NUMBER 113, JUNE 2025

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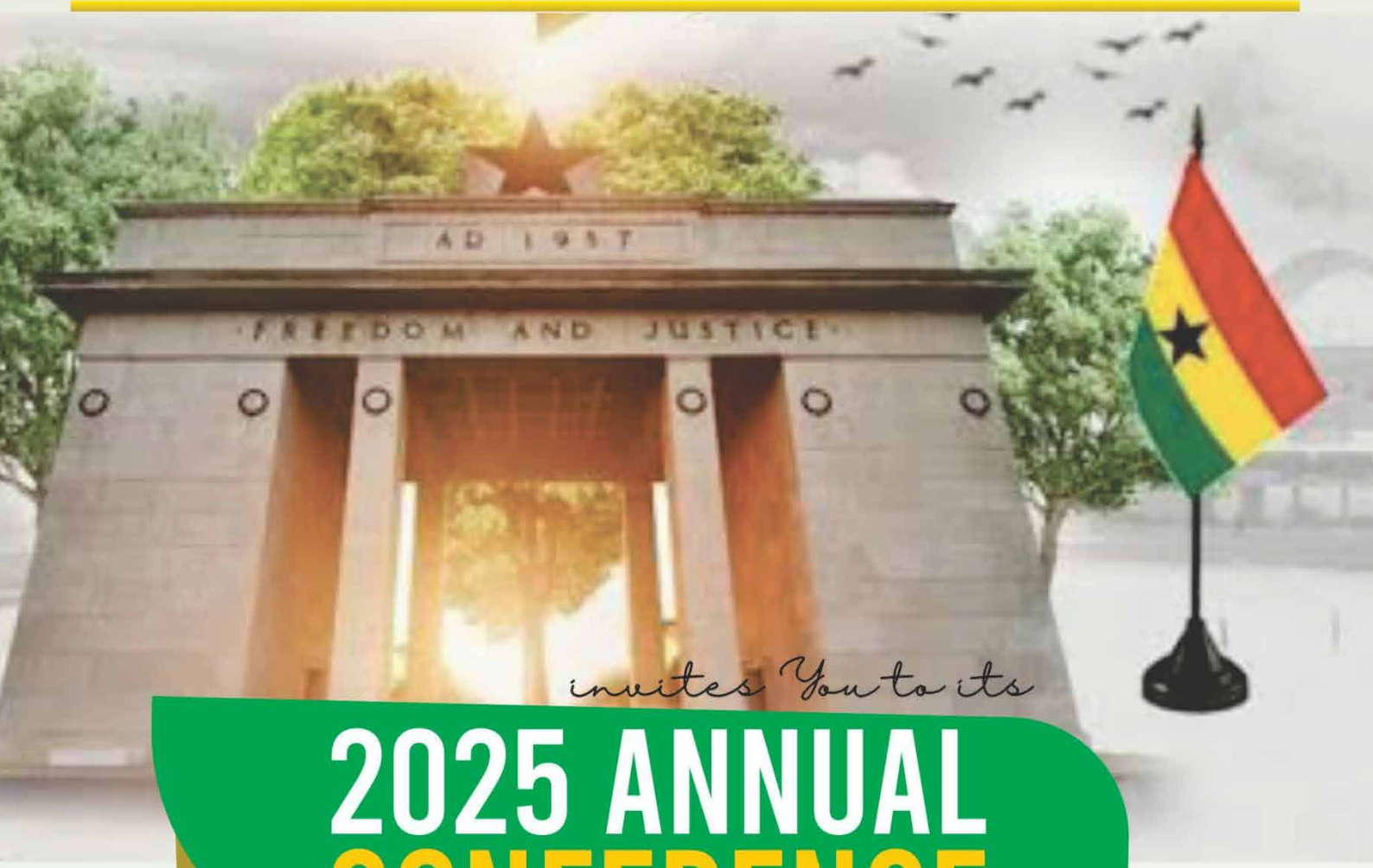

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Platform Publishers Kenya Limited
The Platform for Law, Justice and Society is published monthly by Platform Publishers Kenya Ltd
Fatima Court, 2nd Floor Suite 148
Junction at Marcus Garvey/Argwings Kodhek Road, Opposite Studio House
Kilimani, P.O.Box 53234-00200
Nairobi, Kenya

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EDITORIAL

The State of Rule of Law and Human Rights in East Africa

Introduction

The East African region, comprising Burundi, Kenya, Rwanda, South Sudan, Tanzania, and Uganda, has long been a focal point for discussions on governance, democracy, and human rights. Despite being signatories to numerous international and regional treaties guaranteeing the rule of law and fundamental freedoms, many East African nations continue to face significant challenges in upholding these principles. Recent years have seen a troubling regression in democratic governance, with increasing reports of state-sanctioned repression, judicial interference, and human rights violations.

This editorial examines the state of the rule of law and human rights in East Africa, highlighting key treaty obligations and recent violations. It underscores the urgent need for governments in the region to recommit to constitutionalism, judicial independence, and respect for fundamental freedoms.

Legal Framework: Treaty Obligations

East African states are bound by multiple international and regional legal instruments that enshrine the rule of law and human rights. These include:

1. The African Charter on Human and Peoples' Rights (ACHPR)

In the East African region, human rights protections are expected to align with the African Charter on Human and Peoples' Rights (ACHPR), as mandated by the East African Community (EAC) Treaty. All East African states have ratified the ACHPR, which safeguards a broad range of civil, political, economic, and social rights. These include the right to life and bodily integrity (Article 4), the prohibition of torture and inhuman treatment (Article 5), the right to liberty and security (Article 6), the right to a fair trial (Article 7), freedom of expression (Article 9), and freedom of association (Article 10). By adhering to these provisions, East African states commit to upholding fundamental human rights in line with regional and continental standards. Despite these provisions, arbitrary arrests, enforced disappearances, and suppression of dissent persist across the region.

2. The International Covenant on Civil and Political Rights (ICCPR)

All East African countries, with the exception of South Sudan, are signatories to the International Covenant on Civil and Political Rights (ICCPR). This treaty strengthens key protections, including the right to a fair trial under Article 14, freedom of expression under Article 19, the right to peaceful assembly under Article 21, and freedom of association under Article 22. Recent crackdowns on civil liberties in Uganda, Tanzania, and Kenya demonstrate non-compliance with these obligations.

3. The East African Community (EAC) Treaty

The EAC Treaty (2000) obligates member states to uphold principles of good governance, including democracy, the rule of law, and respect for human rights, as outlined in Article 6(d). Additionally, Article 7(2) emphasizes the importance

of accountability, transparency, and participatory governance, ensuring that governments operate openly and inclusively while remaining answerable to their citizens.

The Heavy Hand of Repression: A Grim Dark Shadow all over East Africa

Across East Africa, a disturbing pattern of violent suppression is emerging, as governments in Kenya, Uganda, and Tanzania escalate their crackdowns on dissent, opposition, and activism. The recent arrest and detention of Tanzanian opposition leader Tundu Lissu, alongside the outright ban of his CHADEMA Party, mark a dangerous erosion of democratic freedoms. The Honorable Martha Karua, a distinguished former Minister for Justice and Constitutional Affairs in Kenya, and Professor Willy Mutunga, a revered former Chief Justice of Kenya—both esteemed Senior Counsels—were abruptly deported from Tanzania after being denied entry into the country. The ostensible reason for their expulsion was to prevent them from attending the high-profile treason trial of Mr. Tundu Lissu, a prominent opposition figure.

This controversial move has raised significant concerns over the principles of regional legal cooperation and the freedom of movement for legal professionals across East Africa. These actions are not merely political maneuvers—they are blatant violations of fundamental human rights and the rule of law. Even more harrowing are the reports of torture and sexual violence against activists. Boniface Mwangi, a fearless Kenyan activist, has long faced intimidation, but the brutality extends further. In Tanzania, Boniface alongside journalist and human rights defender Agather Atuhaire have bravely come forward with chilling accounts of her detention—including sexual assault on the part of Agather. Such atrocities cannot be dismissed as isolated incidents; they are part of a systemic campaign to silence critics through fear and violence.

These governments, which once promised progress and democracy, are now betraying their citizens. The suppression of opposition, the muzzling of free speech, and the use of torture as a weapon of control are not just political missteps—they are crimes. The international community must not remain silent. Human rights organizations, regional bodies like the East African Community, and global powers must demand accountability. To the leaders of Kenya, Uganda, and Tanzania: Power exercised through brutality is illegitimate. History will judge these actions harshly. To the citizens and activists resisting oppression: Your courage is not in vain. The world must stand with you—because the fight for justice in East Africa is a fight for justice everywhere.

Conclusion: The Way Forward

The deteriorating state of the rule of law and human rights in East Africa calls for immediate and concerted efforts to address these pressing issues. To combat this decline, governments in the region must prioritize domestic reforms, including enhancing judicial independence, abolishing oppressive legislation, and ensuring accountability for security forces implicated in abuses. At the regional level, institutions such as the East African Community (EAC) and the African Court on Human and Peoples' Rights must take decisive steps to hold member states accountable by enforcing treaty commitments through legal measures and targeted sanctions. Additionally, the international community—including the United Nations, African Union, and key partner countries—must leverage their influence by tying financial assistance and diplomatic support to tangible improvements in human rights practices. Without swift and coordinated intervention, East Africa faces the alarming prospect of deepening authoritarianism, which could destabilize the region and hinder its socio-economic progress. Urgent action is essential to safeguard democratic principles and ensure long-term stability.

REPUBLIC OF KENYA

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STATEMENT ON RESPECT FOR COURT ORDERS AND THE RULE OF LAW

My attention has been drawn to the deeply regrettable events that transpired today during the ongoing Kenya National Drama Festival in Nakuru, involving students from Butere Girls High School.

It is particularly disturbing that these events occurred against the backdrop of clear and binding court orders issued by the High Court sitting in Kisii, in *Anifa Mango v Principal, Butere Girls High School & 3 Others, Petition No. E006 of 2025*. In that decision, delivered on 3rd April 2025, the High Court directed the school administration and the organisers of the Kenya National Drama Festivals to facilitate and ensure that 50 students of Butere Girls High School participate in and perform their play titled *'Echoes of War'* at the national drama festival.

What transpired today raises grave concerns about the extent to which those orders of the High Court were respected and complied with. It is a foundational principle of our constitutional democracy that all persons and institutions — including State organs, State officers, and public officials — are bound by and must obey court orders. Defiance of court orders not only undermines the authority of the courts but also poses a serious threat to the rule of law, which is the bedrock of our society.

Even more troubling are reports of the use of force and violence against school-going children in the course of these events. Such actions raise serious constitutional questions about respect for the dignity, rights, and welfare of children, who enjoy special protection under the Constitution, the Children Act, and international human rights instruments.

I wish to make it clear to all state organs, state officers and public officers that respect for court orders is not optional. It is a constitutional imperative that safeguards our collective commitment to the rule of law, and constitutionalism. Any deviation from this path erodes public confidence in our institutions and poses a danger to our democracy.

I therefore condemn today's events as they deviate from path of the rule of law and constitutional duty to protect the rights of all — especially our children — in every sphere of public and private life.

Hon. Justice Martha K. Koome, EGH
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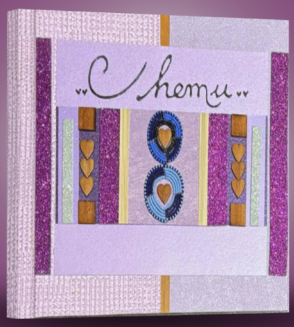

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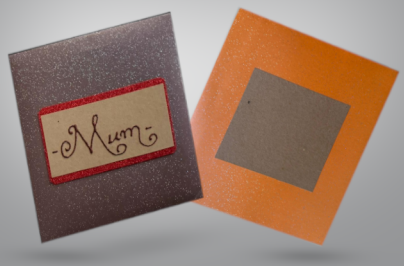

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HAKI IWE NGAO NA MLINZI

Queen of Quiet Terror: Samia Suluhu's Media Mirage, Secret Cells, and Tanzania's Rule-of-Law Rupture

By Ayaga Max Liambilah

Abstract

This article critically examines the worsening human rights situation in Tanzania under President Samia Suluhu Hassan by focusing on the suppression of dissent, erosion of civil liberties, enforced disappearances, and the crackdown on opposition leaders and civil society actors. Using recent high-profile incidents, including the deportation of former Kenyan Justice Minister Martha Karua and the detention of former Chief Justice Willy Mutunga, the author highlights a pattern of state-sanctioned repression that contradicts Tanzania's obligations under international and regional human rights instruments. The article further critiques the silence and inaction of the East African Community, the African Union, and the international community, arguing that their failure to respond effectively is enabling authoritarian entrenchment and setting a dangerous precedent for the region.

Introduction

On 18 May 2025, a disturbing incident reignited scrutiny over the state of human rights in Tanzania. Martha Karua, a prominent Kenyan figure known for her tenure as Justice Minister and her long-standing commitment to constitutionalism and social justice, was denied entry into Tanzania alongside two human rights lawyers, Lynn Ngugi and Gloria Kimani.[1] The three had traveled to the country in a show of solidarity with Tanzanian opposition leader Tundu Lissu, who was scheduled to appear in court to answer treason charges. Rather than being allowed entry, however, they were swiftly detained, interrogated, and deported back to Kenya without clear justification from Tanzanian authorities.[2]

Tanzania President Samia Suluhu Hassan

[1]Farouk Chothia, 'Kenya's ex-justice minister "deported" from Tanzania' (BBC News, 19 May 2025) https://www.bbc.com/news/articles/czdynd8l4pqo accessed 25 May 2025.
[2]ibid

PHOTO BY HANIFA

Former CJ Willy Mutunga (c), activists Hussein Khalid (l) and Hanifa Adan (r), at Julius Nyerere International Airport.

Less than 24 hours later, three more Kenyan citizens—former Chief Justice Willy Mutunga, activist journalist Hanifa Adan, and VOCAL Africa CEO Hussein Khalid—arrived at Julius Nyerere International Airport, also intending to support Lissu. They too were detained, had their passports confiscated, and were held without formal charges or a transparent explanation for their detention.[3] Then came news of yet another troubling development: Boniface Mwangi, Kenyan activist, and Agather Atuhaire, a Ugandan human rights lawyer, were arrested on Tanzanian soil.[4] The duo had traveled to Dar es Salaam to observe Lissu's trial, only to be apprehended and held incommunicado for nearly a week. When they were finally released at different country border points, both recounted harrowing experiences of torture, psychological abuse, and violations of their basic human dignity while in custody.[5]

These incidents form just the tip of the iceberg. They represent not isolated events but rather the visible manifestations of a broader and increasingly oppressive trend under the administration of President Samia Suluhu Hassan. A trend marked by silencing dissent, curbing freedoms, intimidating opposition, and closing civic space.[6] The fact that these violations are now affecting

[3]'Tanzania detains former CJ Mutunga, two others over Lissu court solidarity visit' (The Standard, 20 May 2025) https://www.standardmedia.co.ke/national/article/2001519447/tanzania-detains-former-cj-mutunga-two-others-over-lissu-court-solidarity-visit accessed 25 May 2025.

[4]Cecilia Macaulay, Wycliffe Muia and Swaibu Ibrahim, 'Ugandan activist alleges she was raped while in Tanzanian detention' (BBC News, 24 May 2025) https://www.bbc.com/news/articles/cn4qlqxx9qlo accessed 25 May 2025

[5]'US demands answers from Tanzania on Boniface Mwangi, Agather Atuhaire torture claims' (Nation, 24 May 2025) https://nation.africa/kenya/news/africa/us-demands-answers-from-tanzania-on-boniface-mwangi-agather-atuhaire-torture-claims--5055008 accessed 25 May 2025.

[6]US Department of State, *Tanzania 2023 Human Rights Report* (22 April 2024) https://www.state.gov/wp-content/uploads/2024/02/528267_TANZANIA-2023-HUMAN-RIGHTS-REPORT.pdf accessed 25 May 2025.

foreign nationals and well-known regional personalities is emblematic of the worsening climate for human rights not only for Tanzanian citizens but also for anyone who dares to express solidarity with them.[7]

This was not the presidency many envisioned in 2021 when Samia Suluhu Hassan was sworn in following the sudden death of President John Pombe Magufuli. As Tanzania's first female president, and someone who projected an aura of moderation and pragmatism, Samia was initially greeted with cautious optimism by civil society, the media, opposition groups, and the international community. During her first months in office, she signaled an intention to reform—meeting with opposition leaders, allowing exiled critics like Tundu Lissu to return home, and lifting some media restrictions imposed by her predecessor.[8] She was even lauded in diplomatic circles as a potential reformer who could steer Tanzania back toward democratic governance.

However, those hopes have steadily eroded. Beneath the initial surface of reform lay an increasingly sophisticated strategy to retain control while projecting a more diplomatic face internationally. Rather than wholesale authoritarianism, the Suluhu administration has employed what political analysts might call "hybrid authoritarianism": a governance style that blends selective openness with targeted repression.[9] It is a method that keeps international donors and multilateral agencies at bay while consolidating domestic power and neutralizing dissent through

The Late John Pombe Magufuli

legal, extrajudicial, and procedural means.

Opposition parties, particularly CHADEMA—the leading opposition party led by then Freeman Mbowe and now Tundu Lissu—have remained under constant threat.[10] Arrests, intimidation, bans on rallies, and the repeated deployment of state security agencies to frustrate their operations have become the norm. Freedom of expression has suffered a similar fate. Journalists have been harassed, newspapers suspended, and online platforms targeted for reporting unfavorably on the government.[11] Laws passed under the guise of national security and digital regulation have been weaponized against bloggers, whistleblowers, and independent media outlets. More recently, restrictions on the use of social media and

[7]Denis Omondi, 'Tanzania's Samia Suluhu: Reformer or rising autocrat?' (The Standard, 23 May 2025) https://www.standardmedia.co.ke/article/2001519899/tanzania-s-samia-suluhu-reformer-or-rising-autocrat accessed 25 May 2025
[8]Nicodemus Minde, 'Why is Samia struggling to sustain reforms in Tanzania?' (ISS Africa, 23 August 2024) https://issafrica.org/iss-today/why-is-samia-struggling-to-sustain-reforms-in-tanzania accessed 25 May 2025.
[9]Denis Omondi, 'Tanzania's Samia Suluhu: Reformer or rising autocrat?' (The Standard, 23 May 2025) https://www.standardmedia.co.ke/article/2001519899/tanzania-s-samia-suluhu-reformer-or-rising-autocrat accessed 25 May 2025
[10]Agence France-Presse, 'Tanzania arrests opposition leaders, blocks protest' (VOA News, 23 September 2024) https://www.voanews.com/a/tanzania-arrests-opposition-leaders-blocks-protest/7794597.html accessed 25 May 2025.
[11]Amnesty International, *Human Rights in Tanzania* (2024) https://www.amnesty.org/en/location/africa/east-africa-the-horn-and-great-lakes/tanzania/report-tanzania/ accessed 25 May 2025

Despite multiparty democracy being reintroduced in 1992, CCM has won every general election (both presidential and parliamentary) since then.

the arrest of online critics have signaled a full return to the repression of the Magufuli era—albeit with more polish and less rhetorical belligerence.[12]

But perhaps most concerning is the rise in enforced disappearances and extrajudicial practices.[13] Human rights organizations have documented increasing instances where critics of the government simply vanish—often later found dead, badly beaten, or not heard from again. The intelligence services have gained notoriety for their role in these disappearances, and the lack of accountability in the security sector emboldens such practices.[14] The message to dissidents, journalists, opposition leaders, and ordinary citizens is clear: you may criticize the government, but be prepared to pay a price.

The treatment of foreign nationals in May 2025 represents an alarming escalation. It suggests that the government is no longer content with suppressing domestic critics—it now views international observers and advocates as legitimate targets. This posture is not only contrary to international human rights standards and regional treaties to which Tanzania is party (including the African Charter on Human and Peoples' Rights), but also deeply troubling for regional integration efforts in East Africa. The East African Community (EAC), of which Tanzania is a founding member, is premised on the free movement of people and ideas. Yet, in recent months, Tanzania's actions have undermined those principles, prompting questions about its commitment to regional norms of democracy, rule of law, and human rights.

Moreover, these developments are occurring in the run-up to the 2025 general elections. With public trust eroding and international

[12]Advox, 'Freedom of expression in Tanzania is on a downward spiral' (Global Voices, 6 December 2022) https://globalvoices.org/2022/12/06/freedom-of-expression-in-tanzania-is-on-a-downward-spiral/ accessed 25 May 2025.
[13]Human Rights Watch, 'World Report 2025: Tanzania' (5 January 2025) https://www.hrw.org/world-report/2025/country-chapters/tanzania accessed 25 May 2025.
[14]ibid

criticism mounting, the ruling Chama Cha Mapinduzi (CCM) party appears intent on closing all avenues for accountability and opposition. The arrest and deportation of figures like Karua and Mutunga should be viewed not merely as diplomatic incidents but as deliberate political choices aimed at insulating the regime from scrutiny. They also serve a secondary purpose: to intimidate Tanzanian activists by showing that even high-profile international advocates are not immune from state harassment.

To be clear, Tanzania's human rights issues did not begin with President Hassan. Her predecessor, John Magufuli, governed with an iron fist—shutting down media houses, jailing critics, banning opposition rallies, and weaponizing the judiciary.[15] But the current administration's significance lies in its betrayal of hope. Where Magufuli was transparently authoritarian, Samia has cloaked repression in reformist rhetoric. Her presidency has been characterized by a kind of double speak—making public commitments to democratic renewal while quietly entrenching the very systems of control she once promised to dismantle.[16]

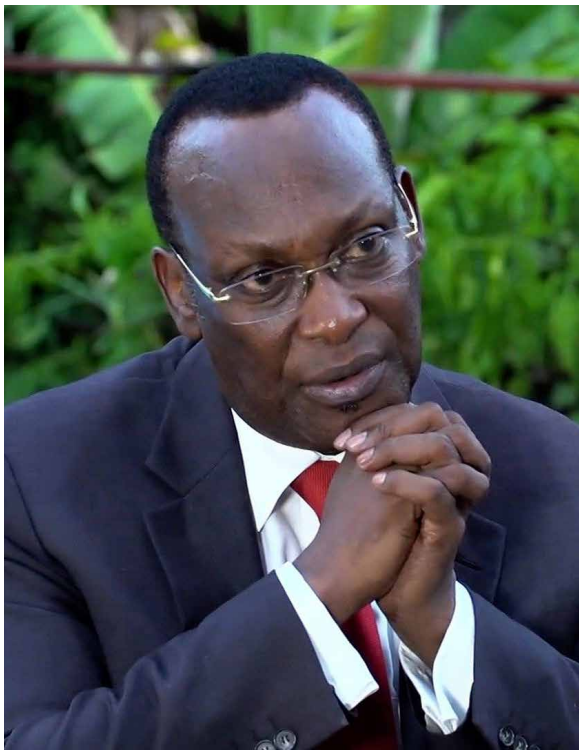
This article seeks to unpack the current state of human rights in Tanzania under Samia Suluhu Hassan. It will explore how the administration has perpetuated patterns of political suppression, criminalized dissent, tightened restrictions on freedom of expression, and enabled violations such as enforced disappearances and torture. By doing so, it aims to provide a comprehensive and evidence-based portrait of a country sliding deeper into authoritarianism under the watchful eye of a world that was once too eager to believe in reform.

