

Challenges of Achieving Justice, Equality and Peace in Kenya: A Literature Review

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Abstract

This paper examines critically the challenges of achieving justice, equality and peace in the society. The development of any nation depends on how she handles, manages, coordinates and regulates the tripod concepts of justice, equality and peace. The three concepts work in tandem. The principle of justice is to give each person, or group of persons whether weak or strong their dues and to demand the contribution of each on the basis of equal contribution. Equality focuses on treating equals equally and unequal unequally. Peace, which is the end result of justice and equality, is a situation where there is no war, no crisis, or fighting; it is a pleasant situation that encourages positive thinking. In this literature review paper, the challenges of achieving justice, equality and peace are systematically investigated and brought into perspective. Youths are mainly targeted in gaining information about this topic as they are the foundation to the nation and are looked upon to changing the nation and educating their children in the coming generations. The findings indicate that education is core, and if children are provided with it, it will traverse the dualism of the individual and the society to arrive at a continuum. Specifically, education is necessary for the sustenance of justice, equality and peace in any society. It helps to equip individuals with capability to embrace justice, to know the importance of equality and march towards enhancement of a peaceful coexistence.

Keywords: Justice, Equality, Peace, Development, Education

1. Introduction

The prevalence of peace is always made possible with the existence of justice and equality. Therefore, justice combined with equality will naturally lead to peace. A nation clamoring for development should focus her attention on maintaining the equilibrium between justice and equality to enhance peace which in the end will bring development in all its ramifications. Thus, justice, equality and peace work in tandem using the machineries of education to bring development. It is in the presence of fair dispensation of justice, equal treatment of people according to their needs and traits that peaceful coexistence could be guaranteed and thus bringing development in all the sectors of a country, be it political, economical, social and technological. Practice has shown that peace without justice does not alter the vicious cycle of violence, impunity and social inequality and is therefore not sustainable.

1.1 Justice

According to Adedeji (2013), the concept justice has always been on the lips of men throughout ages. The ordinary men, politicians, Ideologists, reformers, philosophers, and other great thinkers have reference to it. While the noble ideals of justice have pushed people to protest, revisit, clamor for liberation, freedom and independence from people who deny them justice.

Justice is the quality of being just, impartial, rightness, legitimacy, equity and fairness in awarding of what is due. For this reason, Aquinas (1969), views justice as the constant and perpetual will to render to everyone what is due to them. The principle of justice is to give each person or group of persons, whether weak or strong what is his or her due and to demand the contribution of each on the basis of equal consideration. Therefore if someone has a right, to have or do something, others have the duty to respect that claim on the balance of equal protection and reciprocity. Justice is a moral virtue which inclines the will constantly and perpetually to render to others their due in time and place and in a given set of circumstance.

Justice can refer to simple reciprocity or proportionality in vengeance as for instance in the Old Testament rule of 'an eye for an eye, and a tooth for a tooth' which was the first step towards social order and civilization (Adedeji, 2013). The concept of justice has been shaped by the western criminal justice system. It is the society's response to an occurrence of a crime or an injustice action. It acknowledges the moral intuition that the victim deserves something and the offender owes something. It is aimed at discouraging impunity.

However, there are limitations to this concept. Often it is felt that criminal justice does not adequately meet needs and frustration; it may deepen societal wounds and conflicts rather than contributing to healing or peace because corruption in Kenya is particularly a large problem and it's the money that speaks. Poor and vulnerable people in the society tend to suffer from discrimination and get overpowered by the rich people.

Restorative justice is an approach to justice that focuses on the needs of the victims and the offenders, as well as the involved community, instead of satisfying abstract legal principles or punishing the offender. It links justice inextricably to the needs and rights of humans, be it material, social and cultural. If for any reason these are not met, many people will choose to engage in conflict, violence or crime in an effort to fulfill them and to obtain justice. But what will truly prove right is acknowledgement of victims' harms and needs, combined with an effort to encourage offenders to take responsibility, make right the wrongs and address the causes of their behavior (Ndungu, 2007).

Therefore, in criminal cases, victims can testify about the crime's impact upon their lives, receive answers to questions about the incident, and participate in holding the offender accountable. Offenders can tell their story of why the crime occurred and how it has affected their lives. They are given an opportunity to compensate the victim directly to the degree possible. In criminal cases, this can include money, community service in general, education, land, and expression of remorse.

