He emphasised that the role of the Minister for Foreign Affairs, while significant, is subservient to the President's authority in this sphere.

He explained his view thus:

'... Government is free to negotiate treaty and other relations with foreign nations, subject only to the rule of incorporation into domestic law, where such incorporation is necessary. Save in such cases of incorporation into domestic law, there are wide and important areas in foreign affairs where the Government is free of legal, as opposed to political controls. These include the declaration of war, the dispatch of armed forces, the annexation of territory, the conclusion of treaties, the accrediting and reception of diplomats and the recognition of new states and revolutionary governments. All such acts sometimes called "acts of state" fall within the scope of the prerogative to conduct foreign affairs and are assertions of state sovereignty in international relations.'¹⁹

The crux of Godana's discourse centred on the crucial question of how foreign policy should be constitutionally regulated. He framed the discussion by acknowledging the extent to which the constitution should regulate the conduct of foreign affairs and diplomacy. Godana

¹⁸ Bonaya Adhi Godana 'Constitutionalisation of foreign policy and diplomatic relations' Address to the Constitution of Kenya Review Commission (CKRC) on 13 November 2001, Available on Commonwealth Legal Information, CommonLii, <http://www.commonlii.org/ke/other/KECKRC/2001/11.html> on 24 November 2023.

¹⁹ Godana, 'Constitutionalisation of foreign policy and diplomatic relations'.

emphasised that in the context of the constitutional review, while foreign policy was traditionally the prerogative of the executive, and more so, the president, because foreign policy is public policy, he urged the CKRC to contemplate a role for parliament, and *the citizen*. He insisted that any democratisation of foreign policy would require an assessment of the competences of the various institutions. He offered the following questions to guide the assessment:

The issue of the constitutionalisation of foreign policy and diplomacy, which I have interpreted to mean the need for or otherwise for express constitutional regulation of the field leads to the following questions.

* What should be the role of the Executive over the conduct of foreign affairs? For example, should the executive have an exclusive authority over the conduct of foreign affairs or should it have some limited role? If so what should be the extent of such limitation?

* What role should Parliament, however conceived, have in the formulation of foreign policy? Should for instance major decisions such as the declaration of war or conclusion of peace, the conclusion of treaties and appointment of ambassadors be subjected to Parliamentary ratification, vetting or some form of censor, as the case may be?

* What role should the citizen be assigned to influence the conduct of foreign affairs?

...

What is needed is a constitutional structure where competence, confidence and power are properly assigned in the constitution to facilitate effective foreign policy.²⁰

Dr Godana admitted his conservative view on the constitutionalisation of foreign policy. Contending that the citizenry and Parliament are ill-equipped to navigate the complexities of foreign policy, he advocated a preeminent role of the Executive in the formulation and execution of foreign policy decisions. He emphasised that the swift and flexible nature of international politics necessitates prompt and informed actions, qualities that are best realised through an empowered Executive.

²⁰ Godana, 'Constitutionalisation of foreign policy and diplomatic relations'.

Dr Godana eloquently reasoned that while democratic governance entails citizen participation, foreign affairs are often too intricate and remote for average citizens to make informed decisions. He argued that even Parliament, despite its importance, is beset by issues of time constraints, public display of disunity, and a lack of executive-oriented expertise. In advocating a strong executive role, Dr Godana highlighted that international politics operates differently from domestic affairs, and the executive's competence and confidentiality are crucial.²¹

Death

The sudden and tragic death of Bonaya Godana occurred in a plane crash on 27 April 2006 at Marsabit Airstrip where he was, along with other senior politicians, on their way to a peace making mission. Abdulqawi Yusuf, co-founding member of the AAIL, later to be President of the International Court of Justice eulogised Dr Godana thus:

Dr Godana's death in the course of a peace mission symbolises his life which was devoted to peace and development in his native Kenya, to the betterment of the welfare of his people, to the advancement of the rule of law in Africa in general, and to the teaching and dissemination of international law.²²

His death was a profound loss to Kenya and its political landscape. As a seasoned politician and diplomat, Dr Godana had been an influential figure, contributing his insights and expertise to the nation's affairs. His untimely passing, alongside other officials, cast a shadow of sorrow and disbelief across the country. Dr Godana's legacy of service and his contributions to the fields of politics and diplomacy continue to be remembered, reminding us of the fragility of life and the impact of dedicated individuals on the course of a nation's history.

²¹ Godana, 'Constitutionalisation of foreign policy and diplomatic relations'.

²² Yusuf, Meriboute and Sinjela 'Tribute to the memory of Dr Bonaya Adhi Godana (1952-2006) & Dr Andronico Oduogo Adede (1936-2006)' 1-7.

Conclusion

Despite the untimely end to Bonaya Godana's life, his legacy lives on through his works, teachings, and the impact he had on countless lives. From academia to politics, he continuously championed human rights, promoted the rule of law, and advocated peace, leaving an enduring mark on Kenya, Africa, and the global legal community. His Pastoralist Integrated Support Programme and his writings are the few of his many achievements that live on.