Tundu Antiphas Mughwai Lissu is a prominent Tanzanian lawyer, human rights advocate, and the current chairman of CHADEMA, Tanzania's leading opposition party.

Political repression and opposition suppression

Since assuming office in March 2021, President Samia Suluhu Hassan has presided over a regime that continues to systematically repress political opposition in Tanzania.[17] Despite early indications of a reformist agenda—such as her high-profile meeting with exiled opposition figure Tundu Lissu in Brussels and tentative overtures to opposition parties—her administration has entrenched the same authoritarian tendencies as her predecessor, John Pombe Magufuli. Political repression remains a cornerstone of statecraft, with opposition parties, their leaders, and supporters bearing the brunt of state-sponsored intimidation,

[15]Jeff Smith, 'In Tanzania, Abductions and Disappearances of Government Critics Continue Unabated' (Vanguard Africa, 30 July 2019) http://www.vanguardafrica.com/africawatch/2019/7/30/in-tanzania-abductions-and-disappearances-of-government-critics-continue-unabated accessed 25 May 2025.
[16]Denis Omondi, 'Tanzania's Samia Suluhu: Reformer or rising autocrat?' (The Standard, 23 May 2025) https://www.standardmedia.co.ke/article/2001519899/tanzania-s-samia-suluhu-reformer-or-rising-autocrat accessed 25 May 2025
[17]'Tanzania opposition arrests dent hopes of political change' (France 24, 2 August 2021) https://www.france24.com/en/live-news/20210802-tanzania-opposition-arrests-dent-hopes-of-political-change accessed 25 May 2025.



Freeman Mbowe remains a significant figure in Tanzania's political landscape. His tenure as CHADEMA's leader was marked by steadfast opposition to the ruling CCM party and persistent advocacy for democratic reforms.

surveillance, arrests, and legal warfare.[18] This suppression has intensified in the lead-up to the 2025 general elections, revealing a government deeply fearful of political competition and committed to retaining power through coercion rather than consent.

a. The CHADEMA paradox

No opposition party has experienced the brunt of repression as severely as CHADEMA (Chama cha Demokrasia na Maendeleo), Tanzania's largest and most vocal opposition party. Led by Freeman Mbowe and featuring firebrand politicians like Tundu Lissu, CHADEMA has consistently challenged the hegemony of the ruling Chama Cha Mapinduzi (CCM).[19] While Samia's meeting with Lissu in 2022 raised hopes of normalization and political dialogue, that optimism quickly soured.[20]

In July 2021, just four months into Suluhu's presidency, Freeman Mbowe was arrested alongside ten other party members ahead of a scheduled public conference to discuss constitutional reforms.[21] Charged with terrorism and economic sabotage—a tactic often used by authoritarian regimes to silence political rivals—Mbowe was held in pre-trial detention for over seven months. Though he was later released after the charges were dropped, the political message had been delivered: dissent will be punished.

Even after his release, CHADEMA's activities remained under heavy surveillance and obstruction. Local CHADEMA offices have been raided, their meetings disrupted, and party officials arrested on nebulous charges such as unlawful assembly, incitement, and disturbing public order.[22] These actions, often orchestrated under the pretense of enforcing public health rules or security laws, reflect a state apparatus determined to prevent CHADEMA from operating as a viable opposition force.

b. Rally bans, permit denials, and the weaponization of procedure

One of the defining features of political repression under President Suluhu has been the continued ban on opposition rallies and public assemblies. These restrictions,

[18]'Facts don't lie: The Magufuli-Suluhu Tanzania is a tin-pot dictatorship' (The Nation, 25 May 2025) https://nation.africa/kenya/blogs-opinion/opinion/facts-don-t-lie-the-magufuli-suluhu-tanzania-is-a-tin-pot-dictatorship-5055436 accessed 25 May 2025.
[19]Agence France-Presse, 'Tanzania arrests opposition leaders, blocks protest' (VOA News, 23 September 2024) https://www.voanews.com/a/tanzania-arrests-opposition-leaders-blocks-protest/7794597.html accessed 25 May 2025.
[20]'Samia meets opposition leader Tundu Lissu' (The EastAfrican, 17 February 2022) https://www.theeastafrican.co.ke/tea/news/east-africa/samia-meets-opposition-leader-tundu-lissu-3719746 accessed 25 May 2025.
[21]'Leader of Tanzania's main opposition party arrested' (Al Jazeera, 21 July 2021) https://www.aljazeera.com/news/2021/7/21/leader-of-tanzanias-main-opposition-party-arrested accessed 25 May 2025.
[22] 'Tanzania police release Chadema leaders after assembly stand-off' (The EastAfrican, 13 August 2024) https://www.theeastafrican.co.ke/tea/news/east-africa/tanzania-release-chadema-leaders-after-protest-stand-off-4724154 accessed 25 May 2025.

initiated during the Magufuli era ostensibly to maintain "public order," have remained firmly in place, despite their violation of the Tanzanian Constitution and international human rights obligations.

Opposition parties seeking to hold public events must undergo a labyrinth of bureaucratic approvals, most of which are routinely denied without explanation. This has had a chilling effect on grassroots political engagement, weakening the ability of parties like CHADEMA and ACT-Wazalendo to build public support or communicate their platforms.[23]

In contrast, CCM—the ruling party—enjoys unrestricted access to public spaces and is frequently seen mobilizing crowds, organizing youth parades, and using state resources for party functions.[24] This selective application of the law exemplifies a deliberate strategy to neutralize competition while sustaining the illusion of political normalcy.

c. Security apparatus as a tool of political control

The Tanzanian police and intelligence services have become blunt instruments of political repression. Under Suluhu's leadership, they continue to operate with impunity, often acting as the first line of enforcement against opposition activity.[25] Opposition leaders are routinely surveilled, trailed, or summoned by police under vague pretenses, while their supporters are subjected to arbitrary arrests and detentions. For example, in 2024, Tundu Lissu was once again targeted by state security after questioning the legitimacy of a new cybercrime regulation that criminalized criticism of the president on social media.[26] Though no formal charges were filed, Lissu's home was reportedly raided by plainclothes officers, and he received repeated threats from anonymous security sources. His court appearances have become rallying points not just for legal redress but also for political resistance—a fact that likely explains the state's aggressive response to regional solidarity from foreign activists and leaders.

The security agencies have also been accused of violent crackdowns during opposition demonstrations. Teargas, baton charges, and excessive use of force are commonly reported, and very few officers have ever been held accountable for these violations. Instead, a culture of impunity prevails, with the state viewing dissent as a security threat rather than a democratic right.

In 2023, several opposition-aligned NGOs and political education platforms were shut down after being accused of "acting as unregistered political parties."[27] These actions have made it nearly impossible for parties to conduct civic education, voter outreach, or policy advocacy without being labeled subversive.

Freedom of expression and media restrictions

Despite Tanzania's constitutional guarantees on freedom of expression, the space for

[23] Jeff Smith, 'How 'Mama Samia' Morphed into Tanzania's Wicked Stepmother' (Vanguard Africa, 27 July 2021) http://www.vanguardafrica.com/africawatch/2021/7/27/how-mama-samia-morphed-into-tanzanias-wicked-stepmother accessed 25 May 2025.
[24] Freedom in the World 2023: Tanzania' (Freedom House, 2023) https://freedomhouse.org/country/tanzania/freedom-world/2023 accessed 25 May 2025.
[25] Tanzania: Climate of fear, censorship as repression mounts' (Amnesty International, 28 October 2019) https://www.amnesty.org/en/latest/press-release/2019/10/tanzania-climate-of-fear-censorship-as-repression-mounts/ accessed 25 May 2025
[26] Tundu Lissu among Tanzania's top Chadema figures arrested in crackdown' (BBC News, 12 August 2024) https://www.bbc.com/news/articles/c6236wzv4k9o accessed 25 May 2025.
[27] Tanzania: Board revokes six NGOs' license' (The Citizen, 19 April 2019) https://www.thecitizen.co.tz/tanzania/news/national/tanzania-board-revokes-six-ngos-license-2677906 accessed 25 May 2025.

The suspension of The Citizen's online platforms in 2022 underscores ongoing challenges to press freedom in Tanzania, with critics arguing that such actions stifle independent journalism and public discourse.

open and critical discourse has continued to shrink under the leadership of President Samia Suluhu Hassan. The brief moment of optimism that followed the death of her predecessor, John Magufuli—has since given way to entrenched patterns of censorship, surveillance, and legal harassment. The media landscape remains tightly controlled, journalists face constant intimidation, and ordinary citizens risk arrest for expressing opinions on social media.[28] Far from ushering in a new era of democratic openness, Suluhu's administration has refined the instruments of control, silencing dissent with both velvet gloves and iron fists.

In the initial months of her presidency, Suluhu lifted bans on a few newspapers and granted interviews to international media, signaling a willingness to open up public discourse.[29] However, these gestures were largely symbolic. Structural constraints on freedom of expression remained firmly in place, upheld by draconian laws such as the Cybercrimes Act of 2015, the Media Services Act of 2016, the Online Content Regulations of 2020, and the Statistics Act. These laws grant the state expansive powers to surveil, arrest, and prosecute individuals whose opinions are deemed threatening to national security, public order, or the reputation of government officials.[30] The result is a society where silence is safety, and speech is a calculated risk.

Journalists continue to operate under a cloud of fear. Independent outlets are either shut down or forced into self-censorship. The government, through the Tanzania Communications Regulatory Authority (TCRA), wields the power to revoke licenses, impose fines, and block websites without due process. In 2022, the investigative online platform *Mawio*, which had previously been banned under Magufuli's regime, was allowed to resume publication—but only after accepting restrictive licensing conditions and editorial guidelines that preclude critical reporting on sensitive topics like corruption, land rights, and human rights abuses. Other outlets such as *The Citizen* and *Raia Mwema* have had their content flagged or temporarily suspended for articles criticizing government spending or highlighting opposition grievances.

Broadcast media is even more tightly controlled. Radio and television stations are required to obtain government approval for live coverage of political events, and violations result in immediate suspension.[31]

[28]'Facts don't lie: The Magufuli-Suluhu Tanzania is a tin-pot dictatorship' (The Nation, 25 May 2025) https://nation.africa/kenya/blogs-opinion/opinion/facts-don-t-lie-the-magufuli-suluhu-tanzania-is-a-tin-pot-dictatorship-5055436 accessed 25 May 2025.
[29]'Tanzania's new president lifts media ban' (Reuters, 6 April 2021) https://www.reuters.com/article/world/tanzania-s-new-president-lifts-media-ban-idUSKBN2BT1JP/ accessed 25 May 2025.
[30]'Freedom of expression in Tanzania is on a downward spiral' (Advox, Global Voices, 6 December 2022) https://advox.globalvoices.org/2022/12/06/freedom-of-expression-in-tanzania-is-on-a-downward-spiral/ accessed 25 May 2025.
[31]Lycke Holmén, *Media Freedom in Tanzania Today: A Qualitative Study on the Freedom of the Press Under President Samia Suluhu Hassan, 2021–2023* (Uppsala University, 2023) https://www.diva-portal.org/smash/get/diva2:1796242/FULLTEXT01.pdf accessed 25 May 2025.

During opposition leader Tundu Lissu's court appearance in 2025, no local media was permitted to cover the hearing live, and journalists attempting to film outside the courthouse were either detained or had their equipment confiscated.[32]

Digital expression has become a new frontier of state surveillance and repression. The rise of social media platforms such as Twitter (now X), Facebook, and WhatsApp had initially allowed Tanzanians to bypass traditional media censorship. However, the state quickly adapted. A notable instance of digital expression curtailment in Tanzania occurred in October 2024, when the Tanzania Communications Regulatory Authority (TCRA) suspended the online platforms of Mwananchi Communications Limited for 30 days.[33] This action was taken after The Citizen, one of Mwananchi's publications, shared an animated video on social media that depicted a woman watching television broadcasts of individuals expressing concerns about missing or murdered relatives. The TCRA stated that the content "threatens and is likely to affect and harm national unity and social peace of the United Republic".[34] The boundary between private expression and public offense has been blurred, allowing the state to intrude into everyday discourse and online spaces that were once considered safe.

Civil society actors and human rights defenders who advocate for free expression are not spared. Organizations such as the Legal and Human Rights Centre (LHRC), Tanzania Human Rights Defenders Coalition (THRDC), and the Tanzania Media Women's Association (TAMWA) operate under intense scrutiny, often receiving threats, surveillance visits, or funding restrictions.[35] Several NGO staff members have reported being summoned by the intelligence services for "friendly chats" that are, in reality, coercive interrogations meant to discourage advocacy on politically sensitive issues. In 2024, THRDC's executive director was detained briefly and accused of "fomenting unrest" after the organization published a report detailing media censorship and journalist harassment in the run-up to the 2025 general elections.[36]

PHOTO BY ERICKY BONIPHACE/AFP

Tanzania's main opposition leader, Tundu Lissu, stands in the dock at a hearing in his treason trial in Dar-es-Salaam on May 19, 2025

The culture of fear is compounded by the normalization of digital surveillance. Activists and journalists regularly report that their calls are monitored and their social media accounts mysteriously hacked or shadowbanned. There is a growing belief

[32]'Journalists banned from covering Tundu Lissu's trial case' (Mwanzo TV, 28 April 2025) https://mwanzotv.com/journalists-banned-from-covering-tundu-lissus-trial-case/ accessed 25 May 2025.
[33]'Tanzania suspends Mwananchi Communications online publications over 'prohibited content'' (The EastAfrican, 3 October 2024) https://www.theeastafrican.co.ke/tea/news/east-africa/tanzania-suspends-the-citizen-for-30-days-4784668 accessed 25 May 2025.
[34]ibid
[35]Tanzania Human Rights Defenders Coalition, *Situation Report on HRDs & Civic Space in Tanzania 2024* (2024) https://thrdc.or.tz/online-center/download-reports-file/SITUATION%20REPORT%20ON%20HRDS%20%26%20CIVIC%20SPACE%20IN%20TANZANIA%202024.pdf accessed 25 May 2025.
[36]ibid

that the state has invested in spyware and other surveillance technologies from foreign contractors, although the full extent of these capabilities remains unknown due to the opaque nature of government procurement and cybersecurity operations. What is clear, however, is that citizens no longer feel secure expressing opinions—particularly those critical of CCM—in either public or private forums.

Moreover, the Tanzanian government's repression of expression has taken on a regional dimension. The deportation of Kenyan journalists and human rights defenders like Lynn Ngugi, Hanifa Adan, and Gloria Kimani—who had traveled to attend a public court session in solidarity with Tundu Lissu—underscores an alarming trend of transnational repression.[37] That the Suluhu administration would detain, intimidate, and expel foreign citizens merely for engaging in peaceful observation reflects not only hostility to open expression but also a determination to control the narrative beyond its borders. This internationalization of censorship tarnishes Tanzania's image and sets a dangerous precedent in the East African region.

Criminalization of dissent and civil society clampdown

The Suluhu administration has deepened a pattern of criminalizing dissent and stifling civil society that was already well-established under President John Magufuli. The most potent tools in this campaign of suppression are laws that cloak political persecution in the language of legality. Statutes such as the Non-Governmental Organizations Act (as amended), the Police Force and Auxiliary Services Act, the Political Parties Act, and the Cybercrimes Act are routinely invoked to curtail the activities of civil society groups and individual activists. These laws give government officials enormous discretion to deny registration, freeze assets, arrest staff, or cancel events with little to no judicial oversight.

A central feature of the crackdown has been the strategic harassment of high-profile human rights defenders. Hussein Khalid of VOCAL Africa, a regional civil liberties group, was detained without formal charges in May 2024 after arriving in Tanzania to observe the court proceedings of opposition leader Tundu Lissu.[38] Alongside journalist Hanifa Adan and former Chief Justice of Kenya Dr. Willy Mutunga, Khalid was detained at Julius Nyerere International Airport, his passport confiscated, and communication cut off.[39] No formal explanation was issued by the Tanzanian authorities. This arbitrary detention of respected legal and civic voices sends a clear message: the Tanzanian state will not tolerate even peaceful, lawful oversight or solidarity from domestic or international actors.

Similar fates have befallen Tanzanian activists. In January 2023, members of the Tanzania Human Rights Defenders Coalition (THRDC) attempting to host a community training in Mwanza were arrested and interrogated on suspicion of "unlawful assembly" and "inciting public unrest."[40]

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[37]Farouk Chothia, 'Kenya's ex-justice minister "deported" from Tanzania' (BBC News, 19 May 2025) https://www.bbc.com/news/articles/czdynd8l4pqo accessed 25 May 2025.

[38]'Tanzania detains former CJ Mutunga, two others over Lissu court solidarity visit' (The Standard, 20 May 2025) https://www.standardmedia.co.ke/national/article/2001519447/tanzania-detains-former-cj-mutunga-two-others-over-lissu-court-solidarity-visit accessed 25 May 2025.

[39]ibid

[40]Tanzania Human Rights Defenders Coalition, *Situation Report on HRDs & Civic Space in Tanzania 2024* (2024) https://thrdc.or.tz/online-center/download-reports-file/SITUATION%20REPORT%20ON%20HRDS%20%26%20CIVIC%20SPACE%20IN%20TANZANIA%202024.pdf accessed 25 May 2025.

Their offices were raided by police, and their electronic equipment was seized. Although they were later released without charge, the disruption had a chilling effect on their programming. The state uses such tactics to exhaust civil society organizations financially and psychologically—constant bail hearings, equipment losses, canceled permits, and the fear of arrest create a climate where advocacy becomes unsustainable.

The clampdown on dissent is not limited to formal organizations. Individuals who raise their voices on social media are vulnerable to retaliation. In 2023, a university student from the University of Dar es Salaam was expelled and arrested after tweeting criticism of police brutality during an eviction exercise in Morogoro. He was charged under the Cybercrimes Act and held for two weeks before being granted bail. The university justified his expulsion as "bringing disrepute to the institution." Similarly, lawyers who represent dissenting voices are increasingly targeted. In 2024, prominent human rights lawyer Fatma Karume faced renewed disciplinary proceedings for "bringing the judiciary into disrepute," stemming from her public statements on judicial independence and executive overreach.[41]

Even international NGOs are not immune. Organizations such as Amnesty International and Human Rights Watch have faced bureaucratic delays in securing research permits, while their reports have been publicly dismissed by government spokespersons as "biased" and "neo-colonial." In 2023, the Open Society

Fatma Karume continues to be a formidable force in advocating for democracy and human rights, both within Tanzania and on the international stage.

Initiative for Eastern Africa was denied license renewal and warned against funding Tanzanian-based civil society groups.[42] This erosion of international partnerships significantly undermines the capacity of domestic human rights defenders to amplify abuses and seek recourse beyond national borders.

Civic space is also under siege at the level of regulation. In 2022, the Registrar of NGOs began requiring civil society organizations to submit detailed quarterly reports that include staff rosters, funding sources, thematic focus areas, and plans for public engagement.[43] Organizations that failed to comply—often due to capacity constraints—faced suspension or deregistration. This

[41]"Rutashubanyuma Nestory, 'The Indefatigable Fatma Karume Is Now A Prisoner Of Conscience In Tanzania' (Tanzania Digest, 19 April 2025) https://digest.tz/the-indefatigable-fatma-karume-is-now-a-prisoner-of-conscience-in-tanzania/ accessed 25 May 2025; See also in 2019, 'Tanzanian lawyers in uproar after judge suspends their immediate past president from practice' (AfricanLII, 27 September 2019) https://africanlii.org/articles/2019-09-27/carmel-rickard/tanzanian-lawyers-in-uproar-after-judge-suspends-their-immediate-past-president-from-practice accessed 25 May 2025.

[42]Godfrey Musila, 'The Spread of Anti-NGO Measures in Africa: Freedoms Under Threat' (Freedom House, 27 September 2024) https://freedomhouse.org/report/special-report/2019/spread-anti-ngo-measures-africa-freedoms-under-threat accessed 25 May 2025.

[43]Godfrey Musila, 'The Spread of Anti-NGO Measures in Africa: Freedoms Under Threat' (Freedom House, 27 September 2024) https://freedomhouse.org/report/special-report/2019/spread-anti-ngo-measures-africa-freedoms-under-threat accessed 25 May 2025.

regulatory overreach is designed to bog down civic actors in paperwork, diverting resources from advocacy to bureaucratic survival. Many smaller organizations, particularly those working in rural areas or representing marginalized communities, have had to shut down.

Public protest, a crucial form of civic expression, is effectively outlawed. The Police Force and Auxiliary Services Act requires that all public demonstrations receive prior approval from the police, which is routinely denied for any gathering perceived as critical of the state.[44] In 2023, a protest in Mbeya against arbitrary evictions was violently dispersed by police using teargas and rubber bullets.[45] Organizers were later charged with "illegal assembly" and "disturbing public order." The excessive use of force has become normalized; reports of police brutality, unlawful arrests, and custodial torture have increased dramatically, though few cases are ever investigated or prosecuted.

What is perhaps most insidious about this crackdown is its gradual normalization. The government has successfully framed civil society as oppositional, unpatriotic, and externally controlled. State media often portray CSOs as conduits for Western ideology or tools for regime change.[46] This narrative has gained traction in some segments of the public, particularly as economic pressures grow and political disillusionment deepens. By casting civil society as a threat rather than a partner in governance, the Suluhu administration undermines democratic resilience from within. The space for civic action is narrowing—what remains is a landscape of fear, resilience, and defiant courage in the face of deepening repression.