The problems and challenges that bedevil the justice sector in Kenya are immense. The problems are compounded by the fact that there is no single institution, dispute resolution mechanism or single process that can deal with all injustices, produce a just ordering society, ensure a fair distribution of material and legal resources, safeguard the rule of law, promote equality, ensure proportionality in punishment, and protect entitlements and legitimate expectations. As a consequence, informal justice systems have been neglected and undermined at the expense of litigation. It is only recently that the law began recognizing informal justice systems. This has been the trend in Kenya despite the demands of substantive and procedural justice being so monumental and multi-dimensional that no law, institution or method is adequate to the task (Kariuki & Kariuki, 2014). Thus, it is challenging for Kenya to acquire justice for her citizens. People will continue to suffer, be denied of their rights or even killed without any compensation or even compunction.

A couple of years ago, it was not uncommon for a victim of burglary, assault or theft in Kenya to report the case to a police station and be told to go and arrest the thief and bring him to the station, they will do the rest. Needless to say, nothing ever got done. The good citizen would not arrest the thief and the police would not follow it up. The situation has slightly changed today but Kenyans still do not have much faith in the ability of law enforcement agencies to execute justice, especially in cases involving murder. This is why, even as the case of Julie Ward, the British tourist who was killed in Kenya more than two decades ago while on a trip to the Maasai Mara game reserve, gets reopened by the Metropolitan police, Kenyans wonder at, and admire, the tenacity of British authorities to get to the bottom of a case that took place way before some of them were born (Waithaka, 2010).

Many are likely to dismiss this pursuit of justice as the mere chasing of something that will never come to pass. Kenya is a place where the mills of justice grind exceedingly slow and sometimes conk out in the middle of the task. Our justice system is such that only those who have money get things done. When a poor villager is murdered in a remote backwater of the countryside, the police come, ask a few questions, collect the body and take it to the morgue and thereafter a deathly silence. The family can only grieve and bury their dead while hoping against hope that one day the killers would be known. That day never arrives and no word from the police is ever heard.

Though Kenya has been carrying out police reforms lately, many Kenyans are yet to be convinced that justice could be speedily executed in cases that deafeningly cry out for it. There are numerous murders that have gone unresolved. In fact, most of those who are arraigned in court on charges of manslaughter or murder are those who, invariably, have been caught in the act. But successful investigation based on forensic evidence is something yet to catch on in this country. It is not that Kenyan police lack training to deal with these cases but they are ill-equipped. Even when they dust the scene for fingerprints, it is not clear what they do with them because they lack the technical capacity to deal with them. At any rate, before they arrive at the scene, which in most cases is never cordoned off anyway, scores of people would have interfered with it.

If there is one thing that Kenya lacks, as indeed do many other developing countries, is the tenacity to investigate crime in the fashion exhibited by the Julie Ward case, and neither do they have the capacity to do it. That is why Julie Ward's case is not likely to make the headlines in Kenya and yet it does so in the United Kingdom. If Julie lived in Kenya and her father had the same kind of money, there would probably still not have been any hope that two decades after her murder the police would reopen her file. Hers would be a really cold case. In Kenya, cold cases get really cold after only a few months, and in many cases, soon after the body has been interred (Waithaka, 2010).

1.2 Equality

This is a very complex concept but highly related and strongly attached to justice. In a fairly obvious sense, we are all unequal from birth in that we inherit different characteristics. Some people are more intelligent than

others; some are good at music while others are tone-deaf. Some people are good athletes; others have poor physical coordination while others are disabled. In a more abstract sense, it can be argued that political inequalities exist within society, the implication being that all men were equal in the pre-social state of nature (Adedeji, 2013).

Equality as a concept has the notion that each person is to have an equal right to the most extensive system of basic liberties, compatible with a similar system of liberty for all and secondly, social and economic inequalities are to be arranged so that they are attached to positions open to all, under conditions of equality of opportunity and are to the greatest benefit of the least privileged. As a matter of fact, social injustice arises when the principle of equal opportunity is not observed, where there is discrimination between classes and groups with little or no social mobility, where the natural resources which nature provides for the benefit of all is placed in the lands of a few who exploit the labor of the rest or a great majority of the population who live on the level of paupers (Adedeji 2013).

