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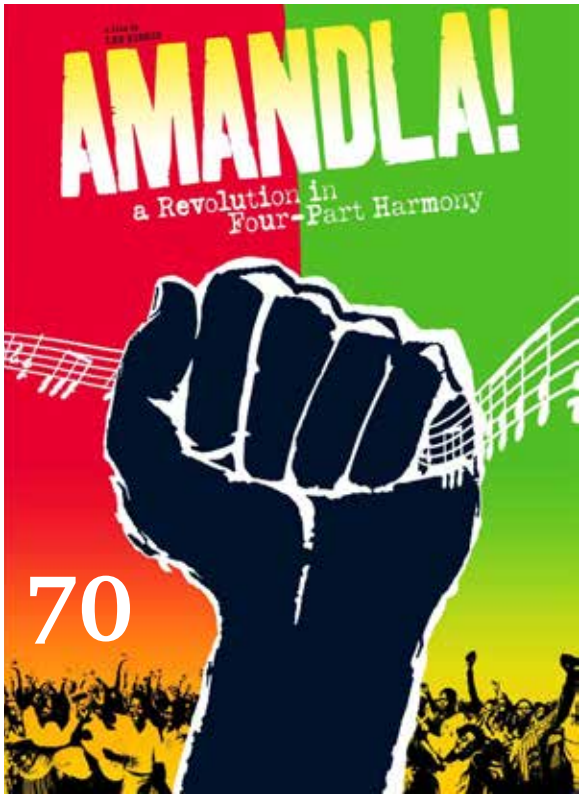

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EDITORIAL

The Imperative of a Peaceful Resolution to the Rwanda-DR Congo Conflict

Militiamen from the Patriotic Front for Peace/People's Army, one of the largest armed groups fighting M23 in North Kivu, at their headquarters in Mbwavinwa, Lubero territory, in eastern DRC Alexis Huguet/AFP

The protracted conflict between Rwanda and the Democratic Republic of Congo (DRC) is one of the most complex and devastating disputes in modern African history. Rooted in colonial legacies, ethnic tensions, and the scramble for resources, this conflict has claimed millions of lives, displaced countless others, and destabilized the Great Lakes region for decades. Despite numerous attempts at mediation and peacebuilding, the situation remains volatile, with sporadic outbreaks of violence and mutual accusations between the two nations. The need for a peaceful resolution to this conflict is not just a regional necessity but a global imperative. A pacific resolution of disputes, as enshrined in international law and the principles of the United Nations, must be pursued with urgency and determination.

Historical Context and the Roots of the Conflict

To understand the gravity of the Rwanda-DRC conflict, one must delve into its historical roots. The seeds of discord were sown during the colonial era when

Displaced people in Goma, eastern Democratic Republic of Congo, on Feb. 16. Guerchom Ndebo/AFP/Getty Images

European powers arbitrarily drew borders, grouping together ethnic communities with little regard for their historical relationships. The Tutsi and Hutu ethnic groups, central to the conflict, were politicized and pitted against each other by colonial administrators, creating a legacy of division that persists to this day.

The 1994 Rwandan genocide, in which an estimated 800,000 Tutsis and moderate Hutus were killed, marked a turning point. The genocide's aftermath saw the exodus of millions of Rwandans, including Hutu extremists responsible for the killings, into eastern DRC. This influx destabilized the region, leading to the formation of armed groups and the eruption of the First and Second Congo Wars (1996-1997 and 1998-2003), often referred to as "Africa's World Wars" due to the involvement of multiple nations and the staggering death toll, estimated at over five million.

Despite the formal end of the wars, eastern DRC remains a hotbed of violence, with numerous armed groups, including the Democratic Forces for the Liberation of Rwanda (FDLR), operating in the region. Rwanda has repeatedly accused the DRC of harboring and supporting these groups, which it views as a threat to its security. Conversely, the DRC accuses Rwanda of backing rebel factions, such as the M23 movement, to exploit its vast mineral resources. This cycle of mistrust and retaliation has perpetuated the conflict, making a peaceful resolution all the more elusive.

The Human Cost of the Conflict

The battle between Rwanda and the Democratic Republic of the Congo has had an enormous human cost. Millions of people have died as a direct result of violence, and millions more have died from diseases and starvation aggravated by the conflict. Eastern DRC, in particular, has devolved into a humanitarian catastrophe, with widespread displacement, sexual abuse, and the recruitment of child soldiers. The

conflict has also hampered development, destroying infrastructure and causing millions of people to live in poverty. Millions of people have been displaced, and many have died. Eastern Congo, which is rich in minerals like coltan and cobalt, is one of the world's most resource-rich but destitute regions. The continuous conflict undermines livelihoods, stifles growth, and exacerbates poverty. Rwanda's war diverts resources from national development to military spending, impeding economic progress.

The psychological scars run deep, with generations growing up in an environment of fear and violence. The displacement of communities has fractured social structures, making reconciliation and rebuilding even more challenging. For Rwanda, the genocide remains a defining trauma, shaping its national identity and foreign policy. The DRC, on the other hand, grapples with the legacy of colonialism, dictatorship, and external interference, which have left it ill-equipped to address internal divisions and external threats.

The Role of Natural Resources

The exploitation of natural resources has been both a driver and a sustainer of the conflict. Eastern DRC is rich in minerals such as coltan, gold, and cobalt, which are essential for modern technology. Control over these resources has fueled the ambitions of armed groups and external actors, creating a vicious cycle of violence and exploitation. The illicit trade in minerals has also enriched corrupt elites while depriving local communities of the benefits of their natural wealth.

Efforts to regulate the mineral trade, such as the Kimberley Process and the Dodd-Frank Act in the United States, have had limited success. The complexity of supply chains and the involvement of powerful actors make it difficult to enforce accountability. A lasting peace will require not only addressing the immediate causes of violence but also tackling the structural issues that perpetuate inequality and exploitation.

The Failure of Previous Peace Efforts

Numerous attempts have been made to resolve the Rwanda-DRC conflict, but none have succeeded in achieving lasting peace. The Lusaka Ceasefire Agreement of 1999, the Sun City Agreement of 2002, and the Nairobi Declarations of 2007 and 2013 were all significant milestones, but they failed to address the underlying causes of the conflict. The presence of United Nations peacekeeping missions, such as MONUSCO, has provided some stability but has not been able to prevent recurring violence.

One of the key challenges has been the lack of trust between the parties. Rwanda and the DRC have repeatedly accused each other of bad faith, undermining efforts at dialogue and cooperation. External actors, including neighboring countries and international organizations, have often been perceived as biased, further complicating the peace process. The absence of a comprehensive and inclusive approach has also been a major obstacle, as local communities and civil society have often been excluded from negotiations.

Impact on the East African Community

The East African Community (EAC), comprising Burundi, Kenya, Rwanda, South Sudan, Tanzania, Uganda, and the Democratic Republic of the Congo (DRC), was established to foster regional peace, security, and economic integration. However, the ongoing conflict between Rwanda and the DRC poses significant challenges to these objectives, undermining the bloc's efforts in multiple ways.

One of the most pressing concerns is the threat to economic integration. The instability disrupts trade routes and cross-border commerce, particularly in the Great Lakes region, hindering the realization

of a common market and customs union. The uncertainty discourages investment, as businesses and investors are reluctant to commit resources to a region marked by persistent conflict, ultimately slowing economic growth.

Politically, the conflict deepens mistrust among EAC member states, making it increasingly difficult to reach consensus on key regional matters. This division weakens the bloc's capacity to mediate disputes and implement collective solutions, further straining diplomatic relations within the community.

Security is also a growing concern, as the spillover effects of the conflict—such as the proliferation of armed groups and the displacement of refugees—threaten the stability of neighboring countries. This situation forces member states to focus on national security priorities rather than advancing regional cooperation, thereby undermining the EAC's broader security framework.

Additionally, the prolonged crisis damages the EAC's reputation as a model for regional stability and integration in Africa. The inability to effectively address the conflict raises doubts about the bloc's capacity to resolve internal disputes and fulfill its ambitions for unity and progress. As the situation persists, it becomes increasingly clear that lasting peace and cooperation are essential for the EAC to achieve its full potential.

The Path to Peace: Principles and Strategies

A peaceful resolution to the Rwanda-DRC conflict requires a multifaceted approach that addresses the root causes of the conflict and builds a foundation for lasting peace. The following principles and strategies should guide this effort:

Dialogue and Diplomacy: The first step towards peace is the resumption of dialogue between Rwanda and the DRC. This dialogue must be inclusive, involving not only the governments but also civil society, local communities, and armed groups. The African Union (AU) and the United Nations (UN) should play a facilitative role, ensuring that the process is transparent and impartial.

Addressing Security Concerns: Both Rwanda and the DRC have legitimate security concerns that must be addressed. This requires the disarmament, demobilization, and reintegration (DDR) of armed groups, as well as the establishment of a joint security mechanism to monitor the border and prevent cross-border incursions.

Justice and Reconciliation: The legacy of violence and impunity must be addressed through a combination of justice and reconciliation. This could include the establishment of a truth and reconciliation commission, as well as the prosecution of those responsible for war crimes and crimes against humanity. The International Criminal Court (ICC) and regional courts should play a role in ensuring accountability.

Economic Development and Resource Management: The exploitation of natural resources must be regulated to ensure that they benefit local communities and contribute to sustainable development. This requires the establishment of transparent and accountable mechanisms for resource management, as well as investment in infrastructure, education, and healthcare.

Regional Cooperation: The Great Lakes region is interconnected, and the conflict in one country inevitably affects its neighbors. Regional organizations such as the East African Community (EAC) and the International Conference on the Great Lakes Region (ICGLR) should play a proactive role in promoting peace and cooperation. This includes the establishment of a regional framework for conflict prevention and resolution.

The UN Security Council has played a significant role in maintaining peace and stabilizing the DRC through its peacekeeping missions, diplomatic efforts, and sanctions. However, achieving lasting peace in the DRC requires more than just military intervention; it requires addressing complex political, social, and economic factors that contribute to the conflict.

International Support: The international community has a responsibility to support peace efforts in the region. This includes providing financial and technical assistance, as well as exerting diplomatic pressure on the parties to adhere to their commitments. The UN Security Council should consider imposing targeted sanctions on those who undermine peace efforts.

The Role of Civil Society and Local Communities

Civil society and local communities are often the most affected by conflict but are also the most resilient. Their involvement in peacebuilding is crucial, as they bring local knowledge and legitimacy to the process. Grassroots initiatives, such as community dialogues and peace education programs, can help bridge divides and build trust. Women and youth, in particular, should be empowered to play a leading role in peace efforts, as they are often the most marginalized but also the most invested in a peaceful future.

Conclusion: A Call for Urgent Action

The Rwanda-DRC conflict is a stark reminder of the devastating consequences of unresolved disputes. It is also a testament to the resilience of the human spirit and the possibility of peace, even in the most challenging circumstances. A peaceful resolution to this conflict is not just a moral imperative but a practical necessity for the stability and development of the Great Lakes region and beyond.

The principles of pacific resolution of disputes, as enshrined in the UN Charter, must guide our efforts. This requires a commitment to dialogue, justice, and cooperation, as well as the courage to address the root causes of the conflict. The international community, regional organizations, and local actors must work together to build a future where peace and prosperity are not just aspirations but realities.

The time for action is now. The people of Rwanda and the DRC have suffered for too long. They deserve a future free from fear and violence, where they can live with dignity and hope. Let us not fail them. Let us work tirelessly for a peaceful resolution to this conflict, for the sake of humanity and the future of our shared world.

Electing the African Union Chairperson and Deputies: Process, Challenges, and Implications

By By Evans Ogada

Introduction

The African Union (AU) plays a pivotal role in shaping the political, economic, and social landscape of the continent. At the heart of its leadership structure is the election of the Chairperson and Deputy Chairpersons of the AU Commission—key figures responsible for driving the Union's agenda and ensuring the effective implementation of its policies. However, the process through which these leaders are elected, the eligibility criteria they must meet, and the voting mechanisms employed are critical factors that influence the AU's governance and decision-making efficiency.

The African Union (AU) is a continental body comprising 55 African member states, established to promote unity, economic development, and political stability across Africa. The election of the AU Chairperson and Deputy Chairpersons is a crucial process that determines the leadership and direction of the organization. The Chairperson, supported by Deputies, plays a pivotal role in coordinating AU activities, representing Africa on the global stage, and driving key policy initiatives. This article explores the election process, its legal and procedural framework, and its implications for governance and continental unity.

This paper delves into the intricate dynamics of electing the AU Chairperson and Deputies, exploring the qualifications required for candidates, the procedures guiding their selection, and the political considerations that shape the electoral process. Furthermore, it examines how these leadership choices impact continental governance, affecting policy formulation, regional integration efforts, and Africa's collective voice on the global stage. By analyzing these elements, we gain deeper insight into the strengths and challenges of the AU's leadership framework and its broader implications for the continent's future.

Legal and Institutional Framework

The election of the AU Chairperson and Deputies is governed by the AU Constitutive Act, the Rules of Procedure of the AU Assembly, and the Statutes of the Commission. The key organs involved in the election process include the Assembly of Heads of State and Government, the Executive Council, and the Permanent Representatives Committee (PRC).

a. **The Assembly of Heads of State and Government**
   The Assembly is the supreme decision-making body of the AU and comprises all member states' Heads of State and Government. It has the final authority in electing the Chairperson and Deputies.
b. **The Executive Council**
   The Executive Council consists of Ministers of Foreign Affairs or designated officials from AU member states. It plays a role in the nomination and vetting of candidates before forwarding recommendations to the Assembly.
c. **The Permanent Representatives Committee (PRC)**
   The PRC, composed of ambassadors representing AU member states in Addis Ababa, facilitates communication and coordination in the electoral process.

The Election Process

The election process follows a structured procedure, aimed at ensuring transparency and equitable representation. It involves nomination, election, and appointment stages.

1. Nomination Process

The nomination process begins at the regional level, as the AU operates on a rotational principle based on geographic representation. The five AU regions—Northern, Southern, Eastern, Western, and Central Africa—each have a turn to put forward candidates.

Criteria for Candidacy

Candidates seeking election as Chairperson or Deputy Chairpersons of the African Union (AU) Commission must meet specific eligibility criteria to ensure they possess the necessary leadership qualities and commitment to the continent's development.

Firstly, individuals vying for these positions must have proven leadership experience in public administration, diplomacy, or international relations. This requirement ensures that candidates have the expertise and capacity to navigate complex regional and global affairs, effectively steering the AU's agenda.

Additionally, candidates must demonstrate a strong commitment to African integration and development. A track record of actively promoting regional cooperation, economic growth, and social progress within Africa is essential, as these leaders play a pivotal role in shaping policies that impact the entire continent.

Furthermore, each candidate must receive official endorsement from their home government. This endorsement signifies national support and ensures that those contesting for leadership positions have the backing of their respective states.

Once nominated, candidates submit their applications to the AU Commission, which is responsible for verifying compliance with the established eligibility criteria. After this assessment, the Commission forwards the approved nominations to the Executive Council, which oversees the next stages of the selection process.

2. Voting Procedure

The election of the AU Chairperson and

Deputies occurs during the AU Summit, with voting conducted by the Heads of State and Government. The Chairperson of the African Union (AU) Commission is elected through a systematic voting procedure meant to secure widespread support among member states. To be elected, a candidate must obtain a two-thirds majority of the member states present and voting. If no candidate reaches this threshold in the first round of voting, additional rounds are held until a winner is determined. This procedure ensures that the elected Chairperson has significant support across the continent, boosting their legitimacy and authority to oversee the AU's operations.

A similar voting system is used for the election of Deputy Chairpersons. Deputy candidates, like the Chairperson, must achieve a two-thirds vote to be declared winners. However, the notion of regional rotation guides Deputies' selection, ensuring that diverse geographical regions within Africa are represented in the AU's leadership structure. This method encourages inclusivity and power balance among the varied member states, generating a sense of unity and equitable involvement in the Union's governance.

3. Appointment and Inauguration

Once elected, the Chairperson and Deputies are formally appointed by the Assembly and serve a four-year term, renewable once. Their inauguration takes place at the AU Headquarters in Addis Ababa.

Challenges in the Election Process

Despite the organized electoral framework that governs the selection of the African Union (AU) Commission Chairperson and Deputy Chairpersons, a number of issues continue to impede the process. These issues affect not just the efficiency of the elections, but also the AU's ability to fulfil its mandate.

One important impediment is regional and political rivalry among member states. The rotational principle, which is intended to ensure equitable representation across Africa's different regions, frequently leads to strong competition. Member states from the same region may be unable to agree on a single candidate, resulting in extensive talks and selection delays. Political maneuvering can also have an impact on the decision, with candidates being chosen based on political relationships rather than merit and vision for the AU's future. These regional rivalries erode the AU's cohesiveness and limit the organization's ability to take decisive action on continental concerns.

Another key difficulty is the role of extraneous actors in the election process. While the African Union was created on the idea of "African solutions for African problems," foreign countries have attempted to influence the outcome of leadership elections in order to align AU policies with their geopolitical interests. This foreign meddling undermines the Union's independence and raises questions about whether AU decisions truly reflect the collective will of its member countries. It also undermines the integrity of the electoral process and the legitimacy of elected leaders in the eyes of the African people.

Furthermore, the lack of agreement on AU Commission reforms has persisted. Several ideas have been made to improve the election process, increase efficiency, and strengthen the Commission's leadership. However, some member states have opposed these reforms, fearing that they may reduce their influence or disrupt the AU's present power balances. This unwillingness to embrace critical reforms has caused delays in adopting structural adjustments that may improve the Commission's operational performance and governance.

Addressing these challenges is critical to ensure that AU leadership elections are transparent, credible, and reflect African nations' collective goals. These concerns

will continue to impede the AU's ability to effectively advance continental integration and development in the absence of serious reforms and increased member state unity.

Implications of AU Leadership Elections

The election of the Chairperson and Deputy Chairpersons of the African Union (AU) Commission carries significant implications for both continental governance and Africa's role on the global stage. The leadership of the AU plays a crucial role in shaping the organization's effectiveness in promoting unity, stability, and economic integration among member states. A strong and consensus-driven leadership enhances the AU's ability to mediate regional conflicts, facilitate cooperation, and drive collective development efforts across the continent. When the leadership enjoys broad support, the AU is better positioned to implement policies that foster peace and economic growth, ultimately strengthening continental stability.

Beyond Africa, the AU Chairperson serves as the continent's representative in international forums, playing a key role in shaping global discussions on critical issues such as trade, security, and climate change. The Chairperson's influence in diplomatic engagements ensures that Africa's collective interests are advocated for on the world stage, helping to secure beneficial partnerships and policies that align with the continent's development goals. In this way, the selection of AU leaders not only impacts Africa's internal governance but also determines the strength of its voice in global affairs.

Institutional Effectiveness

The success of the African Union (AU) in realizing the ambitious goals outlined in Agenda 2063—the continent's strategic framework for sustainable development, economic growth, and regional integration—largely depends on the effectiveness of its leadership. The Chairperson and Deputy Chairpersons of the AU Commission play a pivotal role in translating policy decisions into actionable strategies that drive progress across member states.

Strong leadership is essential for ensuring that key initiatives, such as industrialization, infrastructure development, and free trade agreements, are implemented efficiently and equitably. Leaders who possess the vision, competence, and commitment to Africa's development can foster collaboration among nations, mobilize resources, and navigate political challenges that often hinder progress.

Moreover, effective leadership enhances the AU's ability to respond to emerging issues, such as conflicts, climate change, and economic disruptions, by ensuring timely and coordinated policy implementation. Without strong governance and strategic execution, the objectives of Agenda 2063 risk remaining aspirational rather than becoming tangible realities for the continent. Therefore, the ability of AU leaders to drive and sustain policy decisions is a critical determinant of Africa's long-term development and global influence.

Conclusion: Strengthening the Election Process of the AU Chairperson and Deputies for Effective Continental Governance

The election of the Chairperson and Deputy Chairpersons of the African Union (AU) Commission is a pivotal process that significantly influences the trajectory of African integration, governance, and diplomacy. As the highest executive positions within the AU, these roles carry immense responsibility in shaping policy direction, fostering regional cooperation, and representing Africa's collective interests on the global stage. Given their strategic importance, ensuring a fair, transparent, and effective election process is crucial for the legitimacy and functionality of the AU.

While the electoral framework is designed

to uphold transparency, inclusivity, and regional representation, several challenges continue to undermine the process. Regional rivalries remain a persistent issue, as competition among member states and geopolitical blocs within Africa often leads to political maneuvering, delays in candidate selection, and fractured voting patterns. Instead of focusing on selecting the most competent and visionary leaders, elections can sometimes devolve into power struggles that prioritize regional influence over continental progress. This weakens the unity of the AU and hampers its ability to operate as a cohesive entity.

External influences further complicate the election process. While the AU champions the principle of "African solutions for African problems," foreign powers have, at times, sought to sway the selection of its leadership to align AU policies with their own strategic interests. Such interference not only undermines the sovereignty of the AU but also raises concerns about the impartiality of its leadership. Leaders who ascend to power under external pressure may find it challenging to act independently in advancing Africa's collective agenda, thereby compromising the organization's credibility and effectiveness.

Addressing these challenges requires a strengthening of electoral mechanisms to enhance transparency, accountability, and regional balance. The AU must reinforce guidelines that prevent undue political maneuvering and external interference while ensuring that merit, experience, and a commitment to African development remain the primary criteria for leadership selection. Additionally, implementing institutional reforms within the AU Commission can improve governance structures, streamline election procedures, and foster a leadership culture that prioritizes the continent's long-term interests over short-term political gains.

By refining its electoral process and reinforcing internal reforms, the AU can enhance the legitimacy and effectiveness of its leadership. This, in turn, will enable the organization to function more efficiently, strengthen continental integration, and position Africa as a formidable force in global affairs. The future of African unity and governance depends on a leadership selection process that is fair, credible, and driven by the shared aspirations of its people.

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The author is an advocate and legal researcher with extensive experience in law and governance. Currently serving as the Chairperson of the East Africa Law Society Rule of Law Committee, Ogada plays a critical role in promoting judicial independence, legal reforms, and good governance across the East African region. Ogada also serves as a lecturer at the University of Nairobi, where he teaches courses including Human Rights Law, Jurisprudence, Trial Advocacy, and Civil Procedure. Beyond academia, Ogada is an active member of several professional bodies, including the Law Society of Kenya Public Interest Litigation Committee, where they contribute to strategic litigation aimed at advancing human rights and social justice. He is also a member of the African Judiciaries Research Network (AJRN), collaborating with scholars and practitioners to conduct research on judicial systems across the continent. Furthermore, Ogada is affiliated with the International Commission of Jurists (Kenya Chapter), an organization dedicated to upholding the rule of law, human rights, and democratic governance in Kenya and beyond. Through these various roles, Ogada remains at the forefront of legal advocacy, policy reform, and judicial research, making a significant impact on both national and regional legal landscapes.

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Whispers in the void? The hidden crisis of enforced disappearances undermining Kenya's commitment to human rights and justice

By Francis Basis Maugo

1.0 Abstract

The issue of enforced disappearances in Kenya represents a profound crisis that echoes through the very fabric of society, casting a long shadow over the nation's commitment to human rights and justice. As reports of individuals vanishing without a trace continue to rise, the silence surrounding these incidents becomes deafening, revealing a troubling reality that demands urgent attention.[1] Enforced disappearances not only violate fundamental human rights but also instil fear within communities, undermining the principles of democracy and accountability.

This paper examines the alarming rise of enforced disappearances, arbitrary arrests, and extrajudicial killings in Kenya, particularly during periods of civil unrest, such as the protests surrounding the controversial Finance Bill of 2024.[2] It highlights the implications of these human rights violations on fundamental freedoms, including the right to habeas corpus, freedom of expression, assembly, and peaceful demonstration.[3] The analysis reveals a systemic failure within the state to uphold its constitutional mandate to ensure security and safety for its citizens, raising

Individuals who are perceived as politically inconvenient or opposed to the government's policies, such as political activists or opposition figures, are at risk of abduction. These abductions are often used to intimidate or silence dissent, particularly during times of heightened political tension or unrest.

[1]Human Rights Watch, 'Kenya: Security Forces Abducted, Killed Protesters' (6 November 2024) https://www.hrw.org/news/2024/11/06/kenya-security-forces-abducted-killed-protesters accessed [07/11/2024].
[2]The Finance Bill of 2024 was rejected by President Ruto amid public protests against harsh tax measures. Subsequently, the Supplementary Appropriations Bill 2024 was introduced, attempting to reintroduce controversial taxes on essential goods, raising concerns about government transparency and accountability.
[3]See Constitution of Kenya Articles 51(2), 33 and 37

Both forced abductions and extrajudicial killings not only violate the rights of individuals but also have serious implications for Kenya's international human rights standing. These violations violate Kenya's obligations under international conventions, including the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights.

critical questions about the effectiveness of existing legal frameworks.[4]

The paper discusses the urgent need for Kenya to formulate specific legislation that addresses enforced disappearances and enhances accountability for perpetrators. It advocates for the country to become a signatory to the International Convention for the Protection of All Persons from Enforced Disappearance[5], emphasizing the importance of aligning domestic laws with international human rights standards.

Through a comprehensive review of recent incidents and legal shortcomings, this study aims to shed light on the broader implications of state violence against dissenters and the necessity for legal reforms. Ultimately, it calls for a collective response from civil society, human rights organizations, and the international community to restore justice and protect human rights in Kenya. By addressing these pressing issues, the paper seeks to contribute to ongoing discussions about governance, accountability, and the protection of civil liberties in a democratic society.

1.1 Introduction

The recent cases of forced abductions, extrajudicial killings, and enforced disappearances remind me of my late[6] uncle's favourite reggae artist, Lucky Dube. His song "Crazy World" resonates deeply

Article 51(3) of the Constitution enabled the Persons Deprived of Liberty Act, but its effectiveness in ensuring the right to habeas corpus remains limited due to implementation challenges.

[5]Kenya signed the International Convention for the Protection of All Persons from Enforced Disappearance on February 6, 2007, but has not yet ratified it, meaning it is not legally binding within the country.

[6]Reflecting on the tragic loss of my uncle, who was murdered over a land dispute—rumoured to involve local authorities—underscores the urgent need for justice, as ten years have passed without accountability.

in these troubling times, particularly the haunting lines:

"So far so good we still living today
But we don't know what tomorrow brings
In this crazy world
People dying like flies every day
You read about it in the news
But you don't believe it
You'll only know about it
When the man in the long black coat
Knocks on your door
'Cause you're his next victim" [7]

These lyrics encapsulate the pervasive fear and uncertainty that characterize our society today, where individuals are often subjected to violence and injustice without accountability. As we navigate this chaotic landscape, it is crucial to confront the systemic issues that allow such human rights violations to persist, particularly in Kenya, where enforced disappearances have become alarmingly common. This article seeks to explore these violations and their implications for justice and human rights in the country.

The recent surge in enforced disappearances, arbitrary arrests, and extrajudicial killings in Kenya has raised significant concerns regarding the state's commitment to upholding human rights[8] and its constitutional mandate to provide security for its citizens. These alarming trends have become particularly pronounced during periods of civil unrest, notably surrounding the controversial Finance Bill of 2024, which sparked widespread protests and civil disobedience and in which it was reported that a total of fifty (50) people have died, with fatalities occurring both during clashes and from injuries sustained while receiving treatment. In addition, fifty-nine (59) individuals have been abducted or are currently missing, while six hundred

Extrajudicial killings in Kenya remain a serious and persistent human rights issue. These killings, involve state actors—typically police officers—deliberately taking lives without due process or legal justification, have been documented across various parts of the country, especially during political unrest, protests, and counter-terrorism operations.

[7]Lucky Dube, 'Crazy World' (AZLyrics) https://www.azlyrics.com/lyrics/luckydube/crazyworld.html accessed [07/11/2024].
[8]Kenya National Commission on Human Rights, 'Surge of Abductions and Killings in Kenya: A Call for Immediate Action and Accountability' (KNCHR) https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1206/Surge-of-Abductions-and-Killings-in-Kenya-A-Call-for-Immediate-Action-and-Accountability accessed [07/11/2024]

and eighty-two (682) people have been arbitrarily arrested.[9]

The right to habeas corpus, freedom of expression, assembly, and peaceful demonstration are enshrined in Kenya's Constitution.[10] However, the ongoing violations of these rights during protests indicate a systemic failure within the state apparatus.[11]

This situation raises critical questions about the effectiveness of Kenya's legal frameworks in protecting citizens' rights. The lack of specific legislation addressing enforced disappearances exacerbates the plight of victims and their families, leaving them without a clear path to justice. Furthermore, despite Kenya's ratification of various international human rights treaties, including the International Covenant on Civil and Political Rights, the government has yet to implement necessary legal reforms that would align domestic laws with international standards.

In light of these pressing issues, it is imperative for Kenya to reconsider its approach to human rights protection. The formulation and enactment of comprehensive legislation aimed at preventing enforced disappearances and holding perpetrators accountable is essential.[12] Additionally, becoming a signatory to the International Convention for the Protection of All Persons from Enforced Disappearance[13] would demonstrate Kenya's commitment to safeguarding human rights and enhancing accountability mechanisms.

As the nation grapples with these challenges, there is an urgent need for a collective response from civil society, human rights organizations, and the international community. Advocacy for legal reforms must be coupled with public awareness campaigns that empower citizens to demand their rights and hold authorities accountable. The current crisis presents an opportunity for Kenya to reaffirm its dedication to human rights by addressing these violations head-on and ensuring that all citizens can exercise their freedoms without fear of reprisal.

1.2 Historical patterns of enforced disappearances and state accountability in Kenya

The phenomenon of enforced disappearances in Kenya has deep historical roots, shaped significantly by colonial practices and evolving through the post-colonial era, particularly during the Nyayo regime and the recent post-2010 period. This analysis will explore these two distinct eras to understand how enforced disappearances have persisted and transformed within the context of state accountability.

1.2.1 Colonial era: The foundations of enforced disappearances

The practice of enforced disappearances in Kenya dates back to the British colonial period where it was used as a way to control the local dissent. The emergence of the Mau Uprising (1952-1960), which marked a high level of such tactics was

[9]Kenya National Commission on Human Rights, 'Statement on Mukuru Murders and Updates on the Anti-Finance Bill Protests' (KNCHR) https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1201/Statement-on-Mukuru-Murders-and-Updates-on-the-Anti-Finance-Bill-Protestscite accessed 07 November 2024.
[10]Supra note 3
[11]Haki Africa, 'Extra-Judicial Killings and Enforced Disappearances in Kenya: A Human Rights Perspective' (January 2019) https://hakiafrica.or.ke/wp-content/uploads/2019/01/HakiAfricaWDWTTF_V14.pdf accessed 8 November 2024
[12]Irene Ikomu, 'Extra-Judicial Killings and Enforced Disappearances in Kenya: Balancing Respect for Human Rights' (Heinrich Boell Foundation, 10 April 2018) https://ke.boell.org/en/2018/04/10/extra-judicial-killings-and-enforced-disappearances-kenya-balancing-respect-human-rights accessed 7 November 2024
[13]International Convention for the Protection of All Persons from Enforced Disappearance Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced

the situation that brought about increased the casualties in such confrontations. British Army officer Frank Kitson[14] formed counter-insurgency principles in which he practiced enforced disappearances in order to eradicate the opposing force. The colonial government deployed "counter-gangs"[15] to disrupt the Mau movement which ended up into systematic abductions of suspected insurgents and political dissidents.

The use of enforced disappearances during this period was not just a means of control but also served as a psychological tool to instil fear among the populace, deterring potential dissent against colonial rule.

As Kenya approached independence in 1963, the legacy of these practices did not dissipate; instead, they became ingrained in the fabric of state security operations. The first post-independence government continued to utilize these tactics against perceived threats, often targeting former freedom fighters who were now seen as political dissidents.[16] This set a troubling precedent for state-sponsored violence that would persist in subsequent administrations.[17]

1.2.2 Post-Colonial Era: The Nyayo Regime and Pre-2010 Constitution

The historical accounts of enforced disappearances during the Nyayo era can be clearly traced from the book We Lived To Tell: The Nyayo House Story[18], which brings vivid accounts of the atrocities committed within the infamous Nyayo House. This

The Nyayo House story is deeply intertwined with Kenya's history of political repression and the human rights abuses that marked the era of President Daniel arap Moi's rule (1978-2002). Nyayo House, located in the heart of Nairobi, Kenya's capital, is both a physical structure and a symbol of state power and repression.

government building, ostensibly a centre for administrative functions, housed torture chambers in its basement where countless political dissidents were detained and subjected to severe abuse. Survivors recount harrowing experiences of being held in dark, waterlogged cells, where they faced physical and psychological torture.

The infamous Nyayo House served as a site of terror, where many victims were detained and tortured incommunicado. Reports revealed that suspected dissidents were subjected to severe physical abuse within its confines, reflecting the government's willingness to employ violence to silence opposition. Another high-profile case

[14]Counterfire, 'Kitson: Failed Boot Boy of Empire' https://www.counterfire.org/article/kitson-failed-boot-boy-of-empire/ accessed 07 November 2024.
[15]Frank Kitson later wrote a book: *Gangs and Countergangs* outlines counter-insurgency tactics used in Kenya, emphasizing intelligence, psychological warfare, and the use of local informants.
[16]J.M. Kariuki, critic of post-independence government corruption, was abducted and assassinated in 1975. His killing exemplified the continuation of colonial-era tactics of enforced disappearances and extrajudicial killings, targeting even former freedom fighters who opposed the regime.
[17]Shilaho, W.K. (2018). Autocracy, Big Man Politics, and Institutional Atrophy. In: Political Power and Tribalism in Kenya. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-319-65295-5_3
[18]Friedrich-Ebert-Stiftung, We Lived to Tell: The Nyayo House Story https://library.fes.de/pdf-files/bueros/kenia/01828.pdf accessed 07 November 2024.

Dr. Robert Ouko was a prominent Kenyan politician and Minister for Foreign Affairs during the presidency of Daniel arap Moi. His untimely death in 1990 shocked the nation and remains one of the most significant and mysterious political events in Kenya's history. His life, career, and the circumstances surrounding his death have left a lasting impact on the country's political landscape, with many questions still remaining unanswered about the true cause of his demise.

was that of Dr. Robert Ouko, a prominent politician who disappeared in 1990 before his body was found[19]. His murder raised significant questions about state involvement, further highlighting the dangers faced by those who challenged the government.

Opposition leaders faced arbitrary arrests and enforced disappearances as the Moi administration sought to stifle political competition. Figures like Masinde Muliro, Kenneth Matiba, and Raila Odinga among others were targeted especially during the rallies to call for mutli-party democracy in the country,[20] demonstrating the lengths to which the government would go to eliminate dissent. During protests in 1991[21] against government policies, many demonstrators were arrested and reported missing, with security forces employing violent tactics to disperse crowds and intimidate participants.

Extrajudicial killings were rampant during this period, with police and military personnel often executing suspected criminals or political opponents without due process. Activists such as Wangari Maathai[22], who spoke out against government abuses, faced intimidation and threats, with some activists disappearing under suspicious circumstances.

Moreover, forced disappearances were particularly prevalent during election periods, notably in 1992 and 1997, when many opposition supporters were abducted to prevent their participation in the electoral process. The suppression of media freedom further compounded these issues; journalists critical of the regime faced harassment, arrest, and even disappearance as the government sought to control narratives surrounding its human rights record.

Additionally, The Human Rights Watch report from October 2011 highlighted the severe issue of enforced disappearances in Kenya's Mt. Elgon region, particularly between 2006 and 2008. Approximately 300 individuals were forcibly disappeared, either through arrests by Kenyan security forces or abductions by the Sabaot Land Defence Force (SLDF).[23] The report detailed the

[19]Kenya Forum, 'Murder of Dr. Robert Ouko: What Really Happened?' https://www.kenyaforum.net/investigative/murder-of-dr-robert-ouko-what-really-happened/ accessed 07 November 2024.
[20]Standard Media, 'Will 1991 Saba Saba Strategy Gain Traction in Today's Politics?' https://www.standardmedia.co.ke/politics/article/2001476386/will-1991-saba-saba-strategy-gain-traction-in-todays-politics accessed 07 November 2024.
[21]ibid
[22]The Story Exchange, 'Wangari Maathai: A Mighty Woman Who Spoke Truth to Power' https://thestoryexchange.org/wangari-maathai-a-mighty-woman-who-spoke-truth-to-power/ accessed 07 November 2024.
[23]Human Rights Watch, 'Waiting for Justice: The Impact of the Mt. Elgon Conflict on Human Rights in Kenya' (October 2011) https://www.hrw.org/reports/Kenya_1011_insert_LOWRES_WITH_COVER.pdf accessed 8 November 2024

plight of families left without answers, as the government failed to conduct thorough investigations or provide justice. Victims' families faced significant obstacles, including the lack of death certificates, which hindered their access to property and benefits. The report underscored the ongoing human rights violations and the urgent need for accountability in these cases.