Arrests, detention, and enforced disappearances

Under the administration of President Samia Suluhu Hassan, Tanzania has continued to entrench a system of arbitrary arrests, unlawful detention, and enforced disappearances as core tools of political control. These methods—once escalated dramatically under the late President John Magufuli—have not only persisted but become increasingly structured and opaque, targeting critics, opposition leaders, journalists, and even apolitical citizens who challenge state authority or exercise constitutional freedoms. What is most alarming is the state's reliance on these extrajudicial tactics in parallel with legal forms of repression, blurring the line between formal law enforcement and illicit suppression.[47]

For Tanzanian citizens, the risks are even graver. The case of opposition leader Freeman Mbowe remains one of the most notorious examples. In July 2021, Mbowe was arrested in Mwanza in the middle of the night, ahead of a planned constitutional reform forum.[48] He was charged with terrorism financing—a charge widely discredited by human rights observers as fabricated. He was held for eight months before charges were dropped in March 2022, but the ordeal sent a clear warning to any critics of the government. The use of terrorism charges has become a

[44]Human Rights Watch, 'World Report 2025: Tanzania' (5 January 2025) https://www.hrw.org/world-report/2025/country-chapters/tanzania accessed 25 May 2025.
[45]ibid
[46]Godfrey Musila, 'The Spread of Anti-NGO Measures in Africa: Freedoms Under Threat' (Freedom House, 27 September 2024) https://freedomhouse.org/report/special-report/2019/spread-anti-ngo-measures-africa-freedoms-under-threat accessed 25 May 2025.
[47]Human Rights Watch, 'World Report 2025: Tanzania' (5 January 2025) https://www.hrw.org/world-report/2025/country-chapters/tanzania accessed 25 May 2025.
[48]'Leader of Tanzania's main opposition party arrested' (Al Jazeera, 21 July 2021) https://www.aljazeera.com/news/2021/7/21/leader-of-tanzanias-main-opposition-party-arrested accessed 25 May 2025.

Under President Samia Suluhu Hassan's administration, Tanzania has faced increasing scrutiny over alleged human rights violations, particularly concerning political repression, suppression of civil liberties, and mistreatment of activists.

favored state tactic to lend false legitimacy to political detentions while allowing authorities to detain suspects indefinitely without bail.

The opacity of the criminal justice system in such cases facilitates abuse. Detained individuals are often denied access to lawyers or family, held in undisclosed locations, and interrogated without oversight. These conditions create fertile ground for torture and other cruel, inhuman, or degrading treatment. Testimonies from activists, especially those detained during politically sensitive periods like elections or court hearings of opposition figures, indicate that beatings, forced confessions, and psychological abuse are common practices.

A particularly concerning dimension of the Suluhu regime has been the increase in enforced disappearances—cases where individuals are secretly abducted or detained by state agents, and the government refuses to acknowledge their fate or whereabouts.[49] The most emblematic case is that of Azory Gwanda, a journalist who disappeared in 2017 while investigating mysterious killings of local government officials in the Coast Region.[50] Despite repeated calls for transparency, the Tanzanian government has refused to disclose any credible information on his fate. President Suluhu has avoided addressing the case publicly, leaving a vacuum of accountability.

More recently, in 2023 and 2024, multiple activists and student leaders were

[49]Amnesty International, *Human Rights in Tanzania 2024* (Amnesty International, 2024) https://www.amnesty.org/en/location/africa/east-africa-the-horn-and-great-lakes/tanzania/report-tanzania/ accessed 25 May 2025.
[50]'Media freedom groups seek answers over missing Tanzanian reporter' (Al Jazeera, 12 July 2019) https://www.aljazeera.com/news/2019/7/12/media-freedom-groups-seek-answers-over-missing-tanzanian-reporter accessed 25 May 2025.

In May 2025, the Tanzanian government blocked access to the social media platform X (formerly Twitter) following cyberattacks on official accounts. Authorities warned that using VPNs to bypass the ban could result in legal penalties. Critics argue this move suppresses online dissent, especially amid President Suluhu's re-election campaign.

reported missing during anti-government demonstrations in regions such as Mbeya, Arusha, and Mtwara.[51] Families and colleagues report that police and intelligence agents seized these individuals without warrants or formal charges. In some cases, victims resurfaced days or weeks later, bearing signs of torture; others remain unaccounted for.[52] The incommunicado nature of these detentions is itself a violation of both domestic legal protections and international human rights conventions to which Tanzania is party, including the International Covenant on Civil and Political Rights (ICCPR).

Additionally, the state has perfected the use of "preventive detention" as a coercive instrument. Under loosely defined public order laws, the police can detain individuals without immediate cause if they are deemed a "threat to peace." In practice, this provision has been weaponized against political rallies, union organizing, and environmental protests. In August 2023, six land rights activists in Tanga were detained after organizing a meeting with pastoralist communities protesting against government land allocation to foreign investors.[53] They were held for nearly a month before being released without charge. No explanation was provided.

The problem is compounded by the culture of impunity within security agencies. The police, military, and the Tanzania Intelligence and Security Service (TISS) operate with little oversight.[54] No senior officials have been prosecuted for abuses related to arbitrary arrests or disappearances. Even in well-documented cases involving severe injuries or deaths in custody, internal investigations are either perfunctory or never launched. Human rights organizations attempting to demand accountability often face bureaucratic obstruction or are themselves threatened with deregistration.

Despite rhetorical commitments to reform, President Suluhu has refused to initiate any serious institutional inquiries or judicial reforms to address these systemic abuses. Her silence and inaction signal tacit approval, or at the very least, a strategic decision to preserve the coercive instruments of her predecessor. This has led to a dangerous normalization of state

[51]Chimba Jerry, 'Tanzania: Police Under Scrutiny Over Disappearances' (Institute for War and Peace Reporting, 25 March 2024) https://iwpr.net/global-voices/tanzania-police-under-scrutiny-over-disappearances accessed 25 May 2025.
[52]ibid
[53]Human Rights Watch, *World Report 2024: Tanzania* (2024) https://www.hrw.org/world-report/2024/country-chapters/tanzania accessed 25 May 2025.
[54]ibid; see also, Human Rights Watch, 'World Report 2025: Tanzania' (5 January 2025) https://www.hrw.org/world-report/2025/country-chapters/tanzania accessed 25 May 2025.

PHOTO BY ANTHONY SIAME/EPA-EFE/SHUTTERSTOCK

Police detain a supporter of Tanzania's main opposition party, Chadema, at the start of a banned protest in Dar es Salaam, September 23, 2024.

violence and a loss of public trust in the country's justice system. The constant threat of arbitrary arrest or disappearance has a silencing effect on civil society, the media, and political opposition. Citizens increasingly self-censor, avoid political discussions in public, and withdraw from civic engagement for fear of retaliation. This environment erodes the democratic foundation of the country and undermines any claims to participatory governance or rule of law.

Suluhu administration has failed to break from the repressive legacy of the Magufuli era in terms of arrests, detention, and enforced disappearances. Rather, it has entrenched a more calculated and disguised form of authoritarianism—one that uses legal justifications for illegal actions, and national security rhetoric to mask human rights violations. The use of arbitrary arrest and disappearance is not just a violation of individual rights but an attack on the collective conscience of the Tanzanian people.[55] Without accountability and reform, this system of terror will only deepen, dimming the hope for a democratic and just Tanzania.

International law and regional silence; The cost of inaction

The deteriorating human rights situation in Tanzania under the leadership of President Samia Suluhu Hassan has not unfolded in a vacuum. While the domestic apparatus of repression has drawn concern from civil society and the international human rights community, the broader response—particularly from regional actors—has been disturbingly muted.[56] This silence, coupled with a global tendency to prioritize economic and geopolitical stability over accountability, has created a permissive environment for systemic abuse. The net effect is not just the erosion of rights in Tanzania, but a dangerous precedent for

[55]ibid

[56]Lucy Mumbi, 'Civil society groups give AU, EAC 72 hours to act on alleged abductions, torture in Tanzania' (Eastleigh Voice, 23 May 2025) https://eastleighvoice.co.ke/tanzania/154227/civil-society-groups-give-au-eac-72-hours-to-act-on-alleged-abductions-torture-in-tanzania accessed 25 May 2025.

governance and justice across East Africa and the African continent.

From an international legal perspective, Tanzania is bound by a robust framework of treaties and obligations that prohibit the kinds of human rights violations that have become commonplace under Suluhu's administration. It is a party to the International Covenant on Civil and Political Rights (ICCPR)[57], the African Charter on Human and Peoples' Rights[58], and numerous other instruments that explicitly ban arbitrary arrests, enforced disappearances, torture, restrictions on the freedom of expression, and political repression. These instruments impose both negative obligations (to refrain from violating rights) and positive duties (to prevent violations, investigate abuses, and prosecute perpetrators).

Despite these obligations, enforcement remains largely ineffective. Even when these treaties are clearly violated—as in the use of terrorism laws to jail opposition leaders, the incommunicado detention of journalists, or the failure to investigate enforced disappearances—international enforcement mechanisms have limited capacity to compel compliance. The United Nations Human Rights Committee has issued statements of concern, but these are often ignored by the Tanzanian government.[59] The absence of binding enforcement action or tangible consequences has emboldened the state to persist with impunity.

Compounding this failure is the studied indifference of regional actors, particularly within the East African Community (EAC) and the African Union (AU). Tanzania is a founding member of both, and its conduct—especially against fellow EAC citizens—should be of immediate concern to these institutions. The deportation and detention of high-profile Kenyan figures such as Martha Karua and Willy Mutunga should have triggered diplomatic protests, or at the very least, a formal investigation. Instead, member states have either remained silent or offered vague calls for "respecting sovereignty," even in the face of transboundary human rights abuses.[60]

This regional silence is both troubling and telling. At the African Union level, the response has been even more lackluster. The African Commission on Human and Peoples' Rights, which has the mandate to examine state reports and investigate complaints, has noted the deterioration of civic space in Tanzania, especially during and after the 2020 general elections.[61] But its resolutions remain non-binding and largely unenforced. The African Court on Human and Peoples' Rights—ironically headquartered in Arusha, Tanzania—has also been a target of governmental hostility. In 2019, Tanzania withdrew the right of individuals and NGOs to bring cases directly before the court, weakening one of the continent's most vital human rights mechanisms.[62]

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[57] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.
[58] International African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217.
[59] 'Tanzania: Experts call for urgent action amid crackdown on civil society ahead of elections' (OHCHR, 17 October 2024) https://www.ohchr.org/en/press-releases/2024/10/tanzania-experts-call-urgent-action-amid-crackdown-civil-society-ahead accessed 25 May 2025.
[60] 'The Police Reforms Working Group condemns the enforced disappearance of human rights defender Boniface Mwangi, calls for immediate release of Agather Atuhaire' (Amnesty Kenya, 22 May 2025) https://www.amnestykenya.org/the-police-reforms-working-group-condemns-the-enforced-disappearance-of-human-rights-defender-boniface-mwangi-calls-for-immediate-release-of-agather-atuhaire/ accessed 25 May 2025.
[61] 'Press Statement of the African Commission on Human and Peoples' Rights on the human rights situation in Tanzania' (ACHPR, 23 October 2020) https://achpr.au.int/en/news/press-releases/2020-10-23/press-statement-african-commission-human-and-peoples-rights accessed 25 May 2025.
[62] 'Tanzania: Withdrawal of individual rights to African Court will deepen repression' (Amnesty International, 2 December 2019) https://www.amnesty.org/en/latest/press-release/2019/12/tanzania-withdrawal-of-individual-rights-to-african-court-will-deepen-repression/ accessed 25 May 2025.

Despite early optimism, President Samia Suluhu Hassan's administration has increasingly mirrored the authoritarianism of her predecessor. Arbitrary arrests, suppression of media and digital spaces, mistreatment of critics, and political intimidation suggest a deteriorating human rights landscape in Tanzania. The government's approach has drawn both domestic resistance and growing international condemnation — underscoring the urgent need for transparency, accountability, and genuine reform.

What emerges from this constellation of regional inaction is a troubling message: authoritarianism may be challenged rhetorically, but rarely in practice. Political solidarity, non-interference principles, and economic alliances often trump the duty to uphold human rights.

The cost of this inaction by regional and international actors is profound and multidimensional. First, it legitimizes repression by signaling that international and regional norms can be violated with little consequence. This not only emboldens the Tanzanian state but also sets a dangerous example for other regimes in the region. Leaders in Uganda, Rwanda, and Burundi—countries already grappling with their own human rights crises—may interpret Tanzania's experience as validation of impunity. It reinforces what I described in the May Edition article as a trend of shrinking democratic space across East Africa, led by leaders with fragile egos.[63]

Second, the lack of international and regional accountability denies justice to victims and their families. From the family of missing journalist Azory Gwanda to tortured land rights defenders and

[63]Max Liambilah Ayaga, 'Teargas and Tyranny: The East African Union of Human Rights Violations and Fragile Egos' (1 January 2025) SSRN https://ssrn.com/abstract=5213020 accessed 25 May 2025

arbitrarily detained political activists, the message is clear: legal redress is elusive, and international justice mechanisms are slow, weak, or inaccessible. This fuels disillusionment, radicalizes opposition movements, and increases the risk of long-term instability.

Third, the erosion of human rights in Tanzania undermines the credibility and coherence of regional integration efforts. The EAC and AU have both committed to frameworks that prioritize the rule of law, democratic governance, and human rights as essential pillars of unity. When these principles are flouted by member states without repercussions, the legitimacy of regional governance structures is compromised. It becomes increasingly difficult to advocate for cross-border cooperation, mutual recognition of legal standards, or shared commitments to sustainable development when one or more states actively sabotage these values.

Finally, and perhaps most alarmingly, the global failure to act reveals the selective nature of human rights enforcement. Countries like Tanzania are often allowed a margin of repression so long as they do not disrupt international economic interests or regional security priorities. This double standard not only devalues the lives and freedoms of Tanzanian citizens but also threatens the integrity of international human rights law itself.

While the Tanzanian state bears the primary responsibility for its repressive policies, the inaction, silence, or complicity of regional organizations and international allies enables that repression to continue. The path forward must involve a recalibration of regional priorities: from passive observation to principled engagement; from diplomatic deference to coordinated accountability. Until that happens, the cost of inaction will continue to be paid by the people of Tanzania—one arbitrary arrest, one silenced voice, and one disappeared citizen at a time.

Concluding remarks

The unfolding human rights crisis in Tanzania under President Samia Suluhu's administration is not merely a domestic affair—it is a regional emergency and a global indictment. Beneath the carefully cultivated image of reform and diplomacy lies a regime that has intensified surveillance, silenced opposition, criminalized dissent, and stifled press freedom. The persecution of civil society actors, the weaponization of the law against journalists and activists, and the chilling tales of enforced disappearances reveal a government that fears its own people more than it fears the loss of international credibility. The deportation of prominent human rights defenders and former state officials like Martha Karua and Willy Mutunga is not just a diplomatic scandal—it is a glaring symbol of how Tanzania has turned its borders into barriers against accountability.

Yet perhaps more damning than the repression itself is the resounding silence from regional and international actors. The East African Community, the African Union, and global institutions have failed to stand with the victims or demand change with conviction. This silence emboldens autocrats, erodes public trust in international justice, and betrays the very principles these organizations claim to uphold. The longer the world watches in silence, the deeper the cracks grow in Tanzania's democratic foundations. The moment demands not just observation, but intervention—not just statements, but solidarity. For if Tanzania is allowed to trample rights without consequence, the entire continent risks becoming a theatre where justice is optional, and impunity is the rule.

Ayaga Max is a third-year law student at the University of Nairobi, human rights and international law enthusiast.

UNIFYING VOICES

Message from the East African Civil Society Organisations Forum-(EACSOF)-Kenya Chapter

By Morris Odhiambo

Mr. Musalia Mudavadi

Cabinet Secretary

Foreign and Diaspora Affairs

Republic of Kenya

Dear Sir,

Re: Your condescending attitude towards Kenyans who do not share your outdated views on human rights

Receive greetings from EACSOF-Kenya.

I have taken the liberty to write this open letter following your interview with the Citizen Television on Tuesday, 20th May, 2025. The interview addressed the matter of detention, torture, and deportation of Kenyans from the United Republic of Tanzania. The citizens of Kenya who were detained, tortured and subsequently deported had travelled to URT to witness the trial of Tundu Lissu, a Tanzanian politician being tried for the crime of Treason because of his political challenge to the administration of President Samia Suluhu Hassan.

I write to you as a Kenyan citizen, first, as the Chairman of the East African Civil Society Organisations Forum-(EACSOF)-Kenya Chapter, second, and as the Vice-Chairman of the Diplomacy Scholars Association of Kenya (DIPSAK), third.

PHOTO BY IKULU TANZANIA

Prime Cabinet Secretary Musalia Mudavadi welcomes Tanzanian President Samia Suluhu during her visit to Kenya on April 29, 2024.

You are quoted to have said the following during the subject interview:

"I will not protest that (Suluhu's remarks) because I think there is some truth. Let us face a few facts. The level of etiquette, insults, that we see in Kenya, even though we have the freedom of speech, is sometimes going overboard to some extent. She is saying people have sometimes gone to extremes in their utterances in Kenya, which is a fact."

"She (Suluhu) has said that she is unhappy, because they observe what we do here, but I will need a little time to get more evidence into the detail of the operation, to the point of saying whether we have

displayed decency. I am not talking about the individuals in question, but she is talking from a general viewpoint, and if it is a general viewpoint, then I think she has a point."

"The Jumuiya has not taken away the sovereignty of the states; the countries have not ceded their sovereignty to the EAC, so it still remains. If there is sovereignty, then a country will make certain decisions. They have taken the decision, so it is the duty through the diplomatic channels to find out what the circumstances were in detail."

From these utterances, my conclusions are as follows:

1. That you do not seem to understand your role as Kenya's Cabinet Secretary for Foreign Affairs. The mandate of your docket includes the protection of the rights of Kenyans abroad. Furthermore, the Constitution of Kenya does not give you the right to select which Kenyans to protect and which ones not to protect. It requires that you act professionally, fairly and justly;

2. That you are conflating matters involving Kenyans abroad and Kenya's local politics. The core of your responses in the interview suggest that your point of reference was local politics and not matters of Foreign Affairs or even what exactly transpired at the airport in Dar es Salaam. When you were asked which crimes the group had committed, you had no response;

3. Your disdain and hatred of human rights activists, most likely informed by your own political background in the dark era of Kenya's one party politics, shone through the interview. You seem to enjoy the torment meted out on Kenyans the same way the KANU apparatchik that you were part of enjoyed the torture and killing of Kenyans in the Rift Valley and other parts of the country in the 1990s in the ethnic pogroms it organised in the name of ethnic clashes;

4. You do not understand, or do not believe in, the architecture and philosophy of the East African Community integration process. The Common Market Protocol defines the following 5 freedoms and 2 rights for citizens of East Africa: free movement of goods, persons, labor, services, and capital, and the rights of establishment and residence. The Protocol does not discriminate which citizens should enjoy these freedoms and rights and which ones should not. Kenya (like other partner states) hosts many citizens from URT and other neighbouring countries. Your justification of the torture of Kenyans in URT can create bigger problem for East Africans;

5. In addition, the EAC puts the citizen at the centre of the regional integration process. This is why it is described as "people-centered and market-driven." The people-centredness of the EAC was a reaction to the elitism of the 1960s and 1970s integration process. That process collapsed partly as a result of the non-involvement of citizens, according to the Treaty Establishing the East African Community (EACT); and

6. The state sovereignty you preach about does not make it right or legal to detain and torture citizens of East Africa (or any partner state) at will. Besides, any state that attempts to justify the torture of its own citizens in foreign countries fails to adhere to that very same logic of sovereignty unless sovereignty is only important in protecting the interests of the rich and powerful class to which you belong.

Yours faithfully,

Morris Odhiambo, Chairman-EACSOF-Kenya.

Presumed innocent, treated as guilty: The forgotten crisis of remand centres in Kenya

By Lucy Kamau

By Lynne Oluoch

Abstract

In Kenya, remand centres meant to temporarily hold individuals awaiting trial have become sites of prolonged suffering, legal neglect and systemic injustice. This paper interrogates the contradiction between the legal principle of presumption of innocence and the harsh realities endured by remandees, many of whom face worse conditions than convicted prisoners. Drawing on firsthand accounts, legal audits, and human rights standards, the paper exposes how poverty, weak legal safeguards, and bureaucratic inertia have turned pretrial detention into a de facto punishment. Though bail is often granted, courts fail to enforce it as the norm, and many remain detained even when they pose no threat to society or the trial process. Minor offences attract custodial remand, and systemic delays entrench legal limbo. Far from being exceptional, such injustice has become routine. Beyond highlighting the crisis, the paper proposes bold reforms centered on dignity, legal accountability, and structural change to restore the presumption of innocence from a hollow ideal to a lived reality. In so doing, it argues that true justice cannot exist where freedom is lost before guilt is proven.

Kenya's remand centres are currently facing a significant crisis characterized by severe overcrowding, prolonged pretrial detentions, and substandard living conditions. These issues not only infringe upon the rights of detainees but also strain the country's correctional infrastructure.

Introduction

Remand centres are intended to serve as temporary holding facilities for individuals awaiting trial, people who, in law and in principle, are still presumed innocent. The Kenyan legal framework, grounded in Article 50(2)(a)[1] of the Constitution, upholds the right to be presumed innocent

[1]Article 50(2)(a) Constitution of Kenya 2010.

Remand in Kenya is meant to serve justice by ensuring court appearance and public safety. However, delays, overcrowding, and inequality in access to justice have turned many remand centres into sites of injustice and suffering. Sustainable reforms are urgently needed to align Kenya's remand system with constitutional and international human rights standards.

until proven guilty. However, the reality in Kenya's remand centres reveal a disturbing contradiction. Structural separation between convicted and unconvicted individuals exists nominally, but the lived experiences within these facilities are alarmingly similar, if not worse, for those who have not yet had their day in court.

Despite various publicized undertakings to improve detention facilities, most remain in deplorable conditions.[2] First-hand accounts from former remandees paint a picture of overcrowded, dimly lit cells holding up to 150 men, inadequate food, scarcity of clean water, and rampant police abuse.[3] This is an unfortunate calamity that exists among us. The most disheartening part is that it is rarely spoken of. Remand centres seem to exist in the shadows of law enforcement, perhaps because they are only supposed to be temporary holding places, which is clearly not the case, as seen through numerous experiences by individuals.

Ultimately, Kenya's remand centres are not just failing to uphold constitutional and human rights standards, they are actively violating them. The physical conditions, length of detention, and institutional neglect amount to cruel, inhuman and degrading treatment.[4] They transform what should be temporary custody into de facto punishment. This paper explores the legal and policy failures enabling this situation, and argues for urgent systemic reform to

[2]Law Society of Kenya, Unlocking Justice: A Collective Effort to Decongest Prisons and Deliver Legal Aid – Position Paper (Law Society of Kenya).
[3]Dorothy Otieno and Maureen Kakah, 'Why Remandees Are Granted Bail but Still Rot in Jail' (Daily Nation, 4 November 2018).
[4]Article 51 Initiative, Freedom from Torture: Kenya Baseline Study Report, 18 May 2012 (Draft) (2013).