In Kenya, gender equality has become extremely outrageous. Women continue to be educated at an inferior rate to their counterparts, increasing their reliance upon men. They are also limited from owning, acquiring, and controlling property throughout Kenya, regardless of social class, religion, or ethnic group. If women attempt to assert property rights over men or in-laws, they are often ostracized by their families and communities. This practice of disinheritance seems to be on the rise, particularly in areas hit hard by poverty. Therefore, if women were considered and given equal opportunities like men, Kenya would be far much ahead as far as poverty level is concerned.

The Republic of Kenya is faced with numerous claims concerning the protection of human rights especially economic, social and cultural rights. Disparities and discriminations are still felt across the national board even after the promulgation of the new constitution in 2010 which establishes several constitutional and statutory institutions to address the inequalities allegations through transitional justice (Onyoyo, 2014).

(a) Economic inequality

Onyoyo (2014), states that the gap between the rich and the poor is increasingly widening. Pastoralists, farmers, business communities and elites all live in a situation that does not respect international minimum standards meant for all human beings. Allocations of public duties are prone to nepotism, political biasness and sycophancy rather than meritocracy and equity.

Recent growth in overall income inequality in Kenya has been driven mostly by increasing inequality in wages and salaries. Widening economic inequality is an inevitable phenomenon of free market capitalism when the rate of return of capital is greater than the rate of growth of the economy. Thus, there is an urge for the government of Kenya to correct this limitation by equalizing the opportunities of acquiring education, skills, and resources.

(b) Social inequality

According to Onyoyo (2014) gender inequality, rights related to the disabled, failure to have social welfare rights, social work law, transgender equality, respect for sexual orientations, all reveal elements of inequality. Access to quality primary education (free primary education) and access to justice are still realities challenging the equality rights. Forced evictions of the landless and homeless still create more questions than answers. Pastoralist communities find themselves excluded from the entire social trends making equality unrealistic and unachievable. Social inequality begins with two things: Education and culture

(i) Education is what establishes one's ability to become self sufficient. The better the education the more opportunities open up for you to have options in life. These options can provide a lot of things, like money and security, and better choices to choose from. Education was supposed to alleviate inequality or be the great equalizer but it has ended in being the greatest unequalizer.

One other measure of inequality in Kenya is the emergence of private schools. Schools can make up for the deficiency in intellectual endowment. Rich parents can hire tutors, while in United States and even in Kenya, the school you go to determines how far up the social ladder one will go (Iraki, 2004). Iraki (ibid) further stated that after independence, the few educated Kenyans easily acquired wealth, without competition, and major changes since then has spawned few rich people because this group perfected ways of ensuring that wealth does not leak out, including marrying among themselves.

(ii) Some cultures refuse to learn the modern ways of science and technology, and even languages. Some cultures believe it's a bad thing to move forward from the old ways and develop new traditions and practices. While the rest of the world moves on and forward as you sit still and watch because of cultural or, economic, or education deficiencies, will result in social inequality.

(c) Cultural inequality

According to Onyoyo (2014), the current Constitution of Kenya promotes cultural values and heritages of the Kenyan people but the existing laws in place are not yet fully compatible and in compliance with stipulated international minimum standards. Cultural institutions in Kenya still require well improved legislations and institutions that would adapt to human rights and international standards. Management authorities and Boards are yet to come up with suitable criteria and effective frameworks that would abet legislative and judicial authorities.

However, schools don't close their doors to poor parents but the charges are high enough to keep the poor parents off. In Kenya there are private elementary schools that are more expensive than the universities. This way schools become clubs, where fees payment is the barrier to entry. Therefore, children from the rich backgrounds not only acquire good education but also benefit from other things like good shelter and clothing.

The other cause of inequality is marriage. Unlike poles repel! The rich marry from the rich. This ensures, deliberately or not, that wealth remains among certain people. But as soon as a poor man becomes rich, he can marry from any class. What cannot be disputed is that inequality is among us and has been civilization's companion for a long time. Though it has been on the wane, but reluctantly, a child today has a greater chance to reach the highest echelons of any society, irrespective of whom his father was, his great grandfather may have been less lucky (Iraki, 2014).