1.2.3 2010 and Post 2010- Era: Failed promises to uphold human rights?

The adoption of the 2010 Constitution in Kenya initially fostered hopes for enhanced human rights protections, including freedom of security, freedom of expression without fear or intimidation, and the right to peaceful assembly and petition. These rights were enshrined in the Constitution, promising a society where citizens could express grievances and participate in governance without fear of arbitrary arrest, as protected by the right to habeas corpus.[24]

However, these aspirations faced significant setbacks due to the abuse of the rule of law and state immunity. Despite constitutional guarantees, many citizens experienced intimidation and repression, particularly during protests against policies like the Finance Bill 2024. The government's heavy-handed response to dissent, including arbitrary arrests and restrictions on free speech, highlighted a troubling trend where legal protections were undermined. This disillusionment with the state's commitment to uphold these rights has left many Kenyans questioning the effectiveness of the constitutional framework intended to safeguard their freedoms.[25]

Over the years, River Yala has gained a sinister reputation due to its connection to political violence, extrajudicial killings, and human rights abuses. It has been linked to the disappearance and deaths of individuals, particularly in the context of political repression and forced disappearances under various Kenyan governments.

The River Yala case stood out as one of the most alarming examples of enforced disappearances in Kenya.[26] Between July 2021 and January 2022, over 30 bodies were discovered in the Yala River, Siaya County[27]. Human rights groups such as Amnesty International and Missing Voices reported that many of these bodies showed signs of torture and drowning, suggesting foul play. By early 2023, at least 40 bodies had been retrieved from the river. The bodies were found in various states of decomposition, with some stuffed into sacks or tied with polythene bags over their heads[28]. Local divers and residents reported seeing vehicles dumping bodies into the

[24]Article 51(2) CoK 2010
[25]Natasha Kimani, 'Meeting the Promise of the 2010 Constitution: Devolution, Gender and Equality in Kenya' (Chatham House, May 2020) https://www.chathamhouse.org/sites/default/files/2020-05-07-meeting-promise-2010-constitution-kimani.pdf accessed 8 November 2024.
[26]Chilling Tales of River Yala' (YouTube, 21 July 2022) https://youtu.be/cxdiOMZ78F8?si=oo3QN-pqpALQ5MDb accessed 8 November 2024.
[27]Amnesty International Kenya, 'Statement on the Discovery of Over 30 Bodies in the Yala River, Siaya County' (22 January 2022) https://www.amnestykenya.org/statement-on-the-discovery-of-over-30-bodies-in-the-yala-river-siaya-county/ accessed 8 November 2024.
[28]Kenya: Bodies Found in River Yala Linked to Enforced Disappearances' (BBC News, 8 February 2022) https://www.bbc.com/news/world-africa-60083684 accessed 8 November 2024.

river under suspicious circumstances. Despite these findings, investigations into the cause of death and those responsible for these killings were slow and inconclusive.

The discovery of these bodies shocked the nation and raised suspicions about the involvement of state security agencies.[29] However, despite public outcry and demands for thorough investigations, no conclusive evidence was provided to link the deaths directly to government forces. The River Yala case remained a symbol of the ongoing crisis of enforced disappearances in Kenya, with many victims remaining unidentified and their families left without answers.[30]

In the years following the River Yala case, Kenya experienced a series of anti-government protests led by opposition leader Raila Odinga. These protests were often met with heavy-handed responses from security forces, resulting in injuries, deaths, and allegations of enforced disappearances.[31]

During these protests, particularly those held in 2023 against President William Ruto's administration, several individuals reportedly went missing after being arrested or detained by police. Families reported their loved ones disappearing after participating in demonstrations or being taken into police custody.[32] Human rights organizations called for investigations into these disappearances and for greater transparency from law enforcement agencies.

The protests themselves were sparked by grievances over issues such as electoral reforms, economic hardship, and government corruption. However, the violent suppression of these demonstrations only intensified public anger and further eroded trust in state institutions. Another significant event that highlighted concerns about enforced disappearances was the widespread opposition to Kenya's Finance Bill 2024. The bill proposed controversial tax increases that were seen as burdensome to an already struggling population facing high inflation rates and unemployment.[33] Nationwide demonstrations erupted in response to the bill's passing, with protesters taking to the streets to voice their discontent.[34] As with previous protests, security forces responded with force, leading to clashes between police and demonstrators. In some cases, individuals who participated in these protests were reported missing afterward[35] with Human Rights organizations noting that close to a thousand cases of arrests and disappearances of protesters reported across the country.[36]

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[29]Revealed: Police Linked to 112 Disappearances, Yala Killings' (The Star, 25 October 2022) https://www.the-star.co.ke/news/2022-10-25-revealed-police-linked-to-112-disappearances-yala-killings accessed 8 November 2024.

[30]Post-mortem exams done on 17 bodies recovered from River Yala' (YouTube, 27 January 2022) https://youtu.be/FO7BxyYBTlA?si=nbXGdbVyKFrA6q_0 accessed 8 November 2024.

[31]Human Rights Organisations Says Police Killed 12 People During Kenya Protests' (The Canary, 1 June 2023) https://www.thecanary.co/uk/news/2023/06/01/human-rights-organisations-says-police-killed-12-people-during-kenya-protests/ accessed 8 November 2024.

[32]What's Behind Kenya's Deadly Opposition Protests' (Bloomberg, 18 July 2023) https://www.bloomberg.com/news/articles/2023-07-18/what-s-behind-kenya-s-deadly-opposition-protests accessed 8 November 2024.

[33]As at 2023 the Unemployment rate in Kenya was 5.7% (Unemployment, total (% of total labor force) (modeled ILO estimate) - Kenya | Data) with recent data projecting the situation to worsen even much (World Bank projects Kenya's unemployment to worsen in 2024 - Business Daily)

[34]AfriCOG, 'The Gen Z Uprising in Kenya and Africa's Youthquake' (September 2024) https://africog.org/wp-content/uploads/2024/09/AfriCOG-The-Gen-Z-Uprising-in-Kenya-and-Africas-Youthquake.pdf accessed 8 November 2024

[35]Amnesty International, 'Kenya: Abductions of Citizens Suspected of Involvement in Protests Violate Human Rights' (Amnesty International, 27 June 2024) https://www.amnesty.org/en/latest/news/2024/06/kenya-abductions-of-citizens-suspected-of-involvement-in-protests-violate-human-rights/ accessed 8 November 2024.

[36]Kenya National Commission on Human Rights, 'Statement on the Aftermath of Protests Against the Finance Bill 2024 Carried Out in 19 Counties on Thursday 20th June 2024' https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1197/Statement-on-the-Aftermath-of-Protests-against-the-Finance-Bill-2024-carried-out-in-19-Counties-on-Thursday-20th-June-2024 accessed 8 November 2024.

Enforced disappearances are often carried out without formal arrest records or any other documentation, making it impossible for families to know where their loved ones are taken. The lack of accountability is a key feature of the phenomenon.

Human rights groups documented several cases where protesters were last seen being apprehended by police but later disappeared without a trace[37] with recent reports from the police indicating that close to 42 death cases reported.[38] These incidents have fuelled accusations that state security agencies are involved in silencing dissent through unlawful detentions or extrajudicial killings.[39]

1.3 Current legal deficiencies in Kenya's framework on enforced disappearances

The issue of enforced disappearances in Kenya represents a profound challenge to the country's commitment to human rights and justice. Despite the Kenyan Constitution's robust guarantees of fundamental rights, including the right to life and freedom from torture, significant legal deficiencies persist within the framework addressing enforced disappearances. The absence of specific legislation criminalizing enforced disappearances leaves victims and their families without adequate recourse, perpetuating a culture of impunity. While Kenya is a signatory to various international human rights treaties, including the International Covenant on Civil and Political Rights, it has yet to ratify the International

[37]Kenya National Commission on Human Rights, 'Retrogressing into the Dark Abyss of Violations and Atrocities: Current State of Human Rights in the Nation' https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1199/Retrogressing-into-the-dark-abyss-of-violations-and-atrocities-Current-state-of-Human-Rights-in-the-Nation accessed 8 November 2024.
[38]Police Boss: 42 Kenyans Died in Anti-Finance Bill 2024 Protests as MPs Demand Answers' (Nation, 7 November 2024) https://nation.africa/kenya/news/police-boss-42-kenyans-died-in-anti-finance-bill-2024-protests-as-mps-demand-answers-4815812 accessed 8 November 2024
[39]Gabrielle Lynch, 'Kenya Has Changed: The Gen Z Protests and What They Mean' (Democracy in Africa, 8 November 2024) https://democracyinafrica.org/kenya-has-changed-the-gen-z-protests-and-what-they-mean/ accessed 8 November 2024

The Constitution of Kenya 2010 represents a major leap forward in the country's commitment to human rights. Its Bill of Rights provides a strong legal foundation for protecting the rights of all citizens, while its institutional reforms aim to address historical injustices and ensure accountability for human rights violations.

Convention for the Protection of All Persons from Enforced Disappearances. This lack of ratification not only undermines Kenya's international obligations but also highlights a critical gap in its legal framework that fails to protect vulnerable populations from state-sponsored violence. The interplay between constitutional protections and statutory inadequacies creates an urgent need for comprehensive legal reform. Addressing these deficiencies is essential not only for safeguarding human rights but also for restoring public trust in governmental institutions. Without decisive action to fill these gaps, Kenya risks perpetuating a cycle of abuse that undermines its democratic values and the rule of law.

1.3.1 Constitution of Kenya 2010

Despite The Constitution 2010 having strong commitment to human rights, including the right to life and freedom from torture, significant gaps exist in its legal provisions concerning enforced disappearances. While the Constitution explicitly prohibits torture[40] and guarantees the right to habeas corpus,[41] which allows individuals to challenge unlawful detention, it does not specifically address enforced disappearances. This omission leaves victims and their families without adequate legal recourse. The lack of dedicated legislation criminalizing enforced disappearances further exacerbates this issue, undermining Kenya's ability to uphold its human rights obligations. Consequently, without comprehensive legal measures in place, the protection of individuals from enforced disappearances remains insufficient, highlighting a critical area for reform within Kenya's human rights framework.

1.3.2 Legislative frameworks

Enforced disappearances remain a significant human rights issue in Kenya, highlighting critical gaps in the legal framework designed to protect individuals from unlawful detention and state-

[40]Article 29 Constitution of Kenya, 2010
[41]Article 51(2) Constitution of Kenya, 2010

sponsored violence. Despite the existence of various laws, including the Penal Code, the Persons Deprived of Liberty Act, the National Police Service Act, and the Public Order Act, these statutes do not adequately address the complexities surrounding enforced disappearances. This inadequacy underscores the urgent need for specific legislation that explicitly criminalizes enforced disappearances and provides robust protections for victims.

The Penal Code[42] serves as the primary legal instrument for defining and prosecuting criminal offenses, including those related to unlawful detention. It criminalizes offenses such as kidnapping and abduction.[43] However, while these provisions address certain aspects of unlawful detention, they do not encompass the broader definition of enforced disappearances as recognized in international law. Enforced disappearance involves not only the act of abduction but also the subsequent denial of information about the individual's fate or whereabouts, often perpetrated by state agents or with their complicity. The lack of specific provisions addressing enforced disappearances means that victims may struggle to seek justice under existing laws. The penalties for kidnapping or abduction may not reflect the severity of enforced disappearances, which often involve grave human rights violations. Consequently, this gap in the Penal Code perpetuates a culture of impunity, where state actors may engage in enforced disappearances without fear of significant legal repercussions.

The Persons Deprived of Liberty Act (PDLA)[44] was enacted to provide a legal framework for the treatment of individuals in custody. It aims to ensure that their rights are respected and protected during

The Penal Code remains a cornerstone of Kenya's criminal justice system, providing a comprehensive framework for addressing criminal behavior. While it has undergone some reforms to keep pace with emerging challenges, further amendments are likely needed to ensure that it fully reflects modern standards of justice, human rights, and equity.

detention. The Act outlines various rights for persons deprived of liberty, including access to legal representation and humane treatment.[45] However, like the Penal Code, it does not explicitly define or criminalize enforced disappearances. The PDLA's focus on regulating detention practices is commendable; however, its failure to address enforced disappearances leaves a significant gap in legal protections. For instance, if an individual is forcibly taken by state agents and subsequently denied access to legal representation or information about their whereabouts, there are no specific legal mechanisms within this Act to hold perpetrators accountable for enforced disappearance.

The National Police Service Act[46] governs the conduct and responsibilities of police

[42]Cap 63 Laws of Kenya
[43]See Chapter 25(XXV) Of Penal Code Cap 63 which provides for the Offences against Liberty
[44]Cap 90A Laws of Kenya
[45]Section 7 of The Persons Deprived of Liberty Act
[46]Cap 84 Laws of Kenya


Justice John Mativo

officers in Kenya. It establishes a framework for policing that emphasizes respect for human rights and accountability. While this legislation aims to enhance police professionalism and integrity, it does not provide explicit guidelines or accountability mechanisms regarding enforced disappearances. The broad powers granted to police officers under this Act can lead to arbitrary detentions, especially during public protests or unrest. Instances have been reported where individuals are detained without due process, leading to fears of enforced disappearances. Without clear regulations addressing how police should conduct arrests and detentions, there is a risk that human rights violations will continue unchecked.

The Public Order Act[47] regulates public gatherings and demonstrations in Kenya. While it is intended to maintain order during public events, it has been criticized for enabling excessive use of force by law enforcement agencies. This broad authority has led to arbitrary arrests and potential enforced disappearances during public demonstrations with several reports being reported during the Finance Act protest where most arrest were conducted by ununiformed law enforcement officers despite court ruling on the same.[48] Reports have surfaced of individuals being taken into custody during protests without any subsequent information provided about their fate or whereabouts.

The provisions within this Act grant police broad discretion to disperse crowds and detain individuals deemed to be causing unrest. There have been judicial interpretations on the validation of dispersal orders and the consequences of defying them after the expiry of a reasonable time. In Ferdinand Waititu vs AG[49], Justice Onguto held that Cap 56 gives police the authority to stop an assembly "where appropriate and where it is obvious it will not meet the constitutional objectives." Furthermore, he noted that while protests can turn riotous, this should not implicate freedom of assembly, which is essential in a democratic society. The focus should instead be on preventing violence during protests. Consequently, the Inspector-General was ordered to facilitate peaceful demonstrations, emphasizing police responsibility in maintaining law and order. The assessment of whether the use of force is reasonable is circumstantial. Justice Mativo in Wilson Olal vs AG (2017) eKLR[50] stated that "what is reasonably justifiable in a democratic society is an elusive

[47]Cap 56 Laws of Kenya
[48]Standard Media, 'No masked plain-cloth police officers in unmarked cars for protests, court orders' https://www.standardmedia.co.ke/national/article/2001500914/no-masked-plain-cloth-police-officers-in-unmarked-cars-for-protests-court-orders accessed 12 November 2024
[49]Ferdinand Ndung'u Waititu & 4 others v Attorney General & 12 others [2016] eKLR
[50]Wilson Olal, Gacheke Gachihi, John Koome, Nelson Mandela, Kenya National Commission on Human Rights & Independent Medico-Legal Unit v Attorney General, Inspector- General of Police & Director of Public Prosecutions [2017] KEHC 4909 (KLR)

concept" that cannot be precisely defined, with reasonableness judged by whether it excessively invades constitutionally guaranteed rights.

The lack of accountability mechanisms within this Act exacerbates concerns about human rights violations related to enforced disappearances.

1.3.3 International Human Rights Obligations

Kenya has ratified key international human rights treaties that address issues related to arbitrary arrest, liberty rights, and enforced disappearances. Among these, the International Covenant on Civil and Political Rights (ICCPR) which obligates the state to uphold the rights to liberty and security of individuals, explicitly prohibiting arbitrary arrest and detention.[51] The African Charter on Human and Peoples' Rights (ACHPR) similarly emphasizes the right to liberty and security while condemning arbitrary detention.[52] However, despite signing the International Convention for the Protection of All Persons from Enforced Disappearances in 2007, Kenya has yet to ratify it. This lack of ratification is particularly significant as it prevents victims of enforced disappearances from pursuing legal recourse against the state.

Despite these international commitments, the effectiveness of these treaties in Kenya is severely undermined by several factors. There is often a serious disconnect between Kenya's international obligations and their domestic implementation; many treaty provisions remain unenforced due to inadequate legal frameworks or insufficient political will. Kenya's failure to ratify additional protocols related to the International Covenant on Civil and Political Rights (ICCPR) restricts victims' ability to hold the state accountable through international mechanisms. Consequently, many victims find themselves without effective means for seeking justice or compensation.[53] While the ICCPR represents a significant commitment to upholding civil and political rights, its effectiveness in Kenya is severely limited by the absence of ratification of the Optional Protocol.[54] This protocol allows individuals to submit complaints about violations directly to the UN Human Rights Committee after exhausting domestic remedies. Without this crucial mechanism, citizens are left with few avenues for recourse when their rights are violated, such as in cases of arbitrary arrest, torture, or enforced disappearances. The lack of ratification also undermines international oversight and accountability, allowing many human rights abuses to go unaddressed. Victims often find themselves trapped within a domestic legal system that may not adequately protect their rights or provide justice. This gap highlights a critical deficiency in Kenya's human rights framework and emphasizes the urgent need for the government to ratify relevant protocols to enhance accountability and ensure that citizens can effectively seek redress for violations.

1.4 Filling the void: The imperative for Kenya to ratify and legislate against enforced disappearance

The urgency for Kenya to ratify and legislate against enforced disappearance cannot be overstated, particularly in light of the alarming rise in such cases within the country. Despite signing the International

[51]Article 17 of ICCPR
[52]Article The African Charter on Human and Peoples' Rights
[53]Office of the United Nations High Commissioner for Human Rights, 'Complaints Procedures under Human Rights Treaties' (2024) https://www.ohchr.org/en/treaty-bodies/human-rights-bodies-complaints-procedures/complaints-procedures-under-human-rights-treaties accessed 18 November 2024.
[54]Optional Protocol to the International Covenant on Civil and Political Right

Convention for the Protection of All Persons from Enforced Disappearance in 2007, Kenya has yet to take the critical step of ratification, leaving a significant void in its legal framework to combat this grave human rights violation. The failure to ratify this convention not only perpetuates a culture of impunity among state agents but also undermines the rule of law and erodes public trust in government institutions.[55]

Enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.[56] This practice often serves as a tool of intimidation, silencing dissent and instilling fear among the populace. Recent events, including peaceful protests that have been met with violent crackdowns, illustrate the urgent need for Kenya to adopt comprehensive legislation that criminalizes enforced disappearances and provides mechanisms for accountability. Victims and their families currently lack recourse under existing laws, which perpetuates a cycle of violence and fear.[57]

The ratification of the convention would obligate Kenya to implement measures ensuring that investigations into enforced disappearances are conducted effectively and impartially. It would require the government to hold accountable those responsible for these acts, including superior officers who fail to prevent them. The convention emphasizes that no exceptional circumstances can justify enforced disappearances, reinforcing the principle that human rights must be upheld at all times. By ratifying this treaty, Kenya would align itself with international human rights standards and demonstrate its commitment to protecting its citizens.

Ratification would enhance Kenya's standing within the global community. It would signal to both citizens and international observers that the Kenyan government is serious about addressing systemic abuses within law enforcement agencies. This step could also encourage judicial reforms that extend beyond existing habeas corpus protections, which have proven inadequate in cases where individuals are secretly detained or killed. As noted by legal experts, habeas corpus often fails when individuals are taken out of the jurisdiction or when they are found deceased, highlighting the need for more robust legal protections.

The absence of national legislation specifically criminalizing enforced disappearance allows these violations to persist unchecked. Current Kenyan laws related to torture and unlawful detention do not adequately address the complexities surrounding enforced disappearances. For instance, while habeas corpus provides some recourse for unlawful detentions, it often falls short in cases where individuals are forcibly taken or when their bodies are discovered long after their abduction. Therefore, ratifying the convention would necessitate developing comprehensive national laws that criminalize enforced disappearances and establish clear procedures for investigating such cases. Ratification will compel Kenya to report periodically to international bodies on its progress in safeguarding citizens' rights. This accountability mechanism could help focus

[55]Wallace Nderu, 'Time for Kenya to Ratify the Convention on Enforced Disappearances' (ICJ Kenya, 2024) https://icj-kenya.org/news/time-for-kenya-to-ratify-the-convention-on-enforced-disappearances/ accessed 15 November 2024.
[56]Article 1 of International Convention for the Protection of All Persons from Enforced Disappearance
[57]Jill Ghai, 'Why Doesn't Kenya Ratify Treaty Against Enforced Disappearances?' (Katiba Institute, 2023) https://katibainstitute.org/why-doesnt-kenya-ratify-treaty-against-enforced-disappearances/ accessed 15 November 2024

governmental efforts on addressing systemic issues enabling enforced disappearances and extrajudicial killings. It will foster a culture of respect for human rights within law enforcement agencies and promote greater transparency in their operations.

The implications of failing to ratify this convention extend beyond legal obligations; they also reflect on Kenya's commitment to upholding human rights as enshrined in its Constitution. Article 1 of the convention explicitly states that no one shall be subjected to enforced disappearance and that there are no circumstances that justify such acts. By ratifying this treaty, Kenya would be taking a definitive stand against these violations and affirming its dedication to protecting its citizens from state-sponsored violence.

Organizations like Human Rights Watch and Amnesty International continue to highlight the issue of extrajudicial killings and forced disappearances in Kenya. They call for accountability, independent investigations, and justice for the families of the disappeared.

1.5 Conclusion

In conclusion, Kenya must urgently ratify the International Convention for the Protection of All Persons from Enforced Disappearance[58] and emulate the proactive steps taken by other African nations such as South Africa, Togo, and Tunisia[59], which have successfully ratified this crucial treaty. These countries have demonstrated a commitment to safeguarding human rights and ensuring accountability for state agents who engage in enforced disappearances. By following their lead, Kenya would not only align itself with international human rights standards but also take significant strides toward protecting its citizens from the alarming trend of abductions and extrajudicial killings that have become prevalent in recent years. Additionally, ratifying the Additional Protocol to the International Covenant on Civil and Political Rights (ICCPR) would further enhance protections for civil and political rights, creating a comprehensive legal framework that upholds the dignity and safety of all Kenyans. The time for action is now; Kenyans deserve a legal framework that not only criminalizes enforced disappearances but also restores public trust in their institutions.[60] Addressing this issue is not just a legal obligation but a moral imperative that would foster a society where human rights are respected and upheld for all citizens. By taking decisive action, Kenya can ensure that enforced disappearances become a relic of the past rather than an ongoing threat to democracy and respect to human rights in the country.

Francis Basis Maugo is a final-year law student at the University of Nairobi, with diverse research interests including transformative constitutionalism, mental health law, public international law, human rights, sexual and reproductive health rights. He can be contacted at maugofrancis@gmail.com.

[58] https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced accessed 15 November 2024
[59] Human Rights Indicators' (OHCHR) https://indicators.ohchr.org/ accessed 15 November 2024.
[60] Kenya: Enforced Disappearances and Extrajudicial Killings Must Stop Now' (OMCT, 2024) https://www.omct.org/en/resources/statements/kenya-enforced-disappearances-and-extrajudicial-killings-must-stop-now accessed 15 November 2024.

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Kenya National Commission on Human Rights

Press Statement: *For Immediate Release* Nairobi, Saturday 4th January, 2024

STATEMENT ON THE PASSING ON OF ROSELINE ODEDE, HSC, CHAIRPERSON OF THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR).

It is with **shock and deep sorrow** that I inform you of the **demise** of Roseline Odhiambo Odede, HSC, Chairperson of the Kenya National Commission on Human Rights, that happened yesterday, **Friday 3rd January, 2025** after a short illness.

Her untimely death is a big blow to the Commission and Nation at large. As a Commission we had the privilege of serving with Roseline Odede as the Chairperson at the helm of the KNCHR's leadership.

During this period of mourning, we send our message of condolences and heartfelt sympathies to the family, friends and all those who knew Roseline. May the memories of her exceptional service bring comfort and strength in this difficult time.

Dr. Raymond Nyeris, PhD
Vice Chairperson,
Kenya National Commission on Human Rights (KNCHR).

RULE OF LAW

Kenya's Abduction Cases a Direct Assault on the Rule of Law

The Kenyan government has faced significant criticism for its failure to address and investigate abduction cases, especially when state agents are involved. The National Police Service, military, and intelligence agencies often face accusations of being complicit in such crimes or of failing to protect victims of abduction.

By Vincent Kimathi

In the recent weeks, Kenya has seen a rise in reports of abductions particularly of young Kenyans which has been characterized by the unlawful detention of citizens by unknown persons suspected to be security personnel.

This has sparked a widespread public outcry in the country by citizens seeking accountability from the government for the abductions. Responding to the outcry, the Inspector General of Police released a contradicting statement refuting any allegations of police involvement in the reported abductions in the country and not setting out the steps being taken by the security agencies.

He said "*for avoidance of doubt, the National Police Service is not involved in any abduction, and there is no police station in the Country that is holding the reported abductees*," The statement raises concerns especially on the fact that the office of the Inspector-General is entrusted with the responsibility to ensure the safety and security of all citizens.

It is important to state that the Kenyan constitution, guarantees fundamental rights and freedoms to all citizens, and outlines the standards and procedures under which law enforcement agencies are to operate. These abductions, contradicts these constitutional guarantees and poses serious risks to the rule of law and undermines citizens' trust in state institutions.

Article 29 of the Constitution of Kenya guarantees the right to personal liberty. It states that "every person has the right to freedom and security of the person," which includes the right not to be "deprived of freedom arbitrarily or without just cause." This right is inviolable and applies to all individuals, regardless of their status or the charges against them.

The Constitution of Kenya 2010 and the National Police Service Act 2011, require that any arrest made by law enforcement must be conducted in a manner that upholds the rights of the arrested individual.

The Constitution of Kenya 2010 and the National Police Service Act 2011, require that any arrest made by law enforcement must be conducted in a manner that upholds the rights of the arrested individual.

Specifically, Article 49 of the Constitution outlines the rights of an arrested person and provides on how arrests should be conducted, including the requirement for the suspect to be informed of the reason for their arrest and given access to legal representation. It further provides that the detained individual must also be brought before a court as soon as reasonably possible and not later than 24 hours of their arrest.

The Constitution of Kenya through Article 25(a) prohibits any form of torture or cruel, inhuman, or degrading treatment or punishment. It makes it clear that the prohibition of torture and inhumane treatment is a non-derogable or absolute right, meaning it cannot be suspended even in times of national emergency.

The right to a fair trial is another critical constitutional protection that is compromised by abductions. Article 50 of the Constitution guarantees every person the right to a fair hearing, which includes the right to be informed of the charges against them, to have adequate time and facilities to prepare a defense, and to be tried in an open and impartial court.

Kenya is a signatory to several international human rights conventions, including the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights. Both instruments obligate the Kenyan government to respect and protect the human rights of all individuals within its jurisdiction, including the right to freedom from arbitrary detention and torture.

Further, the instruments principles marry with the Charter of the United Nations, and recognises the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

The current wave of abductions in Kenya is a blatant violation of the Constitution of Kenya and the international human rights conventions, which guarantees fundamental rights such as personal liberty, the right to a fair trial, protection from torture, and due process. These unlawful actions undermine public trust in the police and the justice system, and they breach Kenya's international human rights commitments.

Vincent Kimathi is an Advocate of the High Court and the Programme Manager,Human Rights, at the Kenyan Section of the International Commission of Jurists (ICJ Kenya). This article was first published on the Standard Newspaper.

LEADERSHIP IN FOCUS

The Reality of William Ruto's Leadership

By Gitobu Imanyara

I listened to, and later read President William Ruto's address to the nation on New Year's Eve and was astonished at his lack of empathy for the scores of Kenyan youths abducted by elements within our security services. I use the word 'abducted' because none other than the Director of Criminal Investigations apologized to veteran journalist Macharia Gaitho when he was 'mistakenly' abducted at Karen Police Station. The tax payer funded National Human Rights Commission, NHRC", has documented 82 cases of enforced disappearances. Then I suddenly realized that the President was just being William Ruto who has been in political limelight since the days of the infamous Youth for KANU 92.

His leadership has been marred by accusations of dishonesty and lack of follow-through on promises, which has left many Kenyans deeply skeptical of his ability to deliver meaningful change His recent actions and public statements have reinforced the perception that he is, at best, has little regard for truth. He is one who cannot be trusted to implement the policies he espouses.

While he makes grand declarations about turning Kenya into a land of prosperity, our experience since he came to power almost two and half years shows that these are often little more than empty promises.

The people of Kenya are not blind; they have seen this pattern before, and they are rightfully cautious about the Ruto administration's ability to affect any real transformation.

The most glaring evidence of this comes from his recent ranking as the second most corrupt leader in the world. This ranking speaks volumes about the integrity—or lack thereof—of his presidency. It raises a critical question: Can a president who is himself deeply embroiled in corruption even hope to combat it? The truth is, President Ruto's actions over the years suggest that he is part of the problem, not the solution. How can the man who

is ranked so high on the list of corrupt individuals in the world claim to lead the charge against corruption? The answer is simple: he cannot. His own vested interests and personal entanglements prevent him from tackling the issue with the seriousness it requires.

Rather than focusing on genuine reforms, President Ruto's current actions seem geared towards positioning himself for a second term in office, which begins in 2027. It is abundantly clear that the 2027 election cycle is already on his mind. His policies, his public appearances, and his rhetoric are all centered around securing his political future. Any attempts to present himself as a transformative leader are nothing more than a smokescreen for his true goal: re-election.

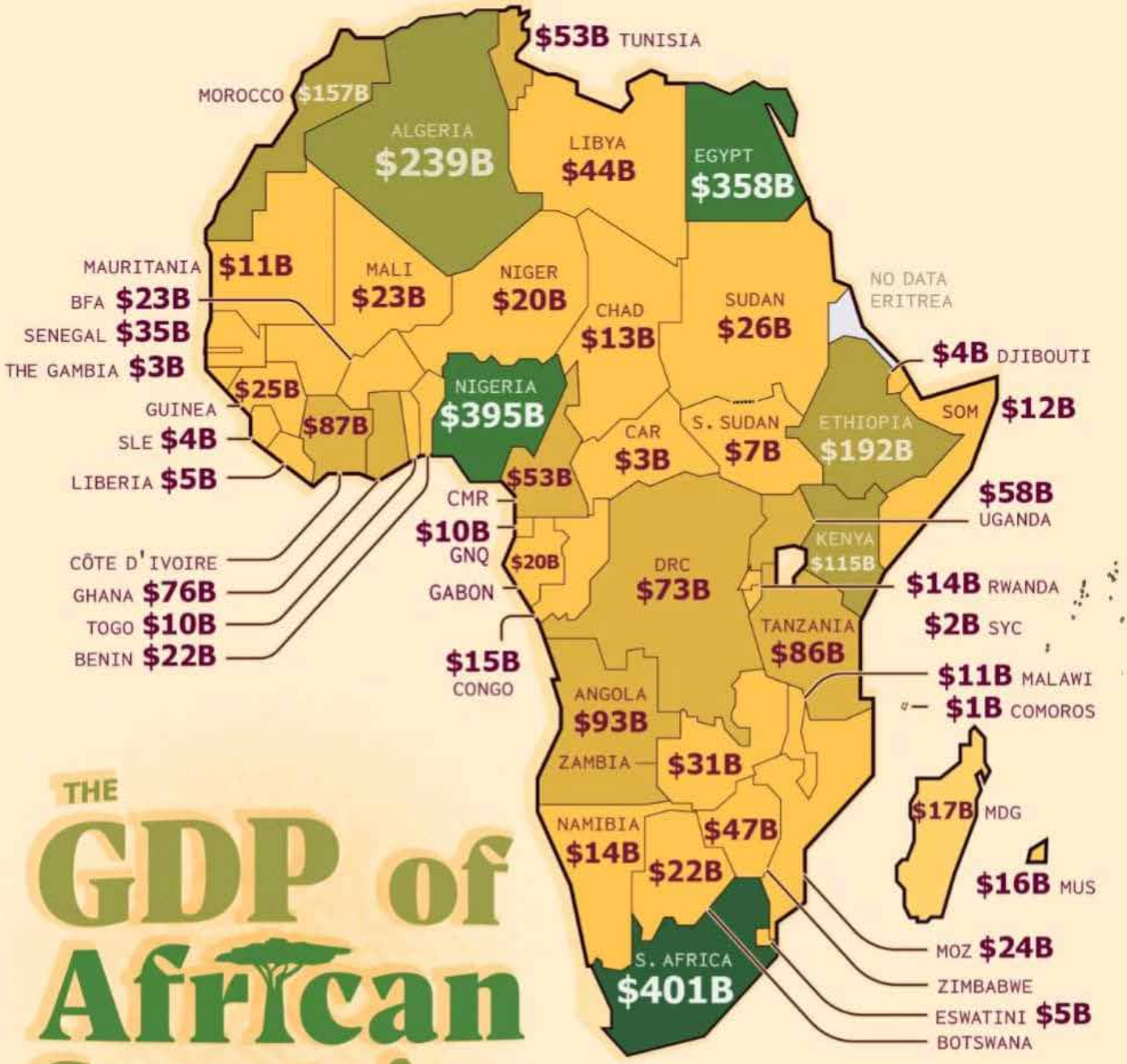
In fact, no one should be deceived into thinking that Ruto is genuinely committed to the betterment of Kenya. He is playing the long game, but that game is all about maintaining power for himself, not creating lasting change for the people. History has proven that William Ruto's administration cannot be trusted to deliver on its promises. The Kenyan public has endured years of political promises that ultimately went unfulfilled, and there is little reason to believe that this time will be any different. Time and again, Ruto has failed to act on critical issues, and no amount of political rhetoric can change the reality that his administration is primarily concerned with its own survival rather than the well-being of the country.

Looking ahead, it seems that the true future of Kenya's leadership may rest not with Ruto but with a re-engineered opposition. While Ruto remains focused on his own ambitions, a redesigned opposition represents a potential shift in Kenya's political landscape. A refocused opposition's leadership may offer a fresh direction—one that is not clouded by corruption or the pursuit of self-interest. But for now, we are left with a president who is more concerned with securing his second term than with addressing the pressing issues facing the nation. This is the harsh reality, and no amount of political spin can change that.

In the coming years, the people of Kenya will likely continue to feel the weight of unmet promises and unmet needs. We must not fool ourselves into thinking that Ruto will suddenly change course or become a champion for the common people. His actions thus far suggest otherwise. His focus is already on 2027, and unless something drastic changes, Kenya will be stuck in the same cycle of political deceit and broken promises. The future may lie elsewhere but not in the hands of this administration.

Gitobu Imanyara is the Chairperson of the editorial board at this publication.

GDP IN CURRENT PRICES USD BILLIONS



THE GDP of African Countries IN 2024

Source: IMF (Oct 2023)
All figures are projections. Excludes Lesotho, Guinea-Bissau, São Tomé and Príncipe, Burundi.