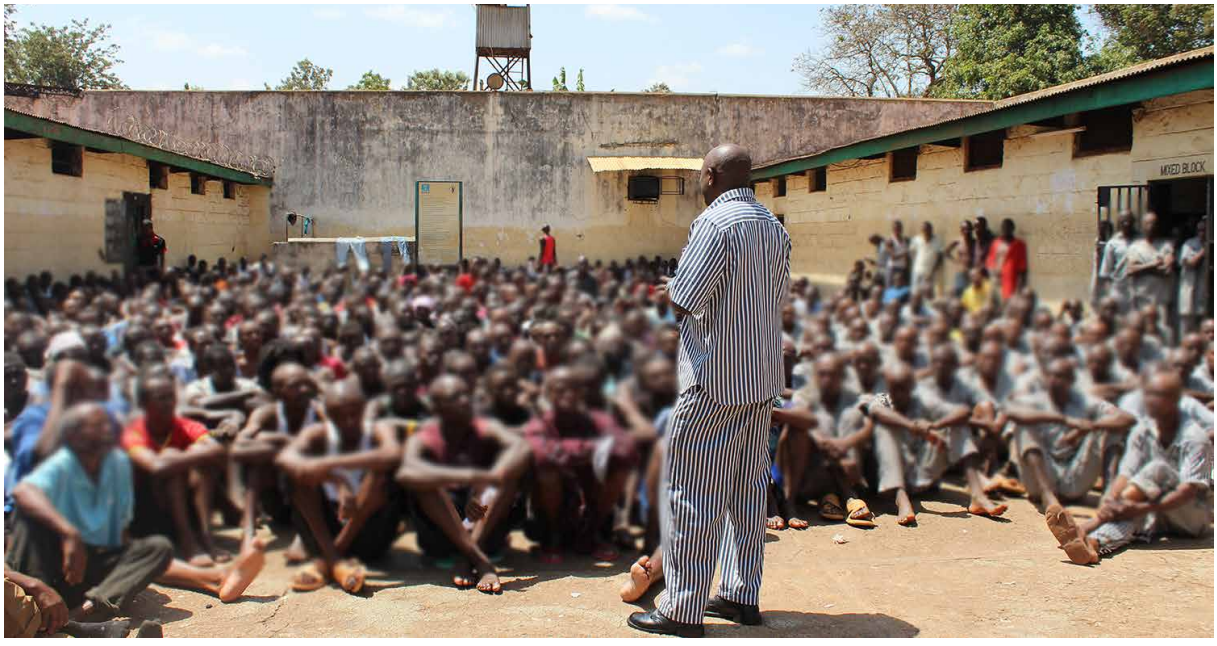
restore justice, dignity, and the true meaning of presumption of innocence.

Understanding remand and the concept of presumed innocence

To remand means to send a defendant away when a case is adjourned till another date.[5] Remand centres are meant for the detention of the accused person pending the determination of their trial. While the constitution recognizes the eligibility of remand centres, it also maintains that accused persons shall not be held in custody unless the Court or a legislation deems it necessary.[6] Article 49 (1) (h)[7] anchors the idea that liberty should remain the norm, and detention the exception, only to be justified by evidence-based risk, not assumption of guilt.

The Criminal Procedure Code[8] also allows an officer in charge of a police station or court to admit a person accused of an offense (excluding murder, treason, robbery with violence, attempted robbery with violence, and related crimes) to bail or release by executing a bond with sureties for their appearance.[9]

According to the Constitution, an arrested person should be presented to court 24 hours after their arrest.[10] The court then decides whether or not to grant the accused bail or bond after considering issues such as the nature of the offence and the risk of flight.[11] If bail is denied or the accused cannot meet the conditions, only then will the court issue a warrant of commitment, ordering the accused to be held in a remand centre. Even while being held, the accused



Remand should be an exceptional measure, not a default. The presumption of innocence is not just a legal formality — it's a cornerstone of justice and dignity. Systems that detain people for extended periods without trial violate human rights and undermine public trust in the rule of law. Reforms that protect this principle are essential for any fair and democratic society.

[5]'To remand definition' LexisNexis < https://www.lexisnexis.co.uk/legal/glossary/to-remand > accessed 4th May 2025.
[6]Article 49 (1) (h) of the Constitution of Kenya 2010.
[7]Ibid.
[8]The Criminal Procedure Code Cap 75.
[9]Bail and Bond Policy Guidelines, 2015.
[10]Article 49 (1) (f) of The Constitution of Kenya 2010.
[11]Article 49(2) of The Constitution of Kenya 2010.

Kenya's remand centres—designed to hold individuals awaiting trial or sentencing—have long been criticized for their poor conditions, overcrowding, and systemic rights violations. While detainees are legally presumed innocent, the reality within many remand centres paints a troubling picture of neglect, inequality, and injustice.

has a right to have their trial begin and conclude without unreasonable delay.[12]

Reality of conditions in remand centres

Remand is not a sentence, but rather a legal holding measure. However, the nuances of this distinction are frequently lost in public debate, and much more so in reality. At its essence, remand is the temporary custody of an accused individual pending trial or ongoing investigations. It is neither an acknowledgment of guilt nor should it serve as punishment. It is a neutral legal state, justified only when necessary to protect the integrity of the judicial process, such as preventing flight, interfering with witnesses, or committing additional offenses.

The country's 94 prisons continue to grapple with congestion and financial burdens of taking care of inmates. The correctional facilities have a holding capacity of about 27,000 prisoners but are currently holding in excesses of 54,000, which is more than double their capacity. Half the inmates are convicts of petty offences and pre-trial remandees facing prosecution for minor offences.[13] Most end up serving longer sentences in prison while on trial than they would if convicted.[14]

The majority of remandees are wasting away in detention despite having been granted bail, often for longer than they would spend in prison if proven guilty of the charges they face. According to an audit conducted by the

[12]Article 50(2) (e) of the Constitution of Kenya 2010.
[13]Joseph Ndunda, 'Remandees detained longer on trial than they would if convicted' International Commission of Jurists May 2018 < https://icj-kenya.org/news/remandees-detained-longer-on-trial-than-they-would-if-convicted/ > accessed 6 May 2025.
[14]Ibid.

Office of the Director of Public Prosecutions, nine out of ten defendants in pretrial prison have been granted bail or bond but are unable to afford the requirements. Approximately the same share lacks legal representation.[15]

Unnecessary delays of trials go against the principle that one is presumed innocent until proven guilty and constitute a denial of justice. According to the case review study, remandees spent an average of 12 months in detention awaiting trial, with interviews conducted on 2,100 pretrial detainees housed at the Nairobi Remand and Allocation Prison and Nairobi Medium Security Prison, or more than 70%. At least 13 inmates had been kept in custody for seven to eight years, and eight had mental problems. Another 2% were minor offenders, who are either non-custodial or face a term of less than six months if proven guilty, such as causing a disturbance.[16]

The deplorable conditions affect not only the physical health but also the mental health of the inmates. In an investigation report on the alleged maladministration at the Nairobi Remand and Allocation Maximum Prison in 2020 established that that the facility is very congested with about 2,612 inmates instead of the standard capacity, 1,288.[17] The number has doubled in 5 years with over 4,000 inmates with minimal to no changes in the infrastructure in the facility. The facility faces several challenges, including poor housing conditions, limited infrastructure, outdated security equipment, insufficient supplies, and insufficient counsellors.[18]

Legal Irony and Systemic Injustice

Kenya's Constitution boldly proclaims that every accused person is "*presumed innocent until the contrary is proved*." Men and women, some of whom might later be acquitted or released, are subjected to conditions far worse than those faced by convicted criminals.

Because remandees cannot reside in the same institution as convicted criminals[19], the large number of remandees must share the little space available to them. With a bigger number of detainees in prisons being remandees and just a tiny percentage being real convicts, the overcrowding in the remandees' housing is concerning.

They are crammed together in badly kept quarters, and the scenario becomes one of survival of the fittest. Given that remandees are deemed innocent until proven guilty, the living circumstances being harsher than the real criminals may be considered punishment, even if they are ostensibly innocent.

With meagre resources available to prison systems in Kenya, remandee conditions may be worse compared to convicted persons as prison systems have very limited resources budgeted for them.[20] Like most prison facilities in the third world and developing world, reasons such as delays in the criminal justice system include delays in the investigation by the police, lack of cooperation by the criminal justice system agencies, and cumbersome processes in the criminal justice system fuel the increasing number of remandees.

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[15]Dorothy Otieno and Maureen Kakah, 'Why remandees are granted bail but still rot in jail' International Commission of Jurists September 2018 < https://icj-kenya.org/news/why-remandees-are-granted-bail-but-still-rot-in-jail-2/ > accessed 6 May 6, 2025.
[16]Ibid.
[17]'An Investigation Report On The Alleged Maladministration at the Nairobi Remand and Allocation Maximum Prison' The Commission on Administrative Justice; Office of the Ombudsman September 2020.
[18]Ibid.
[19]Article 49(1) (e) of the Constitution of Kenya 2010.
[20]Collins Reuben, Evans Oruta, Nicholas Ombachi, 'The Nexus Between Acquitted Remandees' Personal Characteristics and Their Reintegration in Kakamega County, Kenya' Journal of Law, Policy and Globalization Vol. 124 2022.

The right to a fair trial is enshrined in both Kenya's 2010 Constitution and international human rights instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). However, growing systemic failures in Kenya's justice system—particularly in relation to access, equity, and judicial independence—are undermining this right for many citizens. In some cases, this erosion can be seen as signaling the death of meaningful access to fair trials for the average Kenyan.

Systems of this nature are also likely to be characterized by overuse of pre-trial detention, making use of arbitrary arrests, a lack of access to legal counsel, and corruption are identified as reasons for the poor system.[21] The dragging of cases is against the principals that the court and tribunals should be guided by while exercising authority according to Article 159 (2) (b) of the Constitution of Kenya. The principle of justice not being delayed is highly violated in this case.

The contrast is startling; a guilty individual may serve time in an organized prison setting with access to vocational training and sentencing planning but a remandee, who is still assumed innocent, faces chaos, filth and uncertainty. This not just inefficient, it is unconstitutional. The law does not allow for punishment before trial, yet the system often gives just that.

Coerced guilty pleas and the death of the right to a fair trial

The deplorable conditions of remand centres mostly coerce the remandees to plead guilty in order to escape the horrific conditions. This is not only a violation to Article 50 (2) of the Constitution which advocates for the right to a fair trial, legal representation, adequate facilities to prepare defence, it also takes away an individual's trust to fair administration of justice and undermines public trust in convictions.

The remandees are lucky to appear in court for more than three times in a year and even those three appearances are not sufficient for trial.[22] Fear of wasting away in the remand centres from the remandees with the uncertainty of when their trials might be concluded drives them to change their plea to a guilty one after spending some

[21]Ibid.
[22]Supra n. 8.

time in the facility given their conditions of stay. The remandees see serving a sentence, whether guilty or not, as a way of being assured of the time they would spend there. This to them seems more appealing than the concept of waiting for their trial to end and be acquitted after spending a reasonable amount of time in the centres.

Legal and policy gaps enabling the crisis

The humanitarian crisis in Kenya's remand centres is not incidental. Instead, it is a product of deep legal and policy gaps that continue to go unaddressed. It is a cruel irony that pretrial detainees are treated worse than convicted prisoners. Pretrial detainees are often held in police lockups, facilities not designed for long-term occupancy, where conditions can be particularly crowded and harsh, for extended periods of time. Prison systems treat pretrial detainees as temporary and incidental and therefore devote fewer resources to them. Compared to sentenced prisoners, pretrial detainees have less access to food, beds, health care, and exercise.[23]

The circumstances of the pretrial detainees held in custody is worsened by the delay that is often experienced in the trial of cases due to the heavy case back-log. This is a major drawback in the administration of justice in Kenya as well as the incapacity of the Police to complete investigations and identify witnesses in a timely manner, with the results being accused persons remaining detained for months or years before trial.[24] The only available safeguard for the pre-trial detainees at the moment is the requirement that they be produced in the magistrate's Courts at least once in 14 days for mention so that the Court can look into their condition of detention and to ensure that they are provided with the necessary material support when in remand.

Notably, many pretrial detainees lack legal representation, with a disproportionate number having limited or no formal education, further inhibiting their ability to navigate the justice system or apply for bail review. This creates a system in which poverty is criminalized, and justice becomes a privilege of the few.[25]

The courts, though guided by the Bail and Bond Policy Guidelines (2015)[26], often fail to consider non-custodial alternatives or revise bail terms in light of indigence. Worse, minor and non-violent offences, such as creating a disturbance continue to lead to prolonged remand, despite being punishable by short or non-custodial sentences upon conviction. The criminalization of petty offences is thus directly linked to the swelling remand population.[27]

Finally, there is a glaring lack of legal, institutional, and public accountability. Monitoring mechanisms are weak, budgetary allocations to correctional services remain low, and the rights of both detainees and prison staff are routinely ignored. The net effect is a system sustained by indifference, where constitutional safeguards are rendered meaningless in practice.

[23]Patrick Lumumba Aghan, The Association Between Custodial Rehabilitation and Recidivism of Male Prisoners in Kenya: The Case of Nairobi Remand Prison (2016).
[24]National Council on the Administration of Justice (NCAJ), Guidelines on Law and Practice for the Management of Petty Offenders (NCAJ)
[25]National Council on the Administration of Justice (NCAJ), Criminal Justice System in Kenya: An Audit – Understanding Pretrial Detention in Respect to Case Flow Management and Conditions of Detention (2016) NCAJ, Legal Resources Foundation Trust and Resources Oriented Development Initiatives.
[26]Ibid
[27]Ibid

Legal aid is a cornerstone of access to justice, especially for marginalized groups who cannot afford legal representation. In Kenya, despite constitutional guarantees and enabling legislation, legal aid remains deeply inadequate, leaving thousands—particularly remandees, women, children, and the poor—unable to defend their rights in court.

What should be done?

Reforming Kenya's remand system requires a multifaceted approach, one that addresses immediate conditions, medium-term institutional weaknesses, and long-term structural change.

1. Enforce bail as the norm, not the exception

Courts must apply the presumption of innocence in practice by treating bail as the default position in non-violent and petty offence cases. There are situations under which pretrial detention is warranted. When there is good reason to think an arrestee, if released, will commit a crime, threaten a witness, or abscond, he should be held pending trial. But these conditions do not apply to most pretrial detainees.[28] The vast majority of pretrial detainees pose no threat to society and can be safely released pending trial. Simply put, they should not be in pretrial detention. The Bail and Bond Policy Guidelines[29] should be strictly enforced, with special attention to an accused person's financial capacity. Judicial officers must be empowered and obligated to revise unaffordable bail terms *Sua sponte*.

2. Expand access to legal aid

The particularly poor conditions afforded pretrial detainees serve an instrumental purpose. In numerous jurisdictions, police and prosecutors seek to use the pretrial detention period as an opportunity to obtain confessions that will lead to a conviction. Many authorities condone deplorable pretrial detention conditions as a tool to induce arrestees to incriminate themselves in order to achieve a non-custodial sentence or transfer to a prison with better conditions. In some places, pretrial detainees are routinely assaulted and tortured to get them to confess to the charges against them. Assistance from international donors,

[28]Commission on Administrative Justice (Office of the Ombudsman), An Investigations Report on the Alleged Maladministration at the Nairobi Remand and Allocation Maximum Prison (September 2020).
[29]Ibid

intended to enhance the capacity of law enforcement, may be accelerating global detention without addressing its excesses.[30]

It is for this reason that The Legal Aid Act, 2016[31] must be robustly implemented and funded. Legal representation at the earliest stages of arrest and arraignment is essential to avoid arbitrary detention. Paralegal support and public defender schemes, especially at magistrate level should be institutionalized and constitutional right of legal representation guaranteed the whole period of pretrial detention.

3. Decriminalize petty offences and promote non-custodial measures

Laws criminalizing minor misconduct such as loitering, hawking, and disorderly behaviour must be repealed. Alternatives such as community service orders, conditional cautions, and restorative justice programs should be mainstreamed, especially for juveniles and first-time offenders. The national government should develop a sustained national strategy to limit the use of pretrial detention and encode it as an exceptional measure only. Such a strategy should involve the collaboration of all criminal justice agencies, including the judiciary and the legal profession, as well as relevant civil society organizations.

4. Improve detention conditions and oversight

In rare cases, pretrial detention serves important functions: namely, to ensure that arrestees who pose a risk of absconding

Decriminalizing petty offences is not about condoning misconduct—it's about rejecting injustice. It aligns with Kenya's constitutional values of dignity, equality, and non-discrimination, while freeing the justice system to deal with real threats to society. It's time to stop criminalizing poverty and start advancing fairness for all. In Kenya, these offences clog the justice system, fill remand prisons, and disproportionately target the poor and vulnerable.

[30]Ibid
[31]Legal Aid Act, 2016

stand trial; that arrestees who present a violent danger to the community do not commit serious crimes pending trial; and that unscrupulous arrestees do not intimidate witnesses or otherwise interfere with the lawful collection of incriminating evidence. In such legitimate circumstances, immediate investment must be made to improve water, sanitation, food, and healthcare access in remand facilities.[32]

The UN Special Rapporteur on Torture[33] affirms that the conditions remandees are subjected to amount to cruel, inhuman, or degrading treatment or punishment. To remedy this, regular inspections by the Kenya National Commission on Human Rights, judiciary committees, and civil society should be mandated under statute. The Mandela Rules[34] must guide daily practice.

5. Address structural and resource constraints

The Judiciary and prison services require urgent resourcing: staffing, infrastructure, training, and remuneration. There is also need to leverage increased funding and development aid for pretrial detention reform by linking improved pretrial justice practices to protecting not only the rights and wellbeing of detainees themselves, but also wider societal benefits such as reduced torture and corruption, improved public health, and better performance of criminal justice systems.

The rights of prison officers must also be upheld, in recognition of the fact that humane working conditions for them contribute to humane treatment of detainees. As Rule 74 of the Mandela Rules[35] puts it, prison work must be seen and supported as a social service of great importance.

Conclusion

Kenya has ratified the International Covenant on Civil and Political Rights and committed to the Mandela Rules, both of which insist on humane treatment for all detainees and uphold the presumption of innocence. Yet, the current state of remand centers speaks to a deeper institutional failure as current pretrial custodial programmes in Kenya are more suited for punishment rather than temporary holding.

This paper has shown that remandees in Kenya are not merely being held, they are being punished. The erosion of the presumption of innocence within these facilities is not just a legal contradiction but a humanitarian disaster. Reforms must be bold and uncompromising. Fewer people should enter remand, and those who do must be treated with dignity and fairness.

As Albie Sachs, former South African Constitutional Court judge and once a political prisoner so powerfully observed:

"***Even if you cannot at first provide good living conditions…you can at least ensure that personal dignity is respected***."

That is the bare minimum.

And it is long past due.

Lucy Kamau is in her fourth year of law studies at the University of Nairobi, and **Lynne Aluoch** is in her third.

[32]Faith Wanjiku Irungu, right to an Adequate Standard of Living: A Case Study of Kenyan Prisons (LLB Dissertation, 2019).
[33]Manfred Nowak, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Addendum (2010) UN Doc A/HRC/13/39/Add.5.
[34]United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (adopted 17 December 2015) UNGA Res 70/175.
[35]Ibid Rule 74

THE NEW VANGUARD

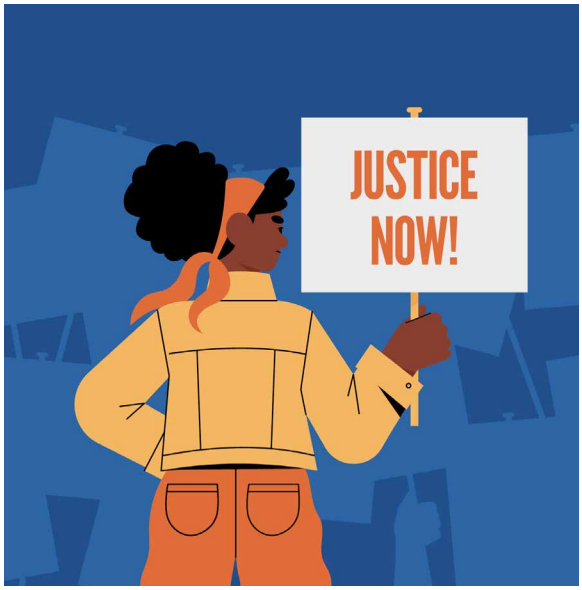
Youthful population's digital activism: A force to reckon with

By Kola Muwanga

By Nyamboga George Nyanaro

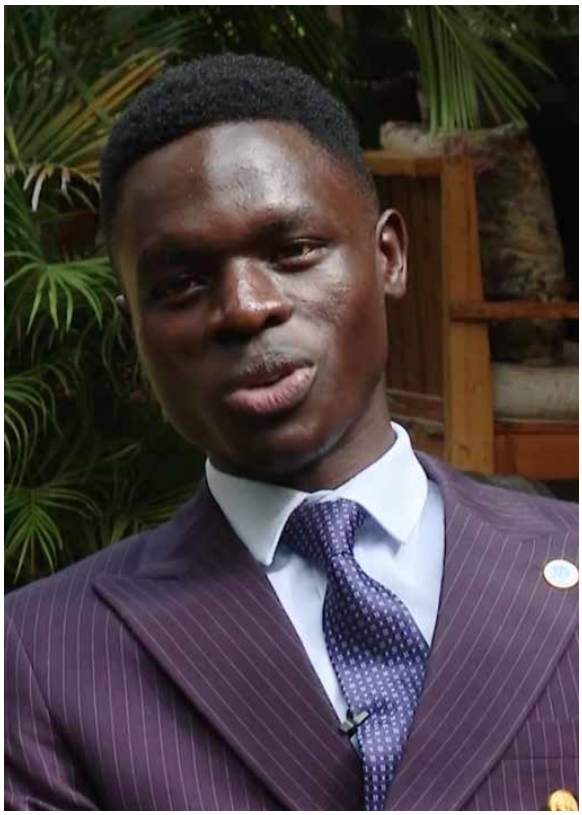
1. Introduction

"All sovereign power belongs to the people of Kenya and shall be exercised in accordance with this Constitution." (Article 1(1) of the Constitution of Kenya 2010). Barely two years after ascending to power, the Kenya Kwanza regime has come under heavy criticism due to breaching a social contract they had with the electorates drawn under their PLAN. Such breach has been characterized by the swift passage of harsh, repressive, and punitive laws, increasing the cost of socioeconomic needs through oppressive laws and models (Mangale & Schmidt, 2024). Brazenly, politicians displayed wealth and opulence at its core amidst widespread widening poverty gaps of the citizenry, further affirming the perceived notion of the existence of the dichotomous class of the haves and have-nots or the bourgeoisie and proletariat or even those of a good, rewarding and superior god versus those of a lesser, forgetful and unforgiving god (Milanovic, 2019). It painted a gloomy picture and reminded us of an adage in the old days that "all animals are equal, but some animals are more equal than others"(The Orwell Quotes Right-Wingers Never Mention, 2019). Frustrated by this situation, the Youthful population



Kenya and much of Africa are home to a youthful population with unprecedented access to mobile phones, the internet, and social media. This tech-savvy generation is increasingly turning to digital activism—the use of online tools to organize, advocate, resist, and mobilize—to confront injustice, amplify their voices, and demand accountability from leaders and institutions.

organized protests in Nairobi and other parts of the country, criticizing our nation's CEO, President William Ruto's failure to uphold the social contract promised under "THE PLAN," which had narrowly secured their 2022 election victory and ascension to power. (Ibeh, 2024) How things in the view of the frustrated youthful population turned out after two years of ascending to power is better described by the late French philosophical writer Charles Louis de Secondat, Baron de la Brède et de Montesquieu, 1689–1755, that 'power corrupts and indeed absolute power corrupts absolutely'(Bok, 2014). The protests were, therefore, a socio-economic justice call by all Kenyans across the 47 Counties, demanding accountability through the manner in which the affairs of the country are run.