Therefore, people who maintain power and influence are best placed to reduce inequality. Reduction in inequality will benefit even the privileged, those on the right side of the inequality divide, because greater social harmony makes it easier for one to enjoy his wealth. When there is less crime, it becomes easier to do business, there is more trust and economic growth goes up.

1.3 Peace

For some people peace is merely the maintenance of law and order, the pursuit of stability, and a relatively safe social and political order (Ndun'gu, 2007). One of the key drivers of conflict in Kenya is the dimension of community identities, which is closely related to the issue of land, borders and associated historical grievances plus a challenging regional environment and political transition. It could be argued that the state of peace in Kenya is complex. As far back as 1969, civil society, led by faith-based entities, headed calls for the government to address issues of peaceful co-existence among communities. This was after Tom Mboya, one of Kenya's vibrant intellectual and political icons, was murdered in Moi Avenue Nairobi. Furthermore, much tension has been the result of crime, including ransom demands following the abduction of both children and adults. Sadly, some of the tension fuelling violence has also come from political platforms, writing the political history of Kenya (Ndiku, 2012).

Ndiku (2012) further states that Kenya's proximity to Somalia, Sudan, Yemen and Eritrea which have been known to empathize with Al Qaeda and Al Shabaab, has left the country vulnerable to violence related to high sea crime and terrorism. The seaway from the Gulf of Aden into the Indian Ocean has been rife with piracy, some linked to overall international terrorism with ships headed for the port of Mombasa often invaded by pirates. The impact of this has been more direct on shipping lines plying the Eastern Africa coast, providing an international security threat and cause for serious humanitarian crises. Kenya has supported counter terrorism and the fight against piracy, and the potential consequences of this are obvious.

According to Ndiku (2012), there are a number of sources of conflict in Kenya, including:

Natural Resources: This is the main type of conflict among pastoral communities and along the international borders; Competition over commonly shared resources mainly pastoral land and water is, in part, fuelled by the cultural practice of livestock raiding and the associated desire for revenge. Furthermore, valued economic activities and resources such as oil, coal, gypsum, metals, sand, stone, wood, water and other minerals continue to drive conflict. The governance of these areas differs from community-to-community, leading to inherent contradictions, accusations of favoritism, and exploitation and discrimination against other communities. Again, conflicts arise when people are competing for the same resources (such as territory, jobs and income, housing) when they aren't fairly distributed or when there aren't enough to go round (Ndiku, 2012).

Land: it is a dominant factor in the Coastal area, but more frequent in the Kwale, Likoni, Bombolulu, and Tana River County. It is also emerging as a flashpoint in localities with valued resources, such as minerals (for example, oil in Turkana and Merti) and valued commercial hubs (such as Lamu). The management of land issues shows signs of vested political interests, with local communities rarely involved in the decision-making process about how land is allocated (for instance, for re-settling landless communities, or resource exploitation. Local communities often see allocations as unjust and a means of depriving them of ancestral lands.

Political Activities: such as elections, political electioneering processes and any community/large group-oriented elections are a key driver of conflict, primarily because of the involvement of un- and under-employed young

people under the influence of the political classes. Political parties tend have vested interests (favoring a particular clique or ethnic group), with narrow perspectives and strong elements of rivalry (Ndiku, 2012).

Conflicts also arise when people are unhappy with how they are governed. The most common conflicts occur when a particular group wants to be independent from a central government, or when their viewpoint isn't represented in the government, or when the government oppresses them and doesn't respect or meet their basic needs.

Community Identities and Cultural Rivalry: this has been more dominant among some of the major communities, but has also recently affected some minority communities. The core driver is Kenya's political history, where force and not dialogue has been used on occasion to deal with certain issues. In addition, minority communities have often not been given space for expression, and where their voice has been expressed it has not been listened to.

Conflicts arise when people's beliefs clash. Religious and political views are particularly sensitive, because people often depend on these for a sense of identity and belonging. Sometimes the conflict is caused by a religious/political group being attacked; sometimes it is because the group is eager to spread a particular belief and even enforce it on others. Some leaders may aggravate religious and political differences as part of their tactics for keeping or gaining power.