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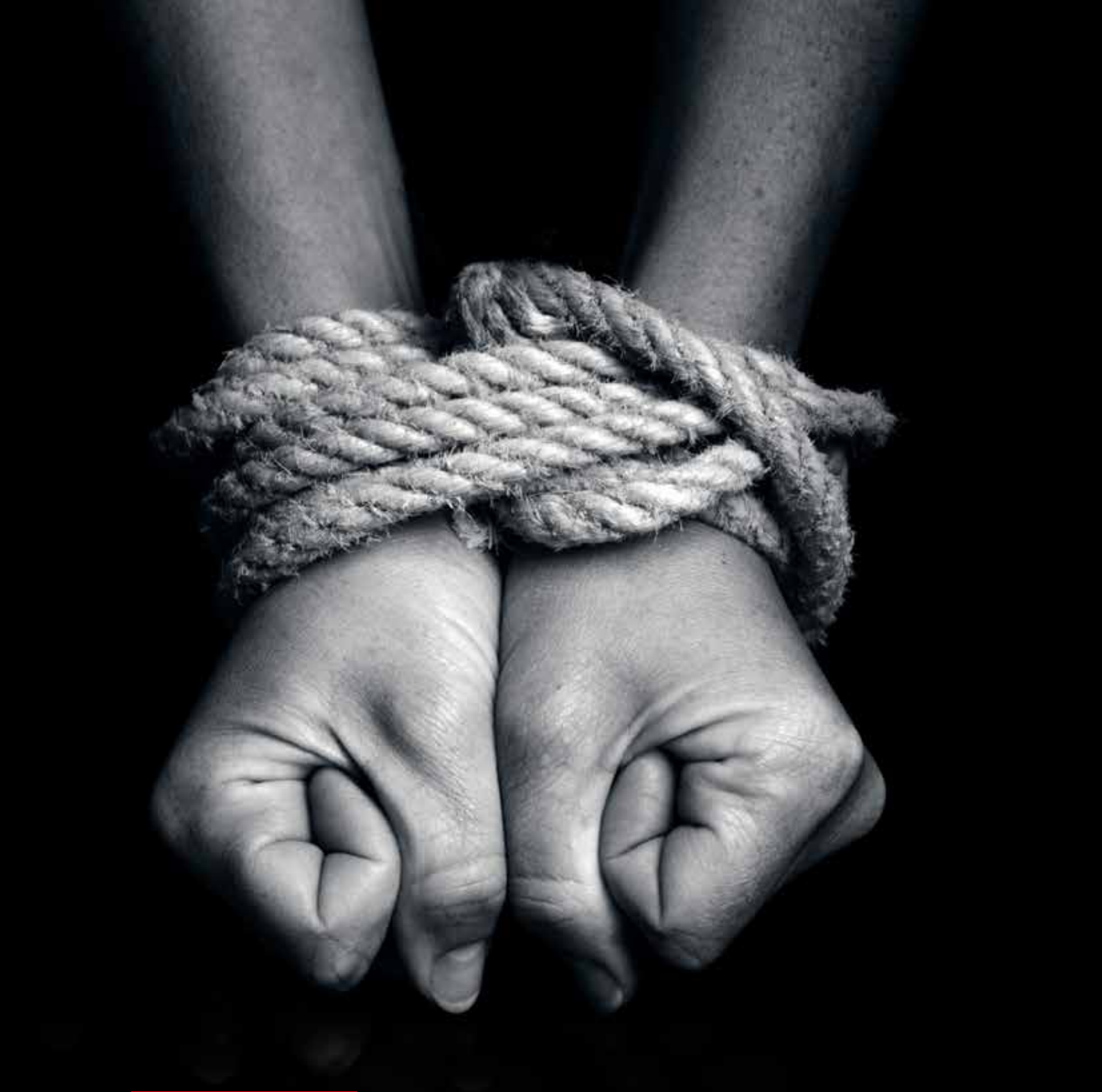


A GLOBAL CHALLENGE

The global nature of human trafficking and addressing the concern

Human trafficking is a transnational crime, meaning it often involves the movement of victims across borders. Traffickers operate through complex networks that span multiple countries, sometimes operating within and between developed and developing countries.

By Muriuki Wahome

Abstract

The actualities of globalisation for uniting the economies and people have contributed to the emergence of a global hub that fosters enslavement. Factors contributing to this form of criminal activity include world globalisation through travel and conducting business, enhanced technology in the areas of digital communication, and variations in legal systems across different countries.[1] This essay aims to discuss the effects of globalisation on human trafficking by describing the new opportunities and threats that it brings to police officers. Furthermore, it describes essential legal and policy instruments and emphasises the importance of international cooperation, improved legal conditions and new approaches to prevent this problem worldwide. The conclusion resonates with the need to foster collective action in addressing the shifts of human trafficking within the framework of globalisation.

Introduction

Globalisation is a term used to describe the increasing level of interaction between different nations regarding economic processes, cultural exchange, and political institutions. This process manifests in the import and export of goods, provision of services, transfer of information, and mobility of people.[2] While it has adopted better and easier ways of exchanging commodities and communication, it has also

[1]Cathy Zimmerman and Ligia Kiss, 'Human Trafficking and Exploitation: A Global Health Concern' (2017) 14 PLOS Medicine <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002437>.
[2]Emma George and Mandy Stanley, 'Exploring the Occupational Injustices of Human Trafficking' (2018) 26 Journal of Occupational Science 394.

developed numerous complex problems like the instance of criminal activities like human trafficking.

The different forms of human trafficking have force, fraud or deception during recruitment, transportation or harbouring of the victim with the purpose of exploitation.[3] This exploitation can be evidenced through forced labour, sexual exploitation, and trafficking of human organs.[4] Gang rape of women and girls violates every aspect of their dignity and is a heinous crime that thrives on the social constructions of gender, power, and poverty.

Scope & Problem Identity

One must not lose sight of the fact that there are millions of such victims every year, and the issue of trafficking in human beings is a truly global phenomenon. Worse, despite efforts to combat this vice worldwide, the International Labor Organisation estimates that tens of millions of people are still living in conditions of modern slavery that create billions of abnormal injustices. This has been further compounded or magnified by globalisation, which has deepened economic inequalities, made borders porous, and brought forth opportunities that may be utilised by the traffickers in penetrating systems that they can manoeuvre.

The Consequences Of Globalisation On Human Trafficking

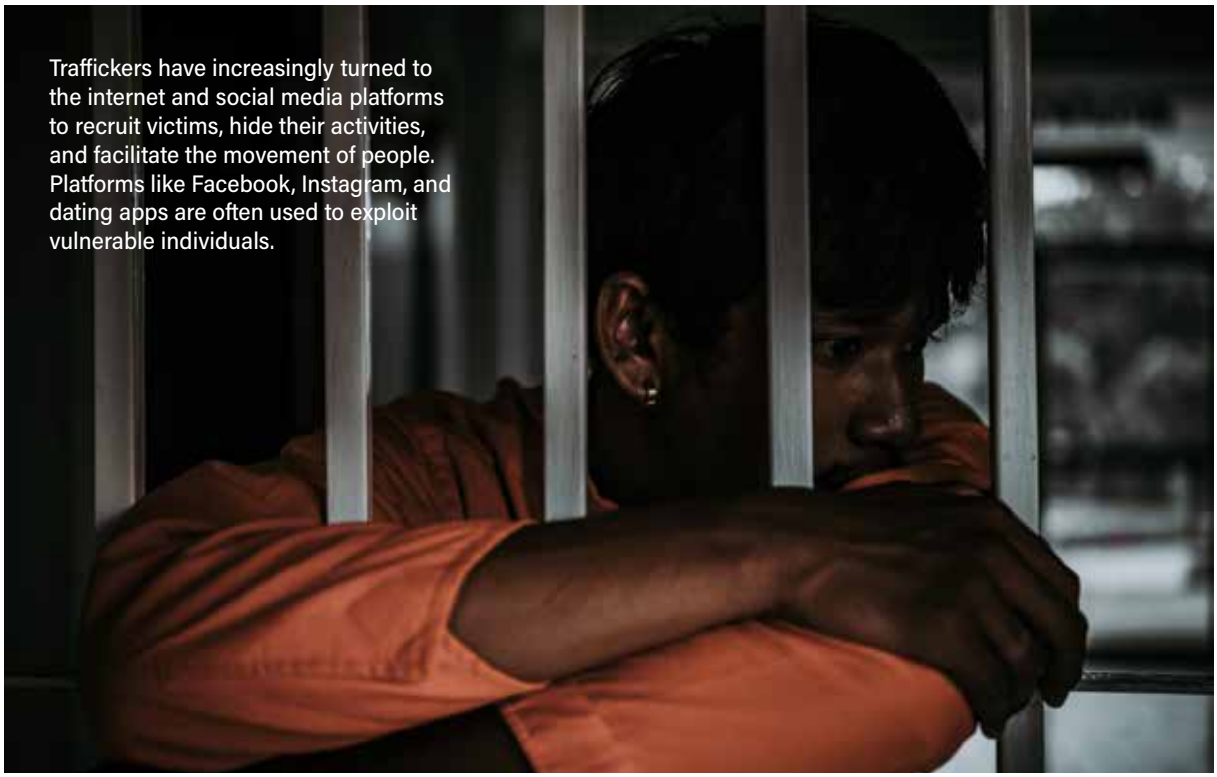
One aspect of globalisation that can be illustrated in this case is the flow of people, merchandise, and services across country borders. Mobility contributes to economic growth and cultural exchange; on the other hand, it creates opportunities for human traffickers.[5] Man tends to move from one country to another in search of better standards of living because of variations in the economic status of a particular country. Still, it is always done in a way that is not very safe.[6] This desperation is what the traffickers take advantage of since the victims are lured with the promise of employment or protection upon reaching the intended destination, where they are subjected to further exploitation.[7]

Other factors that have aided in the trafficking of people include cheap means of transport and the relaxation of movement restrictions, especially in some regions of the world. The vulnerable people, which include children, women, and sidelined people like migrant workers, refugees and displaced persons, are vulnerable because they cannot protect themselves from being exploited.[8]

Technological and Communication Developments

Through the use of the internet and the advancement in technology, the process of trafficking has also been boosted in the following ways: Temporary employment search sites, social media platforms, or secret chat applications have become the tools in the hands of traffickers to seek and lure individuals.[9] This means that the traffickers cannot easily be identified, and the business of trafficking is done across different jurisdictions with little chance of being apprehended.[10]

[3]Sasa Mijalkovic, 'The Forms Trafficking in Human Beings' (2005) 8 Temida 33.
[4]Paolo Campana and Federico Varese, 'Exploitation in Human Trafficking and Smuggling' (2015) 22 European Journal on Criminal Policy and Research 89.
[5]Mónica Méndez, 'Globalization and Human Trafficking' [2015] International Encyclopedia of the Social & Behavioral Sciences 206.
[6]Thanh-Dam Truong, 'Human Trafficking and New Patterns of Migration' (2008) 12 Gender, Technology and Development 5.
[7]Alicja Jac-Kucharski, 'The Determinants of Human Trafficking: A US Case Study' (2012) 50 International Migration 150.
[8]Lasha Kukhianidze, 'Legal Aspects of Labor Migration and Trafficking in Human Beings' (2016) 12 European Scientific Journal, ESJ 483.
[9]Siddhartha Sarkar, Use of Social Networking Technology in Sex Trafficking (2024).
[10]Siddhartha Sarkar, 'Use of Technology in Human Trafficking Networks and Sexual Exploitation: A Cross-Sectional Multi-Country Study' (2015) 5 Transnational Social Review 55.



Traffickers have increasingly turned to the internet and social media platforms to recruit victims, hide their activities, and facilitate the movement of people. Platforms like Facebook, Instagram, and dating apps are often used to exploit vulnerable individuals.

Furthermore, the dark web is slowly transforming into a marketplace for crime, including the sale of trafficked persons. This leads to increased vulnerability of victims, coupled with the difficulty in apprehending the groups perpetrating such crimes, as suspects can easily conceal themselves behind such sites. On the same note, prevention and control of online abuse are relatively lesser compared to that of technology, hence creating more barriers towards combating human trafficking.

Ineffective Governance and Limited Regulation

Another significant concern that has followed the development of globalisation is that the latter has progressed apace with many domestic and foreign legal systems' capacity to address the consequences of globalisation.[11] Some have poor governance systems to curb human trafficking, while others do not exert proper effort in combating the vice despite having legislation on it. National and international conventions and treaties are crucial in this regard, yet the gaps in their implementation may be observed due to the differences in commitments and resources within the regions.[12]

Intertwined with this is the fact that legal and regulatory instruments fail to address the internationality of human trafficking adequately. Because no one law applies uniformly across the member states regarding how the issue is defined and punished and the support for the victims, collaboration in preventing it is limited.[13] This is where traffickers exploit the loopholes, hence the need for enhanced

[11]Dao Tri Uc, 'The Impact of Globalization on National Legal Systems' (2024) 40 VNU Journal of Science Legal Studies.
[12]Vira Tymoshenko and Larysa Makarenko, 'The Impact of Globalisation on Legal Conduct' (2022) 1 Scientific Journal of the National Academy of Internal Affairs 20 <https://lawscience.com.ua/en/journals/tom-27-1-2022/vpliv-globalizatsiyi-na-pravovu-povedinku> accessed 14 December 2024.
[13]V Mehra and Gazala Sharif, 'Legal Framework and International Cooperation in Combatting Human Trafficking' (2024) 6 International Journal For Multidisciplinary Research.

and coordinated legislative policies in world legal systems.

Key Global Legal Mechanisms to Combat Human Trafficking

The Palermo Protocol

Trafficking is a criminal act that has gone beyond the international stage and requires a combined legal approach to curb its consequences. Another global instrument for combating this menace is the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which is more commonly referred to as the Palermo Protocol.[14]

This means that through this protocol, countries can have a standard definition of trafficking that can assist in passing laws. In fulfilling this aspect, the state parties have the responsibility of enacting laws against trafficking in persons, protecting the victims, and fostering cooperation with other states. ConcerningThe Palermo Protocol serves as the main legal foundation for national laws and cooperation between countries since there is a common structure at the national level.[15]

Similarly, the Palermo Protocol emphasizes victim treatment, directs states to encourage protection and victim assistance programmes in a non-exploitative and degrading way while honouring victims' human rights.[16] It encompasses medical attendance, legal assistance, and other post-release support activities that may include rejoining families or schools. As a result, its vast purview ensures that it emphasises prevention, protection, and prosecution—key pillars to combating human trafficking.

Successes & Failures

A major achievement of the protocol is establishing a standardized definition of human trafficking. This has brought harmonization of the legal framework in the member states, all working together in the same fight against the crime. Also, the protocol requires states to provide medical, psychological and legal assistance to the victims, all within the ambit of protection.[17]

Even with such success, the protocol has obvious flaws. It is, however, hardly implemented in an even way and (except for Finland) depends heavily on the political will and resources of individual member states, leading to uneven enforcement. Few countries have full, comprehensive anti-trafficking laws, and even if they do, they often fail to allocate adequate resources to victim support, or law enforcement. Furthermore, in practice the protocol's victim protection measures often fail, with survivors often deported, stigmatized or not having adequate access to support services.[18]

A second important limitation of this protocol is that it is on criminal justice rather than looking at the social economic roots of trafficking in conditions of poverty, inequality and gender discrimination. This reactive approach, however, is ineffective at preventing trafficking, critics say.

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[14]Elżbieta M Goździak and Kathleen M Vogel, 'Palermo at 20: A Retrospective and Prospective' (2020) 6 Journal of Human Trafficking 109 <https://www.tandfonline.com/doi/full/10.1080/23322705.2020.1690117>.

[15]Katharine Bryant and Todd Landman, 'Combatting Human Trafficking since Palermo: What Do We Know about What Works?' (2020) 6 Journal of Human Trafficking 1 <https://www.tandfonline.com/doi/full/10.1080/23322705.2020.1690097>.

[16]Jónína Einarsdóttir and Hamadou Boiro, 'The Palermo Protocol: Trafficking Takes It All' (2014) 10 Veftímaritið Stjórnmál og stjórnsýsla 387.

[17]Gillian Wylie, 'Norm Emergence: Entrepreneurs, Interests and the Palermo Protocol' <https://doi.org/10.1057/978-1-137-37775-3_3.> accessed 16 December 2024.

[18]Jean Allain, 'No Effective Trafficking Definition Exists: Domestic Implementation of the Palermo Protocol' (brill.com1 January 2015) 265 <https://brill.com/display/book/9789004279896/B9789004279896-s015.xml>.

International Labour Organization headquarters in Geneva, Switzerland.

On the other hand, the implementation of the Palermo Protocol itself has been uneven, as has its narrow emphasis on convicting and punishing offenders. It cannot reach its full potential without the stronger commitments of member states, more victim-centered approaches, and work on the root causes of vulnerabilities.[19]

International Organisations

Non-governmental organisations, both local and international, including the International Labour Organization (ILO), play a significant role in combating human trafficking. Forced labour and child labour linked with anti-trafficking measures are ILO concerns.[20] Through lobbying, the organisation is seen as wishing to control policy formulation to address issues of exploitative culture so that special groups are safeguarded. Thus, the data collected by the ILO and its research support shed light on the extent and severity of human trafficking globally in relation to strategies.

They assist national governments in formulating specific intervention strategies and nurture teamwork among member states.

International Organizations Role In Transnational Cooperation

Considering that human trafficking has become a transnational issue, the strategies must have a significant level of bilateral and multilateral engagement. Such treaties enable the governments of various nations to exchange information on the cases, prosecute offenses, and implement legal processes collectively.[21] It enables the countries that have signed it to dismantle

[19]Yordan Gunawan and others, 'UN Palermo Protocol's Implementation on the Legal Protection of Street Children Trafficked in Indonesia' (2022) 13 Jurnal Hukum Novelty 145 <https://consensus.app/papers/palermo-protocols-implementation-legal-protection-gunawan/ebf7c714ea7c5875b98d8935faa2a0bf/?utm_source=chatgpt> accessed 16 December 2024.
[20]Tom Obokata, 'Chapter 3. The Role of Inter-Governmental Organisations in Relation to Trafficking of Human Beings' [2006] Brill | Nijhoff eBooks 85.
[21]Laura Gómez-Mera, 'The Global Governance of Trafficking in Persons: Toward a Transnational Regime Complex' (2017) 3 Journal of Human Trafficking 303.

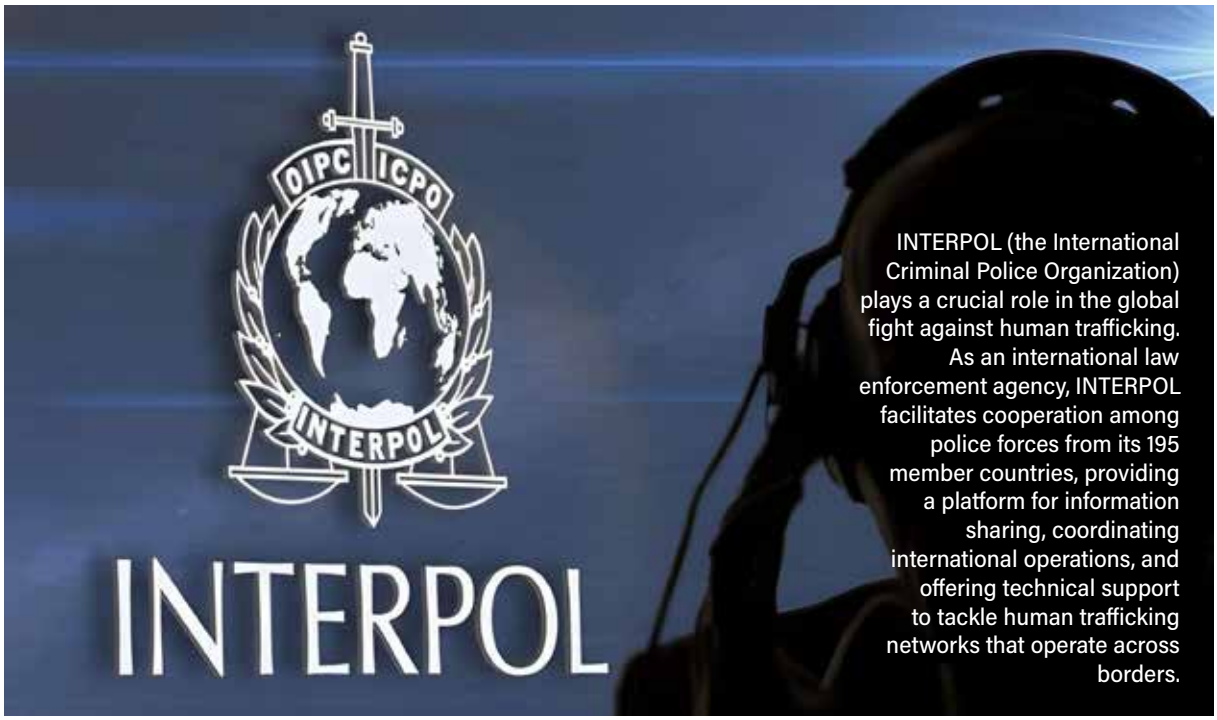
the cross-border trafficking networks more easily. These frameworks focus not only on the effectiveness of organizational processes but also on enhancing trust and diplomatic relations.

Other international organisations like INTERPOL assist in coordinating with other countries and provide equipment and support during investigations. INTERPOL's two databases namely, and alerts about trafficking in persons are useful in tracking and arresting traffickers.[22] Also, cross-border activities such as forming regional task forces increase nations' readiness to deal with trafficking cases. Ideally, such collaborations can help demonstrate how citizens of different nations can coordinate to address an international issue.

Other international players that have played a role in the cooperation include the EU, ASEAN, ECOWAS, et al. through the development of inter-operational plans on combating trafficking. These plans can include joint rules of procedures for identifying victims, transfer of the requested data, and cooperation in the legal area between the countries involved to ensure the close coordination of their actions.[23] Such partnerships imply that it is important to build on regional assets in responding to this complex problem.

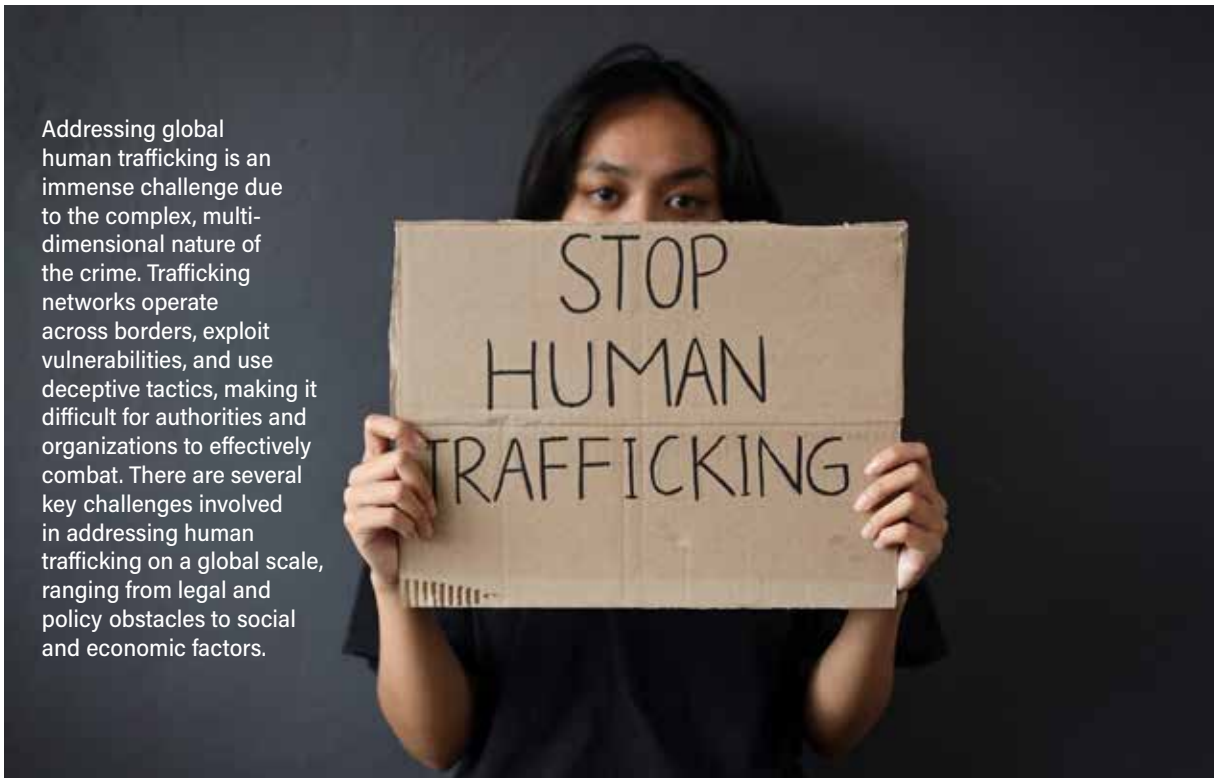
Prevention & Awareness Policies

It requires sustained communal effort to prevent human trafficking and spread awareness among vulnerable groups. Awareness ensures that various communities are informed about the possible risks and how the traffickers may operate.[24] This was especially aimed at the vulnerable groups in society, such as immigrants and people



INTERPOL (the International Criminal Police Organization) plays a crucial role in the global fight against human trafficking. As an international law enforcement agency, INTERPOL facilitates cooperation among police forces from its 195 member countries, providing a platform for information sharing, coordinating international operations, and offering technical support to tackle human trafficking networks that operate across borders.

[22]Layla Putri Aulya and others, 'Interpol's Efforts against Human Trafficking by Non-Procedural Migrant Worker Networks in East Nusa Tenggara: Leveraging Legal Assistance Treaties' (2024) 3 International Law Discourse in Southeast Asia 135 <https://journal.unnes.ac.id/sju/ildisea/article/view/78884> accessed 12 December 2024.
[23]Marija Jovanovic, 'International Law and Regional Norm Smuggling: How the EU and ASEAN Redefined the Global Regime on Human Trafficking' (2021) 68 The American Journal of Comparative Law.
[24]Renata A Konrad, 'Designing Awareness Campaigns to Counter Human Trafficking: An Analytic Approach' (2019) 67 Socio-Economic Planning Sciences 86.



Addressing global human trafficking is an immense challenge due to the complex, multi-dimensional nature of the crime. Trafficking networks operate across borders, exploit vulnerabilities, and use deceptive tactics, making it difficult for authorities and organizations to effectively combat. There are several key challenges involved in addressing human trafficking on a global scale, ranging from legal and policy obstacles to social and economic factors.

living in poverty, to assist them to fend for themselves by educating them on how to avoid being abused.

Socialking sites, community meetings, and lectures are effeffectively createss of the campaign. Thus, compatible tailored messages increase the public's awareness and help societies fight against trafficking. Partnering with other NGOs and key opinion leaders within society also increases the campaign's reach.[25]

Another critical component is the policies adopted at the economic level. By eradicating poverty and inequality, the various governments can readily address the weaknesses exploited by those traffickers.[26] Sustainable schemes such as employment generation, education, and even micro-finance complications display skills, thereby reducing vulnerable potentialities. Measures to address such circumstances should focus on addressing the factors that create room for exploitation to occur.[27]

Challenges In Addressing Global Human Trafficking

Failure in Anti-Trafficking Operations However, failures here are evident where there are loopholes in the enforcement of the laws. Often, states sign and/or accede to international instruments but are unable or unwilling to ensure compliance with them. For instance, provisions that require assistance to victims are not well funded, resulting in survivors being turned away. This problem is worsened by the aspect of limited training for law enforcement

[25]Cheryl Pooler, Jessica Sykora and David Pooler, 'The Impact of Assembly Trainings on Awareness of Human Trafficking among Middle School and High School Age Youth' [2020] Journal of Human Trafficking 1.
[26]Gergana Danailova-Trainor and Frank Laczko, 'Trafficking in Persons and Development: Towards Greater Policy Coherence' (2010) 48 International Migration 38.
[27]Alimzhan Bekmagambetov and others, 'Analysis of Policies on Combating Human Trafficking Crimes at the International and National Levels' 403.

agencies, making it difficult to accurately identify victims of trafficking or risk categorising them as culprits.

Contrasting national interests still jeopardise operations even further. Many countries are only interested in prosecuting the traffickers, while others are more interested in immigration control, thus rendering the victims vulnerable. For instance, Brexit has significantly impacted the UK's access to European databases and joint task forces, impeding its anti-trafficking efforts against international criminal networks.[28]

Corruption and poor governance in some parts of the world also act as constraints. There are regions where borders are poorly controlled and corrupt officers who benefit from trafficking help the criminal networks prolong their existence.

Inconsistency In Existing Regulations and Standards

Existing legislation and policies have several drawbacks. There are several issues with current legislation and frameworks. Some of the problems include:

Firstly, enforcement measures may not be applied consistently in different jurisdictions. Despite being ratified by many countries, the Palermo Protocol is implemented based on states' sole discretion, leading to varying results.[29]

Furthermore, globalization poses challenges to the regulation of private international law. Criminals target loopholes in labour and immigration policies by ensnaring people in weaker districts of the global economy, such as farming, household services, and fishing industries. Several issues involve the absence of cooperation between the laws relating to labour abuse, legal immigration, and the prevention of trafficking.

Relevant Recommendations

Legal Aid Services / Assistance in the Legal Protection and Rehabilitation of Victims

An important policy consideration is to protect trafficking victims and assist them in their reintegration processes. In this case, people are left with various physical and psychological complications, not to mention the numerous legal cases that stem from sexual harassment experiences. Shelters, on the other hand, provide a safe haven for the survivors to get medical attention and counselling to aid them. Legal aid is also considered crucial as it helps to enable the survivors to seek redress in legal systems for human rights abuses.

Another crucial component in the reintegration process is the presence of social support systems within the community. In this manner, communities can assist those who have been abused or committed a crime in getting the requisite treatment they require instead of isolating them because of the social taboo. This involvement enhances the capacity of both government and non-governmental organisations, where their combined effort is required to safeguard the victims and offer essential services that would enable the victims to rebuild their lives.

Prosecution of Traffickers

The other way is to enhance the national legal instruments to improve the fight against human trafficking and apprehend criminals. It also entails eradicating legal loopholes that traffickers exploit to legalize

[28]Tim J Wilson, 'EU-UK Criminal Justice and Security Cooperation after Brexit: A Perspective' (2021) 3 Forensic Science International: Synergy 100144.
[29]David Nelken, 'Human Trafficking and Legal Culture' (2010) 43 Israel Law Review 479.

The prosecution of human traffickers is a critical component in the global fight against human trafficking. Successful prosecution serves not only as a deterrent but also as a means to punish perpetrators, protect victims, and uphold human rights. However, the prosecution of traffickers faces numerous challenges, ranging from jurisdictional issues to victim cooperation.

their trade. Namely, legal predictability regarding the rules' clarity and enforceability conforming to analogue foreign models directly contributes to the effectiveness of the legal processes apart from officials' accountability.

Legal sensitisation of the law enforcement agencies and the judiciary increases their understanding of the laws that block the trafficking of people, thus increasing the probabilities of arresting and prosecuting such cases. These programs enable them to address different types of trafficking and address survivors' needs without compromising on the legal requirements and ethical standards.

Conclusion

On the one hand, globalization has helped expand trafficking networks worldwide; on the other hand, it has also opened up opportunities for a united global front against this global menace. This connectedness of countries makes it possible for the governments, organizations, and other stakeholders at the international level provide solutions to combat trafficking globally while the localized approaches are offered at the country level.

There is the same need for legal reforms to address the existing loopholes that the traffickers tend to exploit. This entails making sure that laws against human trafficking are synched across states, improving on measures to implement laws in international agreements and including provisions that address the use of technology in human trafficking.

Ending trafficking is possible only through courageous measures and strictly following the goals set. By enhancing legal changes, improving the international cooperation, and implementing socio-economic measures, global actions can be more efficient and eliminate the trafficking networks and help those who are most at risk.

MY HRDA LEGAL JOURNEY

Standing on the shoulders of giants: A glimpse of my HRDA experience

"If I have seen further, it is by standing on the shoulders of giants."
- Isaac Newton

By Kipkoech Nicholas Cheruiyot

1. Introduction

On the 10th of December 2024, I graduated from the University of Pretoria (UP), Centre for Human Rights in South Africa (SA) with a Master of Laws, specialising in Human Rights and Democratisation in Africa (HRDA). This was a significant period in my career and for the Centre, especially as the Centre celebrated 25 years since the commencement of the HRDA LLM/MPhil programme (Programme) in 1999. This piece is a snippet of my experiences during the programme. It reflects not just a sense of fulfilment that comes with a dream realised but also some of the valuable experiences gained throughout the programme. These experiences have profoundly enriched my personal and professional life, equipping me with the relevant arsenals and confidence to defend human rights and champion democratisation in all the spaces I find myself in. These I do not take for granted, especially at a point where human rights and democratisation in Kenya and Africa are more than ever under threat.

Human rights refer to the fundamental rights and freedoms that every individual is entitled to, simply by virtue of being human. These rights are universally recognized and are intended to guarantee dignity, equality, and respect for all people, regardless of their nationality, ethnicity, gender, religion, or other status.

2. Acceptance

One of the best communications that I have so far received in my career as a young lawyer is the communication of acceptance to join the programme. I knew that the programme would be quite impactful not only to my career but also to my life in general, and getting accepted was the best gateway to that. Upon getting accepted, I

Human rights are inextricably linked to the dignity and worth of the individual. They provide a foundation for a fair and just world where people can live free from oppression, poverty, and violence.

knew that one of my early career dreams of doing an LLM at the earliest opportunity specifically at UP was about to be realised. Being a highly competitive programme, I knew that some heavy weight had been placed on my shoulders, with the trust and confidence that I was able to carry it. The best I could do was to embrace it with open arms.

3. New country, new people, new cultures

Going to SA for my LLM programme was my first time travelling outside the country and being away from home for a considerably long period of time. While I was excited about the new opportunity and ready to start my LLM, no one fully prepared me for the experience of meeting completely new people and being miles away from home. I was eager to experience what it feels like to sit in an LLM class and wondered what would come out of that. My class was my first dynamic experience after my interactions with the school pick-up driver, with whom we could only communicate in English. My HRDA class consisted of candidates from about 20 countries, 95% of which were African countries. This presented perspectives from all these countries and more than 28 candidates on various topical issues, which enriched my experience and particularly allowed me to see the successes in those countries and the challenges they face through their eyes. The dynamic community gave me one of the most precious opportunities to learn their languages, religions, food, dress code and other cultures.

The small community of my classmates and professors made it a small family away from home, cushioning me from the harsh realities of being in a foreign land. One would however not be fully isolated, especially when one wants to experience the full picture of it all. This came with good tidings, and allowed me to learn some of the South African languages, food and dress code, what they mean, and everything else that makes SA unique in its own right. One of the lessons that I picked is SA's value

for cohesion and most importantly, respect for fundamental human rights. I came to understand that history has a lot to do with this, given the fact that SA has had a long history of the fight against apartheid, the quest for land justice and respect for human rights. With different races present in SA making it a rainbow nation, the value for human rights, democracy and the rule of law are ideals held dear.

While SA has come a long way in fighting apartheid and fostering unity and togetherness, I also experienced the harsh reality of the effects of racism and xenophobia. This is seen among others through the still existent inequalities in terms of ownership and management of land and other factors of production. This would only show that SA, just like any other African and non-African country has its own struggles and success stories. Importantly, that Africa's struggle for unity, cohesion, economic and other progress is continuous and requires the valuable input of all of us.

4. Academic nourishment: The richness of the HDRA LLM/MPhil curriculum

The HRDA curriculum has been so rich and has largely quenched my thirst for knowledge on human rights and democratisation issues. The curriculum is made in a way that makes it rigorous and intense. The first few months, at least before I got accustomed to it, were a bit challenging. The signal was sent to me when we started receiving assignments even before travelling to SA. The rigorous nature and the structure of the curriculum made it challenging and academically nourishing in equal measure. The careful selection of modules and the choice of topics within each module made it easy to understand almost all aspects. This was ably fuelled by the expertise of the Professors teaching each module and the various units within each module. The choice of different variety of professors from young human rights activists and academics to experienced ones aided in having a grounded and easily relatable understanding of concepts. HRDA presented me with a golden opportunity to be taught by and have enriching sessions with some of the highly acclaimed professors including Frans Viljoen, Charles Fombad and Stuart Maslen. I only knew these professors through their books and other academic and non-academic work and did not think I would get to not only meet them but also benefit from their rich knowledge, experience and passion in their various fields of expertise. The HRDA programme however made this a reality.

What I also appreciated is the curated selection of professors and experts from all over the world, and from different spaces including academia, civil society organisations and regional human rights mechanisms including the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights, the inter-American Court and Commission on Human Rights and the International Court of Justice. This added a practical angle to the knowledge gained in class, giving me a better grasp of human rights and democratisation concepts and their application in solving real-world problems. This allowed us to not only easily understand theoretical concepts but also know how to navigate the terrains of their practical application in solving real-world problems. This also exposed us to the processes within the regional and international human rights mechanisms, which are key institutions in the defence of human and peoples' rights.