Joshua Okayo is a Kenyan law student, youth leader, and digital activist who gained national attention in 2024 due to his involvement in the anti-Finance Bill protests and the subsequent ordeal he endured.

According to Paul Tiyambe Zeleza, this digital revolution sparked shock-wave responses like the Cabinet's dismissal, the Attorney General's exit, and the President's declining of Finance Bill 2024 and accompanying austerity measures cutting across the Executive, Legislature, and Judiciary (Tiyambe Zeleza, 2024). Yet this was of the very irreducible minimum asked by the youth who felt the nation's leadership trajectory was veering in the wrong direction (Ogetta, 2024). With roughly 80% of Kenyans under thirty-five, their frustration spilled over from platforms such as X (formerly Twitter), where unfulfilled and endlessly postponed promises of economic growth and development have become tiresome. In the Kenya Kwanza regime's saga, Gen Zs erupted in fury over President Ruto's betrayal, as his cynical mobilization in 2022 under the grandiose banner of "THE PLAN" morphed into glaringly false promises of entrepreneurial opportunities and decent jobs, swiftly disintegrating their renewed hopes for an economic renaissance. His campaign mantra theatrically leveraged the "dynasty versus hustler" narrative, pitting the impoverished majority against the affluent aristocrats and casting himself as the tireless savior of the downtrodden (The Economist, 2024). However, this tale has degenerated into a politically deceptive wild goose chase, yielding nothing of tangible socioeconomic value, depicting one of the two constants in the political arena, betrayal thus betrayal in the city (Wanjiru Mwangi, 2017).

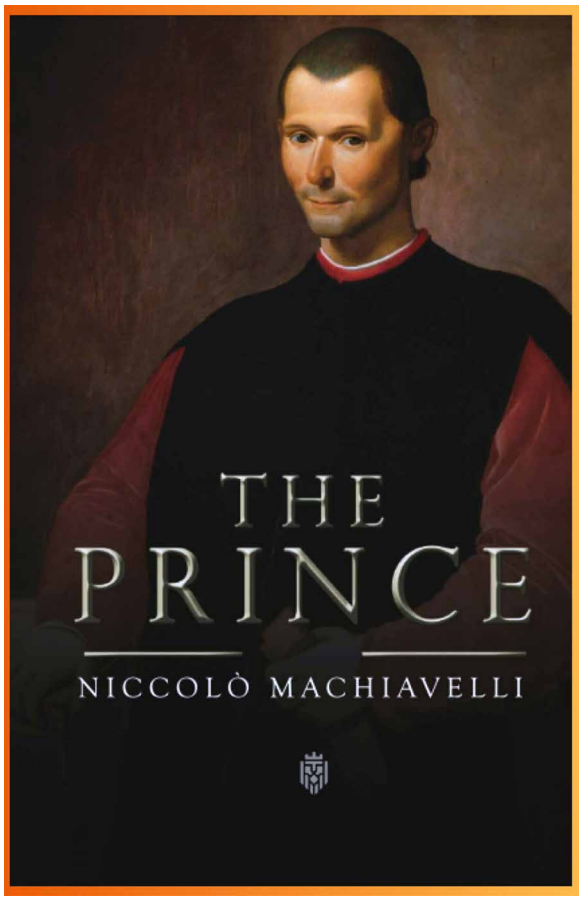
What astonished the political class about this wave of digital activism was that it was neither led nor facilitated by cynical politicians. In fact, abductees who survived the torture of extrajudicial abductions and killings narrated how their torturers forced them to confess who was funding them. A notable example is the Kenya School of Law President, a comrade, patriot and brother, Mr. Joshua Okayo, whose harrowing account, which brought him to tears as he recalled the torture, demonstrated the regime's deep concern regarding the funding and trajectory of the protests. This wave of digital activism cannot be easily co-opted, bribed, intimidated, or isolated, as it is leaderless, tribeless, and partyless, owing no allegiance to traditional parties or coalitions(Mule, 2024). *The organizational architecture is based on contemporary youth's social media, meetings, and engagement in public squares, thereby averting manipulation that is easily achievable through mainstream media and physical squares, thereby moving an indefatigable force to reckon with (emphasis ours).*

A resonant voice across the Gen Zs discourse and plight of normal Wanjiku, Wafula, Zainabu, or Kwamboka rejects untamed and runaway hegemonic neocolonial powers at play, as evidenced by external forces' geopolitical influences, for example, the Finance Bill 2024, which sounded like an international financial institutions'

economic force at play. According to economists, institutions such as the IMF do not know how to put off fires, but they have mastered the art and craft of starting heavily combusting fires (*Kenya/IMF: Align Economic Reform with Rights*, 2024). Gen Z's unspared International Monetary Fund (IMF) advisories' critique (even by emails of concerned Kenyans) sordidly evidenced such institutions' potency to extort, exploit, and marginalize the global south countries such as Kenya due to their developing trust.

In his book, *The Prince*, Niccolo Machiavelli once said that "whoever wishes to foresee the future must consult the past; for human events ever resemble those of preceding times." He further reasoned that "this arises from the fact that they are produced by men (in our instant case politicians) who ever have been and ever shall be animated by the same passions and thus they necessarily have the same results." Recently experienced protests were the result of a cocktail of events that blew up when Kenyans could no longer tame their rage (*Niccolò Machiavelli, the Prince* (1532, 1882), 2022). History records the eruption of the protests to have metamorphosed after controversial President Ruto's expensive tour to the United States of America, whose costs angered citizens due to its cost. In contrast, JSS teachers decried their permanent non-confirmation by TSC.

According to Machiavelli, human actions and outcomes are influenced by timeless and unchanging factors such as human nature and motivations. By examining the patterns and lessons of the past, Gen Z gained valuable insights into the present, struck while the iron was still hot, and made more informed decisions about the future by challenging the incumbent status quo. We had been rattled, and we were ready to dare and bite (*What Can You Learn from Machiavelli?* 2011). This serves as a reminder that history is a valuable teacher and guide in navigating the complexities of human affairs.



Niccolò Machiavelli (1469–1527) was a Renaissance political philosopher, diplomat, historian, and writer, best known for his treatise The Prince (Il Principe), written in 1513. He is often referred to as the father of modern political science due to his pioneering approach to power, statecraft, and realpolitik.

More angering was the trip's geopolitical effects, which saw Kenya being christened by President Joe Biden as a major non-Nato Ally. At the same time, the majority of African Countries, noting the exploitation often associated with the Global North's association, have slowly reasserted their non-alignment(Cabral, 2024). Andrew Wasike (2024) noted that among the paradoxes and ironies of Kenya's pledge to deploy the first batch of police officers to Haiti emanated from the inability of the enforcement agency to combat banditry-infested areas such as Kapedo and Baragoi (Cheng, 2023). How did Kenya's leadership morph into the unexpected leadership change and trajectory? The following section briefly revisits the history of Kenyan liberation.

Dedan Kimathi Waciuri (1920–1957) was a Kenyan freedom fighter and senior military leader of the Mau Mau Uprising against British colonial rule in the 1950s. He is remembered as a symbol of Kenya's struggle for independence, often revered as a martyr who paid the ultimate price for liberation.

2. Going back to the basics and roots: Kenyans historical archive

Political activism in Kenya traces back to post-World War II, when, much like the current Gen Z uprising, a constellation of aspirations and forces clamored for self-rule. Africans became aware that the colonizers were humans and could be overthrown (Mwaura, 2024). What sets this third revolution apart from other political movements against tyranny is its quest for transparency, stemming from malignant corruption, demands value in return for exorbitantly levied taxes, nepotism, and party loyalty triumphing over meritocracy in appointments, silencing of dissent, increased enforced disappearances, extrajudicial killings (even minors), peaceful protesters being labelled as "treasonous criminals" by a president in scandal after scandal-infested regime, and parliamentarians elected to represent the will of the people betraying their constituents at the behest of their party leaders (Paul Tiyambe Zeleza, 2024). A striking similarity between this and other movements is the citizens' relentless drive to achieve a functionally inclusive and sustainable democracy ruled by Pan-African leaders committed to the state and society's development. The first such movement occurred when Kenyans were on the cusp of attaining self-rule, clamoring for independence from the gruelling and torturous colonial regime and its legacy. The second movement clamored the democratic order and the eradication of tyrant-based postcolonial nepotism and dictatorial governance (Nantulya, 2024). This third wave, coined by the title of the column, emphasizes accountability and socioeconomic transformation.

According to the Kenyan youthful revolutions, the torture of abducted activists, illegal addresses, and alleged payment of a faction of digital influencers to quell the movement mirrors neocolonial legacies characterized by political activists post-WWII. In the afore-cited clamour for self-rule, they were subjected to gruelling killings by the police force, long hours of torture, and even arrest and detention without trials, without forgetting the colonialist playbook of compelled confessions (*The First Line of Defense: Grassroots Activists and Protection in Kenya*, 2023). Moreover, the likes of Dedan Kimathi and the MauMau rebellion were resilient in their quest to see Kenya unchained and unshackled from colonial whims of power, waging war from various fronts, from guerrilla warfare tactics to using scorched earth policies, protests, civil disobedience, and even go-slows played by Tom Mboya-led labour law movements, and the mushrooming political parties akin to 2022, United Democratic Alliance (UDA), to erode colonialists elitists occupations,

Tom Mboya was a pivotal figure in Kenya's labor movement and independence struggle. His leadership in trade unionism not only advanced workers' rights but also provided a platform for political activism during a time when African political organizations were suppressed.

and embracing Kenyan socialism through nationalistic parties such as the Kenya National African National Union that emerged under the stewardship of the Mzee Jomo Kenyatta (Moore, 2018). *No man can imprison an idea whose time is ripe (emphasis)*.

Agitating forces such as the Kapenguria six saw the culmination of nationalistic struggles metamorphosizing into the 1963 decolonization of Kenya to attain self-rule; hence 1st of June became Madaraka Day (Lewis, 2007). At the time, revolutionaries such as Tom Mboya and Dedan Kimathi represented a large faction of young male and female charismatic leaders devoted to political mobilization and struggles for a worthy, common cause. This was a watershed moment and a mirror of the true independent movement in Africa. Comparatively, Martin Luther King Junior was 26 in 1955 when he led a Bus Boycott in Montgomery, culminating in national prominence that led to his mass following baptizing him as a civil leader(Montgomery Bus Boycott, 2024).

Kenyan youth political activism gains evidenced by 1 June 1963 self-rule (*Madaraka*) and 12 December 1964 independence (*Jamhuri*) were preceded by movements and protests and opposition to colonial structural legacies and social and ideological schisms which contravened ideals of nationalist movements such as the African National Union and Kenya African Democratic Union (KADU) (Kasajja Byakika, 2021). The genesis of the 2nd revolution emerged, considering that the Kenyan political throne, instead of being inherited by workers and peasants who had been victims of British torture and racial segregation, Zeleza's understood "murderous gulag in the British Concentration camps" and those who

suffered human and degrading treatment during the tenure, was ascended to by aspiring national bourgeoisie and political opportunists that had been secretly loyal and "went in bed" with the oppressor. The intoxicating clamour to reap the benefits of democratic freedom was soon replaced by the Kenya African National Union (KANU)'s one-party autocracy (Zeleza, 2024)

Malleable, tactile, and booming dreams of economic take off, transformational growth, and development quickly morphed into the revolutionaries of the time, referred to as authoritarian developmentalism. This was evidenced by an overreliance on foreign aid, rising socio-economic inequalities highlighted by the widening gap between the rich and the poor, mass unemployment, developmental kleptocracy, and underemployment (emphasis).

According to Professor Paul Tiyambe Zeleza, President Ruto, being Moi's political grandson, heavily borrows from President Moi's dictatorship template, manual or playbook, evidenced by political instincts justified as ruthless, disdain for democratic values and governance, and populism, "notwithstanding his rhetoric often beguiling foreign audience, which, despite brainwashing Kenyans to vote for him in his 2022 General Elections, no longer yields any persuasive value, considering Kenyans are awake and can no longer be fooled easily (Zeleza, 2024). Teleza further notes that the rapidity with which President Ruto and the United Democratic Party (from now on, "his political outfit") have lost public trust and confidence barely two years after taking charge of the country remains unprecedented in the annals of Kenya's political history. This is majorly attributed to his government's remorseless response to a youth uprising, evidenced by the arbitrary security forces' massive crackdown, the killing of peaceable protesters on 25th June 2024, for example, Rex, Beastly, and a twelve-year-old child that was massively shot twelve times only for him to remorselessly ask Linus Kaikai in an interview, "he's alive, right?" Activist abduction, protesters being levelled, trumped up charges, and sympathizers being intimidated, according to Zeleza, is a straightforward extract from the Moi dictatorship's repressive playbook (Ogeta and Onyando, 2024). Borrowing from his own words, the president exceedingly exhibited high levels of "radarless and clueless" on the reality of what had engulfed the nation. Probably, he had sunk deeply into political self-denial, unprecedented hopelessness, or self-abnegation to the point of no return (emphasis).

The Emperor has no clothes, the Emperor is naked, and the Emperor is drunk

History appreciates the wisdom of those who went ahead of us. Those who selflessly fought and laboured to deliver our motherland of political freedom, emancipation from political jaws, and expansion of our vast and progressive democratic spaces. The emperor has no clothes. He is naked and Machiavellistically drunk in ego (Capuzzo, 2016). King Lear's play by William Shakespeare, which is widely regarded as his finest work, the king is an allegory that illustrates the chieftaincy figure who is drunk with pride, consumed by ego, in desperate need of control and his subjects' praises who makes a series of mistakes and plunders which leads to his own engineered self-destruction and downfall leading to his eventual an unhonorable death by listening to his immoral eldest two daughters and bad advisors in the palace or kingdom who exist only to praise him for their own personal gains and political expediency or survival (Al Zoubi, 2024). Though caring for him greatly and always seemingly wanting the best from and for him, King Lear chooses to reject his youngest daughter Cordelia because she refuses to flatter, flirt, feed, caress, Coquet, banter, and massage his bloated ego, like others by telling him the truth even at the expense of her losing her

Gen Z harnessed the power of digital platforms to organize and amplify their protests. Utilizing social media channels like TikTok, X (formerly Twitter), and WhatsApp, they disseminated information, coordinated demonstrations, and educated the public on the bill's implications. Innovative tools, such as AI-driven chatbots, were developed to explain the bill's impact, while real-time communication apps like Zello facilitated on-the-ground coordination

inheritance (*King Lear Quotes: Flattery | SparkNotes*, 2024).

The king falls into error after the other via Machiavellian characters, which are portrayed when he arrogantly "declares" that he has ultimate powers, is fond any questioning, and thus can choose to ignore his subjects, who are his ultimate employers. His inability to discern and see the truth leads him to lose power, wealth, his senses, his truest daughter Cordelia, and eventually his own life. However, we, the Gen Z akin to Cordelia, refused to be yoked and bound by Kenyans' commonly identified merciless oppressors, manipulators, abductors, and archers, thereby arising to the occasion and shining for their time had come (King Lear Quotes: Flattery | SparkNotes, 2024). *Following the 2022 elections, Kenyans thought they had broken loose from Stockholm syndrome and had been delivered from the eternal bondage of Pharaoh and Egyptians. Kenyans had clamored to free themselves from the now elusive bad governance, budgeted corruption, pilfering of public funds, and betrayal by the very electorates they overwhelmingly voted for (emphasis).*

3. 2024 Finance Bill as a catalyst for Gen Z's revolution

The Finance Bill 2024 marked a watershed and monumental moment in Kenya's political landscape. Oppressive provisions in the bill, coupled with lingering outrage over a controversial house levy that had been unconstitutionally incorporated into legislation with the courts' controversial support, triggered a political revolution led by Generation Z et al. From the outset, there was widespread verbal opposition to plans to increase taxes on a broad range of essential household items, as Kenyans were already grappling with the high unemployment levels, bangs of post-covid

In recent years, Wanjigi has been vocal about Kenya's economic challenges, criticizing the government's handling of public debt and economic policies. He has called for new leadership focused on addressing the country's economic issues and prioritizing the interests of ordinary citizens .

2019, and ever-increasing and sky-rocketing inflation rates. The bill's proponent justified tax hikes by citing the government's commitment to repaying staggering public debt, whose full details remain a mirage to most Kenyans, scanty and unknown to the citizenry(Africa News, 2024). However, many Kenyans criticized the lack of transparency surrounding the debt situation, echoing dissenting voices such as those of activist Jimmy Wanjigi and Senator Okiya Omtatah, who claimed that Kenya had already fully repaid its debt(Mati, 2023). Critics argued that the government could not further burden Kenyans to pay off debt while the economy remained in a shambolic, sorry, and dilapidated state, and the gap between the rich and poor continued to widen. Another faction of protesters linked increased taxation to massive corruption, highlighting a lack of meaningful public participation, as mandated by the Constitution of Kenya 2010 and the Public Finance Management Act of 2012 (Article 10(2) of the Constitution of Kenya 2010.)

In Fresh Produce Exporters Association of Kenya (FPEAK) and three others v Cabinet Secretary, Ministry of Agriculture, Livestock and Fisheries through Attorney General & three others; Kenya Flowers Council (Interested Party), Judge A.C. Mrima laid grounds for meaningful public participation with reference to the *court of Kenya 2010 determination in 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 (Affected Party):* Firstly, the subject matter should be clearly articulated and in the case of the Finance Bill of 2024, the general public was expected to clearly understand the contents of the bill. Members of the public and stakeholders were supposed to be engaged using clear, simple, and accessible media of engagement. In the spirit of providing a balanced influence opportunity, the public was supposed to be given an equal opportunity to meaningfully contribute to the final outlook of the bill. Considering the impracticality of having approximately 55 million Kenyans offering their views, an effective and inclusive representation from all parties that the bill stood to affect sufficed. Lastly, the public was supposed to be adequately informed and engaged in the formative stages of the bill, and all their constructive views reflected on the final draft bill presented to the National Assembly for the second reading and consequently put into a vote *(Fresh Produce Exporters Association of Kenya (FPEAK) & 3 others v Cabinet Secretary, Ministry of Agriculture, Livestock and Fisheries through Attorney General & 3 others; Kenya Flowers Council (Interested Party) (Constitutional Petition E236 of 2021) [2022] KEHC 13591 (KLR) (Constitutional and Human Rights) (30 September 2022) (Judgment)* [114]-[122]). Therefore, these laid ingredients

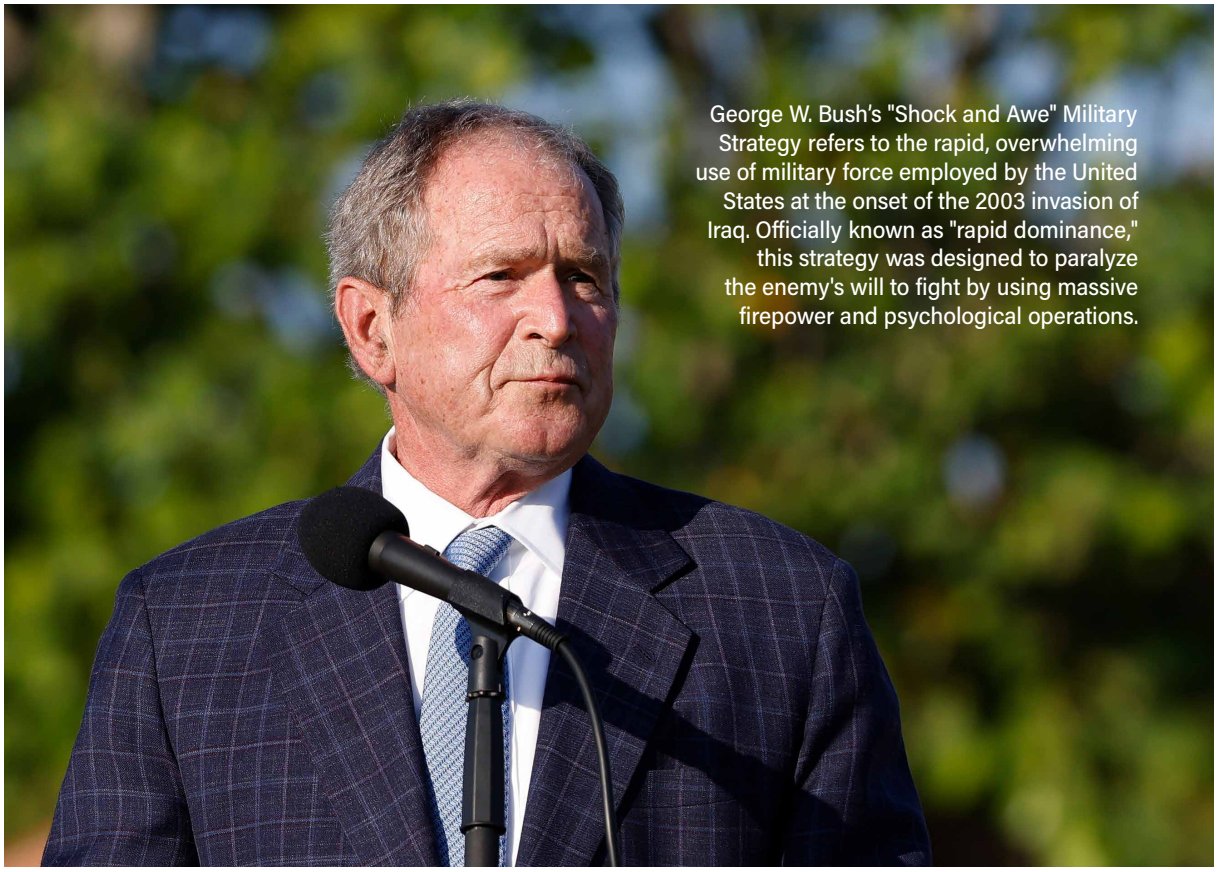
of meaningful public participation by the court's legal application and interpretation ensure that public participation is not merely a cosmetic exercise or formality, but rather a substantive part of the governance process.

He who lives by the sword dies by the sword: Aluta Continua

Our president, being a shrewd figure in the political class, seems to have borrowed a leave from the former US president, George Bush's "shock and awe" military strategy to effect and execute his end political game. This strategy is designed to ensure the wielder has rapid dominance and possesses unchecked and unbalanced powers, which he seeks to unleash and suppress, threaten, gag, muzzle, silence, impede, disorient, dismiss, out-muscle, arm-twist, blackmail, force, paralyze, disarm, incapacitate or overwhelm the citizenry, the governed, the masses or the civilians through an avalanche of this power (OMBATI, 2024).