Contexts and Platforms: Deriving from adversarial contexts and reports, whether related to the constitution making process or the allocation of land. For instance, a number of issues emerged during the constitution making process that continues to drive conflict, such as the creation of constituency and administrative borders. On the other hand, platforms relate to statements made or information shared, particularly by opinion leaders associated with community, religious and political organizations. Lack of leadership in managing information, meanwhile, whether by religious, political or community leaders, has also contributed to such situations, with verbal wrangles, cover-ups, denials and accusations fostering acrimony and uncertainty, to the detriment of ethnic relations.

In the same way ethnic differences can cause conflict, or be made to cause it. Again, people's ethnicity gives them a sense of identity and belonging, and it is threats to this sense which can cause violent responses, just as individuals may lash out with angry words or gestures when they feel threatened. Indeed, conflicts of all kinds most frequently arise when people feel threatened regardless of whether the threat is real. It is harder to soothe and reassure people when they are frightened or angry.

Perceptions of Conflict and Access to Small Arms: Localities with the most frequent occurrence of politically-related violence seem to have more individuals with access to small arms, whilst the use of explosive devices (such as ordinary grenades and improvised explosives) has become a feature in different locations.

Proximity to Training Grounds in Yemen and Somalia; Kenya's geo-political position Al Qaeda and Al Shabaab impacts regional and internal security. It is an open secret that Al Qaeda and, to a lesser degree, Al Shabaab use Yemen for training and recruitment. As a result, and due to internal socio-economic factors some elements from Kenya could be involved. Whilst there is no evidence that this is currently happening, the proximity and temptation for young people to join is clear, as the Sabaot case best suggests.

High Sea Crime and Terrorism: Kenya has a major port serving the Greater Horn and Great Lakes Region of Eastern Africa, with significant sea traffic into Mombasa through the Gulf of Eden, and from the Far East plying the Indian Ocean. Piracy is the focus of the region's counter terrorism efforts – head-quartered in Addis Ababa, Ethiopia – which Kenya actively supports, and for which it has been targeted. Should high sea crime reduce the frequency and level of dockings in Mombasa, many individuals will lose jobs; further compounding the unemployment problem among youth in Mombasa and Kenya as a whole, and depriving the Kenyan government of vital revenue.

1.4 Global Perspective

According to Nagel (2005) living in a justice world may be the least controversial claim one could make in political theory. But it is much less clear that, if anything justice on the world scale might mean or what the hope for justice should lead us to that in the domain of international or global institutions, and in the policies of states that are in a position to affect the world order.

Although the vast majority of the world is living in peace, half the world continues to be vulnerable to social instability and violence due to growing global and local inequalities, falling water tables, increasing energy demands, outdated institutional structures, inadequate legal systems, and increasing costs of food, water, and energy. In local areas of worsening political, environmental, and economic conditions, increasing migrations can be expected, which in turn can create new conflict (Glenn, 2013-14).

The United Nations has defined transitional justice as the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure

accountability, serve justice and achieve reconciliation. It is within the powers of the state to prevent violations to equality rights, protect and promote such rights within its jurisdiction through transitional justice mechanisms. This may include national budget allocations with clear policy objectives to ensure enforcement of equality rights. Improving job creation, improving basic education, and enhancing access to justice are some of the transitional justice approaches to enforce the equality rights if performed in good faith (United Nations Approach to Transitional Justice, 2010).

Royal geographical society states that there are a number of different causes of conflict in the world namely; land disputes, politics, religious and cultural differences and the distribution and use of resources. Most conflicts are caused by a combination of factors and it is very difficult, in most cases, to highlight dominant and less dominant causes. Having said this, some conflicts tend to lean towards some causes more than others. The current war in Afghanistan is predominantly a result of conflicting ideologies and that the Taliban were protecting Osama bin Laden from the US. The Arab-Israeli conflict is mostly about territory with a little water resource conflict thrown in, whilst the war in Iraq was caused partly by conflicting ideologies and partly by the vast oil resources which Saddam Hussein controlled (www.rgs.org)