While joining the programme I aimed to polish my skills and be well-tailored for legal practice and academia. The programme however prepared me for more than that. The curriculum has been characterised by various activities including long lectures, several class and take-home assignments, presentations, moot court and debating competitions, research and writing, Model United Nations sessions, national and

Investment in quality education is one of the most powerful tools for social and economic development, and it is central to the realization of many human rights. Ensuring that every child, adolescent, and adult has access to a high-quality education has profound impacts on poverty reduction, health outcomes, gender equality, and sustainable development.

international court submission processes and state reporting procedures within the human rights regional mechanisms. Additionally, the inclusion in the curriculum of advocacy and litigation processes within the local and regional court and human rights mechanisms made the whole difference. This made me an all-rounded student and equipped me with both knowledge and skills to easily excel in any of these fields, not just academia and legal practice.

The richness of the programme came with its own set of challenges. These are mainly in the form of strict deadlines to be met, lengthy readings to be made, regular presentations and simulations to be made and so on. This made it one of the most exciting yet challenging academic programmes I have gone through. While it has been challenging, all the gains have made it a fulfilling journey worth travelling.

The programme however promotes the spirit of *Ubuntu*. This is in the form of rotational group assignments and projects, which ensures that everyone lifts some weight in the project. The maximisation of specific and unique talents and the uplifting of one another when any student was low made the assignments characterised by strict deadlines and other demands bearable. While the spirit of Ubuntu made the academic experience worthwhile, one would not miss elements of some students carrying heavier weights than others. This was however not so surprising for me, given the fact that I had experienced the same while doing my postgraduate diploma in law, bachelor of laws degree and even at high school and primary school levels. It only teaches one how to navigate societal challenges and find solutions that benefit all, this being a small chunk of the entire community of the human race.

5. Lifelong investment in quality education

One of the greatest fears for any student, and I was no exception is the inability of a school system to meet their academic needs and expectations. Quenching academic thirst, I must admit requires more than

just lectures, and goes all the way to the investment in both electronic and physical study materials, infrastructure, academic environment and culture. What I saw at UP is a lifelong dedication to fully invest in higher learning. From lecture and conference halls to the library, waiting areas and offices, and lecturers, it is indicative of a resolve to not only cater for the present but also the future generations of students. The school has made an effort to ensure that basically all the academic materials needed are available either physically in the library or at the library database on an open-access basis.

The school has also partnered with other institutions and governments that commit resources to better student experience. This is coupled with partnerships with several other African universities, where students get an additional and different experience as they do their research in those institutions. This is perhaps one of the greatest lessons for any academic enthusiast, where the government, the school and other partners seek enduring partnerships that improve the school resources, ensuring that students have the requisite academic materials and infrastructure and that their experience is continuously improved. This includes human resources, characterised by timely and decent pay of support staff and professors, whether external or internal.

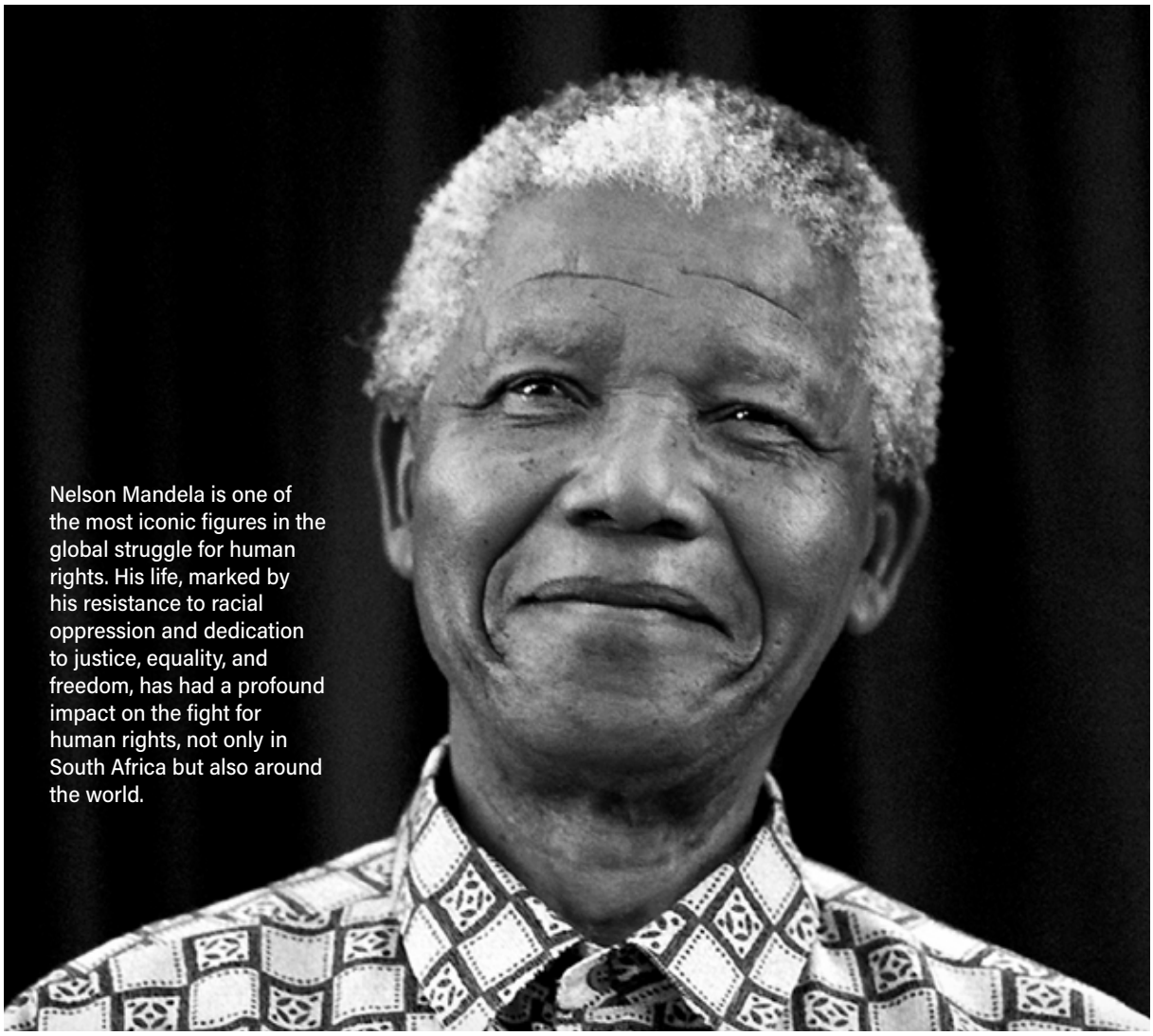
6. Quality research, academic conferences and short courses

To complement our academic experiences, the school organised several conferences and short courses on relevant academic topics and on issues acutely facing the continent. This offered me golden opportunities to do research and present my findings in the form of conference papers at different conferences. I particularly participated in two international conferences linked to the programme which greatly transformed my research and understanding of key legal issues. One was an international student conference on just transitions and conditions of change of the global order organised by the Global Campus of Human Rights and held in Bishkek, Kyrgyzstan in June 2024. The presentations and discussions during the conference expanded my knowledge of several human rights and democracy issues facing the continent, making me realise that such issues also affect other regions. This allowed us to partner and find common solutions to these unique but common issues. The other one was in October 2024 on constitutionalism in Africa, which was organised to celebrate the scholarship of Prof Charles Fombad. This conference was not only rich in expertise on the topic but also offered a rare opportunity to tap into their rich knowledge.

These conferences and experiences among others showcased the school's commitment to not only actively promote research but also ensure that candidates are given opportunities to present their findings and receive constructive feedback, while in the process forging lifetime connections. They also showcased the school's intent to support individual academic and professional contributions within the continent and beyond.

7. Breaking barriers: Human rights and democratisation in Africa

The HRDA programme has not only enriched my academic pursuits but has also positioned me as a thought leader in the broader dialogue on human rights and democratisation in Africa. Before joining the programme, my view on these topics was dim and only identified problems and crafted solutions to such issues facing my country and close neighbouring countries, without a broader look at what goes on throughout the continent and beyond. At this point, I consider this to have been a barrier, since a single country's human rights and democracy status can only excel when other countries in the region are also making positive progress. The programme



Nelson Mandela is one of the most iconic figures in the global struggle for human rights. His life, marked by his resistance to racial oppression and dedication to justice, equality, and freedom, has had a profound impact on the fight for human rights, not only in South Africa but also around the world.

however broke this barrier. I now have a better grasp of the interconnectedness of human rights and democratisation issues within the continent and beyond, and how that shapes Africa's democratic future and affects humanity.

8. Outside classroom: South Africa's historical significance

SA holds an important position in African and global history. During my history and social studies classes in high school and primary school I learnt about South Africa's fight against apartheid, at least until 1994. This led to the imprisonment and persecution of freedom fighters such as Nelson Mandela, Walter Sisulu and Robert Sobukwe. They were incarcerated at Robben Island Prison, an apartheid prison for political prisoners at the time. When I got a chance to visit Robben Island Prison, I had a first-hand experience of it not only as a prison but also as a place where anti-apartheid freedom fighters were forced to sacrifice their dignity, freedom and time with their families for the most inhumane environment whereupon they received the most arduous punishments for simply expressing displeasure with the apartheid policies and practices. Such places are not just historical sites, but are an indication of the prices that have been paid for freedom. It is a mark of a nation-state's decision to never go back to a divisive past, and to always embrace all that brings people together rather than dividing them. It serves as a reminder to SA and other states

Robben Island is one of the most historically significant locations in the world, particularly for its role in the life of Nelson Mandela and the broader struggle against apartheid in South Africa.

to abhor peace, unity, human rights and democratic principles and at all times treat every human being equally without regard to their race, language, gender, age and any other ground.

Apart from Robben Island, other places such as Table Mountain also stand tall geographically and historically. An opportunity to climb to the top of the Table Mountain was not only a golden opportunity to be in tune with nature, but also a chance to understand its unique place and significance in the history books. Notably, the Mountain is one of the seven wonders of the world, due to its unique flat-topped landmark and the orographic clouds that often cover its top among other unique features. It forms part of the Table Mountain National Park, the most visited national park in South Africa and home to thousands of fine bush plant species and a large array of fauna and flora. The full experience is enhanced by the use of technology in the form of cable cars, which allow one to have a 360-degree view of the mountain, the surrounding natural sceneries and the City of Cape Town. Such places serve as reminders to humanity to preserve nature, especially at a point where climate change acutely affects the continent and the entire globe.

9.Conclusion

The start and successful completion of the HRDA programme has been a dream come true for me. It has been a wholesome experience both in and out of class. As I journey ahead in my legal career in impacting lives and defending human rights and democratisation in Africa and beyond, I feel more confident and equipped than ever. As I reflect on Isaac Newton's words, the HRDA LLM programme, given the place of UP as a top law faculty in Africa, and the people who made it a success have been the shoulders of giants, upon which I am now able to see farther. My next challenge is bettering humanity without regard to one's race, gender, language, religion or any other distinguishing feature. But even with this, I am also confident of my ability at this point to deliver on this challenge.

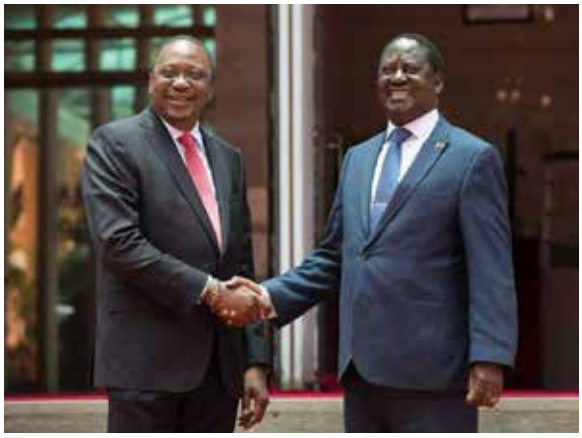
Kipkoech Nicholas Cheruiyot holds an LLM (With distinction) from UP, and an LLB (Hons) from Moi University.

Kenyanprudence of the Supreme Court on Constitutional Amendments

By Leonard Muye Mwakuni

1. Introduction

The Supreme Court of Kenya (KESC) is established under Article 163 of the Constitution of Kenya 2010 and the Supreme Court Act 2011 as the apex court. Its jurisdiction includes hearing and determining appeals from the Court of Appeal on the interpretation and application of the 2010 Constitution. The KESC has had an opportunity to pronounce itself on matters of post-2010 constitutional amendments when it was called upon to determine the constitutionality of the Constitution of Kenya (Amendment) Bill 2020.[1] This Bill was a product of the Building Bridges Initiative (BBI)- 'a device of political ceasefire'[2] between the then President Uhuru Kenyatta and opposition chief Raila Odinga, which was purportedly established to promote national unity. The BBI was established following the



The BBI process began in March 2018 when President Uhuru Kenyatta and Raila Odinga, signed a "handshake" agreement after years of political rivalry. This handshake was aimed at reconciling their differences and working together for the greater good of Kenya, particularly after the contentious 2017 general election.

2017 presidential election, its nullification by the KESC,[3] the rerun which was boycotted by Odinga, his subsequent mock swearing-in as the 'People's President' by the controversial lawyer Miguna Miguna and the protracted mass protects.[4] To a great extent, the KESC has developed Indigenous and progressive jurisprudence on constitutional amendments, that is, *Kenyanprudence*.[5] In the *BBI* case, the

[1] *Attorney-General & 2 others v Ndii & 79 others; Prof. Rosalind Dixon & 7 others* (Amicus Curiae) (Petition 12, 11 & 13 of 2021 (Consolidated)) [2022] KESC 8 (KLR) (31 March 2022) (Judgment) (with dissent) (hereinafter 'the BBI case').

[2] Elizabeth A O'Loughlin and Walter Khobe, 'Kenya: Constitutional Amendments as a Device for Political Ceasefire' (2020) 1 Public Law 198-201.

[3] *Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others* [2017] eKLR.

[4] The repeat elections were held on 25 October 2017, and Raila Odinga boycotted them, handing the victory to the incumbent President.

[5] *Kenyanprudence* is my neologism. The term is coined from the two words: 'Kenyan' and 'jurisprudence'. It is used to refer to the development of jurisprudence that is Kenyan (home-grown, Indigenous, rich, robust, and patriotic) and takes into account the peculiar circumstances of Kenyan society, including socio-economic, cultural, political, legal, constitutional, theological, and spiritual factors.

KESC heard and determined issues such as applying the basic structure 'doctrine' in the Kenyan context and the remit of popular initiative amendments, including whether State actors (like the President) can initiate such amendments. This brief paper looks into the *Kenyanprudence* on constitutional amendments per the procedures under Chapter 16 (Articles 255, 256, and 257)[6] from the KESC.

2. *Kenyanprudence* from the Supreme Court

In the BBI case, the KESC developed *Kenyanprudence* in the following areas.

On popular sovereignty and popular initiative amendments

Per the 2010 Constitution, the judicial authority emanates from the people to promote and protect constitutional principles, values and purposes.[7] The KESC has correctly pronounced that the judicial authority is derived from the people 'must be reflected in the decisions made by the Courts'.[8] History teaches that Kenya's post-2010 constitutional amendment processes must also be highly participatory and people-centred, similar to the processes leading to promulgating the 2010 Constitution.

State actors (organs, offices, or officers and judicial officers) cannot initiate popular initiative amendments. They can petition Parliament to initiate amendments via the parliamentary initiative. The President cannot initiate popular amendments.[9] A sitting President can also petition Parliament to initiate parliamentary amendments without infringing on the sacred people-centred route under Article 257.[10] The KESC has also recognised that, in light of the Kenyan history where the President instigated abusive constitutional amendments under the previous Constitution, the President cannot initiate constitutional amendments via a popular initiative, as this is a citizen-driven and people-centred process. In light of this, the KESC correctly found that the 2010 Constitution of Kenya (Amendment) Bill, 2020, was unconstitutional, as the President had initiated it. Per the history of its introduction,[11] the popular initiative is exclusively a people-driven and highly participatory process, an exercise of direct supreme sovereign power and originates outside the State actors or structures as a preserve of the *Wanjiku*[12] as registered voters as opposed to State actors such as the Parliament and President.[13] Popular initiative amendments are identifiable at the decisive time, that is, at conceptualising the concept.[14] Lenaola SCJ wrongly held that the popular initiative begins with collecting signatures prior to or simultaneously with the general suggestion or draft Bill.[15] The

[6]These Articles provide for parliamentary and popular initiative amendments, amendments to the basic structure, other unrelated matters, and a national referendum.
[7]Kenyan Constitution, Art. 159(1) and (2)(e).
[8]*Interim Independent and Electoral Commission*, Constitutional Application No. 2 of 2011 (2011) eKLR [86].
[9]See for example, the BBI case [481] (Mwilu DCJ & VP), [1042] (Wanjala SCJ), [1535] (Lenaola SCJ), [1917] (Ouko SCJ).
[10]See for example, the BBI case [457], [486], [487] (Mwilu DCJ & VP), [1537], [1544] (Lenaola SCJ).
[11]Popular initiative features in all constitutional drafts, and the intention was to provide the people with a direct route to amend the Constitution to curb the culture of hyper-amendments that bewildered the previous Constitution. The Parliament in the previous Constitution was an appendage of the Executive and passed many amendments without involving the people.
[12]This is a common or popular name or lexicon in the Kenyan socio-economic and political lingua used as a generic reference to the ordinary Kenyan people.
[13]See for example, the BBI case [238], [241] (Koome CJ & P), [491] (Mwilu DCJ & VP), [1892], [1898], [1909], [1919] (Ouko SCJ); [1532] (Lenaola SCJ), [806] (Ibrahim SCJ). See also Elisabeth Gerber, 'Legislative Response to the Threat of Popular Initiatives' (1996) 40(1) AJPS 99-128; Denis Galligan, 'The Sovereignty Deficit of Modern Constitutions' (2013) 33(4) OJLS 703-732; Maija Setala, 'On the Problems of Responsibility and Accountability in Referendums' (2006) 45(4) EJPR 699-721; Chieko Numata, 'Checking the Center: Popular Referenda in Japan' (2006) 9(1) SSJJ 19-31.
[14]*BBI* case [514] (Mwilu DCJ & VP).
[15]*BBI* case [1541] (Lenaola SCJ).


Hon. Justice Philomena Mwilu

correct approach is to consider the original intention of the promoters. Njoki Ndungu SCJ held that popular initiative is only about numbers (1 million) registered voters,[16] which is wrong because both the numbers and the promoters count. Njoki Ndungu SCJ's argument fails to consider the history, nature, and purpose of introducing the popular initiative. Ibrahim SCJ was wrong when he held that under Article 257, the President has the power to decide whether or not to hold a referendum.[17] The correct position is per Mwilu DCJ & VP that the President's role is a ceremonial, mere formality, not discretionary, but mandatory and time-bound functions.[18] In the *BBI* case, Njoki Ndungu JSC wrongly interpreted the constitutional remit of the popular initiative under Articles 255 and 257 of the 2010 Constitution and concluded that any person in Kenya, including the President, Members of Parliament, and Chief Justice, can utilise the popular initiative! The President ceases to be an ordinary citizen, and State actors cannot capture the supreme popular sovereignty.[19]

On constitutional supremacy

It follows that proposed constitutional amendments must fit into the context of the rest of the 2010 Constitution in internal harmony, unbroken unity, and consistency and not be brought haphazardly and clandestinely.[20] The proposed amendments must always be weighed against the existing express constitutional provisions.[21] These pronouncements from the KESC support the principle of constitutional supremacy vis-à-vis constitutional amendments.

On constitutional interpretation

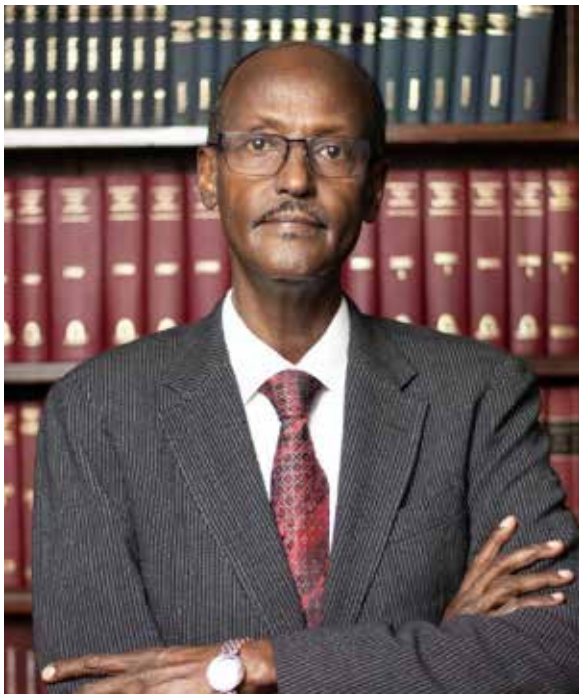
Modern progressive constitutions must always acknowledge that change is inevitable, and the Constitution-making generation cannot tether future generations.[22] The superior courts' Judges have 'sufficient arsenals that include our own canons of interpretation which we must exhaust before borrowing from other jurisdictions'.[23] The KESC has adopted the purposive and value-based approach to constitutional interpretation of the amendment provisions.[24] This approach incorporates the intra-textual (wholesome constitutional interpretation) and extra-

[16] *BBI* case [1185] (Njoki Ndungu SCJ).
[17] *BBI* case [791] (Ibrahim SCJ).
[18] *BBI* case [459] (Mwilu DCJ & VP).
[19] *BBI* case [453] (Mwilu DCJ & VP).
[20] *BBI* case [533] (Mwilu DCJ & VP). This is compatible with the definition of 'amendment' by Richard Albert, Constitutional Amendments: Making, Breaking and Changing Constitutions (OUP 2019) 79.
[21] *BBI* case [543] (Mwilu DCJ & VP).
[22] *BBI* case [209] (Koome CJ & P), [1160] (Njoki Ndungu SCJ), [1860] (Ouko SCJ).
[23] *BBI* case [200] (Koome CJ & P).
[24] BBI case [188] (Koome CJ & P), [416] (Mwilu DCJ & VP).

textual contexts, including the Preamble; national values and principles of good governance; Schedules; preparatory drafting materials;[25] foreign laws and judicial decisions; general principles of international law and ratified treaties; political, socio-economic and cultural contexts with historical, contemporary and future dimensions; and scholarly writings.[26] The people-empowering constitutional amendment provisions must be interpreted liberally, broadly, and generously in favour of the people to give effect to their supreme sovereignty in amendments. The *Kenyanprudence* is not insular and receives or borrows from scholarly works and foreign jurisprudence to suit its needs, considering its contexts and circumstances. For instance, in the *BBI* case, the KESC used judicial decisions from other jurisdictions and scholarly works, accepted the briefs of amici curiae, and the Judges seriously engaged with the amici briefs and submissions. This clearly shows that the KESC Judges are accommodative and ready to learn from other jurisdictions (such jurisdictions can also learn from Kenya; that is 'reverse learning'), especially where there are transformative constitutions, common colonial history, and responses to colonialism and neo-colonialism. This is good to enrich and develop the *Kenyanprudence*.

On the composition and quorum of the Independent Electoral and Boundaries Commission (IEBC)

In constitutional amendments, the IEBC has a role in verifying and forwarding the popular initiative amendments to County Assemblies and conducting national



Hon. Justice Mohammed Ibrahim

referenda. The IEBC is always quorate by three commissioners per Article 250(1) of the Constitution. The IEBC is always constitutionally composed and quorate if it has the minimum prescribed three commissioners to verify popular initiative amendments and conduct national referenda to perfect constitutional amendments. Ibrahim SCJ, in the *BBI* case, was wrong in finding that the IEBC did not have the requisite composition and quorum of five or four commissioners to verify the signatures of one million registered voters per Article 257(4) of the Constitution.[27] Ibrahim SCJ failed to recognise the Constitution-conformity approach to statutory interpretation. Koome CJ & P recognised this principle.[28] That legislation cannot trump the 2010 Constitution was also recognised by the KESC in *Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others*.[29] The

[25]See, for example, the BBI case [188] (Koome CJ & P).
[26]For a discussion on interpreting the amendment provisions, see LM Mwakuni, 'Purposive Interpretation of the Amendment Provisions under Kenya's 2010 Constitution' (2024) (Upcoming).
[27]*BBI* case [918] (Ibrahim SCJ).
[28]*BBI* case [325] (Koome CJ & P).
[29]SC Petition 10 of 2013; [2014] eKLR [85]. See also *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others*, SC Civil Application No. 29 of 2014; [2014] eKLR.

IEBC is constitutionally and legally quorate and composed of three commissioners.[30]

On public participation

Public participation is infused in all stages of the amendment processes, albeit to varying degrees and extents, depending on the nature of the specific stages.[31] The nine guiding principles in the *BAT* case[32] are insufficient, with no clarity on what constitutes adequate public participation as the test is unclear and subjective depending on the inclination of the Judges.[33] The terms 'deep', 'meaningful', 'real', 'sensitisation' and 'engagement' are all subjective. The issue of public participation should be considered as a continuum of the entire amendment processes based on the various stages prescribed under Articles 255, 256, and 257 of the 2010 Constitution, which must be inclusive, enable deep public participation, and promote active involvement of the people.[34] People must know the content of popular initiatives before they support them.[35]

On the basic structure 'doctrine'

This 'doctrine' is not applicable in Kenya as the 2010 Constitution (Chapter sixteen) has provided multi-tiered amendment procedures that effectively cure the culture of hyper-amendments and achieve the desired fair balance between rigidity and flexibility in constitutional design and architecture.[36] This is a creative, unique, significant, and valuable contribution to the jurisprudence of constitutional amendments by the KESC when faced with the possibility of abusive amendments within the framework of two-tiered amendment processes. The tired-constitutional design provides for different amendment procedures for different provisions.[37] The KESC correctly identified Article 255(1) of the 2010 Constitution as the basic structure which is different from the basic structure 'doctrine' which does not apply in Kenya.[38]

The amendment of the basic structure (ten matters including popular sovereignty and constitutional supremacy) can be amended by inclusive, highly and deeply participatory, and people-centred processes, intensive public participation, and a national referendum.[39] In the *BBI* case, Ibrahim SCJ must be called out for wrongly finding and concluding that the basic structure 'doctrine' is applicable in Kenya despite the explicit provisions under Chapter 16 of the 2010 Constitution that provide for amendment of the Constitution via parliamentary and popular initiatives. There is no need for the basic structure 'doctrine' because of the tiered amendment process and the basic structure that is amended by a national referendum.[40]

On national referendum questions

The KESC correctly held that the issue of referendum questions was unripe for determination because the IEBC was not yet

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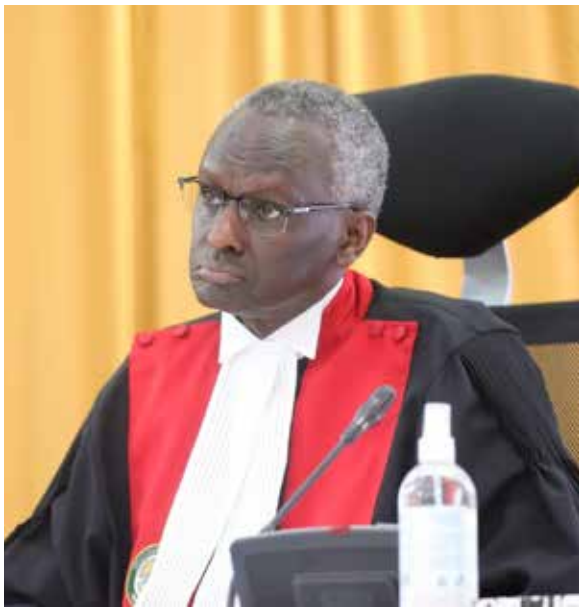
[30]*BBI* case [328], [337], [338], [346] (Koome CJ & P), [1113] (Wanjala SCJ), [1677], [1678] (Lenaola SCJ), [660], [662] (Mwilu DCJ & VP).
[31]For the stages of parliamentary and popular initiatives, see LM Mwakuni, "We, the People of Kenya' as the Sovereign in Post-2010 Constitutional Amendments: A Comparative Approach' (LLM Dissertation, UNISA 2024/5) (Upcoming).
[32]*British American Tobacco Kenya, PLC (formerly British American Tobacco Kenya Limited) v Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tobacco Kenya Limited (The Affected Party)*, Sup Ct. Pet. 5 of 2017; [2019] eKLR [96].
[33]Migai Akech, T*aming the Tyranny of the Barons: Administrative Law and the Regulation of Power: An Inaugural Lecture* (Faculty of Law UoN 2024) 56-57.
[34]BBI case [1629] (Lenaola SCJ), [302], [304] (Koome CJ & P), [1298] (Njoki Ndungu SCJ), [604], [678(v)] (Mwilu DCJ & VP), [2012] (Ouko SCJ).
[35]BBI case [855] (Ibrahim SCJ), [2018] (Ouko SCJ).
[36]See for example, the *BBI* case [192] (Koome CJ & P), [1418] (Lenaola SCJ), [1803], [1860], [1784] (Ouko SCJ).
[39]Richard Albert, 'Constitutional Handcuffs' (2010) 42 AZSLJ 663, 709; Rosalind Dixon and David Landau, 'Tiered Constitutional Design' (2018) 86(2) Geo. Wash. L. Rev. 438, 441.
[40]See for example, the *BBI* case [389], [444] (Mwilu DCJ & VP), [752] (Ibrahim SCJ), [1470] (Lenaola SCJ), [1807], [1809], [1864] (Ouko SCJ).

invited to determine the manner and form of the questions.[41] This is a deeply fundamental question and cannot be determined in an anticipatory manner.[42] However, national referendum question(s) should be presented separately and distinct per the 'unity of content' principle depending on (a) Article 255(1) matters and unrelated matters and (b) whether the amendment falls under parliamentary or popular initiative.[43]

Some KESC Judges exercised judicial overreach and ruinous activism by determining this issue. The principle of separation of powers, checks and balances is significant. The KESC should not take up unripe matters for determination. Lenaola SCJ, while identifying the confusion brought by section 49 of the Elections Act 2011, wrongly opined that 'a Bill in the singular is what is ultimately presented in a referendum'[44] and 'Articles 256 and 257 consistently refers to a 'Bill' and not 'Bills".[45] The correct approach is that an amendment Bill could contain several proposed amendments that should be presented in the national referendum per the 'unity of content' principle, Article 255(1) matters, and unrelated matters. Lenaola SCJ should be called out for exercising judicial overreach and ruinous activism by proceeding to determine the issue of separate and distinct referendum questions[46] despite correctly finding and holding that the issue was not ripe for determination.[47] Lenaola SCJ wrongly misquoted the recommendations of the CKRC *Final Report*, which recommended that the Constitution should have entrenched provisions whose amendment would be by way of a Bill.[48]



Hon. Justice Isaac Lenaola

The CKRC Final Report recommendations referred to the need for the amendment procedure to make a distinction for a Bill seeking to amend the entrenched and other provisions of the Constitution.[49] Ouko SCJ should also be called out for determining the question of separate and distinct referenda questions as follows: the 'language of Chapter Sixteen is that it is the draft Bill that is to be presented to the people in a referendum'[50] despite having found that the issue is not ripe for determination.

Similarly, Njoki Ndungu SCJ should also be called out for judicial overreach and activism for finding and holding that section 49 of the Elections Act is unconstitutional (an issue that was not available for determination by the KESC) despite correctly finding and holding that the issue of separate and distinct referenda questions

[41]See, for example, the BBI case [351], [358] (Koome CJ & P).
[42]*BBI* case [356] (Koome CJ & P).
[43]See Mwakuni, "We, the People of Kenya' as the Sovereign' (Upcoming).
[44]*BBI* case [1698] (Lenaola SCJ).
[45]*BBI* case [1699] (Lenaola SCJ).
[46]*BBI* case [1699] (Lenaola SCJ).
[47]*BBI* case [1712] (Lenaola SCJ).
[48]*BBI* case [1699] (Lenaola SCJ).
[49]Constitution of Kenya Review Commission, *Final Report of the Constitution of Kenya Review Commission* (2005) 76.
[50]*BBI* case [2110] (Ouko SCJ).

Hon. Lady Justice Njoki Ndungu

was not ripe for determination.[51] Njoki Ndungu SCJ, while observing that the issue of separate and distinct referenda questions was not ripe for determination,[52] went ahead and stated that the question met the fitness and hardship test against the ripeness doctrine[53] to warrant the KESC to exercise its mind. According to Njoki Ndungu SCJ, Article 257 of the 2010 Constitution 'refers to a Bill, and therefore, what ought to have been referred to under Section 49(1), (2) and (3) is a Bill and not an 'issue' or a 'question".[54] It was Njoki Ndungu SCJ's finding that what is to be submitted to the people is not a question or questions but a Bill and that the Bill containing an amendment proposal is submitted to the people for them to vote on in a referendum, indicating whether they agree or disagree with it.[55] Njoki Ndungu SCJ found that the IEBC ought to present to the people only a Bill to amend the Constitution with a 'Yes' or 'No' question for a vote.[56] Njoki Ndungu SCJ also addressed the constitutionality of section 49 of the Elections Act, which departs from the provisions or wording of the 2010 Constitution and confers the IEBC a non-existent mandate to draft referendum questions.[57] Njoki Ndungu SCJ declared that 'Section 49 of the Elections Act, to the extent it departs from the provisions or wording of the Constitution in Articles 256 and 257, unconstitutional'.[58] The correct approach is reading down the statutory provision to ensure it conforms with the 2010 Constitution.[59]

These decisions of the KESC Judges show that they are serious political actors in matters of constitutional amendments by

[51] *BBI* case [1345] (Njoki Ndungu SCJ).
[52] *BBI* case [1333] (Njoki Ndungu SCJ).
[53] *BBI* case [1336] (Njoki Ndungu SCJ).
[54] *BBI* case [1341] (Njoki Ndungu SCJ).
[55] *BBI* case [1342] (Njoki Ndungu SCJ).
[56] *BBI* case [1342] (Njoki Ndungu SCJ).
[57] *BBI* case [1343] (Njoki Ndungu SCJ).
[58] *BBI* case [1345] (Njoki Ndungu SCJ).
[59] See for example, Michael Bishop, 'Remedies' in Stu Woolman and Michael Bishop (eds), *Constitutional Law of South Africa* (2nd edn, Juta 2011) 87.

The BBI became a significant issue in the lead-up to the 2022 Kenyan presidential elections. President Uhuru Kenyatta and Raila Odinga were strong proponents of the BBI, while Deputy President William Ruto and his allies were staunchly opposed to it. The dispute over the BBI played a major role in shaping the political campaigns and alliances for the 2022 elections.

overstretching their mandate and deciding issues that are not ripe for determination. This should be discouraged because the KESC is the apex court. Judges are not demigods, must only decide matters that are ripe for determination and give space to other State organs to exercise their constitutional mandates.

3. Conclusion

Generally, the KESC decision in the *BBI* case is progressive, indigenous, and transformative. The KESC (6-1 majority) held that the basic structure 'doctrine' is not applicable in Kenya. This holding is progressive and transformative. There is no room for implied limitations to the amendment powers in Kenya. The minority decision is backward, and Ibrahim SCJ has a chance for judicial humility in the future to correct the decision. The decision (6-1 majority) that State actors (including the President) cannot initiate popular initiative amendments is also transformative. Njoki Ndungu SCJ's minority decision is wrong and has a chance for judicial humility to correct the decision in the future. There is a need to adopt a purposive interpretation of the amendment provisions to give effect to such provisions.[60] The people-empowering constitutional amendment provisions must be interpreted generously, broadly, and liberally in favour of the people to give effect to their supreme sovereignty in constitutional amendments. The amendment procedures are people-centred and highly participatory as the people are the supreme sovereign and play active roles in promoting and effecting changes that promote democratic good governance and advance positive societal transformations. The KESC must always protect popular sovereignty and constitutional supremacy in constitutional amendments to develop transformative *Kenyanprudence*.

Leonard Muye Mwakuni is an Advocate of the High Court of Kenya and Researcher at the University of South Africa.