This seeks to weaken and affect the will power, perception, and understanding of the "adversary" to fight or respond to strategic government policies by way of imposing a regime of shock and awe.

Further, the strategy is used to suppress the hoi polloi or the civilians to silence and push them to a desired state of helplessness and lack of will through selective denial of information, dissemination of disinformation, overwhelming combat force, and rapidity of actions without the input of those to be affected. We have witnessed a raft if controversial new laws. If not checked or repealed, they will impair our future undertakings. The shock and awe strategy has been employed (*Countering Disinformation Effectively: An Evidence-Based Policy Guide*, 2024). The controversial passing of Bills like the Finance Bill (2024) sought to radically change the tax regime. The new proposed raft of tax measures was aimed at hiking the price for essential items(OMBATI, 2024). There is a hidden



George W. Bush's "Shock and Awe" Military Strategy refers to the rapid, overwhelming use of military force employed by the United States at the onset of the 2003 invasion of Iraq. Officially known as "rapid dominance," this strategy was designed to paralyze the enemy's will to fight by using massive firepower and psychological operations.

The Gen Z-led protests signified more than opposition to a single bill; they marked the emergence of a digitally savvy, politically conscious generation ready to hold leaders accountable. By leveraging technology and grassroots organizing, Kenyan youth have redefined civic participation, setting a precedent for future movements both within the country and across the continent.

hand behind all these taxes: the hand of the masked puppet master pulling strings attached to the puppet dog. When you see a dog overworking on a compound, check within the vicinity. The good paymaster may be around watching. Some of these Bills were hurriedly passed, but some of the government officials and MPs could not articulate their support well (emphasis).

The MPs did not know the content, context, and container. They don't know what is good nor the implications therein. For them, they were given "Orders" by their generals to pass the Bill without question. They were to dance properly to the tune and beat of the puppet master and, if need be, dance the loudest. This was seen in Kenya's IMF and World Bank-backed medium-term revenue strategy details on how the government was to increase revenue through a myriad of tax measures in the next three years (*[4 of 5] Invisible Man, Chapters 16-20, by Ralph Ellison (1947) - NowComment*, 2024). This was a pre-condition for the IMF and the World Bank cash through the shock and awe strategy despite the government itself not being sure whether and how some of these controversial tax proposals would be executed.

President Ruto has since declined to sign into law the punitive Finance Bill that most parliamentarians passed with chest-thumping bravado, referring it back to the National Assembly for withdrawal and a fresh legislative drafting process, and has also dissolved nearly whole Cabinet and the Office of the Attorney General, save for the Prime Cabinet Secretary who doubles up for the foreign affairs docket. Mounting pressure led to the resignation of the Inspector General of Police, Japheth Koome. Still, the Generation Z Allied movement demands that all those involved in the extrajudicial killings be brought to justice, regardless of their dismissal or resignation. This demand extends to the reported pilferage of funds and abuse of power within the institutions they headed. Human

rights activists are also mounting pressure for accountability for those entangled in the authorized extrajudicial killings of innocent protesters, including Dr. Margaret Oyuga, Rex Kanyeki Masai, Frank Okoth, Nick Adams, Erick Njeru, David Chege, Ian Kenya, Belinda Achieng, Edwin Otieno, Eric Shieni, Beasley Kamau, Ericsson Mutisya, Credo Oyaro (17 years old), Emmanuel Tata, Ibrahimu Kamau Wanjiku, and others yet to be identified ((*X (formerly Twitter)*2024).

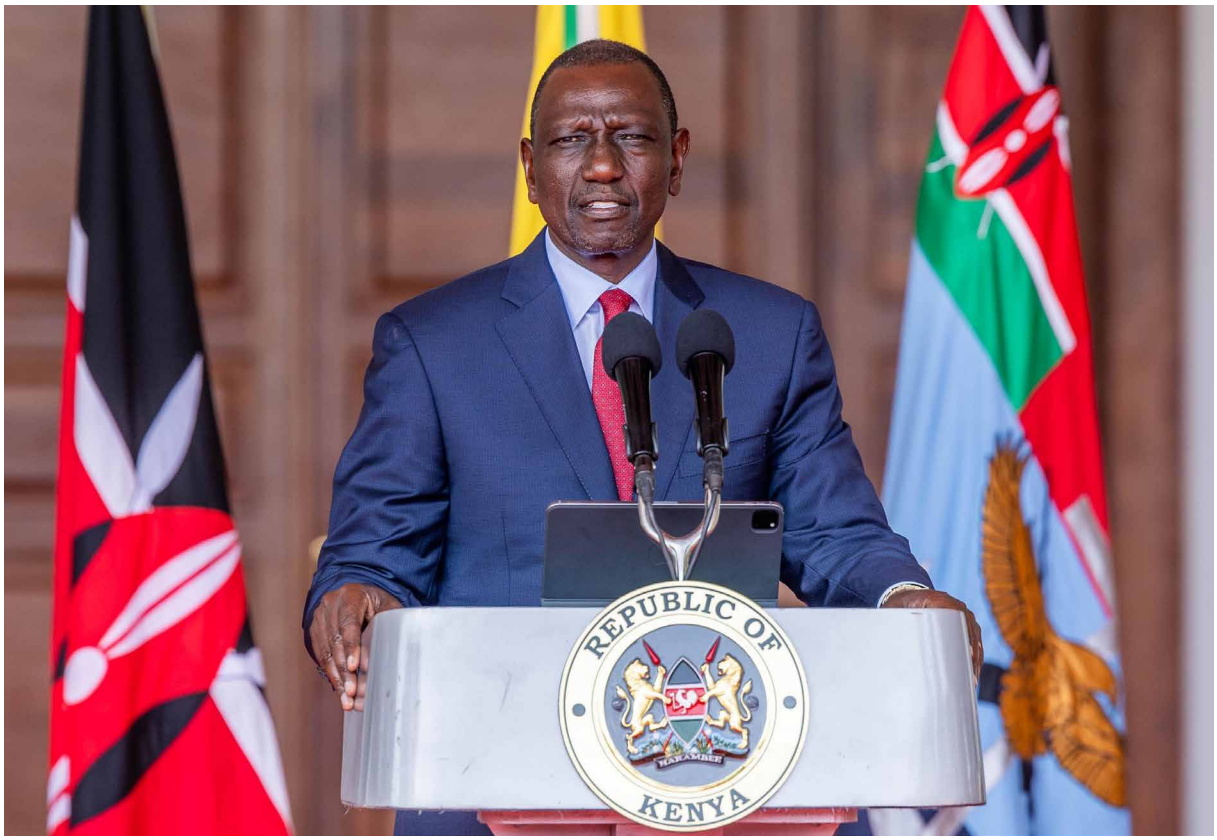
With trouble looming, Gen Zs and youthful anti-tax protests have attracted the interests of international monetary institutions and lenders. High stakes are focused on the president and his core team of heavily criticized economic advisors and diplomats, who, due to their stubborn stance against complying with the citizenry's demands, have come under intense scrutiny. Some are terming his tenure as a "one-term presidency." This criticism includes his creation of unconstitutional offices upon ascending power, which has increased the national wage bill that could have been reallocated to key economic pillars such as education, agriculture, and manufacturing (Warah, 2021). According to the signed Appropriations Act of 2024, these sectors experienced budget cuts, while members of parliament and executives were set to receive pay increases (*The Official Website of the President of the Republic of Kenya*2024). Meanwhile, the fate of Kenyan medical interns and the confirmation of Junior Secondary School teachers as permanent employees remains unresolved (Purity). Moreover, the youthful movement and legal experts were further angered by President Ruto's decision to send off police troops to the Caribbean nation violence-hit Haiti, leaving behind inadequate police that saw unwarranted deployment of the military to assist the police in containing the protests (Siele, 2024). Justice Mugambi's controversial decision to merit the President and CS for defense's reverse constitutional engineering surrounding military deployment pursuant to the

Justice Lawrence Mugambi

Constitution of Kenya 2010 was, according to Malidzo, an affront to the rule of law and unjustified given the renowned stature of the High Court in preserving constitutional order (Nyawa, 2024). Fortunately, military deployment, contrary to the perception of being ruthless for protesters and contrary to the police that had indiscriminately fired teargas canisters and bullets on peaceful protestors, did not engage the patriots in any arbitrary way. Media outlets recorded youthful protestors associated with the military and, in some instances, hanging on military vehicles while chanting anti-punitive bill songs and #Rutomustgo slogans.

Coming to the age of digital activism, a new wave

Thanks to President Mwai Kibaki's introduction of free and affordable education and the rise of digital activism, Kenyan democracy matured. More Kenyans, especially Gen Z and Millennials, are now aware of their sovereignty, a development furthered by the 2010 Constitution (Ishmael Munene, 2022). Despite history's tendency to prove doubters wrong, the government economic advisor David Ndii



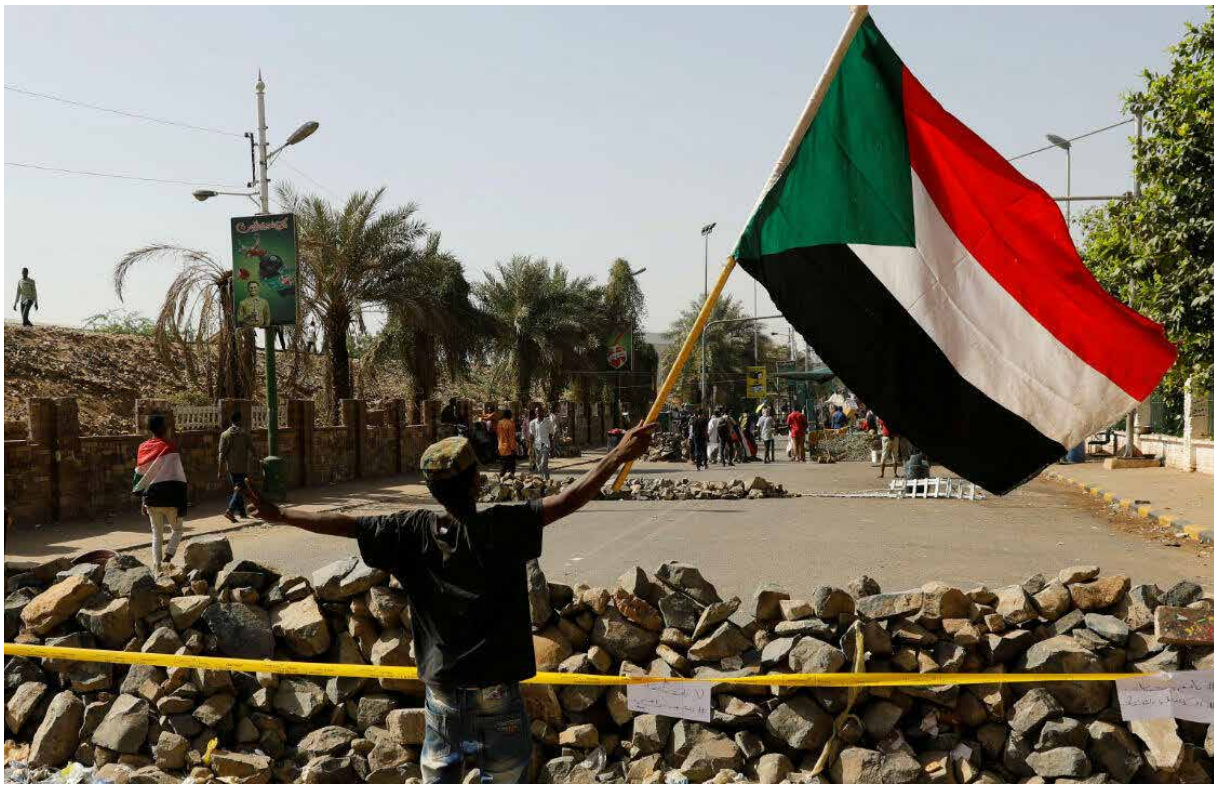
The intensity of the protests led President William Ruto to withdraw the Finance Bill on June 26, 2024. Subsequently, significant political shifts occurred, including the dissolution of the Cabinet and the incorporation of opposition figures into the government. These actions underscored the protests' impact and the government's recognition of the youth's collective power.

dismissed the youth's anti-tax movements as inconsequential, referring to them as "digital wankers", while legislators deemed them ill-mannered and ill-advised (Citizen Reporter, 2024). As Tiyambe noted, seemingly stable conditions can be quickly overturned by massive protests. In a surprising turn, Reuters highlighted the once-dismissed digital activism: "*Over just one week, what began as an online outpouring of anger by young tech-savvy Kenyans on proposed taxes on bread, sanitary pads, and diapers has morphed into a nationwide movement untethered from politicians who have traditionally rallied the masses* (physically and through political enticements) (Ross and Okoth, 2024).

Leaders allied to Ruto's dismissive tone regarding the protests have slowly toned down, even the majority leader toning down his view that protestors were a plan of entitled wealthy kids whose kin were able to afford them owning smartphones. Importantly, this youth movement, albeit having its sell-outs and saboteurs (preferably under political leaders' payroll), has largely remained tribeless, leaderless, and party-less, even signaling Baba to step down on his recent insinuation of the ruling and opposition coalitions dialogue (Mogaka, 2024). The inorganic and predictable structure of these Gen Zs has, therefore, made the political elites' traditional routes or sinister tricks of circulation from influential political figures from party to party, asking heads of movements to name their price in exchange for political cooperation and hence a vital autocratic tool of control (Mogaka, 2024). This may explain why abductees are tortured to name the source of the movement's funding and leadership, if there are any (to which none currently exists).

Our leaders, the Kenyan Gen Z, are us. We are part of the big family, patriots, and well-meaning citizenry as underscored in our Constitution's preamble - We, The People of Kenya. We are part and parcel of the long arc and driving force of the 21st-century African reform agenda and movement, driven by passion and eagerness to see tangible change in our nation and continent(Warah, 2024). *This is what our forefathers fought for, and the baton is now in our hands. We may be partyless, tribeless, and leaderless, but deep in us lies the proverbial seven lives of a cat that yearns for a better country for us all (emphasis).* Kenya belongs to all, and the citizenry desires to have an all-encompassing inclusivity in the national transformation where all and sundry will be proud to live without any iota of fear or resentment. All form a larger block that, once well utilized, we shall be content (Masinga, 2018). Let all unite to make the nation a haven of opportunities, prosperity, and value addition.

In recent years, youth have been part of history-making and destiny shapers on the continent of Africa, ranging from Arab Spring uprisings in North Africa in 2011, the Sudanese Revolution that ousted General Omar al-Bashir in 2019 to the 2020 Nigerian #EndSARS protests against the abuse, extortion and killing of young people by the Special Anti-Robbery Squad (Sars) that had gone rogue(*After the Uprising: Including Sudanese Youth*, 2020). The youthful populations refuse to be termed 'treasonous criminals' as they are governed by a code representative of a young generation united for a common and worth cause. In the undying spirit of Ubuntu, they all seek to be given a chance, a chance to demonstrate and showcase what they can do better. Their parents molded and nurtured them to fight injustices, and teachers educated and mentored them to become responsible citizens (United Nations (UN), 1998). They are empowered and capacity built on the strong foundations of national values and



The Sudanese Revolution refers to the series of mass protests, civil disobedience campaigns, and political upheavals that began in December 2018 and led to the ouster of President Omar al-Bashir in April 2019, after 30 years of authoritarian rule. It marked a historic shift in Sudan's governance and ignited one of the most consequential democratic movements in recent African history.

Social media platforms play an increasingly vital role in promoting proper governance, transparency, accountability, and civic participation. When used effectively, these platforms can serve as powerful tools for both governments and citizens to engage in more open, responsive, and inclusive governance.

principles of good governance, guided by the rule of law, patriotism and nationalism. Our men and women of the clergy have taught them the ways of the Lord, service to humanity, and companionship(United Nations (UN), 1998). The state should give them a chance to thrive and create an enabling environment for their hustles, businesses or job creation.

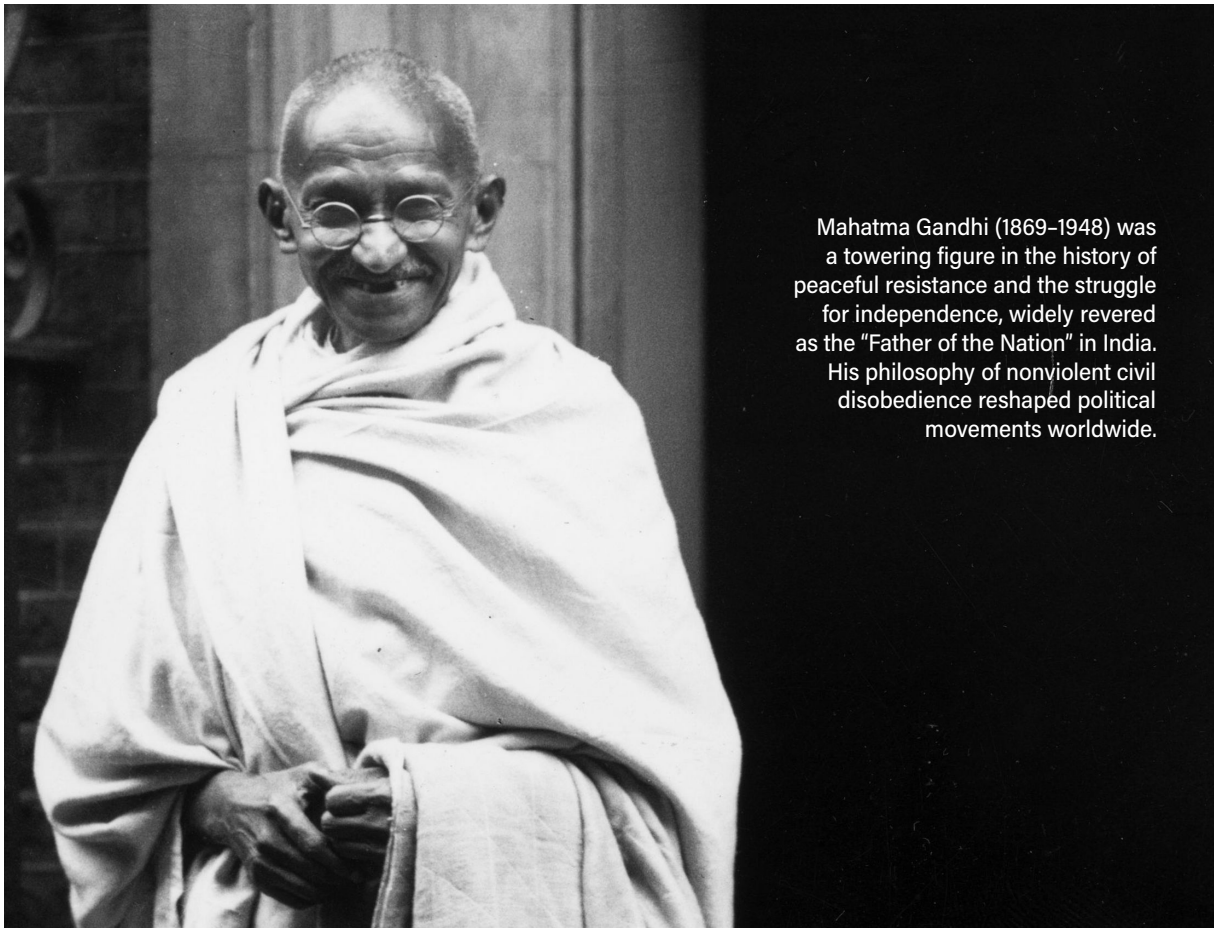
On the other hand, getting a job for an average graduate is no longer tenable. It is whom you know well or what you have(Ellis, 2019). For few jobs available, they are available for formalities, and if you cannot be able to oil or grease the hand of the giver of such "privileges" and rare commodities, you stand minimal, if not zero, the chance of securing one. The lack of a clear leadership structure, such as the Arab Spring and Occupy Wall Street movements pre-2010s, poses a significant vulnerability for radical democratic and political transformation movements, often leading to their demise. Gen Z should consider adopting a decentralized structure to ensure sustainability. The weaknesses of #OccupyWallStreet and #ArabSpring offer valuable lessons to Kenyan Gen Z protesters(Carnegie Ethics Online, 2012). Former President Kenyatta once asserted that the frustrated youthful generation is dangerous. Initially, the youth supported President Ruto's Kenya Kwanza, but their current sense of betrayal suggested diminishing hope in his administration. Former Minister Fred Matiang'i accused Ruto of being a consistent liar, a sentiment echoed by international media and the youth who now say, "he lies all the time, and all the time he lies (OTIENO, 2023)."

Attempts by President Ruto through his aides to infiltrate digital movements have also failed. Protesters on various social media platforms remain steadfast in their stance of being party-less, classless, and tribeless, rejecting the divisive, manipulative, and exploitative tactics of the Kenyan political classes(Opali, 2024). These tactics, often used during election cycles, pit the youth and general population against each other while politicians engage in dialogue funded by punitive taxes on taxpayers(Opali, 2024). This supports the view that Kenya's issue is not a tax revenue problem but an expenditure problem, a characteristic that resonates with both young and old supporters. Undoubtedly, this modern revolution is remarkably run by well-informed protests who are tech-savvy on their social media platforms leveraging to mobilize the nationwide cause for transparent and accountable governance. A publication in the Daily Nation further revealed that: *"What sets these demonstrations apart is their meticulous organization via social media platforms, a tactic which has mobilized thousands of passionate protestors (Nation, 2024)."*

Popular websites that support the success of this digitally savvy movement include Zello for project management and planning, X (formerly Twitter) to broaden the reach of the movement, and WhatsApp and Telegram to coordinate meeting points during physical protests. TikTok, Vimeo, Viskit, and YouTube were used to broadcast the demonstrations, ensuring that elected leaders listened. Artificial intelligence also aids the movement, with experts training GPTs to break down punitive bills and criticize MPs who breach social contracts. Language translation experts have translated the Finance Bill 2024 into local languages, helping older generations understand the bill(Citizen TV Kenya, 2024). These efforts are seen as a political act of decolonizing African linguistics in postcolonial Kenyan society, convincing many parents to join the movement. According to the parents, who have blessed their patriotic children's cause for a liberated Kenya and even joined them, they are surprised by their tremendous contribution to the course. In fact, they are on record remarking that:

"At first, we thought it was a bad idea for our children to take the frontline of the battle against the high taxes. However, Tuesday, the 25th of June 2024 together with our children, we occupied the streets, chanting "Ruto Must Go'…parents also noted, according to the media reports, that "apart from the Finance Bill 2024, parents were compelled to occupy the streets in solidarity with Youth-led peaceful protests as a result of tough economic times, poor governance, and service delivery, while the cabinet and elected members of the National Assembly and Ruto's close aides brazenly displayed opulence and resource wastage. They were also raged by Members of Parliament's accumulation of illicitly acquired wealth at the expense of the continuously milked marginalized population, the slow creation of employment opportunities, meaning the majority of their graduate children were still at home, their HELB repayment periods. At the same time, the government promised them jobs of being a housemaid, driver, and other career-mismatch and ridiculing dark collar jobs abroad" (The Saturday Standard, 24 June 2024). By rising against such impunity, parents noted that Gen Zs had made history by achieving tremendous progress the older folks dreadfully failed to pursue, such as complaints surrounding poor leadership and a lack of accountability due to their fearlessness.