1.5 African Perspective

The potential of international justice to contribute to combating impunity and promoting peace in Africa is clear. As the space occupied by international justice in Africa expands and the venues where redress can be sought for human rights violations multiply. However, it is clear that it is time for a more thorough stocktaking of the work international justice and its prospects. There are a large number of unresolved questions about how international justice is promoted, received and operates, suggesting the need for a more coordinated approach and the creation of a broader, critical constituency for international justice on the continent. Among practitioners and academic experts in Africa there is increasing preference for the adoption of a broad, multi-dimensional, restorative conception of justice, including elements such as peace, reconstruction, victim protection and participation, over the retributive conception often perceived as favored by the broader international community. Re-conceiving the concept of justice in this way tends to render the juxtaposition of peace and justice a false dichotomy. Recognition of the socioeconomic and political contexts within which international justice unfolds is also an aspect of this re conceptualization helpful in conflict prevention programmes (Justice for Africa, 2008).

According to Human Development Report (2014) Equality is a stipulation that all people should be treated similarly, unhampered by artificial barriers or prejudices or preferences, except when particular distinctions can be explicitly justified. In Africa gender inequality remains a major barrier to human development. Girls and women have made major strides since 1990, but they have not yet gained gender equity. The disadvantages facing women and girls are a major source of inequality. All too often, women and girls are discriminated against in health, education, political representation and labor market with negative repercussions for development of their capabilities and their freedom of choice.

According to Brussels (2013) inequalities within countries have increased in most parts of the world. The majority of the poor people now live in middle income countries, in spite of their fast growth. Achieving poverty eradication in such countries appears to be one of the major challenges. However, longer term projections indicate that by 2050 the locus of poverty might again be concentrated in the poorest and most fragile countries. More than 1.5 billion people live in countries affected by violent conflicts. Violence destroys lives and livelihoods and often affects women and people in vulnerable situations, such as children and people with disabilities. The gap between fragile, violence-affected countries and other developing countries is widening. Poor governance, including lack of democracy, rule of law and respect for human rights, is currently hampering efforts towards poverty eradication and sustainable development.

International Women's Day on March 8 is an annual commemoration extending back for over a century. In Africa women have been in the forefront of the movements toward national liberation, social and environmental justice as well as gender equality. A host of events has taken place in March across the African continent and in the Diaspora both recognizing the contributions and advancements of women in society but also examining the ongoing challenges. With African Union (AU) member-states having gone on record calling for full equality for women within governmental and economic affairs, raises serious questions about the pace of change and the commitment of the various states in implementing these goals (Azikiwe, 2014).

An article published by The New Dawn newspaper based in the capital of Monrovia, state that in Liberia, as in most Central and West African countries, indigenous peoples and local communities do not own the land and forests on which they have lived and cultivated for generations. Instead, government claims ownership instead. This same article continues noting that Liberia moves towards adopting a new policy on land ownership, many customary traditions do not yet respect the rights and abilities of women in land governance and, as currently written that Liberia's proposed land reform policy has no safeguards for women. Last year, the publication said,

Liberian President Johnson-Sirleaf made an unprecedented promise to Liberian women, stating that Women will have the full right to own their land like anyone else (Ibid.).

Another contributor to the Guardian article was Egyptian writer and activist Nawal El Saadawi who summed up the intersectional relationships between race, gender and class. She said that there have always been conflicts and disagreements between women belonging to the upper-middle classes in the global west or north and the majority of women in the south or east who belong to working classes. For example, working-class women in the US supported African women when others called us “women of the third world” and we were not happy with that term. Even within countries there have always been different feminisms, and it is really a matter of understanding the links between oppression by gender, by race, class and religion (Ibid.).

According to Onipede and Phillips (2011) challenges of peace and social integration which are determinants to sustainable growth and development have remained a subject of discussion by African scholars. The types and system of governance adopted by African leaders with theories of governance since independence has not helped in the desired development and economic patronage, due to its Eurocentric nature and as such, many nations in Africa, having suffered social collapse have resulted to nation branding to project their image in a more appealing way for development.