[60]See Mwakuni, 'Purposive Interpretation' (Upcoming).

Melodies of resistance: the power, politics and perils of music in Africa's social, cultural and political evolution

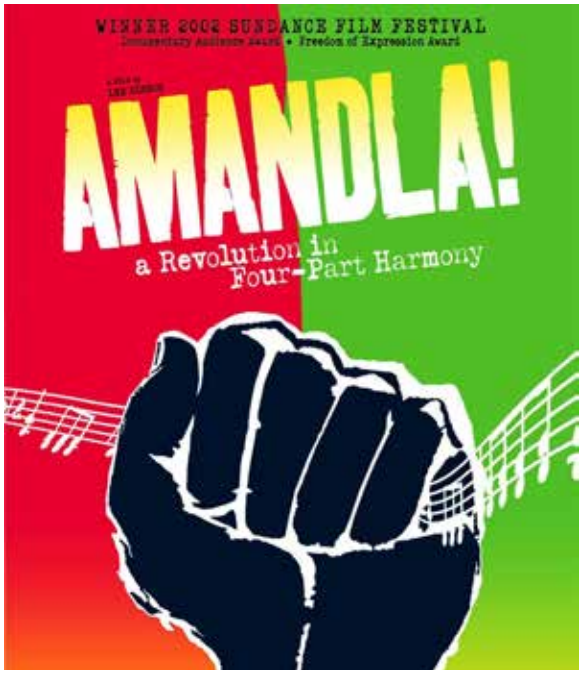
By Lucy Kamau

By David Nduuru

Abstract

Language, art, and music have been central to human expression and societal transformation throughout history. From the protest songs of the civil rights movement to the anthems of the LGBTQIA+ community, music has served as a powerful tool for social change and cultural expression. Art and Literature also played an important role in the struggle for freedom in Africa. Africans began to not only convey their desire for freedom orally e.g. through songs, but also in written forms such as through Poetry, Fiction, Prose Songs, Parables, Novels, Dramatic Plays, etc. In earlier times, Kings and Rulers used Art and Literature for propaganda and as a way to stamp on their authority and 'celebrity' status. We sing when we fight, work, love, hate, when a child is born, and also when death takes a toll'. Music as a performing art and a cultural production is a fundamental feature of life in Africa.[2]

In the recent past, popular culture (and music) has gained prominence as a major site of political and social contestation[3] *in Kenya*



Hugh Masekela, a renowned South African trumpeter and activist, became a voice for the anti-apartheid movement through his music. "Amandla," which means "power" in Zulu, was a rallying cry for the oppressed.

[1]International Journal of Creative Research Thoughts (IJCRT) 9766
[2]Biko 1979:42
[3]Nyairo & Ogude: 2003

Hugh Masekela (1939–2018) was one of Africa's most influential musicians, celebrated for his powerful trumpet playing and for being a political voice against apartheid, colonialism, and racial injustice.

and Africa as a whole. With each decade music changes and each decade has music that encapsulates it. The power of music lies in the fact that music has a captive audience situated in locales outside the regulated zones of the national leadership[4]. Beyond its capacity to entertain, music possesses the unique ability to serve as a catalyst for social change. Through Music, the populace can voice their support or disapproval of their leaders, and or, air their grievances.[5] This article also captures the growing erosion of spaces for artistic expression across the continent, aggravated by a rise in various forms of censorship, which include financial blacklisting, digital surveillance, internet shutdowns, travel bans, forced exile, and the reinstatement of colonial-era laws often designed to suppress dissident expression. It sheds light on the troubling rise in restrictions on artistic freedom throughout Africa that has been exacerbated by recent military coups, political crises, flawed elections, and the lingering effects of the COVID-19 pandemic.

Historical role of music in liberation

In many parts of Africa, music played an important role in the struggle for liberation from colonizers. Music and song served as inspiration and provided a potent tool to mobilize society to resist, and fight against colonial administrations. This was mainly between the 1960s and 1980s when many African countries gained political independence. It is from this context that in 2009, when renowned South African artist and activist, Hugh Masekela, chanted in Lugano, Switzerland, at a concert, '*…I don't know what happened to us the human beings, we seem to have lost our sense of outrage that we had in the 60s and 70s and now, we just look at our laptops and shake our heads*,' one can't help but reflect on the importance, significance and purpose of music and song in the struggle for liberation and freedom.

Music and song will not in and of themselves bring freedom. They are not a substitute for

[4]Ibid
[5]Onyango Gordon; *Music, Ridles and Proverbs in Kenya's presidential Elections; Raila odinga's Oratory Style and the 2017 General Election* 2019

Joseph Kamaru (1939–2018) was one of Kenya's most influential musicians and cultural icons. Known for his powerful voice, ability to blend traditional and contemporary music, and his commitment to social justice, Kamaru's songs often resonated with the everyday struggles of Kenyans, tackling political, social, and cultural issues.

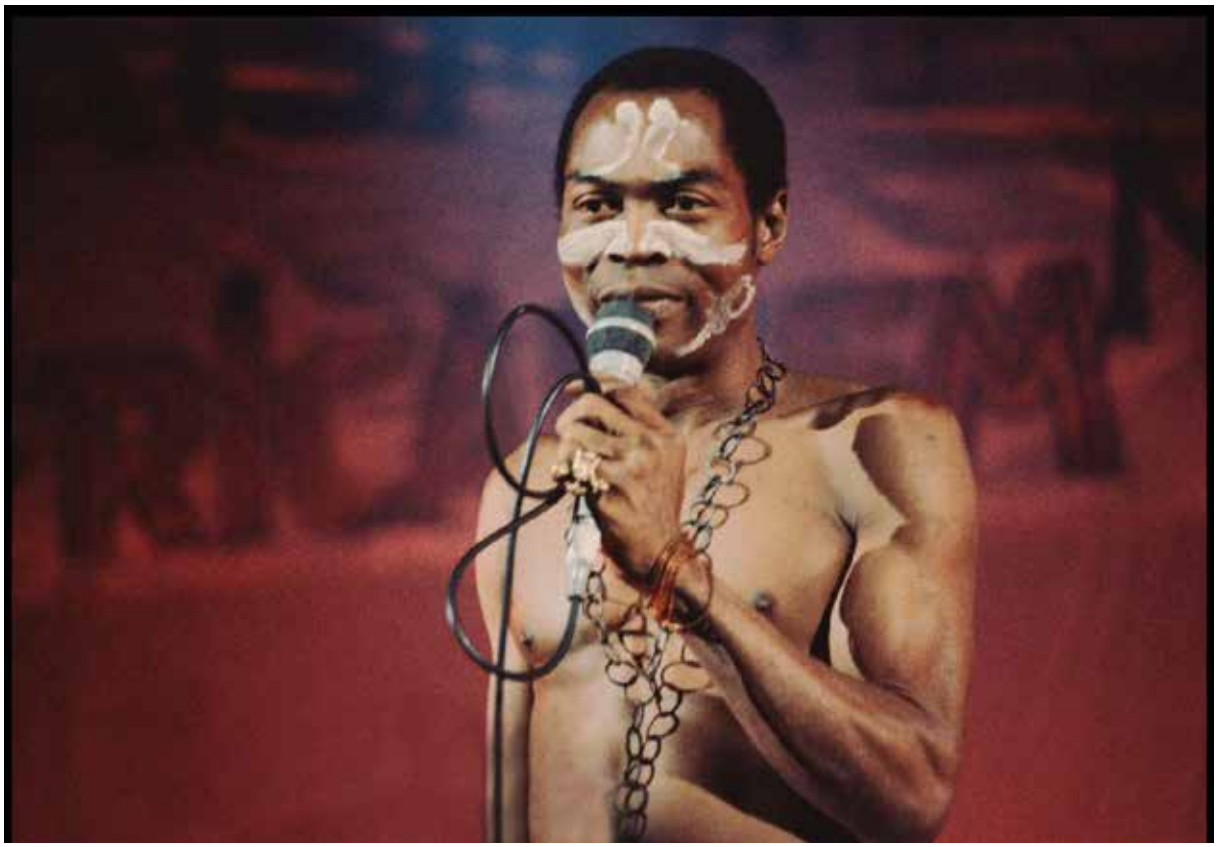
mobilization to fight for freedom, but only serve to cultivate a ready ground. In songs like 'Aluta Continua' (*Welela*, 1990), Makeba urges freedom fighters to continue fighting for liberation: 'open your eyes and answer the call of the drum,' she urges her people. It was clear to Makeba that on her shoulders, and probably more aptly, on her tongue, lay the responsibility to contribute to the liberation of not only her country, but also her continent.

The birth of protest music and censorship

Immediately after independence, there were "patriotic" songs composed to celebrate the newly attained uhuru. Musicians created songs reminding Africans of the independence struggle and the sacrifices that had resulted in self-rule. Along the way, as new presidents consolidated more powers, this music slowly morphed into glorification and praise songs. Before long, a hero- worship culture was born. Joseph Kamaru, a popular Kenyan Benga musician at the time sang 'Safari ya Japan' in praise and appreciation of the new hero, President Moi, when he came to power in 1978.

This would not last long in most African countries as the presidents would gradually but surely fall from the graces of the people. This was contributed by misuse of power, corruption, mysterious deaths & disappearances and political assassinations. The people realized that the only difference between colonization and self rule was that their masters had the same skin colour as they did. Letta Mbulu, a South African musician sings '*Ilifa lezithutha lidliwa ngabahlakaniphileyo*,' (the wealth of the foolish ones will be enjoyed by the clever ones) in *Not Yet Uhuru*(Not Yet Uhuru, 1994), sounding the alarm that the job is not yet done. Mbulu challenges us yet again to consider the lack of socio-economic progress in the conditions of the people whom she describes as not seeing the benefits of the end of apartheid. In almost prophetic prose, she warns that the wealth of the country is at risk of being embezzled by the so-called clever minority. These events also fermented the beginning of protest music in Kenya as artists began to respond to the political contestations. Artists began to speak truth to power. However, it did not go unpunished as the state came down viciously on its critics and opponents, signalling the narrowing of democratic space.

In 1969, in an act of defiance, Abdilatif Abdulla, a poet and member of The Kenya People's Union (KPU), a socialist political party in Kenya led by Oginga Odinga, wrote the treatise Kenya: Twendapi? (Kenya, where are we heading to?). It was a bold attempt at speaking truth to power and revealed that the state was prepared to use all means to stifle commentary. Joseph Kamaru who was also personal friend of JM Kariuki, used his music to protest the killing of the politician. Kamaru's song was banned by the Voice of Kenya, later known as the Kenya Broadcasting Corporation on June 20, 1975 and Kamaru is reported to



Fela Kuti's influence extends far beyond his musical contributions. His music provided the soundtrack for revolution and became a rallying cry for those who fought against corruption, militarism, and dictatorship. His fearless approach to political expression set him apart as an artist who wasn't just entertaining people, but actively challenging them to think critically about the world around them.

have been arrested. Daniel Owino Misiani, another musician who had used his art to consistently critique the political repression by the Kenyatta regime, especially the political assassinations, was imprisoned on various occasions for his lyrics, which were deemed offensive to the state. He was also threatened with deportation from Kenya on several occasions because he was born in Shirati, which is administratively in Tanzania.

Beyond the use of state machinery to limit access to audiences by shutting down the airwaves, physical threats and actual violence entered the repertoire of tools used by the state to ensure that criticism was curtailed. The state resorted to silencing its critics using the public broadcaster that was the only one available at this time. This approach was to become a standard way of ensuring that the voice of protest was not heard, not only in Kenya, but other African countries as well.

Musician and political activist Fela Kuti was outspoken against the Nigerian military juntas, which were dictatorships led by Nigerian Armed Forces, and made many songs opposing them. In 1976 he recorded "Zombie", a protest song that criticises Nigeria's oppressive military regime. In 1977, after yet again attracting the wrath of the Nigerian state, truckloads of armed security forces were sent to arrest the afrobeat maestro, Fela Kuti, at a venue where he was performing.

Miriam Makheba, Hugh Masekela and Letta Mbulu were exiled for their anti-apartheid music, but continued to act as voices of dissent while in exile whilst others like composer Vuyisile Mini were executed for their great role. Among the songs were

Kalamashaka is a pioneering Kenyan hip-hop group that played a key role in shaping the hip-hop scene in Kenya and East Africa during the 1990s. Known for their gritty lyrics and socially conscious themes, the group's music addressed a wide range of issues facing Kenyan society, including poverty, political corruption, inequality, and the struggles of the urban poor.

Senzeni na?(what have we done), siyaya(we will go), yinde lendlela esihambayo(the road we've embarked on is a long one), Iyo Usolomon dedicated to executed MK soldier Solomon Mahlangu.

A new era of music and it's entry into the electoral field

Over time, the music industry evolved and diversified to meet the needs of a different generation. It is at this time that bands like Kalamashaka were born in Kenya. While the likes of Kamaru and Misiani made benga music laced with critiques of the repression of the Kenyatta regime (Kenya's first president), contemporary Kenyan artists such as Kalamashaka, Wenyeji, and Mashifta all part of the Ukoo Flani Mau Mau hip-hop dynasty reached a new generation of listeners.

The use of Sheng, which at that time was struggling to shed its identity as a street thug language and gain acceptance as a Kenyan patois was revolutionary because it immediately drew a generational as well as class line. Kalamashaka made a mark in the music scene by their signature tune, 'Tafsiri Hii' (Translate This) which, was an indictment of the prevailing inequality in Kenya and the disenfranchisement of the youth. A new form of musical protest was emerging that was indignant, gritty, and startling in its bold depiction of police brutality, street life, post-independence betrayals, endemic corruption, and the abject state of poverty in the ghetto. University students became actively involved in voicing their opinions on governmental failures and economic disray. The emerging Hip Hop musicians spoke truth to power, describing how the system had failed them. The lyrics were described as "full of rage" showing how tired they were of a failed system. This sent signals to the political status quo that the movement was potentially dangerous. The response to the

rising protest music signalled a totally new era in censorship. Commercial radio stations played a role in banning this music as they were reliant on state and corporate goodwill and advertising effectively became agents of shutting down any anti-establishment voice.

Various Authors have argued that Kenya's national desire for change during the 2002 General Elections was brought forth, at least in part, by Artists[6]. *Joseph Ogidi* and *Jahd Adonija* performing as *Gidi Gidi Maji Maji*, did the *Ting Badi Malo*, and *I am Unbwoggable*; which was a great delight to a majority of Kenya's electorates. The National Rainbow Coalition (NARC) used the *Unbwogable* to mobilize voters to support them.

Since then, the political class in Kenya has been using Music to capture the populace's attention and to popularize their candidature, certain policies, and referenda. For instance, during the 2005 National Referendum on the Draft Constitution of Kenya, both President Kibaki's and Former Prime Minister Raila Odinga's camps hired Artists to disseminate their political agendas.

In 2017, Ben Githae's *Uhuruto Tano Tena* became a household song campaigning for President Uhuru's reelection and highlighting their major achievements between 2013 – 2017. This would be classified under the Promotional type of Political Poetry; where Artists use poems and songs that focus interest, admiration, and attraction on the image of a political leader to endear the leader to the electorate[7]. Some Promotional Political Poems are often, deliberately, exaggerated.

The aim of producing campaign songs is primarily driven by the need to use popular art as a tool to communicate to the masses. 'Music is the only language that transcends barriers between people from different communities. As a vehicle for campaigns, it serves an effective role as a powerful unifying factor[8].

Gidi Gidi Maji Maji was a groundbreaking Kenyan musical group that played a crucial role in the development of Kenyan hip-hop and conscious music in the late 1990s and early 2000s. They are best known for their socially conscious lyrics, which addressed political corruption, social injustice, youth empowerment, and the struggles of the urban poor.

[6]Njogu & Maupeu: 2007
[7]Onyango Gordon; *Music, Ridles and Proverbs in Kenya's presidential Elections; Raila odinga's Oratory Style and the 2017 General Election* 2019
[8]The Standard Newspaper; 19th December 2008: 18

"Tujiangalie" is a song by Sauti Soul that stands out as a socially conscious anthem, urging listeners to reflect on their own actions, values, and societal roles. "Tujiangalie" carries a strong message about the need for self-awareness and the importance of personal responsibility in the face of societal challenges.

Music as a tool for social change; Kenya Finance Bill protest and gender based violence campaigns

The Kenya Finance Bill protests, widely known by **#RejectFinanceBill2024**, or **Gen Z protests**, were a series of decentralized mass protest in Kenya against tax increases proposed by the Government of Kenya in the Finance Bill 2024. This was followed by cabinet reshuffle and nullification of the Bill. Music played a key role in mobilisation and civic education on issues ailing the nation. Among them were 'Anguka Nayo' by Wadagliz, 'Wanjinga sisi' by King Kaka, 'Maandamano' and 'Tujiangalie' by Sauti Sol and Nyashinski.The coomon message in these powerful songs was selfreflection and the need to unpack some of the country's most pressing problems of the time, such as corruption, economic inequality, the crisis of leadership, and the debt challenges. These songs helped ignite a fire within the people of Kenya, especially the youth, and reminded them that they hold the power.

At the height of gender-based violence in South Africa in 2020, Gijana released "Madoda Sabelani" which means "men must answer" in isiXhosa . This song is a plea to all men in the country to stop abusing and killing women. The movement sparked conversations about power dynamics and accountability, influencing the industry's approach to handling allegations. With increased femicide cases in Kenya within the year, there have also been movements, #endfemicideke with songs like 'By the River' by Sauti Sol highlighting the strength of a united society in fighting for a common goal, a safe space and right to life for all.

Modern day censorship

It's hard for many of us to imagine, but all around the world, people are being intimidated out of playing music. Over the last few years in Africa, we have witnessed disturbing attacks on artists from around the continent, accompanied by widespread and pernicious efforts to dampen the right

to artistic expression. The looming threat of censorship casts a shadow over the careers of too many artists. Those who explore taboo subjects and themes can face community ostracization, financial blacklisting, imprisonment, or worse. Some artists are forced to stop creating or to go into exile, an incalculable loss for their communities. Countries such as Nigeria and Zimbabwe have censorship boards for the film and the TV industries, while in Uganda, the government implemented the Stage Plays and Public Entertainments Act 2019, which includes regulations requiring the vetting of new songs, videos, and film scripts prior to their release. In some countries, workshop participants revealed that certain issues can trigger censorship: for example, in Mauritania, discussions of slavery, ethnic and racial discrimination, and apostasy laws are taboo, while in Cameroon, discussions of Anglophone Cameroon are often censored. Other examples include but are not limited to;

- A concert scheduled for 24 January 2016, celebrating the fifth anniversary of the Egyptian Revolution, was to forced to cancel by the country's Ministry of State of Antiquities. The event was to feature Elawela Balady and had received approval from the Ministry of Culture to hold the show in Cairo's Prince Taz Palace. The band that was set to play have contributed to political and social awareness through their music.
- Art Attack, a Kenyan band who campaign for LGBT rights in the country and other African nations, faced censorship after the Kenyan Film and Classification Board banned their video in February for its remix of Macklemore and Ryan Lewis's song Same Love. The decision was made because the video "does not adhere to the morals of the country", Kenyan newspaper The Star reported. The video includes powerful images of LGBT protests and homophobic news headlines from the country.
- Fumba Chama, who goes by the stage name Pilato, fled Zambia at the start of January following a series of intimidating messages. His song Koswe Mumpoto (Rat in the pot) was seen as critical of the government and resulted in menacing voice and video messages. The song depicts an analogy for leaders that instead of serving the people, end up serving themselves.

While freedom of expression is a human right, when it infringes on the well-being of others, musicians should be required to take responsibility for their music and the actions it inspires in others. Throughout the genocide in 1994 it became a tool for propaganda, with the songs of artists working on behalf of the government helping to encourage the killings. While Simon Bikindi was once Rwanda's most famous musician, he is also one of the country's most famous accused war criminals. At the time of the genocide in 1994, Bikindi was a well-known composer and singer of popular music, as well as the director of the performance group Irindiro Ballet. Bikindi's songs, which called for Hutu solidarity against Tutsis, were broadcast repeatedly before and during the genocide by Radio Télévision Libre des Mille Collines (RTLM). Following his trial between 2006 and 2008, the International Criminal Tribunal for Rwanda (ICTR) became the first war crimes tribunal to indict a musician for incitement to genocide.

Conclusion

In many African societies, song and music have historically been used to express social messages, including to the powers that be. The inimitable Zimbabwean musician, Oliver Mtukudzi, affectionately known as Tuku and who died in 2019, expressed this sentiment, talking about the role of music and almost as a warning, remarked, 'where we come from, you don't dare to sing a song when you have nothing to say.

Thandiswa Mazwai is one of South Africa's most iconic and influential musicians. A powerhouse in the realms of Afro-soul, jazz, and traditional African music, Thandiswa has earned widespread recognition for her unique sound, bold artistic choices, and deep commitment to using her music to address social issues, identity, and African pride.

'We talk about our pain, we talk about our frustrations, we talk about our joys.' It is the rich social consciousness that the music of artists like Makeba and Tuku brings to us as a society that has earned them the special place that they so richly deserve.

In 'Nizalwa Ngobani' (Zabalaza, 2004), Thandiswa through her lyrics such as '*The world changes, revolutionaries die, and the children forget*', asks us to remember our great history and reminds African listeners that we are the sons and daughters of great heroes and heroines, including Winnie Mandela, Kwame Nkrumah and Nelson Mandela. In all known cultures, the arts enter profoundly into normal childhood development, connect individuals to their culture, and help people get oriented to the world, emotionally, morally, and conceptually.[9]

Artists play an important role in advancing human rights through their various platforms, from songs and satire to paintings and performance. In doing so, they are often subjected to risks and threats on their person or their work, resulting in a high level of vulnerability. The available human rights defenders (HRDs) protection mechanisms often neglect them as they do not fall in their general definition of an HRD, which is used to refer to those that defend socio-economic and political rights. There is an immense need for a concerted effort to support artists across Africa as they continue to defend rights at a great personal risk.

The attempts to control dissent only pushes people underground. It is the same phenomenon that Burna Boy, who grew up in a 'post-colonial' Nigeria, sings about in his song, 'Monster You Made' (*Twice as Tall*, 2020). Music becomes a means to invoke the people and to also enable the people see themselves in the suffering of others. In this sense, it not only awakens a consciousness from the exploited, but also arouses solidarity from those watching from a distance.

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[9]Boyd, On the Origin; Carroll, Literary Darwinism 65-69; Carroll, Gottschall, Johnson, and Kruger; Dissanayake, Art; Dutton; Tooby and Cosmides, "Does Beauty Build?"

LAW AND TECHNOLOGY

Anatomy of Autonomous Weapon Systems (AWS)-driven wars' psychological impacts: 19th to the 21st century case studies

By George Nyanaro Nyamboga

1. Introduction

Modern combat has seen military weaponry and activities attain unprecedented complexity in terms of global interdependent technological and human interdependence. This has led to the advent of cyber warfare, remote-controlled weaponry, and increasingly autonomous weaponry, posing a challenge to interpreting and applying international humanitarian law.[1] Shahrullah and Saputra find that deploying autonomous weapons raises IHL concerns because they are software-driven for tracking, searching, finding, identifying, isolating, selecting, and engaging targets devoid of human interventions.[2] By choosing and attacking independently through a pre-programmed algorithm, they are now key players on the battlefield, raising questions about their consciousness in striking a balance between military necessity and human dignity.[3] It (importantly) raises

Autonomous Weapon Systems (AWS) are one of the most controversial and rapidly advancing areas in modern military technology. These systems, often referred to as "killer robots" in popular discourse, are weapons that can operate and make decisions with minimal or no human intervention, typically relying on artificial intelligence (AI), machine learning, sensors, and robotic technologies to carry out military tasks.

[1]Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction* (ICRC 2022) 43-44.
[2]Rina Shahrullah and Muhammad Samsu Saputra, 'The Compliance of Autonomous Weapons to International Humanitarian Law: Question of Law and Question of Fact' (2022) 28 Wacana Hukum/Wacana Hukum 8, Abstract <https://ejurnal.unisri.ac.id/index.php/Wacana/article/view/6689> accessed 2 June 2024.
[3]Natalia Jevglevskaja (ed), 'Introduction', *International Law and Weapons Review: Emerging Military Technology under the Law of Armed Conflict* (Cambridge University Press 2021) Summary <https://www.cambridge.org/core/books/international-law-and-weapons-review/introduction/9E2222CFD9DF1271C4AF44D341CD8FD1> accessed 2 June 2024.

The heart of any AWS is its processing unit, typically powered by artificial intelligence and machine learning algorithms. These algorithms analyze data received from sensors, decide on the best course of action, and, in some cases, execute attacks without direct human oversight.

concerns about how such a software-driven military strategy affects the minds and emotions of combatants and civilians in war-prone regions.

However, there is a less addressed side of AWS: their psychological effect on the controllers and victims of war threatened by them. Considering that AWS operators control these weapons from afar, their psychology of war prevents them from thinking about their direct impact.[4] Likewise, distance changes their psychological feelings regarding the decisions they make and the consequences thereof, while war victims around military targets live in constant fear, uncertainty, stress, and PTSD of being indiscriminately attacked (or even wiped out) anytime.[5] AWS follows their pre-programmed algorithm devoid of feelings, which, if once deployed, indiscriminately attacks, breaching IHL principles of distinction, proportionality, and humanity, causing PTSD, anxiety, and worry to those living under their watch.[6] This essay critically discusses the psychological effects of AWSs, highlighting the effect of their deployment on controllers and war victims, creating an adverse impact relationship between AWS military technologies' relentless march vis-à-vis timeless human experiences of war.

2. AWS' psychological impact on controllers/operators

Autonomous weapons are increasing warfare depersonalization while reducing human empathy and attachment. Lavazza and Farina argue that autonomous weapons detach emotions such as empathy and compassion from a war, causing difficulty in attaching responsibility for IHL violations during wartime.[7] This depersonalization undermines the rules of combat and the principles of IHL applicable in the field. Conversely, Riesen finds AWS to reduce soldiers' moral and psychological risks,[8] a view Altmann notes to be an advantage while critiquing it to be a recipe for loss of human control and understanding, escalating wars' humanitarian fatalities and property destruction thereof.[9] Due to

[4]Afonso Seixas-Nunes (ed), 'AWS: The Current State of the AWS Debate and of State Policy', *The Legality and Accountability of Autonomous Weapon Systems: A Humanitarian Law Perspective* (Cambridge University Press 2022) 45–102, Summary <https://www.cambridge.org/core/books/legality-and-accountability-of-autonomous-weapon-systems/aws/DA0EEDED54A002BBD37DC525DCDECA9E> accessed 3 June 2024.

[5]'International Committee of the Red Cross (ICRC) Position on Autonomous Weapon Systems: ICRC Position and Background Paper' (*International Review of the Red Cross*, 1 January 2022) <http://international-review.icrc.org/articles/icrc-position-on-autonomous-weapon-systems-icrc-position-and-background-paper-915> accessed 3 June 2024.

[6]Anastasia Marshak, Teddy Atim and Dyan Mazurana, 'International Humanitarian Law Violations in Northern Uganda: Victims' Health, Policy, and Programming Implications' (2023) 44 Journal of Public Health Policy 196, Conclusion.

[7]Andrea Lavazza and Mirko Farina, 'Leveraging Autonomous Weapon Systems: Realism and Humanitarianism in Modern Warfare' (2023) 74 Technology in Society 102322, Conclusion.

[8]Erich Riesen, 'The Moral Case for the Development and Use of Autonomous Weapon Systems' (2022) 21 Journal of Military Ethics 132, Abstract.

[9]Jürgen Altmann, 'Autonomous Weapon Systems – Dangers and Need for an International Prohibition' in Christoph Benzmüller and Heiner Stuckenschmidt (eds), KI 2019: *Advances in Artificial Intelligence* (Springer International Publishing 2019) 1–17.

depersonalization, Wagner concludes that AWS threatens IHL principles of distinction and proportionality, central to preserving human dignity and the principle of humanity,[10] which are cornerstones of IHL.

Melzer construes the principle of humanity from the lens of humane treatment, requiring that the physical and psychological integrity of protected persons under IHL be respected.[11] IHL prohibits the use of warfare methods or means that are tantamount to any form of violence against the life, health, or well-being of protected persons, such as murder, torture, corporal punishment, mutilation, outrage against human dignity, hostage-taking, collective punishment, and threats to engage in any of these acts.[12] Therefore, the lack of empathy resulting from AWS depersonalisation in combat may impair the ability to apply the principles of humanitarian law, such as distinguishing between civilian and military targets, ensuring the protection of civilians and their property, and avoiding excessive civilian casualties in the pursuit of military objectives.[13]

AWS deployment can affect the proportionality principle, which prohibits an attack expected to result in excessive incidental loss of civilian life, injury, damage to civilian objects, or a combination of these concerning the anticipated concrete and direct military advantage.[14] As previously mentioned, the distance between AWS operators and the battlefield can lead to a decision-making imbalance, with emotional distance potentially causing the controller to underestimate civilian harm and overestimate military advantages.[15] This could breach the precautionary principle, which mandates that combatants exercise caution to minimise incidental harm to civilians.[16] Therefore, *detachment from the battlefield may compromise the decision-making process of the AWS operator, leading to a failure to take neither necessary precautions nor the proportionality principle into consideration.*

AWS also presents ethical and legal challenges, which, despite not being entirely new/novel, intensify IHL issues that have plagued warfare history. The systematic character of AWS-facilitated violence morally devalues the target, eroding the aggressor's moral agency while jeopardising the laws of war that offer essential restraints on the excessive use of military force. Such a moral agency erosion contradicts IHL's ethos and humanity principle that aims to hold accountable violators of war rules, perpetrators of war crimes, and those who fail to incorporate IHL principles in their thinking process during the conduct of hostilities.[17] Hence, the aforediscussed legal and ethical issues, if left unaddressed, adversely affect the psychology of the AWS operator and victims.

3. Chances of lacking cognitive harmony and moral injury on AWS deployers; psychological disconnect from the warzone

Autonomous weapon system deployment has significantly altered the warfare's

[10]Markus Wagner, 'Chapter 4 Autonomy in the Battlespace: Independently Operating Weapon Systems and the Law of Armed Conflict' (BRILL, 2013) 99–122 <https://brill.com/display/book/edcoll/9789004229495/B9789004229495-s006.xml> accessed 3 June 2024.
[11]Melzer(n1) 195.
[12]Additional Protocol I(AP I), Art. 75(2); Customary International Humanitarian Law (CIHL), Rules 89–93, 96 and 103.
[13]Vincent Boulanin, Laura Bruun, and Netta Goussac, *Autonomous Weapon Systems and International Humanitarian Law: Identifying Limits and the Required Type and Degree of Human–Machine Interaction* (SIPRI 2021) 1, 14-27.
[14]AP I, Art. 51(5)(b); CIHL, Rule 14.
[15]Neil Davison, 'A Legal Perspective: Autonomous Weapon Systems Under International Humanitarian Law' in UNODA Occasional Papers, No. 30, 5-18 https://www.icrc.org/en/publication/4283-autonomous-weapons-systems accessed 2 June 2024.
[16]Melzer (n1) 102-103.
[17]Davison (n15) 5-18.

Anatomy of Autonomous Weapon Systems can be classified based on the level of human intervention required, which can range from fully autonomous to remotely controlled. The control systems determine how much human involvement is necessary in the operation of the weapon.

psychological landscape, moreso regarding cognitive contradiction and moral injury conceptions among operators. Such phenomena exemplify significant changes in combat experience, with effects that stretch beyond the immediate tactical setting of the International Humanitarian Law (IHL) 's foundational principles.[18] In this context, moral injury concerns psychological distress due to actions, or the lack thereof, that infringe upon one's ethical or moral code.[19] AWS operators might suffer from moral injury due to decisions made by the autonomous weapons they deploy. Despite the remote nature of AWS-enabled warfare, it could lead to circumstances in which operators feel guilty and responsible for actions they do not control directly. This may result in psychological trauma due to the deep-seated guilt they develop.[20] Notwithstanding the heightened complexity of the situation, AWS, owing to its inherent design, operates based on predetermined algorithms that may sometimes result in actions that are neither anticipated nor planned by their human overseers.[21]

A lack of cognitive harmony emerges when one experiences mental discomfort due to conflict between one's beliefs and actions.[21] Such inharmoniousness presents a dilemma to operators of AWS when they must reconcile the inherent AWS' decision-making process' impersonal character with their role

[18]Jai Galliott, 'Lethal Autonomous Weapons Systems: Proliferation, Disengagement, and Disempowerment' in Robin Geiß (ed), Lethal Autonomous Weapons Systems: Technology, Definition, Ethics, Law & Security (United Nations Institute for Disarmament Research 2017) 85-96, Introduction.
[19]Neil Renic and Elke Schwarz, 'Crimes of Dispassion: Autonomous Weapons and the Moral Challenge of Systematic Killing' (2023) 37 Ethics & International Affairs 321, 321–343, Conclusion.
[20]Renic and Schwarz (n 19).
[21]Dillon R Patterson, *Ethical Imperatives for Lethal Autonomous Weapons* (Belfer Center for Science and International Affairs, Harvard Kennedy School 2020) 1-12.

in deploying lethal AWS force, a situation that is further complicated by high chances of AWS acting in a manner that contradicts ethical beliefs of operators and reasonable (legal) expectations grounded under IHL principles, notably, proportionality and distinction.[22]

AWS fundamentally alters warfare, contrasting direct physical combat with remote engagement, diminishing the emotional response to lethal force, and leading to cold, systematic killing, such as in the Bombing of Hiroshima and Nagasaki.[23] *Detachment from combat visceral reality can result in moral devaluation of the enemy and erosion of the operator's moral agency, which undermines the emphasized restraint on the military use of force in combat, as stressed by the IHL.*

4. Effect on the target population: AWS as a cause of "fear and uncertainty" of civilians surrounding targets

The impact of Autonomous Weapons Systems (AWS) on psychology and warfare has not been fully addressed by regulations despite their significant influence on International Humanitarian Law (IHL). Despite its relentless nature, the AWS instills fear and anxiety in both combatants and civilians. This arises from its impersonal and unpredictable nature, wherein it can select and engage targets without human intervention, creating a constant sense of threat. Moreover, AWS's capability to operate beyond human combatants' spatial and temporal limitations exacerbates the situation, allowing threats to emerge from any direction and at any time.[24]

Uncertainty stems from the intransparency and unpredictability of AWS architecture and deployment. This lack of comprehension extends to the decision-making processes of AWS systems, raising doubts regarding their adherence to the principles of proportionality and distinction in IHL. The inability to anticipate AWS actions and communication or negotiation with AWS challenges in conflict-afflicted zones exacerbates the psychological burden on those affected.[25] AWS's omnipresent nature exacerbates conflicts, heightens crisis instability, and intensifies deterrence dynamics because AWS's cost-saving benefits reduce the human and financial costs of war, which could lead to more frequent and intense conflicts.[26] Finally, AWS' *Opposition retaliation escalates tensions, raising the likelihood of accidental conflict.*

The long-term psychological effects of deploying AWS will always be felt even after the cessation of hostilities, impacting the society's fabric and generations to come, akin to the case of the Hiroshima and Nagasaki bombings.[27] For example, consider Trauma and Post-Traumatic Stress Disorder (PTSD) in the context of AWS usage, which can exacerbate the previously mentioned trauma that children, civilians, wounded soldiers, sick people, and captives in conflict zones often experience. AWS's unpredictable nature and sustained operational capacity can create an environment of constant anxiety and fear, which are characteristic of warfare and conflicts. The chronic nature of these events can trigger mental

[22]Bartlomiej Chomanski, 'A Moral Bind? — Autonomous Weapons, Moral Responsibility, and Institutional Reality' (2023) 36(41) *Philosophy & Technology* 1, 2-14 https://doi.org/10.1007/s13347-023-00647-2 accessed 2 June 2024.
[23]Rosa Brooks, 'Drones and Cognitive Dissonance' in Peter Bergen and Daniel Rothenberg (eds), *Drone Wars* (1st edn, Cambridge University Press 2014) Summary <https://www.cambridge.org/core/product/identifier/CBO9781139198325A022/type/book_part> accessed 4 June 2024.
[24]David Adam, 'Lethal AI Weapons Are Here: How Can We Control Them?' (2024) 629 Nature 521.
[25]Steven D. Sacks, 'A Framework for Lethal Autonomous Weapons Systems Deterrence' (2023) 110 *Joint Force Quarterly* 16-25.
[26]Ibid.
[27]Mariana Díaz Figueroa and others, 'The Risks of Autonomous Weapons: An Analysis Centred on the Rights of Persons with Disabilities' (2023) 105 International Review of the Red Cross 278, 278–305.