The Church's unholy alliance with the state has not been spared. The youthful movement has boldly criticized and petitioned for the dissolution of this unhealthy and costly relationship, citing its adverse effects on society. Protesters satirically claim that the Gen Z protests against punitive bills, notably the Finance Bill 2024, have driven the church back to God. Clerics are now under scrutiny and



Mahatma Gandhi (1869–1948) was a towering figure in the history of peaceful resistance and the struggle for independence, widely revered as the "Father of the Nation" in India. His philosophy of nonviolent civil disobedience reshaped political movements worldwide.

struggling to dispel allegations of being complicit with the state. The song "*ni wakati wa kupepetwa, pepetwa, kanisa limekwisha pimwa kwenye Mizani ya Bwana*" echoes the sentiment (Team, 2024). *Critics have also highlighted the church's silence during the onset of the protests, only to later call on the state over the brutality meted out on tax protesters, thereby justifying the use of the phrase "too little too late."*

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The president has equally bowed to pressure, evidenced by the highlighted decline to sign the bill that is now shelved, promising to cut unnecessary expenditure such as on the unconstitutional offices such as that of the first lady, office of the Deputy President's spouse, and one belonging to the spouse of the illegally held and occupied office of the Prime cabinet minister(Wasike, 2024). He also dissolves the cabinet regarding what seems to be the constitutional ground of incompetence. He also signed the Appropriations Act while instructing on further budget cuts as part of the austerity measures sought by the new wave of revolutionaries (*President Ruto Signs The Supplementary Appropriation Bill 2024 Into Law*, 2024). The President also engaged in the youthful movement on X Spaces, reinforcing their stance that they do not need a dialogue; rather, they want to see their demands being met.

Way forward

Let us borrow a letter from Mahatma Gandhi that you can chain a man, you can torture a man, you can even destroy his body, soul, and spirit, but you will never imprison his mind. Let my people go...This is a clarion call and fundamental demand of God to Pharaoh (through His messengers Moses and Aaron) for unconstitutional freedom for His people, His beloved people, and a chosen nation. God asserted that Israel belonged to Him, not Pharaoh; and therefore, that they should be free, and free indeed. Those who belong

to God should be free, not bound. God will own his people, though jobless, poor, and despised. God, their Lead Counsel (an advocate of the Supreme Court of Heaven), shall find a time, date, and season to plead their cause.

For sixty-one years of independence, Kenyan people have been held captives and in bondage in chains and shackles and have been "slaves" in their motherland. Being slaves meant that even though the majority of them loved their country so much and had to work hard and do everything, they never had to enjoy the fruits of their labor, and even if they were to be paid paltry, tokenism and peanuts, the astronomical and exorbitant chocking taxes were suffocating them. Mr. President, Dr. William Samoei Ruto, we call for your attention and remind you that he that knew not and did commit things worthy of stripes shall be beaten with few stripes. For unto whomsoever much is given, of him shall be much required: and to whom men have committed much, of him they will ask the more. The Biblical Zacchaeus, the tax collector, when he came back to his senses, climbed down from the sycamore tree (state house) and acknowledged his wrongdoings towards the innocent taxpayers whom he had swindled, milked dry, fleeced, emptied their pockets, accounts/savings and even robbed, he confessed all his "sins" and sought forgiveness before the Lord and man. He further gave back half of what he had unfairly enriched himself with to the poor taxpayers. He restored his strained relationship with them, the taxpayers, and hastily mended the fence with his creator.

These would form the start of a national rebuilding by Gen Z allied reckoning forces as more issues regarding increased funding of manufacturing and agricultural sectors to prevent brain drain through the creation of local jobs. Nonetheless, the Gen Zs allied movement needs all the support from civil society and the embattled Kenya Kwanza regime, ensuring the commitment of the nation and the continent towards a brighter tomorrow.

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A NATION'S ILL

Corruption is a way of life in Kenya: A hypothesis

"Corruption is like a ball of snow, once it sets rolling, it must increase"
Charles Caleb Colton

Corruption in Kenya remains a significant challenge affecting governance, economic development, and public trust. It manifests in various sectors and undermines efforts toward equitable growth and social justice.

By Ouma Kizito Ajuong'

While the definition of the word corruption may vary, the concept of corruption is rather constant. Corruption denotes dishonesty by a person or an organization vested with authority with the aim of acquiring illicit benefits. If there is a need to break it down; corruption is an evil plague that has a wide range of corrosive effect on the society. Therefore, when discussing corruption, one may attribute it to government or persons in the private sector in position of authority.

Corruption in Kenya has become a way of life as hypothesized, meaning it transcends position or sphere of influence. It is found in all sizes - big or small; afflicting the rich or poor. It is in many developing countries like Kenya that the effect of corruption is most destructive. The big question would be why corruption which portends such negativity is considered a way of life in Kenya. Corruption is a way of life in Kenya because it is a matter of power dynamics. As stated, it is about the powerful having their way which often makes it difficult to restrain them. It is the powerful elite in society who make laws and formulate policy. So, how would they make laws that may punish them with regard to corrupt practices? This

The phrase "Corruption is a way of life in Kenya" captures a deep frustration shared by many Kenyans and observers regarding how pervasive corruption has become in society. While it might sound like an exaggeration, the reality is that corruption has entrenched itself in many institutions and daily interactions—often normalized or seen as a necessary evil to get things done.

could be considered a near impossibility. What happens when a police constable bearing the responsibility of maintaining law and order disobey court orders? As much as there may be procedures for this, the practicality of arresting the head of the police due to disobeying court orders may be an impossibility as has been demonstrated in Kenya on countable occasions. This plays to the issue of power dynamics.

There is always a saying that a chicken thief may be sentenced to ten years in prison, while a government minister who has embezzled millions of funds may be let go due to a lack of evidence or based on a technicality. This is to say, there are not a lot of consequences for the rich and the powerful who engage in corruption. Corruption is also a way of life because it is socially acceptable. As much as there is a lot of condemnation on corruption, a lot of people who get to political offices or powerful offices through election are often said to be corrupt yet no one cares. As for the citizens, there is a feeling that everyone in the public service is corrupt and therefore there is no need to use corruption as a guardrail for elected person be it that the law requires so.

Corruption is part of Kenya's historical make up. Kenya inherited a lot from the colonial masters - both good and bad. Corruption as an ingredient of bad governance may be traced back to the oppressive colonial governments.

This has been carried along by subsequent governments hence part of the way of life in Kenya. Corruption in Kenya also appears to be convenient. When a road user is asked for a bribe by a traffic police officer for a non-existent traffic offense as it happens oftenly, paying the bribe and getting over it, may be convenient as opposed to going through a winding court process that is not in itself, just. Getting a lot of government

Political campaigns in Kenya are often extremely expensive, with candidates relying on large sums of money to fund their bids. To recoup investments, elected officials may engage in corrupt practices such as awarding government contracts to cronies or demanding bribes.

service in Kenya is not a matter of putting up an application, rather one has to grease the walls. Again, this is convenient as without "*something small*" an applicant may never get the required services. Ask any conveyancing lawyer in Kenya and the convenience of paying a bribe when dealing with the lands office, for example, becomes apparent. If this is not apparent, a politician running for election in Kenya will furnish you with a budget kept aside for "bribing voters" of course baptized by other colloquial names. The other reason that makes corruption prevalent in Kenya is that the subject has been turned into a subject of political rhetoric. The war on graft as it is phrased has been given lip service by politicians that a lot of the people of Kenya see it just as that - political talk. The fight against corruption in Kenya is seen as the correct thing to say. Enforcement of laws and policy implementation to achieve this is but a mirage. This is not to mention the opulence and the show of wealth that the same people in political office show off. For this to make sense, contextualize the opulence in light of the earnings and the wealth declaration issues. Corruption is further away of life in Kenya because of the system employed in Kenya to fight corruption. While the law is an important element in this; punitive laws and high penalties for offenders as measures of criminalizing corruption, alone, are not enough. There is a lot in the ecosystem of fighting corruption that ought to take place. A lot of persons think of fighting corruption in terms of setting up ethical codes, tough laws and a system of prosecution. There is however need to think of the fight against corruption as a matter of moral fabric.

Like the way religion is taught and both Muslims and Christians hold it to heart, so should Kenyan citizens be made to hold the war against graft to heart. This is to say that there is need to educate people through civic education and children in school about the effect of corruption and how perhaps there is need to stop it. A lot of people in Kenya do not really comprehend the effect of corruption if there was an option to entrench a culture of fighting corruption, perhaps may not be fashionable to be corrupt. In other words; fighting corruption in Kenya and making corruption not a way of life in Kenya is a whole of society approach. Looking back to the so-called Gen Z resolution, what would happen if everyone was "angry" about corruption?

Perhaps there would be no corruption in Kenya just like we longingly point to Singapore and the likes. The final important consideration in stopping corruption in Kenya is political will. The simple meaning is that those in power can shape the conversation and guide public discourse. If there is doubt, reference can be made to President Paul Kagame and Rwanda or the times and life of President John Pombe Magufuli of Tanzania. This is perhaps proof that with good leadership, the fight against corruption is sustainable.

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Digital frontiers: Navigating the intersection of technology, freedom of expression, and privacy

By Sarafin Cherono Koech

Abstract

Internet usage has grown exponentially, with Kenya recording 10.55 million social media users and 17.86 million internet users as of 2023. These statistics overtly pinpoints the internet's critical role as a platform for accessing information and amplifying voices, fostering democratic engagement. However, this digital revolution presents significant challenges, particularly in the realms of privacy and data protection. As individuals increasingly share personal information online, the risk of privacy breaches and the misuse of data looms large.

This paper aims to add to the existing research, by exploring the interplay between technological advancements and constitutional rights to freedom of expression and privacy in Kenya, critically assessing whether the existing legal framework sufficiently addresses these prerogatives.

By examining how digital platforms enable communication while exposing users to surveillance, data misuse, and privacy violations, the study evaluates the challenges of balancing free expression with robust privacy safeguards. Through qualitative analysis of Kenya's legal frameworks, global case studies, and best practices, the paper offers strategies to regulate content effectively, promote data protection, and enhance free expression. It emphasizes the need for comprehensive regulatory mechanisms to uphold constitutional rights in the digital age while ensuring technological innovations are enablers of privacy and free expression rather than threats.

Digital frontiers" refers to the rapidly evolving landscape of technology, connectivity, data, and innovation that is transforming how societies function — especially in areas like governance, human rights, education, commerce, and activism.

Keywords: *Internet, Freedom of Expression, Privacy, Data Protection*

1. Introduction

The right to freedom of expression is one of the essential foundations of a democratic society and the basic conditions for its progress and for each individual's self-fulfillment. This right is enjoyed both online and offline. The UN recognizes it as

[1]Poulsen W, Freedom of Expression, and the Internet (Cambridge University Press 2014); Von Hannover v Germany (No 2) [2012] ECHR 15 (ECtHR)

Navigating the intersection of technology refers to understanding and managing the complex ways in which digital innovations interact with society, law, politics, economy, and ethics. As technology becomes increasingly embedded in every facet of life, this intersection is not just a space of opportunity—it is also one of disruption, conflict, and transformation.

fundamental in constructing inclusiveness, peaceful democracies, and knowledgeable societies.[2] Article 9 of the ACHPR, Article 19 of the UDHR, and the ICCPR exponentially guarantee this right.[3] Further, the Bill of Rights under the Constitution reaffirms this right to enjoy other human rights.[4] In the past two decades, the internet's power to advance the tenets of freedom of expression has gained prevalence due to its seamless ability to send and receive information worldwide.[5]

Social media avenues powered by the internet, such as X, breached traditional channels of freedom of expression, offering unprecedented opportunities to exercise it fully.[6] As a result, they have quickly emerged as essential tools for exercising the right to freedom of expression.[7]

However, the benefits of technological advancements are accompanied by significant concerns regarding privacy and data protection. The digital footprints left by individuals online can be exploited, leading to potential breaches of privacy. Previous research has extensively explored these issues, documenting the use and misuse of problematic laws and policies, as well as internet disruptions by governments to address misinformation, disinformation, hate speech, and unrest. While these studies have provided valuable insights, many have focused on specific aspects without offering a comprehensive view, and there is limited access to up-to-date data on technology's impact.

By delving into these issues, this paper contributes to the ongoing discourse on the ethical and legal implications of technology in the digital age. It highlights the need for a nuanced approach that safeguards both the freedom of expression and protection of personal privacy, ensuring that technological advancements serve the interests of all Kenyans.

Statement of the Problem

Quintessentially, technology should act as a formidable enabler of freedom of expression, empowering individuals to communicate freely and participate actively in public discourse, without the threat of breaches of privacy. In line with the principles of

[2]UNHRC, 'Freedom of opinion an expression': resolution A/HRC/RES/44/12- EN. Geneva: UN, 24, July 2020. Available at <https://digitallibrary.un.org/record/3877197 > accessed 22 November 2024

[3]Art 9, African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982) ; Art 19, Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III) (UDHR) ; Art 19, International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 197) 999 UNTS 171

[4]Constitution of Kenya Art 33(1)

[5]Grace Nolasco, 'Freedom of Expression on the Internet and the Law in Tanzania' [2016] MLR 46

[6]House of Lords Communications and Digital Committee, 'Free for all? Freedom of expression in the digital age'

[7]*Ibid*, Frank La Rue, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression A/HRC/17/27 16 May 2011

administrative law, citizens ought to be able to share their thoughts and opinions online, assured that their personal data is safeguarded by robust legal frameworks and stringent regulatory measures.[8] Paramount to this ideal is the protection of privacy and data, ensuring that rights and freedoms of individuals are upheld in the digital sphere.

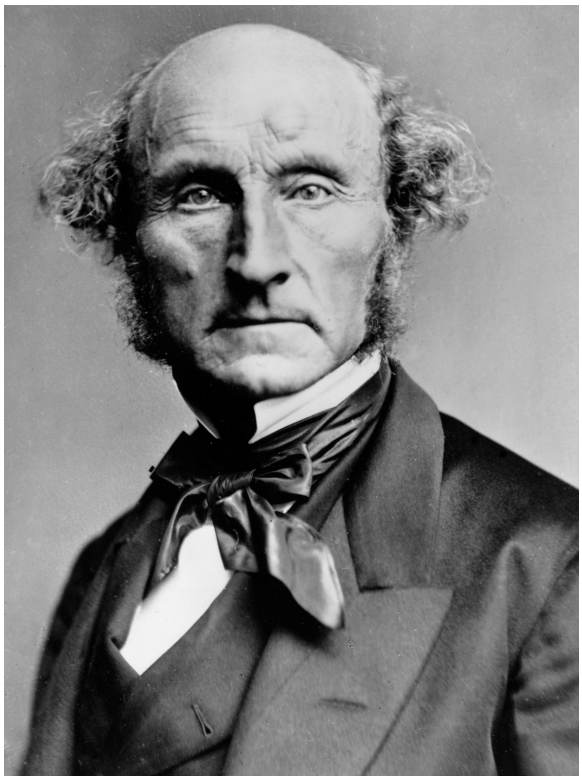
However, the current situation in Kenya deviates from this ideal. While technological advancements have indeed broadened the avenues of freedom of expression, they have concurrently introduced profound challenges in privacy and data protection.[9] The use of mobile phones and social media platforms has rendered users susceptible to heightened risks of privacy breaches and data misuse. Existing legal and regulatory frameworks often fall short in addressing these emerging threats, leaving conspicuous gaps in the protection of individual's privacy.

Only by accepting and opening our eyes to these issues can we adequately address these challenges, lest they perpetuate to different and unfamiliar degrees.

Theoretical Frameworks

Utilitarianism

Utilitarianism, coined by philosopher John Stuart Mill, posits that the best action is the one that maximizes overall happiness or utility.[10] Utilitarianism emphasizes the consequences of actions and seeks the greatest good for the greatest number.[11] The utilitarianism theory can be used to explain the rationale for the protection of online freedom of expression for everyone's good.[12]

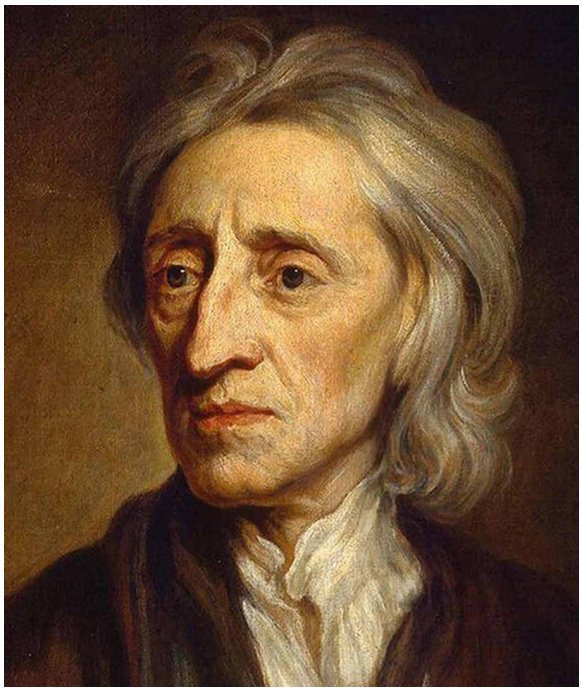


John Stuart Mill (1806–1873) was a British philosopher, political economist, and civil servant, widely regarded as one of the most influential thinkers in the development of liberal political philosophy. His work spans ethics, political theory, economics, and logic, and he is best known for his writings on utilitarianism, liberty, and individual rights.

Technology has revolutionized how we exercise freedom of expression, enabling instantaneous communication, global reach, and access to vast communication. From a Utilitarian perspective, this expansion of expressive capabilities maximizes societal happiness by promoting democratic participation, innovation, and cultural exchange.[13]

Nonetheless, Utilitarianism may justify privacy invasions if they result in a greater overall good, such as improved national

[8]Migai Akech, Administrative Law (Strathmore University Press, 2016)
[9]Gregory P, Free Speech in the Digital Age (OUP 2019); Keraka Caleb, 'The Intersection of Digital Technology, Fundamental Human Rights and Constitutional Values & Principles in Kenya's Digital Space (March 30, 2023) https://ssrn.com/abstract=4660373 Accessed 10 December 2024
[10]Bentham J, An Introduction to the Principles of Morals and Legislation (2nd edn, OUP 1970); Mill J, Utilitarianism (OUP 1998)
[11]*Ibid*, Markkula Centre for Applied Ethics, Calculating the Consequences: The Utilitarian Approach to Ethics (Santa Clara University 2014)
[12]John Stuart Milll, On Liberty (Dover Publications 2002), 18-22
[13]*Ibid* 23 -24; Norman Barry P, On Classical Liberalism and Libertarianism (Macmillan, 1986)



John Locke (1632–1704) was an English philosopher and physician, widely considered the father of liberalism. His writings on government, individual rights, and knowledge laid the foundations for modern democratic thought and deeply influenced Enlightenment thinkers, the American Revolution, and the U.S. Constitution.

security. This theory prioritizes collective benefits over personal privacy, eroding rights to privacy and data protection.[14] According to Utilitarian principles, these negative consequences must be weighed against the benefits of technological advancements.[15]

It's in line with this approach that this paper aims to provide a framework for evaluating the trade-offs between technological benefits and privacy risks, highlighting the need for a balanced approach by emphasizing the importance of considering the collective impact of technology on society while recognizing the potential harm to individuals. This perspective can inform policy decisions and regulatory frameworks that aim to maximize the benefits of technology while safeguarding privacy and data protection, just as was stated by the Supreme Court of South Africa in *Hoho v The State*,[16] That freedom is not without limitations and should be viewed in the context of human dignity, a fundamental value of a democratic state.[17]

Libertarianism

Coined by John Locke,[18] this theory believes that governments serve to protect citizens' rights but cannot grant them nor impose social standards.[19] For Locke, free speech is an inalienable right that citizens have because of their status as independent, unique individuals living in a free society.[20] Libertarianism thus advocates for the unregulated flow of information and strong protection of personal liberties.[21]

Technology amplifies the capacity of freedom of expression by providing platforms for individuals to share their ideas and opinions without governmental interference. From a libertarian perspective, this aligns perfectly with maximizing individual liberty and minimizing state control.[22]

However, Libertarianism's strong emphasis on minimal regulation can lead to the absence of necessary oversight mechanisms to protect individuals from corporate or other entities' abuses of power.[23] Its focus on individual rights may overlook the collective good and the need for community-based

[14]Jonathan G, Utilitarianism, and Its Critics (Reprint edn, Macmillan, 1990)
[15]*Ibid*
[16]Hoho v The State (493/05) [2008] ZASCA 98 (17 September 2008)
[17]*Ibid* 36
[18]John Locke, Two Treatises of Government (Cambridge University Press 1998)
[19]*Ibid* 45
[20]Ibid 106
[21]Norman P. Barry, On Classical liberalism and libertarianism (Macmillan 1986)
[22]David Boaz, The Libertarian Mind (Simon & Schuster 2014)
[23]Sandel J, Liberalism, and the Limits of Justice (Cambridge University Press, 1982)

solutions to address broader societal issues, such as privacy violations.[24]

This paper, in light of the libertarian perspective on technology, freedom of expression, and privacy, seeks to provide valuable insights into the tension between individual liberties. It highlights the importance of protecting personal freedoms while recognizing the potential pitfalls of an unregulated digital environment.

Conceptual Framework

According to Simon Kemp, at least 42.0% of Kenyans are estimated to use the Internet.[25] With such a significant number of internet users, the democratic fabric of society is tested if the issue of content restriction is not adequately addressed. The importance of safeguarding the freedom of expression in cyberspace is underscored by Richard Moon's argument that the value of freedom of expression lies in social interactions.[26] According to Moon, communication enables individuals to form relationships and associations that are essential for a functioning society.[27]

Waldron further emphasizes this by framing communal tolerance as a "public good."[28] He argues that a well-ordered society requires everyone to recognize that it is not just for them individually but for all collectively.[29] He asserts that people should be able to go about their lives with the assurance that they will not face hostility or violence.[30] Building on Waldron's perspective, Grace Nolasco highlights the need to balance freedom of expression with other rights, such as privacy.[31] Such balance ensures that the exercise of one right on the internet does not infringe upon another.[32] In light of these perspectives, this paper addresses the social tensions arising from the control of information created by the Internet and digital technologies. Unchecked, these tensions risk may render fundamental rights meaningless, reducing them to hollow promises devoid of substantive value.