Peace Consolidation in Africa (2005), states that common sources of conflicts in Africa are numerous and include poverty, inequality, various forms of exclusion and marginalization and structural insecurity. Employment-generating economic growth, wealth-sharing, transformation of exclusionary structures, and security guarantees are some key strategies and instruments to address these sources of conflict. Reducing the opportunities, attractiveness and profitability of conflict is equally important. While sources of conflict abound in Africa, and effectively addressing them all will take time, reducing conflict opportunities may be an effective measure to prevent the recurrence of conflict in the short and medium-term. Therefore, efforts to prevent powerful groups from being able to acquire weapons generate funds, receive know-how war must be stepped in.

1.6 Kenyan Perspective

Onyoyo (2014) states that the Constitution of Kenya 2010 in Articles 10, 27, 43, 59 and Chapter Fifteen among others; Article 10 provides for the national values and principles of governance, which include: human dignity, equity, social justice, inclusiveness, equality, human rights and non-discrimination. Article 27 of the Constitution sets out the principle of equality and freedom from discrimination by stating that, every person is equal before the law and has a right to equal protection and benefit under the law. The National Gender Equality Commission is a very important institution that requires equally important attention and financial support in order to make its relevant contribution in the enforcement process. The Commission is also receiving complaints and can use its constitutional power to sue the Government on matters concerning the violation of equality rights in Kenya. However, the full enforcement of equality rights is still a challenge of the present and future of the Constitution in force due to lack of funding.

One of the main challenges facing enforcement of equality rights is based on the perception citizens and juridical operators have about them. Political elite have accepted with little critical analysis the doctrine of categorical sharing of State power at the national level of Government. The legislature and the judiciary used to be at the mercy of the Executive (under the repealed constitution) which could circumvent the law to favor the interests of the elite. Yet the Constitution of 2010 still has Presidential State though with lesser arbitrary powers than in the former Constitution (Onyoyo, 2014).

The Truth, Justice and Reconciliation Commission of Kenya is part of the accountability component of Agenda Four of the National Accord signed in 2008. By addressing the cause and effects of historical injustices and gross violations of human rights the TJRC will contribute towards national unity, reconciliation, and healing. The Commission is established by an Act of Parliament (Truth Justice and Reconciliation Commission Act no. 6 of 2008) to investigate the gross human rights violations and other historical injustices in Kenya between 12 December 1963 and 28 February 2008.

Agenda Four of the National Dialogue and Reconciliation process of 2009 that relates to long term issues and reforms provides the framework for transitional justice, with the Truth, Justice and Reconciliation Commission driving the transitional justice agenda. Kenya’s civil society have called for a truth, justice, and reconciliation process since 2002 when the NARC Government came into power after the twenty four-year rule of President Moi. In 2003, a Government appointed Task Force recommended establishment of a Truth Justice and reconciliation Commission. Had this recommendation been acted on then, perhaps the country might have avoided the post December 2007 election violence witnessed. (www.dialoguekenya.org)

Annan (2013) argues that the International Criminal Court (I.C.C) is not a comprehensive solution to Kenya’s impunity crisis. Kenya’s authorities must also act to investigate and prosecute additional cases connected to the 2007-8 violence. Making clear that no one is above the law is essential to combat decades of the use of violence

for political ends by Kenya's political elite. This is important not only for the victims of the past, but also for Kenya's future. The 2013 elections avoided widespread conflict, but we should not mistake less violence for peace.

Annan (2013) further stated that the underlying causes of Kenya's crisis are as real as ever and may resurface, since the core reforms that were identified during the mediation have stalled. Kenya's progress has no question that impunity remains one of the greatest sources of underlying tensions. If it is not checked, there may yet be future generations of victims in Kenya.

The doctrine of the separation of State powers among the three State organs: the Judiciary, Executive and the Legislature remains problematic in the Kenyan system after the most celebrated promulgation of the new constitution on 27th August 2010. Still the executive and the Legislature regard the judiciary as a subordinate State organ that should be subjected to the powers of the Executive and Parliament whenever they exercise their overseeing power to establish checks and balances and to exercise their rights as democratically elected representatives of the people. Hence, independence and impartiality of the judiciary is continuously exposed to threats also from the constitutional Judicial Service Commission and the statutory vetting Board making it weaker in enforcing equality human rights that shall always ensure that the Government respects its international law obligations and coerces them through its institutions (Onyoyo, 2014).