The psychological toll on the defenders of Ukraine, particularly amid the ongoing Russian invasion and the conflict in the Donbas region, is profound and multifaceted. The war has not only affected soldiers physically but has also placed immense strain on their mental health.

distress, leading to conditions such as depression, anxiety, and PTSD,[28] which can disrupt social cohesion within communities and hinder development. The foregoing connection with appetitive aggression, which involves violence aimed at obtaining a perceived reward, is particularly pertinent in the context of AWS. Due to the detachment of AWS operators, there may be a cycle of violence where the human cost of conflict is underestimated,[29] leading to a greater inclination toward the use of force and a heightened incidence of appetitive aggression within affected populations.

AWS' psychological trauma, as in the cases of the Israeli-Palestine and Russia-Ukraine wars, has a transgenerational impact.[30] Children who grow up in areas where AWS has been implemented may inherit their parents' fears and anxieties, which can lead to developmental difficulties and perpetuate cycles of violence,[31] *thereby exacerbating the challenges faced by these young individuals.* Conversely, AWS exacerbates psychological distress by barricading access to humanitarian assistance and justice because of its autonomous character. The latter is because of the lack of clarity about who should be held accountable for the AWS' actions while they autonomously intercept and destroy humanitarian aid, impeding efforts to provide support and redress to victims of war.[32] However, pre-programmed algorithms steering AWS may incorporate, albeit inadvertently, breaching the principle of distinction by disproportionately affecting vulnerable populations such as children, persons with disabilities, and those sick in the hospital, such as those bombed in Gaza. This form of discrimination exacerbates the already adverse psychological impacts that conflicts have heard on such populations.[33]

5. Russia-Ukraine and Israel-Palestine case studies

5.1. The psychological toll on the Defenders of Ukraine

Fear and anxiety continue to engulf Ukrainian defenders as they battle the physical and psychological threats of Russian drones directed by Artificial Intelligence. The capabilities of these unmanned aerial vehicles are so advanced that they cannot only surveil but also track, isolate, and strike military targets with

[28]Seggane Musisi and Eugene Kinyanda, 'Long-Term Impact of War, Civil War, and Persecution in Civilian Populations—Conflict and Post-Traumatic Stress in African Communities' (2020) 11 Frontiers in Psychiatry Mental Health Problems of Mass Trauma In Africa <https://www.frontiersin.org/journals/psychiatry/articles/10.3389/fpsyt.2020.00020/full> accessed 4 June 2024.
[29]Musisi and Kinyanda (n 28).
[30]Iman Farajallah, 'Continuous Traumatic Stress in Palestine: The Psychological Effects of the Occupation and Chronic Warfare on Palestinian Children' (2022) 4 World Social Psychiatry 112, Introduction.
[31]Musisi and Kinyanda (n 28).
[32]Michael C Horowitz, 'Public Opinion and the Politics of the Killer Robots Debate' (2016) 3 Research & Politics 205316801562718, Conclusion.
[33]Ibid.

precision.[34] Awareness of such surveillance cultivates perpetual dread and anxiety in combatants as they know they are under the enemy's radar, and the fact that they can be unpredictably attacked heightens emotional stress and high levels of psychological stress. This is in addition to the significant psychological toll on soldiers managing conflict zones.[35] Therefore, a looming threat to AI-directed drones worsens the situation. Remaining vigilant while anticipating drone attacks compounds soldiers' war traumas, contributing to Post-Traumatic Stress Disorder (PTSD).[36] The problems that soldiers encounter when dealing with AI-controlled drones add to the complexity of their situation, as they are removed from direct combat, and the decision-making process is centralized. This can lead to a lack of harmony in their thinking, which is further exacerbated by the psychological issues that they face.[37] *As a result, soldiers may question the ethical implications of their actions and the potential for collateral damage when targeting combatants or their military assets* [emphasis added].

5.2. Psychological effects on operators of Russia

Russian operators are not immune to the profound shocks, threats, and chilling anxiety they experience from Ukrainian defenders' retaliatory attacks, some of which are AI/AWS-directed. Surprise drones strike urban centres, target residential storey buildings, and disrupt the homefront's perceived safety.[38] Seeing massive destruction, such as drone strikes even from television screens, can be traumatic to operators, affecting (by destabilising their psychology of war). Fear of retaliation quickly creeps in, considering drone strikes in the Russian cities of Moscow and Kyiv, bringing war closer to home and endangering persons protected by IHL's lives. The spectre of drones deployed by Ukraine hovering around Russian territory has a chilling effect on dread, uncertainty, and anxiety, a stressful psychological burden, knowing one's city is prone to AWS-directed warfare.[39] This also destabilises the emotional states of operators and civilians in surrounding environments, as drone attacks induce shock and anxiety, potentially causing a traumatic state of flight.[40] Operators can also experience retribution desire, fear, or anger.[41] Therefore, a cocktail of stated emotional distress can adversely influence decision-making, potentially escalating war or conflict.

The use of drones controlled by Artificial Intelligence also has a significant impact on public perception. This blurs the line between civilian life and warfare. Moreover, the continuous and indiscriminate drone strikes in civilian areas desensitize the public to the presence of war technologies in their neighborhoods.[42] This may

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[34]Zhanna Bezpiatchuk and Viktoriia Zhuhan, 'Ukraine Crisis: How Are People Coping with the Threat of War?' (BBC, London, United Kingdom, 19 February 2022) <https://www.bbc.com/news/world-europe-60446826> accessed 5 June 2024.
[35]Roberto J González, 'Drones over Ukraine: What the War Means for the Future of Remotely Piloted Aircraft in Combat' (*The Conversation*, 23 February 2023) <http://theconversation.com/drones-over-ukraine-what-the-war-means-for-the-future-of-remotely-piloted-aircraft-in-combat-197612> accessed 5 June 2024.
[36]James Johnson, 'Artificial Intelligence, Drone Swarming and Escalation Risks in Future Warfare' (2020) 165 The RUSI Journal 26, 36, Conclusion.
[37]González (n 35).
[38]Ben Soodavar and The Conversation, 'Ukraine War: The Psychological and Political Impact of the Drone Attacks in Russia' (Phys.Org, June 2023) <https://phys.org/news/2023-06-ukraine-war-psychological-political-impact.html> accessed 5 June 2024.
[39]Robert Picheta, 'Ukrainian Drone Strikes Are Bringing the War Home to Russia. What Does It Mean for the Conflict? | CNN' CNN (5 August 2023) <https://edition.cnn.com/2023/08/05/europe/russia-ukraine-drone-attacks-analysis-explainer-intl/> accessed 5 June 2024.
[40]Alex Edney-Browne, 'The Psychosocial Effects of Drone Violence: Social Isolation, Self-Objectification, and Depoliticization' (2019) 40 Political Psychology 1341, Abstract&Conclusion.
[41]González (n 35).
[42]Johnson (n 36).

War causes the breakdown of social structures and the disintegration of communities. The loss of social cohesion, the destruction of homes, schools, and hospitals, and the displacement of families erodes the foundation of daily life. This can create feelings of alienation, loneliness, and isolation, even after the conflict ends.

potentially lead to a psychological impact on the public, influencing their opinions on the conflict. While some may oppose the Kremlin's foreign policy, others may become supportive, seeking revenge for an act of perceived aggression.[43] *Emotional intelligence triggered by such incidents could further influence political sentiments, potentially leading to changes in public opinion* [emphasis added].

6. Torn in war's psychological distress, the civilian's cry

This section draws attention to the unspoken psychological impact of warfare on the civilian population in the crucible of the AWS-assisted Israeli-Palestine conflict, marked by intermittent and protracted violence. As hinted above, autonomous weaponry's introduction to a conflict adds to the already volatile conflict's psychological landscape as a layer of complexity.[44] From 'all eyes on Rafah' to the dire humanitarian situation in Gaza,[45] civilians war-torn in the Israeli-Palestine conflict are continuously subject to anxiety and violence threats exacerbated by AWS' deployment. AWS' efficiency, lack of human instincts, and unpredictability continuously heighten chronic stress and trauma levels,[46] causing *civilians to feel helpless as they have no haven to hide from AWS-directed technologies.*

Likewise, the conflict has birthed a peculiar manifestation of cultural post-traumatic stress disorders, evidenced by civilians' collective violence experiences that have shaped affected communities' coping mechanisms projected as psychological

[43]Camille Oren and Andrej Verity, *Artificial Intelligence Applied to Unmanned Aerial Vehicles And its Impact on Humanitarian Action* (Digital Humanitarian Network, May 2020) 29-49.
[44]Farajallah (n 30).
[45]'Middle East Crisis: Gaza Offensive Will Last at Least Through End of Year, Israeli Official Says' *The New York Times* (29 May 2024) <https://www.nytimes.com/live/2024/05/29/world/israel-gaza-war-hamas-rafah> accessed 5 June 2024.
[46]Mohammad Marie, Sana SaadAdeen and Maher Battat, 'Anxiety Disorders and PTSD in Palestine: A Literature Review' (2020) 20 BMC Psychiatry 509.

responses. Significant impact is felt by children who,[47] for example, in Israel, Palestine, Ukraine, Russia, and Congo, will grow with a normalized violence and surveillance perception. This type of normalisation poses long-term developmental effects and is a key contributor to cycles of violence. Socially, the psychological impact of AWS can potentially weaken the unity within communities as individuals and groups struggle to cope with the pervasive fear and anxiety generated by uncontrolled violence resulting from directed warfare technologies.[48] This could spill over the aforementioned communities' attitudes towards conflict. For instance, the use of autonomous weapons systems may influence the attitudes of parties,[49] *such as Israelis, Palestinians, Russians, and Ukrainians, thereby reinforcing their positions by hardening their stances while diminishing the prospects for reconciliation* [emphasis added]. This brings us to the legal considerations of AWS.

7. AWS' legal and ethical considerations

AWS's implementation of AWSs presents significant ethical dilemmas that intersect with the fundamental principles of international humanitarian law and the psychological well-being of civilians and operators.[50] For instance, moral disengagement and dehumanization should be considered. By reducing the moral guilt of deploying an AWS and dehumanizing the enemy through destruction, AWS operators can detach themselves from the battlefield. While this form of remote decision-making may have diminished the emotional impact of taking the life of an IHL-protected person or destroying property/livelihood, it can also lead to internal conflicts and moral injuries for operators who must rationalise or justify their actions.[51] Those who engage in moral disengagement or are emotionally distanced from the harm they cause often struggle with internal conflicts and PTSD from executing indiscriminate attacks. This highlights the daily ethical dilemmas that operators grapple with during and after their service or war.

Legal considerations primarily involve complying with the principles and guidelines of International Humanitarian Law, attributing liability, obtaining informed consent, ensuring transparency, and grappling with the psychological implications of such situations.[52] A significant challenge arises in ensuring that AWS, which lacks human agency and operates through pre-programmed algorithms, adheres to the distinction and proportionality principles outlined in IHL. In the case studies discussed, AWS's use has defied IHL due to its lack of empathy, leading to errors in identifying, assessing, and avoiding unnecessary collateral damage during deployment.

The issues of responsibility and accountability become complicated when non-compliance and errors occur, especially considering the lack of direct human agency in Autonomous Weapon Systems and the unlikely deterrent effect

[47]Lynsay Ayer and others, 'Psychological Aspects of the Israeli–Palestinian Conflict: A Systematic Review' (2017) 18 Trauma, Violence & Abuse 322, 322–337.
[48]Bezpiatchuk and Zhuhan (n 34).
[49]Ayer and others (n 47).
[50]Maciek Zając, 'AWS Compliance with the Ethical Principle of Proportionality: Three Possible Solutions' (2023) 25 Ethics and Information Technology 13.
[51]Riesen (n 8).
[52]Renic and Schwarz (n 19).
[53]Anna-Katharina Ferl, 'Imagining Meaningful Human Control: Autonomous Weapons and the (De-) Legitimisation of Future Warfare' [2023] Global society 139-155 <https://www.tandfonline.com/doi/epdf/10.1080/13600826.2023.2233004?needAccess=true> accessed 6 June 2024.

While AWS offer tactical advantages in terms of precision and reducing human casualties for military personnel, they introduce new psychological risks related to dehumanization, moral injury, disconnection from the reality of warfare, and increased anxiety for civilians.

of criminal punishment on future errors.[53] The International Criminal Court and established tribunals may not provide psychological closure to war victims, exacerbating their trauma. Additionally, the lack of transparency surrounding AWS hinders international humanitarian law,[54] *leaving civilians unaware of the risks posed by such systems. Finally, inadequate disclosure erodes trust while instilling fear and failing to address ethical and legal issues.*

8. Conclusion

This essay delves into the psychological effects of Autonomous Weapons Systems (AWS) and their impact on conflicts, using the Russia-Ukraine and Israeli-Palestine conflicts as examples. It argues that the AWS desensitizes violence and diminishes the sense of responsibility for the impacts of combat. Additionally, it discusses how the unpredictability of AWS erodes moral agency and causes cognitive dissonance among combatants while intensifying uncertainty and helplessness in civilian populations, exacerbating the psychological trauma of war. The essay also raises ethical concerns and compliance challenges with International Humanitarian Law (IHL) principles, particularly distinction, proportionality, necessity, human dignity, and the alleviation of unnecessary human suffering. To address these concerns, this essay suggests a multidimensional approach to IHL reforms, including developing a new legal framework to address the psychological impact of AWS and enhanced accountability mechanisms for the deployment of AWS. The goal is for IHL to evolve proactively in response to emerging technologies while upholding humanitarian principles.

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[54]Hortensia DT Gutierrez Posse, 'The Relationship between International Humanitarian Law and the International Criminal Tribunals' (2006) 88 International Review of the Red Cross 65.

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Reconciling Article 50(2) (j) of the Constitution of Kenya 2010 with Section 131 of the Evidence Act Cap 80: A State of Incomplete Justice

By Makau Ian

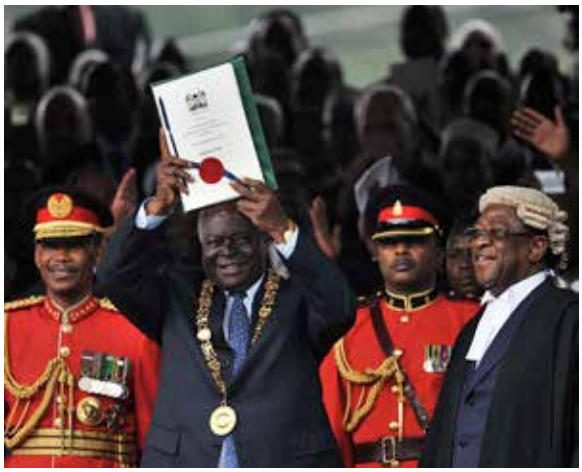
Abstract

While the Constitution of Kenya 2010 under Article 50(2) (j) emphatically provides for the right to a fair hearing, which accrues to any accused person within the Jurisdiction, the effective realization of the said right is nevertheless hampered by a legion of bottlenecks. Taking center stage in this conundrum is the provision under Section 131 of the Evidence Act Cap 80, which creates leeway for the withholding of the production of evidence. This in turn, as will be argued in this paper is a direct affront to justice as it serves largely to the detriment of the accused person. My paper thus makes a case against the unregulated power prescribed under the said section 131 of the Evidence Act Cap 80.

Key Words: Constitution, Evidence Act, Fair Trial

1. Introduction

"Injustice anywhere is a threat to justice everywhere"- Martin Luther.



The Constitution of Kenya, 2010 is a landmark document that marked a transformative moment in Kenya's political, social, and legal history. It replaced the 1969 Constitution, which had been criticized for centralizing power and failing to protect citizens' rights.

The Constitution of Kenya 2010, has been widely celebrated as one of the most transformative and progressive constitutions in modern democracy owing to its holistic citizen-welfare-centered approach.[1] This, most notably, has been due to the inclusion of the Bill of Rights Chapter Four, as a crucial part of the constitution, which provides for a vast array of rights that accrue to the Citizens and all who lawfully reside within the Kenyan Jurisdiction. At the focal point, the Bill of Rights under article 50(2)(j) lays down the right to a fair hearing by including the right of an accused person to be informed

[1]Prof. Christian Roschmann, Mr. Peter Wendoh & Mr. Steve Ogolla, *"Human Rights, Separation of Powers and Devolution in the Kenyan Constitution, 2010: Comparison and Lessons for EAC Member States,"* (2012)

The right to a fair hearing is a fundamental principle of justice and a key human right enshrined in both the Constitution of Kenya, 2010 and various international human rights frameworks. It ensures that individuals have the opportunity to have their legal matters heard and adjudicated in a manner that is impartial, transparent, and in accordance with the law.

in advance of the evidence the prosecution intends to rely on and to have reasonable access to that evidence.[2]

On the other hand, the Evidence Act Cap 80 in a counter-mitigative manner makes provision to the effect that a Minister, being of the opinion that the production of an unpublished official document as evidence is prejudicial to public service, may order for the withholding of publication of such document thus having a net effect of making it inadmissible before a court of Law.[3]

From the foregoing, one may very easily detect an irregularity, a conflict of sorts between the incongruous provisions of the law. This incongruity bedevils my mind as I endeavor to indulge in a breakdown of the provisions to decipher the effects of one to the other. Reliance shall be placed on existing case law in defining the scope of each of the two provisions of law. Subsequently, a comparative analysis of the law of the British Legal System followed by a diagnosis of the prevalent predicament and finally recommendations and a conclusion.

1.1 Definition and scope of the right to fair hearing

The word 'fair' in its most common sense denotes treating someone in a way that is right or reasonable, or treating a group of people equally and not allowing personal opinions to influence your judgment.[4] The scope of this definition is extended further to include a trial in which the rights of the Defendant are safeguarded by an impartial judge and jury deciding the matter.[5] One may easily deduce from the above definitions that unfairness is inimical to access justice: it is indeed an affront to justice.

Therefore, by connection, the term fair hearing in the criminal procedure connotes a hearing in which an impartial judge upholds the rights of the accused / defendant and that anything that tends to take a form contrary to this is deemed an 'unfair hearing.' One rightly refer to such a hearing as that which is bereft of adherence to the core tenets of due process as set out under law.[6]

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[2]The Constitution of Kenya 2010, Art 50(2)(j), 50. *Fair hearing: (j) to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence;*

[3]The Evidence Act Cap 80, Section 131: 131. Privilege relating to official records. *Whenever it is stated on oath (whether by affidavit or otherwise) by a Minister that he has examined the contents of any document forming part of any unpublished official records, the production of which document has been called for in any proceedings and that he is of the opinion that such production would be prejudicial to the public service, either by reason of the content thereof or of the fact that it belongs to a class which, on grounds of public policy, should be withheld from such production, the document shall not be admissible.*

[4]'FAIR | English Meaning - Cambridge Dictionary' <https://dictionary.cambridge.org/dictionary/english/fair> accessed 18 December 2024.

[5]'FAIR | English Meaning- The Black's Law Dictionary' < https://thelawdictionary.org/fair-and-impartial-trial/> accessed 18 December 2024.

[6]TLD Staff, 'UNFAIR HEARING' (The Law Dictionary, 28 March 2013) <https://thelawdictionary.org/unfair-hearing> accessed 18 December 2024.

1.1.1 Judicial reasoning as to the scope of the right to a fair hearing

The judicial repository is replete with judicial decisions proffering overwhelmingly sound interpretations of the right to a fair hearing as envisaged under Article 50(2). To start us off is one of the greatly celebrated Supreme Court Judgments on Kenyan Soil, the Muruatetu Case, where Honourable Justices betook themselves to enunciate the scope of the right to a fair hearing by noting that the said right as envisaged under the Grundnorm is absolute- this right cannot be restricted or derogated in any way or for any reason whatsoever[7] The Supreme Court in the exact case cited the provisions of *article 14 of the International Covenant on Civil and Political Rights (ICCPR)* to which Kenya is a signatory and which further provides for the effective upholding of the right to a fair and public hearing.[8] Briefly, the court here emphasized the importance of the full observance of the Right to a Fair Hearing as a show of fidelity to the Constitution and the rule of Law.

Going a step down into the hierarchy of our court system, the ever-astute Justices of Appeal P. Kihara, K.M'Inoti and A.K. Murgor relentlessly championed the absoluteness of the right to a Fair Hearing by buttressing the provisions of Article 50(2)(j) of the Constitution of Kenya 2010, to the effect that every accused person has a right:[9]

"to be informed in advance of the evidence the prosecution intends to rely on and to have reasonable access to that evidence."

Concerning the scope of the right to a Fair Trial, and in the interest of leaving no stone unturned in defining such scope, the High

Justice Reuben Nyakundi

Court in R v. Hassan Randu Nzioka was of the view that as a matter of constitutional provision, the scope of the Right to a fair trial ranges from a fair and public hearing, cutting across the right to an interpreter and further to the adducing and challenging of evidence together with the right to be informed in advance of the evidence the prosecution will rely on...[10] The Learned Judge R.Nyakundi J went on to affirm that of the contents of these rights, as captured under Article 50(2) of the Constitution, none is subject to limitation or restricted, and that as a matter of justice, it would be better for ten guilty persons to escape that one innocent person to suffer injustice.

Thus, one might very readily deduce the crucial role that the right to a Fair Hearing plays in the quest for Justice. It also suffices to observe that a system that is bereft of the

[7]Muruatetu & Another v. Republic: Katiba Institute & 5 others(Amicus Curiae)[2017] KESC 2(KLR)
[8]The International Covenant on Civil and Political Rights, 1966, Art 14: *All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law..."*
[9]Ahamad Abolfathi Mohammed & Sayed Mansour Mousavi v Republic (Criminal Appeal 135 of 2016)[2018] KECA 743(KLR) (Crim) (26 January 2018)(Judgment)
[10]Republic v. Hassan Randu Nzioka(Criminal Revision 5 of 2019) [2019] KEHC 2185(KLR) (15 July 2019)(Ruling)

adherence to the particulars of the right to a Fair Hearing is indeed one that is hell-bent on reigning injustice upon its subjects

1.2 Unpacking Section 131 of the Evidence Act Cap 80

A cursory glance at the contents of section 131 of the Evidence Act Cap 80 reveals *prima facie* a set of powers entrusted to a Minister relating to the production of unpublished official records. The said section requires a Minister to make an oath pertaining to a document that having been under his scrutiny and evaluation is considered better off withheld from production as evidence owing to the prejudice that would in effect be rendered onto the public. Such documents are exempted from production as evidence on the grounds of public policy and are therefore deemed inadmissible. But what is the scope of this power?

1.2.1 Scope of Section 131 of the Evidence Act Cap 80

In addressing the pressing matter as to the scope of the above-stated section of the Evidence Act, I must first deliver a historical context of our very own Evidence Act Cap 80. The Evidence Act in Kenya was first enacted on 10 December 1963 with its key function being to guide on the aspects pertaining to the obtaining of evidence before trial, adducing of evidence at trial, applying and assessing of evidence for the proof or disproof of a fact.[11] As it stands, the Kenyan Legal System finds its foundation and origins in the British Common Law system: the Evidence Act of Kenya 1963 being *pari materia* to the Indian Evidence Act, which also found its roots in the British Common Law System automatically adopted English doctrines.[12] This forms the basis of my analysis of section 131 of the Evidence Act Cap 80.

An examination of the said section of the Evidence Act triggers attention to an old age doctrine in the British Common Law system then identified as The Crown Privilege Doctrine. This doctrine, being a judge-made doctrine required that a Minister's objection on the grounds of public interest to the production of evidence in legal proceedings be conclusive.[13] Therefore, the Crown was awarded the right to withhold documentary evidence in any legal proceedings simply because the disclosure would injure the public interest.[14] This doctrine was later renamed Public Interest Immunity.

One may therefore conclude that the provisions under section 131 of the Evidence Act are a splitting reflection of the tenets of the doctrine of Public Interest Immunity.

1.2.2 What amounts to public Interest?

Following the findings above, a question arises as to what entails public interest in the context of official documents and in relation to the exercise of the power conferred upon a Minister. The court in the case of Kenya Anti-Corruption Commission v. Deepak Chamanalal succinctly defined public interest to include matters in which the society as a whole is deemed to have to bear a stake; in effect, anything affecting the legal rights or liability of the public at large.[15] Public Interest also denotes the welfare of

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[11]'The Review of The Civil Procedure Act, the Evidence Act, And the Interpretation and General Provisions Act - Kenya Law Reform Commission (KLRC)' <https://www.klrc.go.ke/index.php/media-center/638-the-review-of-the-civil-procedure-act-the-evidence-act-and-the-interpretation-and-general-provisions-act> accessed 19 December 2024.

[12]'Researching Kenyan Law' (*GlobaLex | Foreign and International Law Research*) <https://www.nyulawglobal.org/globalex> accessed 19 December 2024.

[13]S.A. de Smith, "*Crown Privilege,"Confidentiality and Candour*," The Cambridge Law Journal, Vol. 33, No. 1 (Apr., 1974), pp.20-23.

[14]'Crown Privilege' (*Oxford Reference*) <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095650664> accessed 19 December 2024.

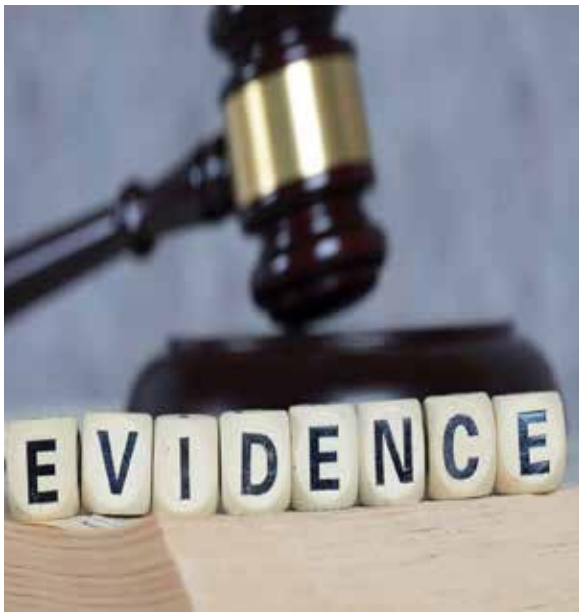
[15]Kenya Anti-Corruption Commission vs. Deepak Chamanlal Kamni and 4 others, [2014] eKLR: "*...a matter of public interest must be a matter in which the whole society has a stake, anything affecting the legal rights or liability of the public at large.*"

the public as compared to the welfare of a private individual or company where all of society has a stake in this interest and the government recognizes the promotion and protection of the public.[16]

Stemming from the definition above, a Minister in exercise of the power conferred under section 131 of the Evidence Act may cause the withholding from production of any unpublished official document so long as it fits the criteria prescribed in a matter of public interest. To this effect, any document that poses a threat to the public interest is therefore the opinion of the Minister exempted from production and deemed inadmissible.

As it stands, section 131 of the Evidence Act does not provide a form of mitigation or counter-check as to whether the exercise of the power granted to a minister to withhold the production of a document as evidence on the grounds specified was done with due diligence and not at whims. It simply declares that such document upon being deemed perilous to the public interest ought to be considered inadmissible at the Minister's call. This forms the crux of every concern that agitates the attainment of the rights under Article 50(j) of the Constitution of Kenya. The wording of the said section drives the final nail to the coffin in any attempt to dispute the withholding of a document as envisaged therein.

Courts are inadvertently placed in a tight position when it comes to choosing between indulging in fierce and unfettered administration of Justice and bowing to the whimsical acts of Ministers who choose to



The Evidence Act, which is part of the Laws of Kenya, primarily governs the admissibility, presentation, and evaluation of evidence in legal proceedings. The Act outlines the rules for how evidence can be presented in courts, ensuring that trials are fair and just.

abuse the power conferred upon them. Here, as I may explain, liability arises to whichever adverse party relies on the admission of a document in support of their case (more often than not the accused person) but which in the opinion of the Minister is adverse to the welfare of the public. This power is not safeguarded from exercise at whims.

1.3 Revisiting the crown privilege doctrine

This doctrine, as highlighted above, emanated from the British Legal System requiring courts to exempt the production of documents at the Minister's objection. Such objection was deemed conclusive.[17] For a long time, the strict application of this doctrine, imperiled parties in litigation given its conclusive nature. However, in the year

[16]TLD Staff, 'PUBLIC INTEREST' (*The Law Dictionary*, 2 March 2013) <https://thelawdictionary.org/public-interest> accessed 19 December 2024.

[17]Duncan v. Cammell Laird & Co Ltd [UKHL] (1942)... Where the Court being presented with a unique set of facts involving a disaster that led to the loss of life of ninety-nine men, was faced with the quagmire of withholding the production of "confidential" official documents on the grounds that the production would be against the public interest. The Court in this case held that the withholding of production of the documents was justified on the grounds of public interest. Lord Eldon held the opinion *"I think, therefore, that these communications come with that class of official communications which are privileged, inasmuch as they cannot be subject to be communicated without infringing the policy of the act of parliament and without injury to the public interests."*

1968, the House of Lords came to the aid of aggrieved litigants in the case of Conway v. Rimmer [1968] A.C. 910 by stripping away the excess power that conferred finality upon the Minister's power. Here, a court would now determine independently whether the evidence against which privilege had been claimed ought to be withheld. The Judges of the House of Lords required that the court apply its discretion in weighing the threat of disclosure to the public interest against the subsequent detriment to the parties and the administration of justice arising from non-disclosure.[18]

This doctrine now referred to as the Public Interest Immunity doctrine has hitherto been developed and modified to fit the criminal justice system in English Courts. In the landmark case of R v. Ward[19] the Court of Appeal made the finding that the ultimate decision as to whether otherwise disclosable evidence should be withheld from disclosure on the grounds of public interest immunity was one to be made by the court. Subsequently, where the prosecution intended to raise the public interest Immunity doctrine against a document by the defence, they would be required to tender notice to the defence for the withholding subject to the court ruling on the claim's legitimacy.[20] The Court further stated that the whimsical asserting of the Public Interest Doctrine by a prosecution would be contrary to the tenets of the right to a fair trial. In its own words, the court stated as follows:

"It seems to us that he was right to remind us that when the prosecution acted as judge in their own cause on the issue of public interest immunity in this case they committed a significant number of errors which affected the fairness of the proceedings."

It follows that in a criminal trial, the prosecution must disclose all unused material to the defence solicitor. The procedure to be observed in asserting the Public Interest Immunity doctrine was later succinctly laid out in R v. Davis, Johnson, and Rowe[21] where the court required that in asserting the doctrine, the prosecution must:

- Give Notice to the defence that the application has been made for a ruling by the court.
- Indicate the category of material held.
- Grant the defence an opportunity to make representations before the Court.

In yet another one of the vast array of judgments addressing the pressing issue of non-disclosure, the Court in R v. Keane[22] took pains in elucidating on the test for documents considered 'material' to include what the prosecution deems relevant to an issue in the case and/or material which would potentially raise or possibly raise a new issue whose existence is not apparent from the evidence the prosecution proposes to use and finally that which holds a real prospect of providing a lead on evidence which falls within the first two tests.[23]

1.4 Problematizing section 131 of the Evidence Act Cap 80

Section 131, as is explained in the recent section above, confers the power to object to the production of an unpublished document by a Minister merely because it would be prejudicial to the public interest. The said section reads as follows:[24]

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[18]S.A. de Smith, ""Crown Privilege, "*Confidentiality and Candour*," The Cambridge Law Journal, Vol. 33, No. 1 (Apr., 1974), pp.20-23.
[19][1993] 1 WLR 619 *"But in argument the question arose whether, if in a criminal case the prosecution wished to claim public interest immunity for documents helpful to the defence, the prosecution is in law obliged to give notice to the defence of the asserted right to withhold the documents so that, if necessary, the court can be asked to rule on the legitimacy of the prosecution's asserted claim."*
[20]Ibid 19
[21][1993] 1 WLR 613
[22][1994] 2 All ER 478
[23]Ibid 22.
[24]The Evidence Act Cap 80, Sec 131.

"Whenever it is stated on oath (whether by affidavit or otherwise) by a Minister that he has examined the contents of any document forming part of any unpublished official records, the production of which document has been called for in any proceedings and that he is of the opinion that such production would be prejudicial to the public service, either by reason of the content thereof or of the fact that it belongs to a class which, on grounds of public policy, should be withheld from such production, the document shall not be admissible."

A breakdown of the section cited above reveals three important aspects that form the basis of my argument in this segment. Firstly, a requirement is placed upon the Minister to attest to his opinion on oath either by way of affidavit or otherwise in adherence to the *Oaths and Statutory Declarations Act Cap.15*.[25] In essence, the Minister may be held accountable by way of his statement under oath, therefore, rendering his objection binding to himself. This segment of the section is purportedly aimed at ensuring that the Minister reasonably exercises their power given the underlying liability that arises thereof.

Secondly, section 131 hints at the fact that the withholding of the production of an unpublished public document relies solely on the opinion of the Minister: so that if the Minister holds the opinion that such publication will be prejudicial, then the document(s) is automatically deemed inadmissible and vice versa.

Thirdly, the said section deems any document, which according to the Minister's opinion for reason of being prejudicial to the public service or the mere fact of it belonging to a class, which on the grounds of public policy ought to be withheld as automatically and determinately inadmissible.

The wording, being conclusive, is a blatant disregard to the right to a fair hearing. As if to assume an ideal situation, a minister in the interest of advancing their ill-conceived(read as corrupt) interest declares the production of a document to be prejudicial to public service or public policy, then the court will be forced to deem the document inadmissible. The greatest prejudice here as it occurs, will be to the adverse party. It, therefore, suffices to state that the conclusive wording under section 131, heaps unregulated power on a single individual, the Minister, who may in turn exercise the power at whims. This precipitates an uncertainty in law.

2 Recommendations

To alleviate the harm posed by the provisions under section 131 of the Evidence Act Cap 80, an amendment is required to include the provision that a judge/magistrate presiding over the matter in which the production of a document has been objected to be allowed discretion to consider the claim for objection and make a subsequent decision either to approve or dismiss the claim as is the present case in the British Legal System.

3 Conclusion

At the very core of the provision under Article 50(2) of the Constitution is the utmost consideration for the rights of an accused person in trial. This right has so far been held to be absolute. Section 131,as observed in the analysis, proves to be an undeniable affront to the abovementioned rights. Any further delay in the amendment is an advancement of injustice: a state of incomplete Justice.

[25]Oaths and Statutory Declarations Act Cap.15, section 17(a): 17. Persons by whom oaths and affirmations to be made *Subject to the provisions of section 19, oaths or affirmations shall be made by—(a)all persons who may lawfully be examined, or give, or be required to give, evidence by or before any court or person having by law or consent of parties authority to examine such persons or to receive evidence;*

Reconciling morality, justice and constitutional principles; A case of criminalizing homosexuality in Kenya

By Fwamba Joshua Kipyego

1.1 Introduction

It is well pasted and clear at the back of my mind that there has been a pandemonium on matters touching on LGBTQ across the world, and even here in Kenya.[1] As far as LGTBTQ is concerned, Kenya criminalizes same sex relations, terming them as certain sexual acts which are "against the order of nature." This topic has been the centre of discussion for way too long, attracting systematic reviews, journal articles and many other expressional manifestations from different scholars and advocacy groups, each with different point of views.

This short writing adds to this oeuvre of literature from a historical and medieval analysis, giving credence to the discussion between the British Judge Lord Patrick Devlin and Herbert Lionel Adolphus Hart, what is popularly known as the Devlin-Hart Debate.

The first section of this paper re-iterates Sections 162 and 163 of the Penal Code,

Morality refers to the system of principles and values that govern human behavior, distinguishing what is considered right from what is wrong or good from bad. It is a set of beliefs and practices that guide individuals and societies in making ethical decisions. Morality can be shaped by cultural, religious, philosophical, and personal influences, and it plays a fundamental role in shaping how individuals interact with one another and with society.

the provisions under scrutiny, providing further clarification with reference to the interpretation by the Supreme Court's decision in the Eric Gitari Case as to include same-sex relations.[2] The second section provides a theoretical underpinning of the research tracing the arguments of legal enforcement of morality, showing the bifurcation of conventional and critical

[1]Wallace Nderu, "Human Rights Identity versus Penal Sanctions: Reality or Perception? Constitutionality of Sections 162(a) (c), 163 and 165 of The Penal Code," 2018 <https://icj-kenya.org/wp-content/uploads/2018/02/Same-Sex-Relations-and-the-Kenyan-Constitution.pdf> on 27 November 2024.
[2]NGOs Coordination Board v Eric Gitari & 5 Others, Judgment of the Supreme Court at Nairobi, Ouko and MK dissenting opinion, 24 February 2023, [eKLR].

Laws surrounding homosexuality vary greatly from country to country, reflecting the diverse cultural, religious, and historical perspectives on LGBTQ+ issues. These laws often define the rights, freedoms, and protections of individuals based on their sexual orientation, and they can be punitive or protective depending on the jurisdiction.

morality. The third section is focused on the past, tracing Africa's historical sexuality and the origin of homosexuality laws in Kenya. The fourth section, more of a clincher, sums up the discussions, analyzing the conventional morality of today's contemporary Kenyan society, guided by the Constitution of Kenya 2010 and what it envisages.

The ink dries with a conclusion, that indeed the present criminalization of homosexuality is against the social morality of the people of Kenya and is consequently unconstitutional.

1.2 Unlawful nature of same - sex relations in Kenya

Section 162 (a) and (c) of the Kenyan Penal Code penalizes any person who has carnal knowledge of any person against the order of nature[3] and or permits a male person to have carnal knowledge of him or her against the order of nature.[4] The act also penalizes any act done in an attempt to commit an unnatural act.[5] Although these laws are rarely enforced, LGBTQ Kenyans are still persecuted under them. These laws codify and legitimize general latitude of homophobia that exists within the country and thereby lead to the routine human rights violations that LGBTQ Kenyans face.[6]

The totality of these laws arose public upheaval that by way of interpretation, people construed that homosexuality is what is unlawful and not lesbian acts. However, the Supreme Court in the Eric Gitari case stated that Section 162 penalizes both homosexual and lesbian acts.[7] Ouko J, in his dissenting opinion, stated that it is a matter of interpretation that the use

[3]Penal Code, (CAP 63 of 1930), Section 162(a).
[4]Penal Code, (CAP 63 of 1930), Section 162(c).
[5]Penal Code, (CAP 63 of 1930), Section 163.
[6]Nancy Makokha Baraza, 'The impact of heteronormativity on the human rights of sexual minority: Towards protection through the constitution of Kenya 2010' Unpublished PHD Dissertation, University of Nairobi, 2013, 7.
[7]NGOs Coordination Board v Eric Gitari & 5 Others, para 190.

The cultural and religious acceptance of same-sex relationships varies significantly across the world. In many Western countries, attitudes have become more inclusive over the years, with growing recognition of LGBTQ+ rights and greater public acceptance of same-sex couples. However, in many Middle Eastern, African, and Asian countries, same-sex relationships remain taboo, and societal pressure or discrimination against individuals in such relationships is common.

of the words, “any person who has carnal knowledge of any person” “against the order of nature” in Section 162 may be construed to include female same-sex relationships as “unnatural”.[8] In contrast Section 377 of the Indian Penal Code, the equivalent of our Section 162, makes explicit provision that the unnatural offence is committed by having “carnal intercourse against the order of nature with any man, woman or animal”.[9] The use of the term “any person” in our Code, by parity of reasoning would similarly extend to woman thereby criminalizing same-sex relations. Section 162's interpretation allows for the inference that female same-sex relationships are also "unnatural."[10] Therefore, this means that these clauses can be used to prosecute both men and women who are in same-sex relationships, thereby criminalizing same-sex relationships.[11]

1.3 Conventional and critical morality of a society and the need to enforce it

From the Devlin-Hart debate, emerged two types of morality; conventional and critical morality. Conventional morality, also known as social morality, is that which most people believe to be morally true[12] while critical morality is that which is morally true.[13] On one side are statements about reality, about the way things really are; on the other side are statements about people’s beliefs.[14] To determine the truth in critical morality, one has to think long and hard about the arguments on either side of the debate; to determine the truth in conventional morality, one should conduct an opinion poll.[15] Devlin was a great proponent of Social morality. He states that social morality of a society is a necessary ingredient of the society in that it is the glue that holds it together, and if this morality is not adequately enforced, the society will fall apart.[16] Social morality is a creation of the society, which is seamless and common to all, amounting to a shared morality. Actions which undermine the shared morality undermine society; so society is justified in protecting itself by using the law to enforce society’s conventional morality.[17] He therefore saw a need to enforce social/conventional morality.[18]

[8]NGOs Coordination Board v Eric Gitari & 5 Others, para 190.
[9]NGOs Coordination Board v Eric Gitari & 5 Others, para 190.
[10]NGOs Coordination Board v Eric Gitari & 5 Others, para 102.
[11]NGOs Coordination Board v Eric Gitari & 5 Others, para 102.
[12]Brian H. Bix, *Jurisprudence: Theory and Context*, Thomson Reuters, England, 2019, 200.
[13]Bix, *Jurisprudence: Theory and Context*, 200.
[14]Bix, *Jurisprudence: Theory and Context*, 200.
[15]Bix, *Jurisprudence: Theory and Context*, 200.
[16]Steven Wall, “ Enforcing Morality,” <Introduction (Chapter 1) - Enforcing Morality> 2023, Cambridge University Press, on 27 November 2024.
[17]Bix, *Jurisprudence: Theory and Context*, 200.
[18]Steven Wall, “ Enforcing Morality,” <Introduction (Chapter 1) - Enforcing Morality> 2023, Cambridge University Press, on 27 November 2024.

Hart, on the other hand, was of the view that a society does not have a shared morality and if there arises a need to enforce such morality, then the laws ought to be changed over time so as to reflect the true social morality of the current society. This is because it is the society that shapes its conventional morality, and when the society changes, the conventional morality changes with it.[19] This particular point is very important as static laws in a dynamic society risks to enforce the last society's morality. There is no reason to enforce the last society's conventional morality at the cost of the present society's conventional morality if indeed the conventional morality of the moment is what matters.

1.4 Origin of homosexual laws; The last generation's implanted conventional morality

In the United Kingdom, male homosexuality had been illegal since the Buggery Act of 1533.[20] Back then, the British society in the middle of the twentieth century widely accepted that homosexuality was 'a miserable way of life,' hence its criminalization. Its criminalization was therefore a reflection of the then society's manifestation. This law was transfused to Kenya from England, thereby criminalizing homosexuality in Kenya in 1897, when Kenya was still a British colony.[21] Without a doubt, its criminalization was fully implemented by the colonial masters who proceeded to enact the Penal Code in 1930, with Sections 162 and 163 as part of it. However, back in their home, Kenya's former colonial masters decriminalized homosexuality in 1967, after the commissioning and consideration of the Wolfenden Report.[22] The act has since been replaced by the Marriage (Same-Sex Couples) Act, 2013, legalizing same-sex relations.[23] Despite England decriminalizing homosexuality, Kenya is yet to do the same 127 years later.

It is undisputed that homosexuality laws were imposed on the people of Kenya courtesy of the colonial government and was not a reflection of the social morality of the Kenyan people. Several scholars have linked the implantation of Western sexual and civilization morals to later day homophobia and homosexuality that grips the post-colonial states to date.[24] There is abundant literature establishing that same-sex practices and non-conventional gender identities were prevalent in pre-colonial Africa.[25] Sylvia Tamale, a leading scholar on sexuality in Africa terms the contention that same-sex relations were unknown in pre-colonial Africa not just a fallacy but also a falsehood.[26] Tamale argues that in order for the colonial and imperial agenda to

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[19]Bix, *Jurisprudence:Theory and Context*, 2019.
[20]Wallace Nderu, " Human Rights Identity versus Penal Sanctions: Reality or Perception? Constitutionality of Sections 162(a) (c), 163 and 165 of The Penal Code,"2018 <https://icj-kenya.org/wp-content/uploads/2018/02/Same-Sex-Relations-and-the-Kenyan-Constitution.pdf> on 27 November 2024.
[21]Wallace Nderu, " Human Rights Identity versus Penal Sanctions: Reality or Perception? Constitutionality of Sections 162(a) (c), 163 and 165 of The Penal Code,"2018 <https://icj-kenya.org/wp-content/uploads/2018/02/Same-Sex-Relations-and-the-Kenyan-Constitution.pdf> on 27 November 2024.
[22]Wallace Nderu, " Human Rights Identity versus Penal Sanctions: Reality or Perception? Constitutionality of Sections 162(a) (c), 163 and 165 of The Penal Code,"2018 <https://icj-kenya.org/wp-content/uploads/2018/02/Same-Sex-Relations-and-the-Kenyan-Constitution.pdf> on 27 November 2024.
[23]NGOs Coordination Board v Eric Gitari & 5 Others, para 197.
[24]Baraza, 'The impact of heteronormativity on the human rights of sexual minority: Towards protection through the constitution of Kenya 2010,' 10.
[25]Baraza, 'The impact of heteronormativity on the human rights of sexual minority: Towards protection through the constitution of Kenya 2010,' 11.
[26]Sylvia Tamale, 'Researching and Theorising Sexualities in Africa.' In Sylvia Tamale (ed.), African Sexualities: A Reader (Pambazuka 2011), p 19.
[27]Sylvia Tamale, 'Researching and Theorising Sexualities in Africa,' In Sylvia Tamale (ed.), African Sexualities: A Reader (Pambazuka 2011), p 24.

Kenya's Penal Code criminalizes same-sex sexual activity. Under Section 162 of the Penal Code, same-sex sexual acts are prohibited, and individuals found guilty of engaging in such activities can face up to 14 years in prison. The law specifically targets "unnatural offenses," which are interpreted as same-sex sexual relations.

succeed, colonialists embarked on culture transformation of African societies and in the process, implanted the culture of heterosexism, hitherto the serious problem that it is today.[27] Additionally, scholars such as Murray and Roscoe have found that homosexuality existed in Africa prior to colonization and its subjugation or denial is a creation of colonialists themselves.[28] The duo convincingly claim that Europeans created a myth that homosexuality was absent or incidental in African societies but it has either been deliberately submerged in discourses, deliberately misrepresented for socio-political reasons or misunderstood because their concept in Africa is alien when viewed in Western sense.[29]

Applying Lord Devlin's interpretation of social morality and the need to enforce it, it is clear from the foregoing that Section 162 (a), (c) and 163 of the Penal Code, which tends to criminalize homosexuality, is a creation of the colonialists' conventional morality back then. This is due to the British society's perception, in the middle of the twentieth century, that homosexuality was 'a miserable way of life,' which, through the colonial government, implanted and imposed this idea in Kenya, through laws, thereby subjugating Kenya's authentic social morality.

In assessing whether the conventional morality of the colonial/last generation, that criminalized homosexuality, is synonymous to the current generation's conventional morality, I tend to disagree. The current generation have a different interpretation and approach to homosexuality, compared to the British society of the middle twentieth

[27]Sylvia Tamale, 'Researching and Theorising Sexualities in Africa,' In Sylvia Tamale (ed.), African Sexualities: A Reader (Pambazuka 2011), p 24.
[28]Stephen O. Murray and Will Roscoe (eds.), Boy-wives and Female Husbands: Studies in African Homosexualities. (New York: Palgrave 1998), p 21.
[29]Sussie Jolly 'Gender myths and feminist fables: Repositioning gender in development policy and practice' Institute of Development Studies (IDS) University of Sussex.

century, who imposed the criminalization to Kenyans. This is because society's social opinions and concerns keep on changing.

1.5 Current conventional and shared morality of the Kenyan society

In 27th August 2010, the people of Kenya unanimously promulgated the constitution of Kenya, 2010. This Supreme Law was as a result of a long struggle, a struggle bravely born by men and women who thirsted for a new democracy, a change in governance and the rule of law.[30] The 2010 Constitution is a true reflection of Kenya's society, a society proud of their ethnic, cultural and religious diversity[31] and committed to nurturing and protecting the well-being of the individual.[32] With this new grund norm came a robust Bill of rights that protects the cultural, social, economic, civil and political rights of individuals. The Kenyan constitution has been regarded by very many scholars as a transformative one for its progressive Bill of Rights that is inclusive, with Article 27 providing for equality of all people before the law.

The Kenyan constitution, by containing the do's and dont's, and the aspirations of the people of Kenya, has aspects of the conventional and shared morality of the people of Kenya, and is the glue that holds them together. Its provisions are alive and guide the day to day lives of Kenyans, acting as an anchor on which Kenyans refer to when making critical economic, social, cultural, political, administrative and judicial decisions. By being unanimously promulgated by the people of Kenya, provisions of the 2010 constitution contain and reflect the conventional, social and shared morality of the people of Kenya, since it is based on the aspirations, beliefs and the wishes of the people of Kenya. Therefore, every act and law should reflect its provisions.

1.5.1 Interpretation of constitutional principles vis-a-vis homosexuality

Just recently, the Supreme Court, in the landmark decision of NGOs Coordination Board v Eric Gitari & 5 Others[33] was faced with a pertinent situation, regarding interpretation of the constitution and more specifically Article 27(4). In an effort to promote inclusivity, the constitution of Kenya, in Article 27(4), provides that the State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. The Supreme Court grappled with the interpretation of the wording of Article 27(4), as whether the term "include" and "sex" as used in the quoted provision should be interpreted in a broader term to include other grounds such as sexual orientation.

Sex in the Black's Law Dictionary, 9th edition is defined as "the sum of the peculiarities of structure and function that distinguish a male from a female organism". The Britannica Online Encyclopedia defines sex as "the sum of features by which members of species can be divided into two groups—male and female—that complement each other reproductively." On other hand, the Black's Law dictionary defines sexual orientation as "a person's predisposition or inclination toward a particular type of sexual activity or behavior; heterosexuality, homosexuality

[30]Wallace Nderu, " Human Rights Identity versus Penal Sanctions: Reality or Perception? Constitutionality of Sections 162(a) (c), 163 and 165 of The Penal Code,"2018 <https://icj-kenya.org/wp-content/uploads/2018/02/Same-Sex-Relations-and-the-Kenyan-Constitution.pdf> on 27 November 2024.
[31]Constitution of Kenya, (2010), Preamble.
[32]Constitution of Kenya, (2010), Preamble.
[33]NGOs Coordination Board v Eric Gitari & 5 Others, Judgment of the Supreme Court at Nairobi, Ouko and MK dissenting opinion, 24 February 2023, [eKLR].

The future of same-sex marriage in Kenya is uncertain, as any change would likely require a reform of the Penal Code or a shift in constitutional interpretation. However, such reforms are unlikely to occur in the immediate future given the political climate and public opposition.

or bisexuality." While the Britannica online Encyclopedia defines it as "the enduring pattern of an individual's emotional, sexual, and/or romantic attraction. There are myriad ways to describe sexual orientation, but the most common include: heterosexual, being attracted to the opposite gender; homosexual, being attracted to the same gender; and bisexual, being attracted to more than one gender."[34]

With these interpretations in mind, one would be quick to argue that the choice of words in article 27(4) to use "sex" does not include sexual orientation, as was the dissenting opinion of Ouko J in the Eric Gitari case.[35] However, the wording of article 27(4) uses the word "including." The word "including" is not exhaustive, but only illustrative, and would include freedom from discrimination based on a person's sexual orientation.[36] Such was the unanimous position of the Supreme Court in the Eric Gitari Case.[37]

Therefore, homosexuals, being within the ambit of sexual orientation, have their rights protected by the constitution by dint of Article 27(4) and the Supreme Court's interpretation. They are not to be discriminated against. They have equal protection and benefit before the law. Additionally, with the onset of a progressive bill of rights and Kenya being a member state to international Bill or Rights like the Universal Declaration of Human Rights, human rights are not earned and equally cannot be lost because of one's personal beliefs or leads a particular lifestyle, no matter how repugnant people in a society

[34]NGOs Coordination Board v Eric Gitari & 5 Others, para 114.
[35]NGOs Coordination Board v Eric Gitari & 5 Others, para 111 & 124.
[36]NGOs Coordination Board v Eric Gitari & 5 Others, para 79.
[37]NGOs Coordination Board v Eric Gitari & 5 Others, para 79.

find them.[38] As argued by John Stuart Mill and his protégé H.L.A. Hart, how one chooses to lead one's life, subject only to minimum requirement of law and public order, is a private matter- no matter how publicly one led that life.[39]

Therefore, by containing provisions like Article 27(4) that protects the rights of all people, including homosexuals, and reflects the conventional morality of the people of Kenya, any law that tends to discriminate and or criminalize homosexual acts is against the purpose of the constitution and the shared morality of the people of Kenya.

1.6 Conclusion

Section 162(a), (c) and 163 of the Penal Code, that tends to criminalize homosexuality, regardless of the act being consented to by adults, is in contradiction to the conventional, social and shared morality reflected in the Constitution of Kenya, 2010. As expounded by Hart, if there arises a need to enforce social morality, then the laws ought to be changed over time so as to reflect the true social morality of the current society, since the society shapes the conventional morality, and when society changes, the conventional morality changes with it.[40] Since the conventional and social morality of the current Kenyan society is not synonymous to the British societies of the middle twentieth century, there is no reason to enforce the last generation's conventional morality at the cost of this generation's if indeed the conventional morality of the moment is what matters.

Same-sex marriage remains prohibited under both the Penal Code and the broader legal framework, as the government does not recognize same-sex unions as legitimate or lawful.

Just recently, the High Court of Kenya at Nairobi, in exercising its constitutional mandate[41], repealed Section 226 of the Penal Code, a colonial law relic that penalized suicide.[42] It is from the same lens that Sections 162(a), (c), and 163 should be looked at. The dying embers of punitive colonial laws must be extinguished to ignite the flames of a brighter, more compassionate future.[43]

Therefore, Section 162(a), (c) and 163 of the Penal Code ought to be repealed as they are not a true reflection of the conventional morality that the current Kenyan society shares, and is consequently unconstitutional.

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[38]Baraza, 'The impact of heteronormativity on the human rights of sexual minority: Towards protection through the constitution of Kenya 2010,' 2.
[39]Duncan J. Richter, (2000), Social Integrity and Private 'Immorality' The Hart-Devlin Debate Reconsidered. Essays in philosophy: Vol.2: No. 2, Article 3
[40]Bix, *Jurisprudence:Theory and Context*, 200.
[41]Constitution of Kenya, (2010), Article 165(3d(i).
[42]Kenya National Commission on Human Rights & 2 Others v Attorney General; Director of Public Prosecutions & 3 Others (Interested Parties); Law Society of Kenya (Amicus Curiae), 2025, eKLR.
[43]Miracle Mudeyi, "The High Court of Kenya Strikes Down The Criminalisation of Attempted Suicide," 10 January 2025, <Guest Post: The High Court of Kenya Strikes Down the Criminalisation of Attempted Suicide – Constitutional Law and Philosophy > on 19 January 2025.

Intellectual Property Evolution in 2025: A Global Perspective

Intellectual Property encourages innovation and creativity by granting creators protection and the ability to benefit financially from their work.

By Patroba Omwenga Michieka

In 2025, intellectual property (IP) takes center stage as technology, innovation, and global commerce collide. Patents, copyrights, and trademarks are no longer just legal tools—they are the currency of a rapidly evolving digital economy. As emerging technologies reshape industries and business models, the role of IP has never been more critical. Let's explore the key trends redefining its future and the opportunities they bring.

1. The Rise of Digital and AI-Driven Innovation

Intellectual Property laws are struggling to keep pace with the rapid development of artificial intelligence (AI), blockchain, and other advanced technologies. AI, in particular, is transforming how products and services are created, leading to new challenges in determining ownership. In 2025, more jurisdictions are expected to have clarified the legal status of AI-generated creations. For example, should an AI-created invention be patented, and if so, who owns the patent: the developer of the AI, the user, or the AI itself?

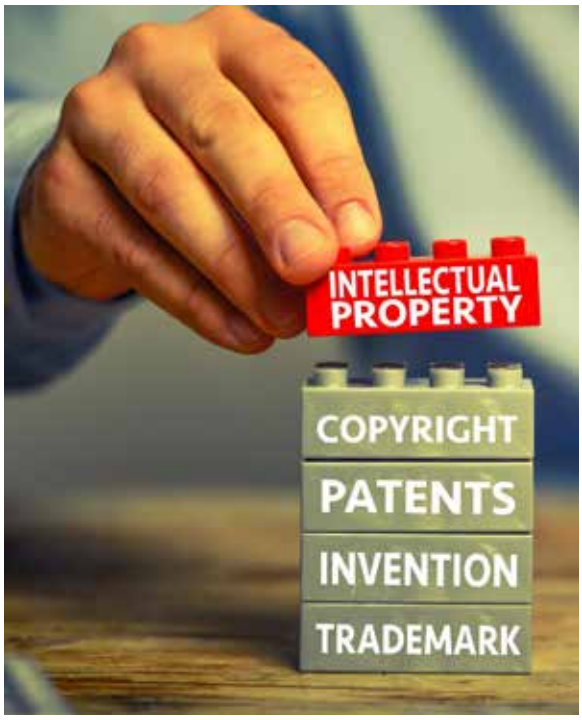
Additionally, blockchain technology is paving the way for decentralized IP management. With blockchain, creators can have greater control over their work through smart contracts, which can automatically enforce licensing agreements. This is particularly important in fields like music, digital art, and software development.

2. Increased Emphasis on Sustainability and Green Technologies

With the global focus on climate change and sustainability, green technologies are receiving heightened attention. In 2025, governments and industries are likely to offer more incentives for the development of sustainable solutions, and this will reflect in IP policies. Renewable energy technologies, eco-friendly innovations, and sustainable practices are expected to be more actively protected and encouraged through IP, ensuring that companies can profit from developing sustainable alternatives without fear of others exploiting their innovations without due recognition.

3. Expanding Global Collaboration and Cross-Border IP

Globalization has always been a driving force in IP, but in 2025, the digital economy is fostering a more interconnected world. More and more companies and individuals are conducting business across borders, leading to the need for stronger international collaboration when it comes to IP protection. Trade agreements and international conventions, such as the World Intellectual Property Organization (WIPO), continue to evolve and adapt to these changing dynamics. With this, countries are likely to harmonize their IP laws further, creating streamlined processes for obtaining patents, trademarks, and copyrights internationally. Moreover, cross-border enforcement of IP rights is becoming increasingly important as the digital world facilitates the global circulation of goods, services, and content.



Intellectual property rights contribute significantly to economic development by promoting investments in innovation and technology. The IP system fosters competition, drives research and development (R&D), and facilitates the growth of industries like entertainment, technology, and pharmaceuticals.

4. The Importance of Data Protection and Privacy

In the digital era, data is seen as one of the most valuable assets for businesses, and as such, its protection is closely linked with IP law. In 2025, as data-driven technologies such as AI, machine learning, and big data continue to advance, intellectual property law will play an increasing role in safeguarding data privacy. As industries find new ways to leverage personal data, there will be growing concerns about who owns the data and how it can be used legally and ethically.

5. The Impact of Open Source and Collaborative Innovation

The open-source movement continues to gain momentum in 2025. Technologies that encourage collaborative innovation and the free exchange of knowledge are reshaping traditional IP models. Software development

KIPI is responsible for the registration and management of patents, which protect new inventions or innovative products and processes. A patent gives the inventor exclusive rights to use, make, sell, or license the invention for a specified period (usually 20 years).

and other creative fields are seeing a shift toward open-source solutions, where instead of strict IP ownership, contributors collaborate and share their work freely.

At the same time, hybrid models are emerging, where businesses combine open-source initiatives with proprietary solutions. This allows for both innovation and protection, with IP serving as a tool for commercial success while maintaining open-access communities.

Kenya Industrial Property Institute (KIPI) and Its Role in Promoting Intellectual Property

The Kenya Industrial Property Institute (KIPI) plays a crucial role in promoting intellectual property rights in Kenya and facilitating the growth of innovation within the country. In a rapidly evolving global IP landscape, KIPI has adapted its strategies to support local entrepreneurs and creators, ensuring that Kenya is part of the global intellectual property conversation. Here's how KIPI is advancing IP in Kenya:

1. Awareness and Education Programs

KIPI has launched numerous educational initiatives aimed at raising awareness about intellectual property rights, particularly for SMEs and innovators. These programs are designed to ensure that local businesses, entrepreneurs, and creators understand the value of IP and how it can be used as a tool for business growth and global competitiveness. By hosting workshops, training sessions, and seminars, KIPI empowers Kenyan innovators to protect their ideas and leverage IP for market success.

2. Streamlined IP Registration and Protection

KIPI has been working on simplifying the process of IP registration, making it more accessible to creators, entrepreneurs, and businesses. This includes offering more efficient ways to register patents, trademarks, industrial designs, and copyrights. By reducing the time and cost associated with obtaining IP protection, KIPI is helping Kenyan innovators safeguard their inventions and creations, both locally and internationally.

The implementation of online registration systems and e-filing platforms has significantly streamlined the process, making it more convenient for individuals and businesses to register their intellectual property rights from anywhere in the country.

3. IP as a Tool for Economic Development

KIPI has recognized that intellectual property can be a key driver of economic growth. The institution promotes IP as a strategic asset for local businesses, particularly in sectors such as technology, agriculture, and creative industries. Through various programs, KIPI supports innovators in turning their ideas into marketable products and services, creating new

Intellectual Property (IP) plays a critical role in fostering innovation, protecting creators' rights, and driving economic growth. From protecting artists' work to incentivizing technological advancements, the IP system is essential for the modern economy. However, it also faces challenges such as enforcement issues, global inconsistency in laws, and debates over balancing private rights with public interest.

opportunities for economic development and employment.

Moreover, KIPI encourages the commercialization of patents and other IP assets, ensuring that local innovators can monetize their creations and contribute to Kenya's economy in a sustainable manner.

4. Strengthening International IP Relations

KIPI also plays a key role in Kenya's participation in international IP treaties and conventions, such as the Patent Cooperation Treaty (PCT) and the Madrid Protocol for trademarks. This international engagement ensures that Kenyan innovators have access to global markets and that their IP is protected abroad. KIPI works closely with other international IP organizations to harmonize local IP laws with global standards, enhancing Kenya's position in the global intellectual property landscape.

5. Supporting Local Creators in the Digital Economy

In line with global trends, KIPI is also focusing on supporting Kenya's growing digital economy. From promoting the protection of software and digital innovations to facilitating the registration of creative works in the entertainment industry, KIPI recognizes the importance of IP in the digital realm. As more Kenyan creators enter the global digital market, KIPI provides them with the tools they need to protect and monetize their works in an increasingly connected world.

6. IP Enforcement and Combatting Counterfeiting

One of the challenges Kenya faces in terms of intellectual property is the prevalence of counterfeiting and piracy. To tackle this issue, KIPI works with local law enforcement agencies and other stakeholders to improve

The future of Intellectual Property (IP) in Kenya holds significant promise, driven by a growing awareness of the value of IP, increasing innovation, and Kenya's evolving role in the global economy. However, this future also faces challenges that require adaptation and reform of existing frameworks, the development of IP education, and improved enforcement mechanisms.

the enforcement of IP rights. This includes taking legal action against counterfeit goods, raising awareness about the negative impacts of piracy, and ensuring that IP holders can take advantage of legal remedies when their rights are infringed.

7. Supporting Innovation in Key Sectors

Finally, KIPI actively fosters innovation in key sectors of Kenya's economy, such as agriculture, health, and technology. By supporting research and development, and offering guidance on IP protection, KIPI ensures that Kenyan innovations are not only protected but also have the potential to make a global impact. In particular, KIPI has worked with institutions in the agricultural sector to encourage the development of new plant varieties and agricultural technologies, which are vital to Kenya's economy and food security.

Conclusion: The Future of IP in Kenya and Beyond

As we look ahead to 2025 and beyond, intellectual property will continue to evolve as a vital tool for economic development, creativity, and technological innovation. In Kenya, KIPI is playing a crucial role in enabling local innovators to protect and commercialize their ideas, ensuring that the country's IP framework remains robust and relevant in a globalized economy. As the world embraces new technologies, IP will become increasingly important for nations to leverage as a resource for growth, competitiveness, and sustainable development.

Through continued education, innovation, and international cooperation, Kenya and KIPI are paving the way for a future where intellectual property is a key driver of prosperity, not just in Kenya but across the globe.

Patroba Omwenga Michieka is a Legal Officer at Kenya Industrial Property Institute. This article is inspired by Concillia Faith Were an IP specialist and mentor to the writer. He also thanks The President of Law Society of Kenya, Faith Odhiambo for pushing him to write about the future of IP.

Objection: hearsay from a neural network
An analysis of law practice in the AGE of the AI

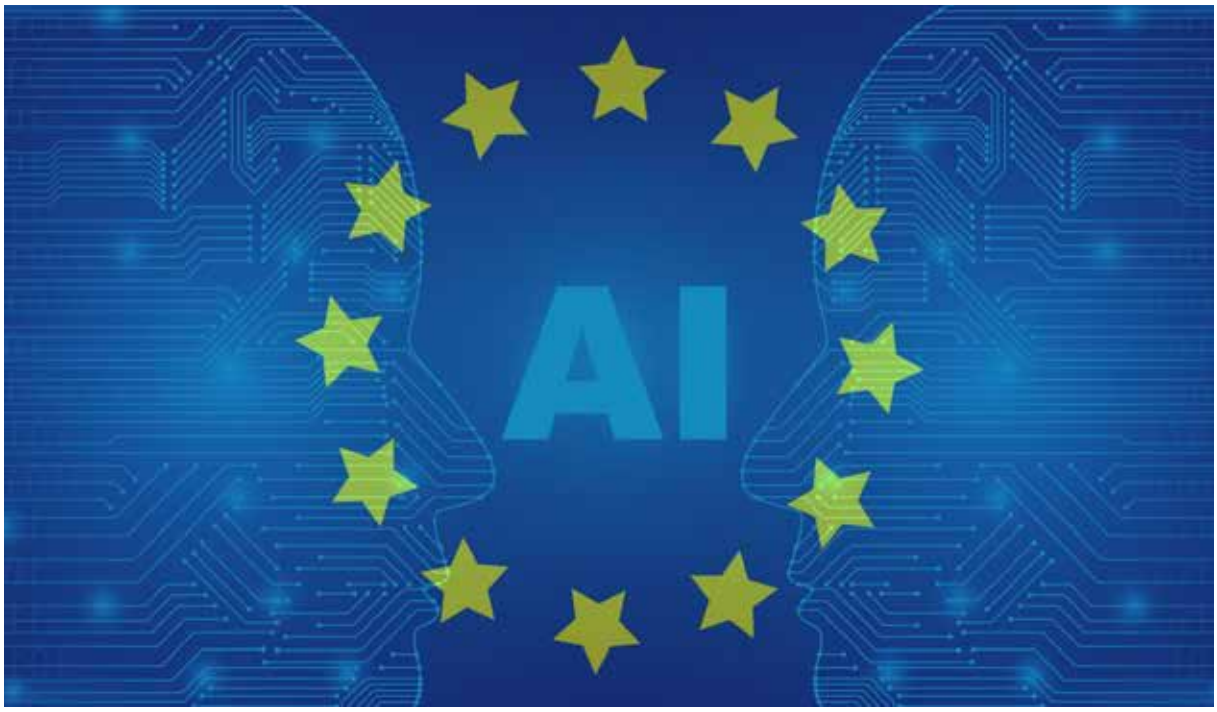
Jawabu AI appears to be a forward-looking platform designed to harness the power of artificial intelligence to improve access to information and services in various sectors. Whether it is a customer service tool, a healthcare assistant, or an educational platform, the future of Jawabu AI is likely to be shaped by the ongoing digital transformation in Kenya and across Africa.

By Jesse Watanga

You might have heard. Triple OK, one of the premier law firms in Kenya, is on the verge of launching Jawabu. Jawabu is an AI platform that, according to Triple OK, is able to draft submissions, cite cases, research cases, and generally do all that lawyers have traditionally claimed to do. The discourse online has been lively. Pro AI enthusiasts, myself included, think it is long overdue. On the other hand, an antiAI camp foretells doom and gloom for the profession. They argue that AI will mark the end of the profession as we know it. In this article, I will try to place these different worldviews on AI into perspective by drawing on history, giving an overview of the state of applications, and suggesting a way of introducing AI while taking care of the human pain factor.

Historical perspectives: The luddites

Before anti-AI, there were textile manufacturers, derisively branded 'luddites, who, in the 19th century, resorted to violence to wade off machines. They argued that



The most notable and widely discussed Artificial Intelligence Act currently in development is the European Union (EU) Artificial Intelligence Act, which aims to set global standards for AI regulation. It is considered the first comprehensive legal framework focused on AI that emphasizes risk-based regulation and aims to ensure that AI is used in a way that is aligned with European values and fundamental rights.

machines were taking away their jobs and livelihoods. The government of the day managed to suppress them then.
A century later, blacksmiths and horseworkers took even more drastic measures to protect their profession from encroachment by cars. Authorities passed "red flag laws" that required owners of motor vehicles to be preceded by a person waving a red flag. They also had to have a mechanic by their who was required to disassemble the vehicle upon encountering a horse.The car eventually replaced the horse and became a bigger industry. In fact, in less than 50 years, the US government had to bail out car companies to save jobs. You probably already know how the story ends in other professions. In the legal profession, some have dismissed AI because of reported incidents of hallucinations of cases in some instances.

The point I make is that new technologies usually endure a period of scorn before people take them seriously enough; by then it is often too late as whole professions are already swept away. The Wright brothers wee told the plane could never fly; JPMorgan himself refused to fund the car, dismissing it as a toy for the rich.

Adapting to the future of work: Robotic Process Automation

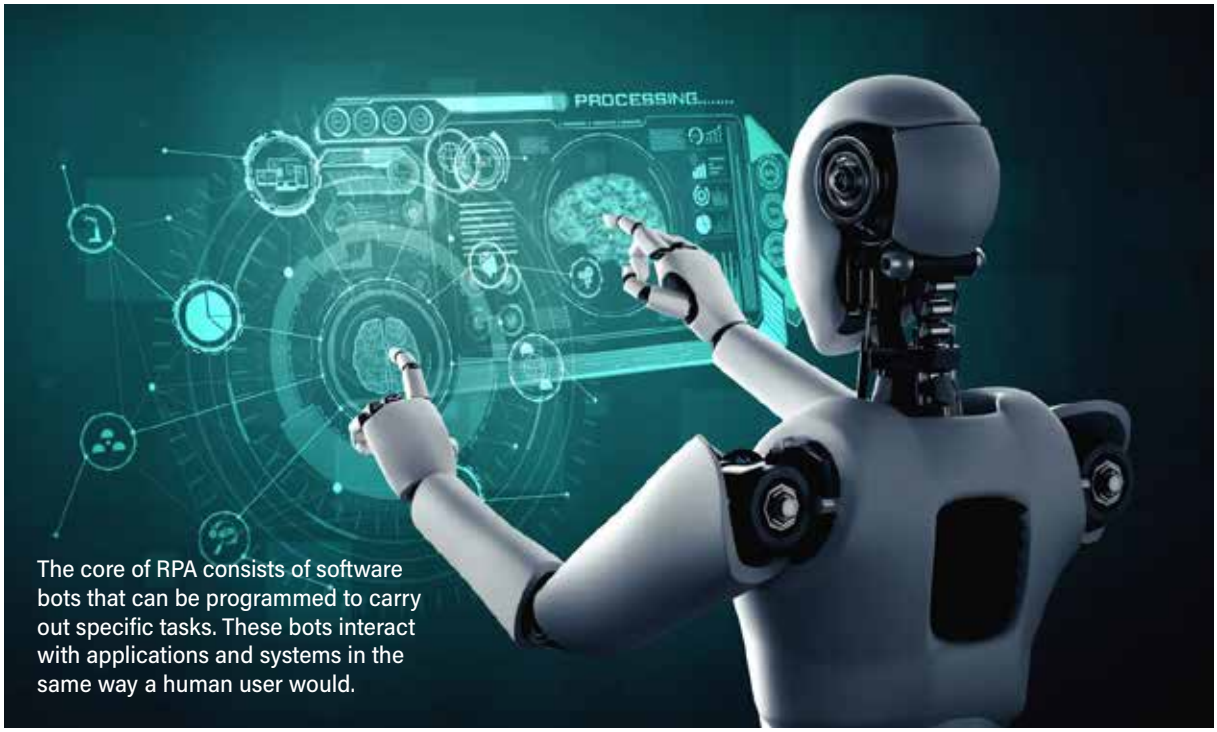
The European Union has introduced an Artificial Intelligence Act, which requires a Fundamental Rights Impact assessment. This assessment is to be conducted before the deployment of these systems and will impact both private and public bodies that seek to deploy these systems. It will analyse the risks posed by the system to individuals and how human beings are to oversee them. The fundamental rights that must be accounted for under this framework are the rights to work, the right to privacy, the right to the dignity of the individual, and some fundamental freedoms. It builds on the back of the General Data Protection Regulations (GDPR) which affected developers of these systems. We might soon see a similar framework in Kenya.