Courts handle cases brought before them for adjudication, advisory opinion, interpretation, but judges' use their discretion to refrain from actions that may put them in conflict with the interests of the Executive, the Legislature or any other political branch. Separation of State powers, autonomy and independence of judges under the principle of impartiality of judges are key frustrations facing the judicial enforceability of equality rights in Kenya. There is cost on the part of the emerging States to ensure that there is full enjoyment of socio-economic and cultural rights (Ibid.).

For instance, everyone is entitled to decent housing that will promote his or her human dignity shall necessarily require funding from the State. Social security for unemployed citizens shall require the State to allocate some social welfare funds to this cause. However, given the poverty level in Kenya and low economic growth may not enable State authority to guarantee the protection of basic equality rights. It would be appropriate for Kenya in the new constitutional dispensation premised on the rule of law, human rights and constitutionalism to ratify Optional Protocols and other related international law conventions.

It is the Government to come up with policy framework that would enhance more public confidence in equality rights. Complainant mechanism and training are necessary causes that must be fulfilled in light of the National Gender Equality Commission and other relevant institutions. The commissions are quasi-judicial bodies that can facilitate the enforcement of equality rights. This can be supported by the constitutional provision on the access to justice holding the Government accountable of its obligations and commitment to human rights under Section 48 yet the operations of transition justice (Ibid.).

2. Conclusion

In day-to-day life, justice implied that equal efforts or contributions are equally rewarded, while laziness or unproductiveness is relatively deprived. Obviously, the society cannot be seen as just if it accords the same apportionment and reward to a lazy, unproductive worker, as it does to the active productive worker, since such would clearly be a travesty of social justice. In our multi-ethnic society, therefore, it is imperative in the interest for stability that we discontinue such irrelevant indices as tribal or ethnic connections in our apportionment of reward or punishment.

It is indeed possible to realize the right of access to justice as envisaged by Article 48 of the current Constitution of Kenya 2010. To achieve this, there is need to bring on board viable options as a pathway to the realization of the same. This will in turn strengthen the rule of law in the country. Strengthening the Rule of Law, ensuring access to justice and addressing and resolving conflict are essential for human security and the development of stable economic states where all citizens' voices can be heard and economic opportunities realized (Kariuki & Kariuki, 2014).

Merit must be seen by all as having been given its proper recognition. Questionable differential treatments tend to upset essential socio-political equilibrium and thereby creating an inflammatory situation. One must not forget to assert once again that for the purpose of national development, there must be a marriage of compatibility among the tripod of justice, equality and peace and the machinery for achieving this marriage is education.

Dewey in Akinpelu (2005) ascribes that the heart of the sociality of man is in education, thus, the freedom of man is in education and in more education. Education makes it possible to traverse the dualism of the individual and the society to arrive at a Continuum. Specifically, education is necessary for the sustenance of justice, equality and peace in any society. It helps to equip individuals with capability to embrace justice, to know the

importance of equality and march towards enhancement of peaceful coexistence, especially in a tribalist society like Kenya.

3. Recommendations

From the foregoing discussion, the challenges of achieving justice, equality and peace in Kenya has become a major problem. The Constitution of Kenya should therefore set the broad framework within which access to justice is to be guaranteed to all Kenyans. It should acknowledge both the formal and the informal justice systems. Judicial authority or the power to arbitrate legal matters vests in the people and is exercised by courts and other tribunals on their behalf. When exercising their power, courts and tribunals should be guided by the following principles;

- (a) Justice should be done to all, irrespective of status.
- (b) Justice should not be delayed.
- (c) Alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted.
- (d) Justice should be administered without undue regard to procedural technicalities.
- (e) The purpose and principles of the constitution should be protected and promoted.

This study further recommends that non-violent transformation and the consolidation of lasting peace should require prolific, varied, innovative and often creative approaches to building cultures of dialogue. Dialogue and exchange are necessary for the parties concerned to process and change the overall perception of a dispute. Striving to find creative solution strategies necessitates interaction between the parties to allow them to follow common and consistent paths. Moreover, flexible and adequate forms of action are needed.

Priority should be placed on continuous communication to the public about efforts to reduce regional inequalities and address poverty. This will stimulate national debate on solutions adopted, promote ownership of reform initiatives and build popular momentum.

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