In the context of organisations, the correct term is AI and more of Robotic Process Automation (RBA). So what is robotic process automation? Well, technology has changed how we interact with each other, how we work, and how we interact with the world. Businesses are adopting technology-driven solutions to manage rising employee and assignment costs, and that includes robotic process automation. It refers to software that can be programmed to do basic tasks across multiple applications. Much like most employees. RBA is shifting the mobility business model. It is able to solve many of the issues faced by programs today. For example, firms are in a global talent race. RBA relieves some of these pressures by alleviating repetitive, time-consuming tasks. While it can decrease headcount in some instances, RBA is seen by most as making mobility personnel strategic in their positions. It also benefits employees who rely on global mobility by enhancing the care and attention they receive. It frees up time for those employees to focus on a high-impact, high touch environment for those employees. It is also a way to restructure outsourcing requirements. As global labour becomes more expensive.

RBA can be a solution that can assist in managing costs and ensuring efficiency since it can work round the clock. Many global mobility departments are realising that RBA can really provide a blend of efficacy, performance, and consistent quality while reducing human error and costs. But this level of automation is still relatively new in mobility. The majority of teams do not have a strategic vision for automation and robotics. They are not using automation to streamline portions of their global mobility process.

Choosing the technology

It is important to consider the correct technology or the process for the organisation or project. Your essentially building a job description for an RPA. In most cases, the organisation has a broader technology vision or even a department that can assist in streamlining the review of technology and may also determine the return on investment for using that type of technology. As the organisation builds the business case and hiring criteria, there are a number of considerations:



The core of RPA consists of software bots that can be programmed to carry out specific tasks. These bots interact with applications and systems in the same way a human user would.

- Process: does the process lend itself to leveraging an RBA?
- Alternatives: How might you accomplish the project without the use of an RBA?
- Complexity: what is the time and cost needed to create an RBA, and is this cheaper and more efficient than the current process?
- Teaming: Since you are able to leverage multiple systems, are you able to work with other groups to solve issues? system integration—are all systems capable of leveraging RPA technology?
- Maintenance: Who will maintain the RPA, and what is the cost associated with that maintenance?
- Keep in mind that whenever there is a system change, whether large or small, portions of the RPA will have to change as well.

Impact on Employees

It is also important to consider the impact on employees. This requires a strong change management strategy throughout the entire process. Through planning, implementation, and adoption. There are so many processes and tasks that an RPA cannot do, so it is important to let people know how expectations and their everyday jobs are going to change with the technology.

Employee engagement then becomes one of the main components of RPA adoption. This falls into four main categories.

Transparency: Make sure employees know what is coming and it is communicated how that change is going to affect them.

Training and transition planning: People should begin to plan for changes in their jobs and to the processes that they are familiar with. Doing this as part of your communication roll out, making sure that once your RPA is released, people are ready to hit the ground running and then you dont have the training aspect and the time associated with it Follow the RPA rollout itself. The third is the value proposition around the RPA. Talk about how it will positively impact individual positions.

Either that is a decrease in time or something that allows them to be more strategic in their role. Involvement in the RPA process. Get people involved. It brings excitement, and it also teaches them how an RPA is built and how it will function.

Over the past two decades, there has been a push to centralise much of back office functions and mobility into shared service centres. RPA has impacted this because this was a strategy that was designed to lower costs; it has worked for many years. But it is becoming increasingly obsolete as we are seeing increased globalization and shrinking labor costs across all markets. Decreased efficiency as many companies prioritize cost savings over efficacy of offshore teams and are now seeing more frequent turnover and political changes that are threatening cross-border transactions.

The Key take Away

The key to RPA success is knowing which technology products you will continue to leverage and support in the future. Along with the interconnectivity between the products, the future roadmaps of the product, and the stakeholders that use each system. It is also important to understand the organization's broader stance on automation, as it can assist in driving discussions and helping to garner internal support for the project. Companies are already starting to use RPAs to create efficiency around mobility processes, including cost estimation, assessment letter generation, and compensation management. While these are currently few and far between, the next couple of years will see growth in this adoption.

Jesse Watanga is a lawyer.

OFFICIAL STATEMENT

1 JANUARY 2025

KENYA SPACE AGENCY
Possibilities beyond our skies

FRAGMENTS OF SPACE OBJECT THAT FELL AND LANDED IN MUKUKU VILLAGE, MAKUENI COUNTY ON MONDAY 30 DECEMBER 2024

The Kenya Space Agency (KSA) wishes to address the recent incident involving a metallic object that fell from the skies and landed in Mukuku Village, Mukuku Sublocation, Nduluku Location, Waia Division, Mbooni East Sub-County, Makueni County, on Monday, 30/12/2024, at around 1500hrs.

The Agency wishes to clarify that the object, a metallic ring measuring approximately 2.5 meters in diameter and weighing about 500 kg, is a fragment of a space object. Preliminary assessments indicate that the fallen object is a separation ring from a launch vehicle (rocket). Such objects are usually designed to burn up as they re-enter the Earth's atmosphere or to fall over unoccupied areas, such as the oceans. This is an isolated case, which the Agency will investigate and address using the established framework under the International Space law.

On receipt of the information on the morning of Tuesday 31 December 2024, KSA officials rushed to the scene and, working alongside a multi-agency team and local authorities, secured the area and retrieved the debris, which is now under the Agency's custody for further investigation.

The Agency wishes to thank the local residents of Mukuku village for their prompt action in reporting the incident to the authorities and for their cooperation in ensuring public safety. We express our gratitude to the local leadership, the multi-agency team, the Makueni County Government, and media houses for disseminating this critical information in a timely manner.

We want to assure the public that the object poses no immediate threat to safety. Our experts will analyze the object, use existing frameworks to identify the owner, and keep the public informed of the next steps and outcomes.
KSA remains committed to fostering safe and responsible space activities for Kenyan entities operating within Kenya or from outside Kenya. We urge the public to report any suspicious objects or unusual occurrences promptly to the relevant authorities.

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(+254)-709 298 200

Pitman House, Jakaya Kikwete Road
Nairobi, Kenya

PRESS STATEMENT

FOR IMMEDIATE RELEASE

STATEMENT ON THE SHAMEFUL AND MANNERLESS UTTERENCES BY SOME POLITICAL LEADERS AT THE FUNERAL OF THE LATE MAMA ANNE NANYAMA.

First, I would like to pass a message of condolences to the families, relatives and friends of Kenyans who today lost their lives in a tragic road accident in the Soy area along the Kitale - Eldoret highway. The Eldoret - Kitale highway is a torturous narrow highway that puts motorists in precarious danger of tragic accidents. I urge motorists to be very careful when using this road.

Apart from that, this afternoon, during the sombre funeral of Mama Anne Nanyama Wetangula in Kabuchai, Bungoma county, I was the subject of severe verbal attacks by some political leaders through the litany of insults and profanity towards my persona. Among the claims, some political leaders alleged that I am an abductor and a murderer who orchestrated the deaths of innocent Kenyans during the last regime. Let it be known that George Natembeya served as a diligent, honest, and truthful servant to the people of Kenya. A position I earned through merit and hard work. I resigned as The Regional Commissioner without any stain or scandal.

My commitment as a Regional Commissioner endeared me to the esteemed people of Trans Nzoia, who nurtured me to be their second governor. I want my fellow Kenyans to know that the reason some political leaders saw it worth insulting me was because I boldly told the President to order the end of abductions and command the release of the abducted youths. The families of these abducted youths are undergoing untold trauma, not knowing the whereabouts of their children. As some politicians dance merrily, enjoying the trappings of being leaders, a family doesn't even have the appetite to drink a glass of water because they are in agony for not seeing their son, who disappeared without a trace. Unfortunately, without respect for these families, some political leaders are trying to divert this matter of national concern by insulting me with their frivolous allegations.

Let it not be construed that condemning extrajudicial abductions is undermining the President. We all have a duty to remind state organs to adhere to the rule of law and our constitution's principles. These politicians lack emotional intelligence; they get carried away by euphoric cheers senselessly without assessing the unforeseen consequences of their loose mouths. I condemn the shameful utterances with the strongest terms possible. I will not be cowed or stopped by hired street hoodlums. The dream of freeing the Luhya community from the chains of egocentric politicians will not be dimmed by corrupt politicians. My fellow Luhya leaders and I, together with like-minded political leaders from other regions, will stand firm and become the voice of the people of Kenya.

The people of Kenya are currently suffering in pain, struggle and poverty. I will continue speaking boldly, without fear. Kenyans want an end to extrajudicial abductions of our young people. Abductions must decisively and courageously be condemned. Kenyans are looking up to leaders to speak for them. We shall not stop reminding other leaders to remember the promise we gave Kenyans during our election campaigns.
George Natembeya remains honest, transparent and obedient to his people.

The truth does not mind being questioned. A lie does not like being challenged.

+2540700026026 KITALE George.Natembeya@transnzoia.go.ke

Anti-immigration policies: why harsh new rules put in place by Trump and other rich countries won't last

Protesters demanding a halt to deportation plans in Chicago, Illinois. Photo by Jacek Boczarski/Anadolu via Getty Images

By Alan Hirsch

Donald Trump, America's new president, has cut back massively on US commitments to asylum seekers, blocked all asylum processes and started to remove irregular immigrants.

Trump's new measures are far reaching. They include the suspension of the US refugee admissions programme. Flights booked for refugees to the US have been cancelled. Arrests and deportations have begun.

Strongly anti-immigrant policies were also pursued under the Biden administration, though Trump's dramatic steps take them much further. Other countries in the global north have also introduced tougher policies. The 2024 EU Pact on Migration and Asylum sets out tougher border controls, quicker assessment of asylum seekers and swifter removal of those who did not qualify. In the UK, Labour prime minister Keir Starmer has promised to bring down the net migration rate and treat people-smugglers like terrorists.

Based on my research into migration over the past 30 years I believe that these measures are unlikely to last. There are two linked trends that make closing the borders of the global north impractical and destined for revision.

The first is that populations in most of the global north are ageing fast (on average)

and the fertility rate, or natural population growth rate, has plummeted. There are many more older people as a percentage of the population.

Secondly, with a workforce shrinking and the dependency ratio (the proportion of non-working to working people) rising rapidly, closing borders to potential labourers from other countries, without any other change, would lead to declining living standards in the global north. Economic growth and government revenues would slow or stagnate, undermining infrastructure maintenance and social service provision.

There are several possible strategies that could be alternatives to anti-immigration measures. Some older people could migrate south, robots and AI could do more work, workers in the global south could perform remote work for the north, and arrangements could be made to allow migrants into the north either permanently or as circulating migrants.

All these strategies are already in use, if modestly. Their application would have to expand considerably.

Misplaced panic

The responses of governments in the global north are exaggerated. Governments putting in place tough anti-immigrant measures have done so on the back of a narrative that there's been a significant rise in the number of migrants worldwide.

This isn't true. Some countries, such as the US, Germany and Colombia, have seen a spike in refugees and other migrants. But for the rest of the world the picture remains much the same as it has done for decades.

Foreign-born residents (the most widely used definition of migrants) rose as a proportion of residents worldwide from 2.3% in 1970 to 3.6% in 2020. But in 1960 the number was over 3%, and in the late 1800s migrants made up somewhere between 3% and 5% of the global population.

So, 3.6% is nothing new.

As for refugees, in 2023 there were about 38 million, of whom 69% sought refuge in neighbouring countries and 75% in middle- and low-income countries.

In general, therefore, rich countries have not been carrying the greatest burden.

The real reason behind these tougher measures is that living standards have stagnated in many countries in the Organization for Economic Cooperation and Development. The cost and availability of housing have worsened; inequality has grown since the 1980s; the quality and availability of public services have deteriorated since the global financial crisis of 2008 and COVID-19; and the quality of employment has shifted to precarious work and poorly paid service sector occupations.

This has contributed to the rise of populism, including anti-foreigner sentiment and even xenophobia.

Trump's actions are the most extreme yet. They include an order to block "aliens involved in the invasion" using "appropriate measures" that give the security forces further powers. The prohibition of southern border asylum hearings in the US and the instruction to "remain in Mexico" means that prospective asylum seekers from third countries may not cross the border to make their applications at the port of entry. They must apply remotely.

Trump has also ordered that birthright citizenship must be limited to the children of certain categories of residents, essentially citizens or those with residence rights in the form of a "green card". This move has been temporarily blocked in some states by judges as unconstitutional.

In addition, the acting head of the Homeland Security Department gave Immigration and Customs Enforcement officials the power to deport migrants admitted temporarily into the US under several programmes of the Biden administration, targeting refugees from Cuba, Nicaragua, Venezuela and Haiti, and possibly Afghan and Ukrainian refugees too.

The very first bill to receive final approval from the US Congress under Trump's second term, the Laken-Riley Act, would require the detention and deportation of migrants who enter the country without authorisation and are charged with certain crimes. This bill was passed with 263 votes and 156 votes against, meaning that 46 House Democrats supported the Republican bill.

In contrast, in the global south, as I have discussed elsewhere, the trend has been in the opposite direction. South American regional communities liberalised migration most extensively in recent decades, but African regional communities have made progress too, as has the Association of Southeast Asian Nations.

The way forward

Some alternative strategies are leading the way. In Canada, the Temporary Foreign Worker programme has expanded steadily since 1973, increasingly including long-term circulating migrating lower-skilled workers for key occupations like catering, care, construction and agriculture. Though it is currently under political scrutiny because of the panic in the north over migration, and because of housing shortages in Canada, it is likely to survive and evolve. Similar systems are emerging across the global north.

In the EU, Talent Partnerships are now encouraged. Germany, for example, has talent partnerships with Kenya and Morocco, where they train health workers and IT technicians in those countries to work and live in Germany. Spain has various

Trump's tough stance on immigration had strong backing from his base, particularly those who believed that illegal immigration was a threat to American jobs, safety, and sovereignty. Many saw him as standing up to what they viewed as a broken immigration system that allowed too many people to enter the U.S. illegally and take advantage of public services.

partnerships in Latin America and Africa. Prime minister Pedro Sanchez has chosen to be upfront on the choices. In October last year he told the Spanish people:

Spain needs to choose between being an open and prosperous country or a closed off poor country.

The current fashion for population protectionism in the global north is increasingly nasty, but it is unlikely to stand the test of time. Several constructive responses to the rising dependency ratio are feasible, but being open to more migration, possibly in new forms and through new channels. is an inevitable part of the solution.

New formal pathways for working migrants and reasonable systems for asylum seekers, along with full enforcement of rules against irregular migrants, could be the combination that works politically and economically.

This article was first published in the Conversation Magazine.

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PRESS RELEASE:

PROSECUTION OF SCHEME TO REMOVE THE HONOURABLE CHIEF JUSTICE, SIX JUSTICES OF THE SUPREME COURT AND TWO JUSTICES OF THE SUPERIOR COURTS ON SOCIAL MEDIA: INTIMIDATION OF THE JUDICIAL SERVICE COMMISSION AND JUDGES

In the recent past, Petitions have been lodged with the Judicial Service Commission seeking the removal from office of the Honourable Chief Justice, Justices of the Supreme Court, High Court and Environment and Land Court.

The Constitution of Kenya contemplates such a course.

Regrettably, after lodging the Petitions with the Commission, some of the Petitioners and their proxies have taken a tangent of intimidating the Judicial Service Commission and judges while prosecuting the Petitions on social media.

The Justices whose removal is under deliberations by the Judicial Service Commission cannot prosecute or present their respective

cases on social media. Their hands are tied by the Conduct of Ethics and Conduct.

It therefore behoves the Kenya Magistrates and Judges Association to intervene within the social media space, amongst other media.

It is no secret that there has been a scheme to weaken and ultimately destroy the institution of the judiciary through crusades in social media.

One of the Petitioners has been using coded language with undertones of actual violence to cause harm and destruction to the judiciary, judges and judicial officers to achieve a predetermined outcome at all costs.

The Petitioner posted on his social media handle:

> We went to Image First Limited to fit our olive fatigues in preparation for the final ground assault on C J Martha Koome and the Supreme Court Judges.

The very next day, the security detail/escorts of the Honourable Chief Justice and officers deployed to the Judiciary Police Unit were withdrawn.

Soon thereafter, the Petitioner posted on his social media pages:

> We eventually landed and caught one of them, geese

In further prosecution of an agenda against the judiciary and judges, a message was posted of a preparedness to bomb the Supreme Court with a warning to civilians advised to evacuate.

> An unconventional war requires an unconventional weapon for a quick end. Civilians are advised to evacuate by 8.45 am.

Yesterday, one of the Petitioners posted:

> Dr John Khaminwa once told me of Lawyers in Uganda or Ghana who contemplated filing suit to challenge a military coup. You see what, Paul Ndemo, we are coming for you people with swords. It is prudent that you take flight instead of reciting the poem titled sub judice'.

Previously, the Petitioner had posted:

> The JSC has a choice to act in accordance with Article 168 of the Constitution of Kenya or be acted upon by the National Assembly as required by Article 251 of the Constitution of Kenya.

Within the past few hours, prominent members of the Law Society of Kenya posted on their social media handles:

> This is a desperate move by CJ Martha Koome to divert attention from the inevitable recommendation that JSC shall make to the President of the Republic of Kenya for the formation of Tribunals to remove the seven judges from office.
>
> Any High Judge who issues a conservatory order in favour of the Supreme Court judges stopping the Judicial Service Commissions process under Article 168 of the Constitution will be guilty of GROSS MISCONDUCT and will be removed.

The Association has reasons to believe that these are not mere coincidences but well-orchestrated plans to obtain certain desired outcomes without giving due process its place in the legal matrix.

Due process demands that persons who have lodged Petitions, and more so those who are officers of Court or legal practitioners with a professional Code of Conduct and Practice allow the

Judicial Service Commission to conduct its processes soberly without intimidation or threats on social media.

The Constitution ordained the Judicial Service Commission with the responsibility to ensure to promote and safeguard the independence, accountability and effective administration of the justice. While carrying that responsibility, the Commission ought to be seen as *de jure* and *de facto* independent and impartial.

The Association appreciates that the Commission has previously played its part within the limits of the Constitution. The obtaining circumstances currently is clouded in a frenetic social media campaign not seen before in this country.

The Association is alive to the fact that the Constitution of Kenya guarantees freedom of speech. Consequently, it is not the desire of the Association to take moves to gag expressions on social media or other media.

The Association therefore calls upon and expects the Judicial Service Commission to stand firm and remain committed to the Constitutional norms of the supremacy of the Constitution, objectives and authority of independent commissions, rights to fair administrative justice, fair labour practices, and fair hearing.

In this respect, the Association requests the Judicial Service Commission to reassure the public that it will keep to the narrow path set out for it by the Constitution and the legal framework guiding its processes.

To all Honourable Justices and judicial Officers, the Association urges you to remain faithful to your oaths of office to dispense justice impartially without any fear, favour, bias, affection, ill-will or other influences.

The Executive Council calls for calm amongst the judges and judicial officers and assures them that the Council will explore all the legitimate avenues to ensure that all the constitutional safeguards and protections assured them in the performance of their constitutional obligations are not breached or violated.

Hon. Mr Justice Radido Stephen
President, KMJA
30 January, 2025

Commonwealth Lawyers Association

Statement on abductions and torture in East Africa

The Commonwealth Lawyers Association (CLA) is alarmed by a pattern of abductions and torture which has increased in several countries in East Africa – predominantly but not exclusively in Kenya, Uganda, and Tanzania.

The abductions are of opposition leaders or activists and human rights defenders who voice criticism of the government in office. Young people involved in public protests and journalists are among those abducted.

The use of abduction and torture by state agents is designed to suppress criticism and instil fear into those exercising their right to protest and to hold government to account. Such practices cannot be condoned or excused. The CLA condemns in the strongest terms those who plan, authorise, and carry out abductions.

The CLA has noted the powerful and comprehensive Statement dated 31st December 2024, from the President of the East Africa Law Society (EALS). Showing leadership and courage EALS states that the abductions

"are primarily targeted at dissidents and government critics, political activists, journalists, demonstrators and recently young people protesting against misrule."

The CLA agrees with EALS that:

"detention without due process, torture and enforced disappearances signals a denial of justice"

The CLA notes the Africa Charter on Human and Peoples' Rights which states in Article 5:

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or de grading punishment and treatment shall be prohibited.

The African Charter also proclaims in Article 6:

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

And the CLA further notes Article 9 of the African Charter which states:

Every individual shall have the right to express and disseminate his opinions within the law.

Many of the members states of the East Africa Community are members of the Commonwealth and have accepted the principles of and committed to the Commonwealth Charter. The Commonwealth Charter states in Article 2:

We are committed to the Universal Declaration of Human Rights and other relevant human rights covenants and international instruments. We are committed to equality and respect for the protection and promotion of civil political economic social and cultural rights.

The CLA, noting that EALS concludes the abductions and enforced disappearances within the East African Community has reached a critical point, agrees that,

these acts are not only violations of individual rights but attacks on the very fabric of regional unity and human dignity.

The CLA, in support of and in solidarity with, EALS joins with EALS in urging:

all East African Community Partner States to act decisively and fast in upholding commitments to human rights and rule of law and calls upon the regions leaders to take immediate action to end these crimes.

Commonwealth Lawyers Association (CLA)
22nd January 2025

The **Commonwealth Lawyers Association** is an international non-profit organisation which exists to promote and maintain the rule of law throughout the Commonwealth by ensuring that an independent and efficient legal profession, with the highest standards of ethics and integrity, serves the people of the Commonwealth. commonwealthlawyers.com

BOOK REVIEW

Rig Or Be Rigged? It's the Shy Girls Roar

Mbita MP Millie Odhiambo

By Janet Mburu

In your wildest dreams, can you picture Millie Odhiambo as a petite, shy, and politically clueless girl, who is perplexed by shaking hands with one amazing woman, Phoebe Asiyo? That's a surprising image, compared to the formidable, fire, brimstone, and well-versed politician we see today, celebrated across nations for her fiery speeches and unshakable standpoint on justice. Millie is a well-established lawyer, author, actor, philanthropist poet among other titles, who was first nominated to the parliament of Kenya in 2008, then elected as first woman MP Mbita in 2013. She has also served as a Member of Pan African Parliament and known as founding mother of the constitution. In her new and captivating book, rig or be rigged, Millie, ***Amilo Geza Geza Jaber Nyasuba*** paints for us a portrait of humble beginnings and a quiet, reserved girl who dared to dream big, against all odds. This book not only tells the story of Millie Odhiambo but also unfolds the trials, adversities, and victories

of women in not only Kenyan, but also African politics, and the importance of resilience in the struggle for a fairer political scene. Further, the book guides its readers on strategies and factors to consider when going into politics.

Into Political Storms

Millie's childhood in Kenya was marred by both love and loss, her father had served as a member of the regional assembly for Nyanza died two days after her 17th birthday. Millie's strong and influential mother played a critical role in shaping her into a woman of perseverance and integrity. Moreover, in this book, Millie Odhiambo explains how her mother's untimely death affected her and changed her life. She invites us into the world of 'young Millie' with stories that are both uplifting and deeply moving. Millie's journey into politics cannot be described as smooth or conventional. In fact, she states that at a younger age, she had serious introspection on whether she would one day become an MP, to which she had decided otherwise based on her strong Christian values and the pros and cons. Odhiambo reveals the inner struggles of a young woman who felt a calling to serve but encountered numerous challenges while navigating the complex landscape of Kenyan politics. She remembers her entry into politics as a baptism by fire, recalling the ridicule, skepticism, disdain, and outright hostility she faced, one minute she was being publicly acclaimed as a *Leader,* and the next she was "*Who the hell is this Millie*"

The secrets of success in leadership and Politics

Millie Generously attempts to define leadership, noting that it has nothing to do with a job or the more often than not appearance of grandiose and exalt. She explores the key principles of leadership as accepted by progressive nations, including being humane, ensuring that you connect with and invest in people, facing challenges and seeing them as opportunities, among others. Millie notes that leadership in politics is not for the faint-hearted, as serious decisions need to be made, one does not have the chance to be in the middle ground. She also warns against one selling themselves short, especially women who have been discriminated against through the years. Clearly, one must put into consideration who their audience is, before passing a message. Millie points out that in political leadership, one cannot afford to be an ape, and shares the example of Charity Ngilu, the classy and articulate, first female presidential candidate in Kenya. She argues that, while it's tempting to imitate someone else, one must have an identity that suits their role, listen to their gut feelings tame their tongue, and keep trying as the tenth time might be a charm. In the keep trying section, Millie captures the stories of Hon Lina Jebii Kilimo, Albert Einstein, Steve Jobs, The Beatles, among others. How about using Shakira's song "*Samina Mina Zangalewa*" song to keep yourself going?

The Gendered Battlefield of Politics in Kenya

In a candid and somewhat shocking manner, Millie's book delves into the harsh realities faced by African women in politics. She shares stories of intimidation, violence, and systemic barriers that deter women from stepping into leadership roles. Millie openly discusses the emotional and physical scars resulting from these experiences, including the heartbreaking loss of her bodyguard during one of her campaigns. She also talks about the publicized case of Flora Tera, from Tetu Nyeri, who was beaten mercilessly for vying as an MP. The book serves as a powerful critique of the patriarchal structures that perpetuate inequality and election fraud. Odhiambo recounts these political struggles not just from an observational standpoint but also through her own deeply personal experiences. She describes moments of ridicule, underestimation, and even physical threats,

Millie Odhiambo with former Prime Minister Raila Odinga.

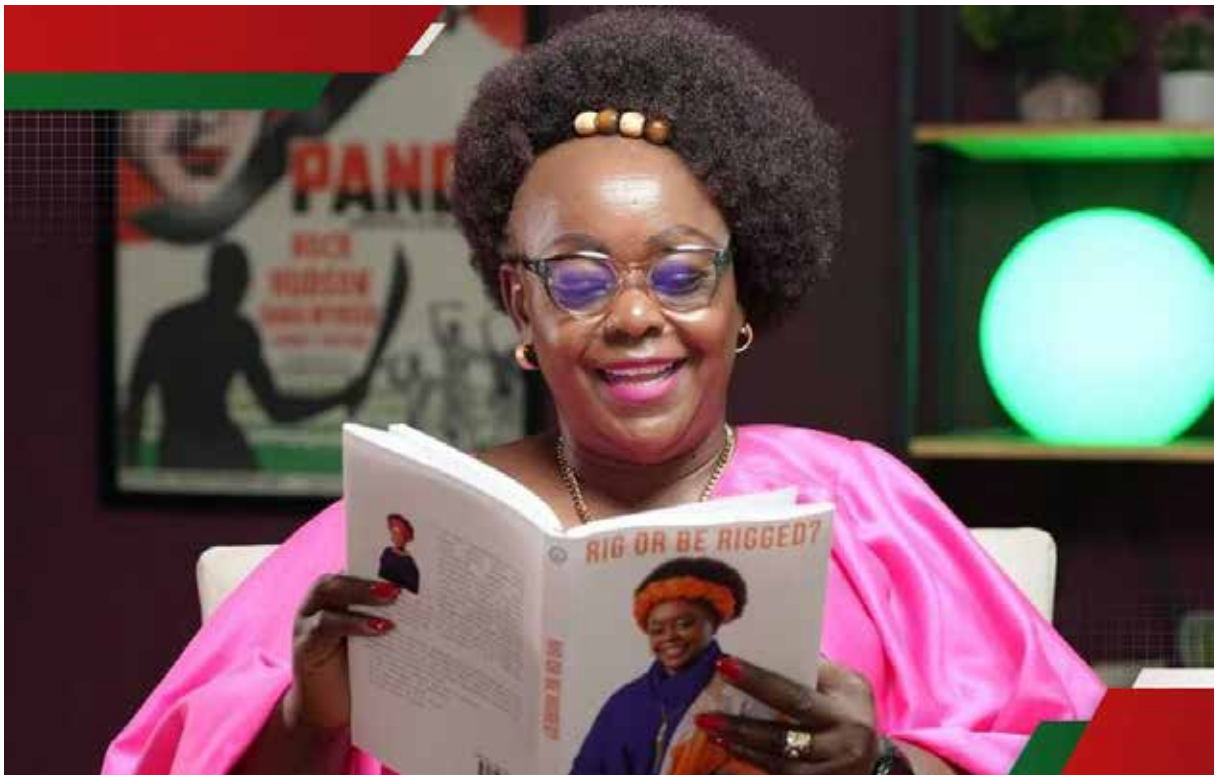
yet this remarkable woman finds ways to assert her presence and move forward with confidence.

Rigging Culture: A Call for Accountability

Millie takes the wraps off the pestiferous culture of election rigging in Kenya, terming it as the unspoken rule of the game after all, the end justifies the means. She states that going into politics thinking that elections will be fair is foolish, as there are various techniques applied, including Pre-Primaries, Pre-elections, Election Day, and post-voting rigging techniques. Odhiambo shares individual experiences of witnessing and encountering electoral fraud, illustrating a clear picture of a failed electoral system. For example, she details situations where vote counts were manipulated to benefit specific candidates and how polling places were used to intimidate voters. She states that sometimes, even police are involved in the rigging process, and She encourages the local communities to demand accountability and transparency, challenging the notion that rigging is an unavoidable aspect of African politics. For Odhiambo, the struggle against rigging is not just about ensuring fair elections but also about restoring trust in democracy itself.

The Icons of Courage: Women Leaders

The most moving sections in the book are those in which Millie takes her time to



celebrate women who have dared to dive into the political arena. Her admiration for fellow women leaders shines through as she shares their stories of courage and perseverance. From Grassroots activists to national figures, these women in politics have defied all odds to claim their place in leadership.

One notable figure that Millie points to is The Narc Leader Martha Karua who, Odhiambo describes as a beacon of integrity, and through her stories, Millie emphasizes the importance of solidarity and mentorship among women leaders, further inviting emerging leaders to learn from these remarkable women while also appreciating the particular challenges they have to cope with. One story that sticks out is where Alice Wahome, the then Candidate Kandara Constituency, is said to have found thousands of condoms distributed in her name on the morning of party preliminaries, urging people to do family planning. Another incident is when Mary Wambui of TNA won the party primaries in Othaya but was almost denied her certificate. In all these, the women stood their ground until they became victorious. Other iconic women that Millie refers to as having endured these challenges and overcome them include Hon Shebesh, Hon Wavinya Ndeti, Hon. Dr. Sally Kosgei, Hon Mary Wambui among others.

A Call to Action

It is important to note that Odhiambo's tone is not one of despair; instead, she offers a consistent critique of the system and advocates for reforms. She urges readers to demand accountability and transparency, challenging the notion that rigging is an unavoidable aspect of African politics. For Odhiambo, the struggle against rigging is not just about ensuring fair elections but also about restoring trust in democracy itself.

She shares personal experiences of witnessing and encountering electoral fraud, illustrating a bleak picture of a broken electoral system. For example, Odhiambo details situations where vote counts were manipulated to benefit specific candidates and how polling places were used to intimidate voters. Millie further highlights the inescapable nature of corruption in the

community, including bribery, thus offering a critique of deep-rooted corruption.

Broader political Landscape

Moreover, Millie addresses the systemic challenges that African Democracies encounter. In the shared perspective, she critiques not only the election rigging issue but also deeply rooted corruption, stating that these undermine governance. Odhiambo further evaluates the extent to which political parties are used to push individual agendas for political leaders rather than offering public service. By addressing these broader issues, Odhiambo places her personal experiences within the larger African context thus making her book relevant to anyone concerned with the state of democracy in Africa.

Her discussions on political culture in Kenya and Africa at large are both sobering and enlightening. Millie highlights how societal attitude towards leadership often fuels the status quo, consequently making it difficult for reform-minded people to gain traction. Above all the challenges, Millie remains optimistic and argues that cultural change is possible with public engagement and sustained effort.

Personal growth and leadership lessons

In the book, Millie has focused on individual growth and development in various parts of life. Odhiambo has brought into the open all the lessons learned throughout her life path, leaving precious pieces of advice for would-be leaders-to-be on how to remain adaptable and resilient. Such qualities, as well as self-awareness, have made her triumph and guided her through every maze of political life.

Millie never shies away from pointing out her mistakes in life; instead, she takes them as areas of improvement rather than failures. Her reflections on failure are bitter-sweet, but her sense of humility and receptiveness to learning turns this tale into something very relatable and surely inspiring.

The Role of Media and Public Perception

Odhiambo paints her personal experiences with media scrutiny as both illuminating and frustrating, shedding light on the double standards faced by women in the public eye. She critiques the extent to which media shapes public perception of women's leadership, arguing that sometimes, the media reinforces biases and stereotypes, making it harder for women to gain the respect they deserve.

Millie Odhiambo shares experiences where her assertiveness in parliamentary debates was described as "aggressive" and "unruly," while her male colleagues received praise for exhibiting the same behavior, being called "bold" and "strong." She also points out that the media often emphasizes her personal life, including her marital status and clothing choices, instead of highlighting her legislative accomplishments and contributions to policy. These instances illustrate the widespread gender bias present in media coverage.

As such, Millie calls for a balanced and responsible approach to reporting that focuses on issues rather than personality and gender biases. By doing so, Millie hopes to create a more supportive and viable environment for women in leadership and encourage other women to dare to dream. She also encourages a new generation of media people to challenge the status quo.

Inspirational Stories from the Grassroots

In the book, we also see Millie celebrating the unsung female heroes besides the prominent women leaders. These special grassroots women of substance have made significant contributions to their community despite limited recognition and resources. One such unsung hero of political activism

"Rig or Be Rigged?" is not just a memoir of Millie Odhiambo's experiences but also a sharp critique of the Kenyan political system. It lays bare the ethical challenges and moral compromises that many politicians, particularly women, face as they navigate a political environment where corruption and rigging are often seen as inevitable. The book is a powerful call for accountability, integrity, and a rethinking of how political power is acquired and wielded in Kenya.

recognized by Millie is Mama Wanjiku, a local market leader in Kisumu who mobilized local women vendors to pool resources and start a cooperative. Through perseverance, she managed to transform the marketplace into a thriving hub, despite facing opposition from established power brokers. This provided economic stability for hundreds of families. This is eye-opening to the fact that leadership is not confined to formal power positions but can be applied every day in service and acts of courage.

Millie's emphasis on grassroots leadership accentuates her belief in the power of collective efforts. She states that real change starts at the community level, where the hoi polloi can come together to solve shared challenges. By featuring these personal anecdotes in her book, Millie offers a viewpoint that is both practical and empowering, providing a roadmap for members of the community who want to make a change without necessarily entering formal politics.

The Legacy of the book?

As Millie draws to a close, she reflects on her legacy and the lessons she aspires to leave behind. She envisions a political arena where inclusivity and integrity are the norm, not the exception. Further, she dreams of a future generation that values a system of merit over manipulation.
Rig or be rigged has an impact that goes beyond its pages, as Millie ignites a conversation about the need for systemic changes in African politics. Her example of confronting uncomfortable truths has set a standard for others to follow.

Again, it's the Shy Girls Roar

Millie Odhiambo's courageous transformation from a shy girl to a steadfast leader highlights the significance of remaining true to one's beliefs and the incredible strength of resilience. This book is essential reading, as it prompts us to rethink politics as a realm of justice and service instead of merely a power struggle. The shared narrative is an indication that change is achievable when bravery and a firm belief in the impact of one's voice are considered. Through the challenges she encountered, growth, and triumphs, her entire journey demonstrates that even when faced with challenging environments, people can lead, and motivate others to engage in positive behavior. Furthermore, Odhiambo's words and actions redefine leadership, encouraging future generations to dare to be change-makers who strive to make a positive change.

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