2. Freedom of expression in a democracy

Freedom of expression is considered the foundation stone[33] and a pillar for every free and democratic society.[34] It serves 4 broad purposes; it helps an individual to obtain self-fulfillment, assists in discovery of truth, strengthens the capacity of an individual to participate in decision-making and provides for a mechanism for establishing a reasonable balance between stability and social change.[35] Cardozo J in *Palco*[36] recognized that freedom of thought and expression is the matrix, the indispensable condition, of every other form of freedom.[37]

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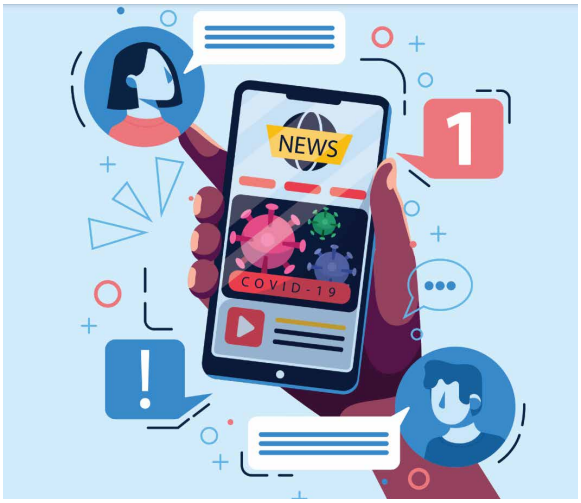
[24] *Ibid* Chapter 2; Cohen G.A, Self-Ownership, Freedom, and Equality (Cambridge University Press, 1995)
[25] Simon Kemp, 'Digital 2023: Kenya's Datareportal (February 13, 2023)
[26] Richard Moon, 'The Scope of Freedom of Expression' *Osgoode Hall Law Journal* 23 (1985), 331-357
[27] *Ibid* 344
[28] Jeremy Waldron, The harm in hate speech (Havard University Press, 2012)
[29] *Ibid* 93-95
[30] *Ibid* 94
[31] Grace .Nolasco, 'Freedom of Expression on the Internet and the Law in Tanzania,' Moshi Co-operative University Law Journal 5.2 (2020) 123-145
[32] *Ibid* 125
[33] UNHRC, 'General Comment No 34' (12 September 2011) UN Doc CCPR/C/GC/34; *See also* Bowman v UK 24839/94 (ECtHR,19 February 1998) para-42.
[34] Onder Bakircioglu, 'Freedom of Expression and Hate Speech' (2008) 16 *Tulsa J Comp & Intl* L 1,2
[35] Munhumeso & others 1995 (1) SA 551; Makali David, Media Law Practice: The Kenyan Jurisprudence (1stedn, Phoenix2003); Ngugi CM, 'Free Expression and Authority in Contest: The Evolution of Freedom of Expression in Kenya' (2020) 15 *Journal of African Media Studies* 102; see also Wanuri Kahiu & another v CEO – Kenya Film Classification Board & 2 others; Article 19 East Africa (Interested Party) & another [2020] eKLR
[36] *Palco v Connecticut* 302US 326-7
[37] *Ibid*, Nyawa Joshua Malidzo, Freedom of Expression on the Internet: How Justice Makau reduced freedom of expression to a cipher' (March 15, 2023)



Freedom of expression online is the right to seek, receive, and impart information and ideas through digital platforms—a crucial extension of traditional free speech in today's connected world. As more social, political, and economic activity moves online, digital expression has become a frontline for both empowerment and conflict.

The information shared encompasses not only the one that is favourably received but also the one that the ECtHR described as shocking, offending, and disturbing, such as the demands for accountability.[38] Hence, freedom of expression is considered the sine qua non and a hallmark of every democracy.[39]

Nyawa states that without freedom of expression, a state cannot be described as a democracy.[40] This is because without freedom of expression, there will be no competition for political ideas and those in power will not be held accountable by their electorates.[40] The Canadian Supreme Court endorses the argument in Edmonton *Journal v Alberta*, stating that it is difficult to imagine a guaranteed right more important to a democratic society than freedom of expression.[42] In the same spirit, Poulsen and Nyawa opine that when considering allegations of infringement of freedom of expression, it is upon judges to start from the point that freedom of expression is requisite in a democracy.[43] Secondly, due to its importance in a democracy, freedom of expression is a potential adversary to those who wield power and they will consider all possibilities to ensure that freedom of expression is extinguished.[44]

3.The Kenyan legal framework governing freedom of expression online

The right to freedom of expression is governed by the Constitution, International Law, statutes, and case law. The Constitution provides for the right to freedom of expression at article 33(1) while article 22 grants the locus for aggrieved persons to enforce alleged human rights infringement cases in courts of law.[45] It emphasizes that everyone is equal before the law and has an equal claim to its protection and benefits.[46] This constitutional mandate is complemented by various statutes, including the KICA[47], Penal Code[48], Media Council Act[49] as well as Defamation Act[50] among

[38]Handyside v United Kingdom 5493/72 (ECtHR, 7 December 1976) para 49
[39]Nyawa Joshua Malidzo, Freedom of Expression on the Internet: How Justice Makau reduced freedom of expression to a cipher' (march 15, 2023); See also Botha v Smuts & another [2024] ZACC 22; Thomas Scanlon, A theory of Freedom of Expression (Havard University Press, 1972); David Ademi, 'Digital Rights: A Critical Analysis of the Status of Online Freedom of Expression in Kenya' (2024) https://www.academia.edu/121170236/DIGITAL_RIGHTS_A_CRITICAL_ANALYSIS_OF_THE_STATUS_OF_ONLINE_FREEDOM_OF_EXPRESSION_IN_KENYA Accessed 26 November 2024
[40]*Ibid* 4
[41]*Ibid*
[42]*Edmonton Journal v Alberta [1989]* 45 CRR 12
[43]Poulsen W, Freedom of Expression, and the Internet (Cambridge University Press 2014); Nyawa Joshua Malidzo, Freedom of Expression on the Internet: How Justice Makau reduced freedom of expression to a cipher' (March 15, 2023)
[44]*Ibid*
[45]Constitution of Kenya 2010
[46]*Ibid* art 27
[47]Kenya Information and Communications Act Cap 411A
[48]Penal Code Cap 63, s 77
[49]Media Council Act 2007 Cap 411B, s 36
[50]Defamation Act 2019 Cap 36, s 2, s 3

others. The international laws ratified, by virtue of articles 2(5) and (6), include, the UDHR, ICCPR, ACHPR, CRC, EAC Treaty among others.

In interpreting article 9 of the ACHPR, the AHRC has asserted the fundamental importance of freedom of expression and information as an individual human right, a cornerstone of democracy and a means of ensuring respect for all human rights and freedoms.[51] It stressed that 'within the law' refers to international law[52], which gives wide latitude for Africans to draw from International law to support their claims for freedom of expression.[53] The HCK in the *Robert Alai Case*, by declaring section 132 of the Penal Code unconstitutional, set a precedent that criminal defamation laws should not unduly restrict freedom of expression, especially when it comes to political discourse and criticism of public figures.[54] Similarly, the same court in Jacquelline Okuta Case, struck down Section 194 of the penal code, which criminalized defamation.[55]

However, the right to freedom of expression is self-limiting.[56] It is subject to restrictions only if they are strictly construed and established convincingly.[57] Article 33 (2) states that freedom of expression does not extend to: propaganda for war, incitement to violence, hate speech or advocacy hatred while article 24 states that a right or a fundamental freedom shall not be limited

Online freedom of expression is the new public square. Protecting it is essential for democracy, innovation, and justice. But it must be done with care—to ensure that rights are upheld without enabling harm or authoritarian abuse.

except by law, and that the limitation is reasonable and justifiable in an open and democratic society.[58]

Therefore, Article 24 is mandatory, and a judge must take it seriously, not mechanically,[59] as seen in *Samuel Manamela v The Director-General of Justice*, where the Constitutional Court of SA,[60] in considering the limitation clause, which is in parimateria to Article 24, cautioned against using the factors set out therein as a laundry list or in Kenya's Supreme Court words in *Karen Njeri Kandie Case*, that the test must not be conducted mechanically'.[61]

The constitution, in article 20(3) requires judges to adopt an interpretation that

[51]Law Offices of Ghazi Suleiman Sudan 11 [2003] AHRLR (ACHPR 2003) See also Lohe' Issa Konate Burkina Faso 004/2013 [ACHPR]
[52]Article 19 v Eritrea Comm No 275|03, para 91-92
[53]African Affairs Committee Freedom of Expression Sub-Committee, The Right to Freedom of Expression on the Internet as it applies to social media (1 March 2016. New York City Bar)
[54]Robert Alai v Attorney General [2017] eKLR
[55]Jacquelline Okuta & Jackson Njeru v Attorney General [2017] eKLR
[56]The Constitution of Kenya 2010 art 24(1); International Convention on Civil and Political Rights art 19(3)
[57]Zana v Turkey App no 18954/91 (ECtHR, 25 November 1997)
[58]Okiyah Omtatah Okoiti v Communications Authority of Kenya & 3 others; Article-19 East Africa & 4 others (Interested Parties) Petition No 53 [2017] eKLR; *See also* Sunday Times v United Kingdom Application No 65 38/74 para-49.
[59]Nyawa Joshua Malidzo, Freedom of Expression on the Internet: How Justice Makau reduced freedom of expression to a cipher' (March 15, 2023); Benjamin Gregg, The Human Rights State: Justice Within and Beyond Sovereign Nations (Philadelphia: University of Pennysylvania Press, 2016)
[60]Samuel Manamela v The Director-General of Justice (2000) 3 SA 1 (CC)
[61]Karen Njeri Kandie v Alassane Ba 7 & another KESC 13 (2017) eKLR


Makau Mutua

most favors the enforcement of a right or fundamental freedom, just as the COA has posited that the theme under article 20(3) is *'maximization and not minimization; expansion, not constriction; when it comes to enjoyment and concomitantly facilitation and interpretation'*.[62]

Makau Mutua opines that one of the one of the leitmotifs of the 2010 constitution, which has been described as a post-war constitution[63] is the promise of a human rights state.[64] The heart of every post-war constitution is the protection of human rights through a limitation clause in the Bill of Rights.[65] Therefore, the inclusion of Article 24 of the Constitution is monumental and should not be seen as ornamental or decorative.[66] Notably, these provisions are consistent with Mill's Utilitarian theory, which grants people the freedom to do as they like, so long as they do not harm others.[67] No one has the right to infringe upon the rights of others to exercise that person's own.[68]

4.Technology and freedom of expression in Kenya

Evolution of technology in communication

In a pre-digital era, the dissemination of information was controlled by a few gatekeepers, such as traditional media. However, the internet has disrupted this paradigm, allowing anyone with access to the internet to publish content and reach a wide audience.

Rukondo opines that previously freedom of expression was considered in relation to complex structures of communication such as newspapers and radio rather than individuals. However, the notion of freedom of expression as an individual liberty has been revived as the internet has empowered the individual with mass media outreach that was previously the preserve of media houses.[69] In June 2012, the HRC unanimously affirmed that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of

[62]Attorney General v Kituo cha Sheria & 7 others [2017] eKLR
[63]Speaker of the Senate & Another v Attorney General & 3 others Advisory Opinion Reference No 2 [2013] eKLR; *See also* Luka Kitumbi & 8 others v Commissioner of Mines and Geology & another, Mombasa HCCC No 190 [2010] eKLR
[64]Makau Mutua, 'Hope and Despair for a New South Africa: The Limits of Rights Discourse' (1997) 10 Havard Human Rights Journal 63; See also Benjamin Gregg, The Human Rights State: Justice Within and Beyond Sovereign Nations (Philadelphia: University of Pennysylvania Press, 2016)
[65]Attorney General & another v Randu Nzai Ruwa & 2 others Civil Appeal No 275 of 2012; [2016] eKLR
[66]Nyawa Joshua Malidzo, Freedom of Expression on the Internet: How Justice Makau reduced freedom of expression to a cipher' (March 15, 2023); Benjamin Gregg, The Human Rights State: Justice Within and Beyond Sovereign Nations (Philadelphia: University of Pennysylvania Press, 2016)
[67]John Stuart Mill, On Liberty, (Dover Publications, 2002) (n 32)
[68]*Ibid*
[69]Solomon Rukondo, 'My President is a Pair of Buttocks: the limits of Online Freedom of Expression in Uganda' (2018) 26 International Journal of Law and Information Technology 252

the frontiers and through any media of one's choice.[70]

According to the CAK, as of 2023, the country's internet penetration rate stood at an impressive 89.2%, with most users accessing the internet via mobile devices.[71] The rise of ISPs and the affordability of internet bundles have contributed to this growth. Platforms like Twitter have enabled users to share their views and engage in discussions on matters of public interest.[72]

The role of the social media platforms Internet tools are terraforming the traditional political landscape by shifting who controls information, who consumes information, and how that information is distributed.[73] These digital platforms have emerged as indispensable conduits for communication and expression,[74] furnishing a forum where individuals can articulate and share their thoughts, and recount their experiences to a global audience.[75]

Social media has been instrumental in political discourse in Kenya. During election periods, notably the 2017 and 2022 elections, Twitter and Facebook were pivotal in educating and mobilizing voters, and fostering robust political debate.[76] Moreover, it has amplified the voices of activists and advocacy groups. Movements such as #RejectFinanceBill2024 and #EndAbductionsKenya have gained momentum and found resonance in Kenya,

The role of social media platforms has become central to modern communication, political participation, and cultural expression. These platforms—such as Twitter/X, Facebook, TikTok, Instagram, YouTube, and WhatsApp—are more than just tools; they are digital public squares that shape how societies engage, inform, organize, and govern themselves.

highlighting issues such as police brutality and bad governance.[77]

The US Supreme Court's ruling in *New York Times v Sullivan* protected the press from excessive defamation litigation, emphasizing the importance of robust debate on public issues.[78] The "actual malice" standard set by this case ensures that individuals and the media engage in critical discourse without undue fear of legal repercussions.[79] Similarly, the EACJ in the *Burundian Journalists' Union Case* held that the requirement for journalists to reveal their sources concerning state security and public

[70]UN Human Rights Council Resolution A/HRC/20/L. 13, adopted 29 June 2012 ;African Commission on Human and Peoples' Rights, 'Declaration of Principles on Freedom of Expression and Access to Information in Africa' (2019) Principle 37
[71]Communications Authority of Kenya, State of Internet Penetration in Kenya (CAK, 2023) https://www.ca.go.ke/reports-and-studies Accessed 22 November 2024
[72]*Ibid*
[73]Solomon Rukondo, 'My President is a Pair of Buttocks: the limits of Online Freedom of Expression in Uganda' (2018) 26 International Journal of Law and Information Technology 252; See also Thomas Scanlon, A theory of Freedom of Expression (Havard University Press, 1972)
[74]Badili Africa, 'Digital Democracy in Kenya: Revolutionizing Participation and Governance' (2024) Badili Africa Journal
[75]*Ibid*
[76]Anne Gitonga and Eliud Moyi, 'The Role of Information Technologies in Innovation in Kenya's Micro, Small amd Medium Establishments' (2018) Africa Journal of Science, Technology, Innovation and Development 23-35
[77]*Ibid* 10
[78]New York Times Co v Sullivan [1964] USSC 4; 376 US 254 (1964)
[79]*Ibid* para 265

Technology-driven freedom of expression in Kenya is reshaping how citizens communicate, mobilize, and hold power to account. Fueled by widespread mobile phone penetration, internet access, and social media platforms, Kenyans are increasingly using digital tools to exercise their constitutional right to free expression—often in creative, bold, and revolutionary ways

order was unreasonable and infringed upon the fundamental rights of journalists.[80]

Technology-driven freedom of expression in Kenya: #Rejectfinancebillprotests

Digital Activism played a central role in opposing the Finance Bill 2024 with social media platforms like Twitter being used in organising and coordinating the protests.[81] Through online campaigns and petitions, significant pressure was placed on law makers, urging them to reconsider the bill.[82] Digital activism enhanced transparency around legislative process, exposing failures in public consultation.[83]

It also helped overcome geographical barriers, enabling protesters across Kenya to unite and coordinate their efforts, thus creating a nationwide movement.[84] Additionally, Kenyan youth utilized their tech skills to raise awareness and mobilize support against the Finance Bill, by creating Al tools such as Finance Bill GPT to answer questions about the bill and even produced Al-generated music.[85] However, the internet shutdown during the protests in Kenya lead to the suppression of digital activism.[86] By cutting off the internet access, the government effectively restricted these activities, making it difficult for protesters to coordinate and express their views.[87]

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[80]Burundian Journalists' Union v Attorney General of the Republic of Burundi (Reference No 7 of 2013) [2015] EACJ 91 (15 May 2015)
[81]Abiero, D. (2024). "Technology-Facilitated Rights and Digital Authoritarianism: Examining the Recent Internet Shutdown in Kenya." Centre for Intellectual Property and Information Technology Law (CIPIT) https://cipit.strathmore.edu/technology-facilitated-rights-and-digital-authoritarianism-examining-the-recent-internet-shutdown-in-kenya/Accessed 22 November 2024
[82]*Ibid*
[83]*Ibid*
[84]*Ibid*
[85]Laibuta M., "Gen Z, right to privacy, and a revolution." (20240 https://www.laibuta.com/data-protection/gen-z-right-to-privacy-and-a-revolution/ Accessed 22 November 2024
[86]Ibid
[87]Ibid

5. Implications on privacy and data protection

The Constitutional Court of SA in *Botha v Smuts & another*,[88] recognized the right to privacy as a shield against unwarranted intrusions, which allows individuals to control their personal information and make life decisions.[89] Privacy has, thus, become of increased significance both as a fundamental right and as a key issue arising from technological advancement, given the twilight of the modern surveillance age.[90]

Risks posed to the right to privacy by digital technologies

The collection, storage, and use of personal data is a major threats to privacy posed by digital technology.[91] In the *Nubian Case*, biometric data and the GPS coordinates required by the disputed amendments were found to be personal, sensitive and intrusive data that required protection.[92] While the HCK in *Okoiti v CAK*, in overturning CAK's plan to implement a surveillance system accessing mobile services subscriber's data was unconstitutional, emphasized the importance of privacy rights and the need for less intrusive measures.

Individuals are increasingly exposing their personal information online as social media, e-commerce, and other online platforms rise in popularity.[93] This information might include their name, email address, phone number, and even sensitive information like financial and medical records.[94] Although

Implications on privacy and data protection—especially in the digital age—are profound and far-reaching. As individuals increasingly engage online through social media, mobile apps, e-commerce, and digital governance platforms, massive amounts of personal data are collected, stored, and analyzed. This raises both opportunities and risks for civil liberties, particularly in contexts like Kenya where legal frameworks are still evolving.

some businesses use this data for good reasons like marketing and improving user experience, others may use it for nefarious reasons like identity theft, fraud or prejudice.[95] In *KHRC v CAK*, the CAK introduced a generic DMS for spying on mobile and communication devices of Kenyans without public consultations or public participation. The courts considered this as a threat and violation of the right to privacy of the subscribers.[96]

Over the years, there have been on-going reports of the expansive monitoring and

[88]Botha v Smuts & another [2024] ZACC 22
[89]*Ibid* para 180
[90]Shoshana Z, The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power (Public Affairs, 2019)
[91]Keraka Caleb, 'The Intersection of Digital Technology, Fundamental Human Rights and Constitutional Values & Principles in Kenya's Digital Space (March 30, 2023) https://ssrn.com/abstract=4660373 Accessed 10 December2024
[92]Nubian Rights Forum & 2 others v Attorney General & 6 others; Child Welfare Society & 9 others (Interested Parties) [2020] eKLR.
[93]Chisomo Nyemba, 'Right to Data Privacy in the Digital Era Critical Assessment of Malawi's Data Privacy Protection Regime' (LLM Thesis, University of Pretoria); Kevins, Jerameel and Brian, Kibet, 'Defining Data Protection in Kenya: Challenges, Perspectives and Opportunities (November 7, 2022)
[94]*Ibid*
[95]*Ibid*
[96]Kenya Human Rights Commission v Communications Authority of Kenya & 4 others [2018] eKLR

surveillance practices.[97] In March 2017, a report by Privacy International documented how the information acquired from unlawful communications surveillance is justified by the state as a response to counterterrorism – from surveillance, profiling, locating, tracking and arresting targets to abuse, torture, abduction and extrajudicial killing, a process in which Kenyan citizens' fundamental human rights are seriously abused.[98]

Cybersecurity threats such as hacking and data breaches compromise sensitive information and undermine the right to privacy and data protection.[99] Kenya has had several high-profile data breaches, including a data breach at the KRA in 2017.[100] Such data breaches can lead to the theft of personal information and financial loss, making people reluctant to share information online.[101]

The case of Kenya's #RejectFinanceBill2024 Protests

The protests were a significant political event marked by widespread public opposition to new tax measures proposed in the Finance Bill.[102] Privacy concerns emerged due to actions like "*tuwasalimie*," where activists casually shared the personal information of MPs and other public figures.[103] While this was a necessary step for accountability, it raised significant privacy issues.[104] The ODPC thus issued a cautionary statement advising against sharing personal data, which infringes on individuals' right to privacy, especially personal data belonging to persons who are not public figures and have not acted to make their contact details public.[105]

The protests also witnessed a wave of abductions, which raised the question of how the abductors could easily trace the abductees.[106] The outrage greeted the exclusive Nation Media investigation, dubbed " *Big Brother watching*," that revealed how police have been colluding with telcos', especially Safaricom, to irregularly access call data and location records that are then used to conduct surveillance, track, and capture, and even kill suspects without using the appropriate legal channels.[107] Consequently, the USA Ambassador to Kenya denounced the abuse of mobile phone users' right to privacy,

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[97]The Right to Privacy in Kenya: Joint Stakeholder Report Universal Periodic Review 35th Session – Kenya, Submitted by the National Coalition of Human Rights Defender-Kenya (NCHRD-K), the Kenya Legal & Ethical Issues Network on HIV and AIDS (KELIN), Paradigm Initiative, and Privacy International, July 2019 https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=7566&file=EnglishTranslation Accessed 10 December 2024

[98]Privacy International, "Trace. Capture, Kill: Inside Communication Surveillance and Counterterrorism in Kenya." March2017 https://privacyinternational.org/report/43/trackcapture-kill-inside-communication-surveillance-and-counterterrorism-kenya Accessed 10 December 2024

[99]Keraka Caleb, 'The Intersection of Digital Technology, Fundamental Human Rights and Constitutional Values & Principles in Kenya's Digital Space (March 30, 2023) https://ssrn.com/abstract=4660373 Accessed 10 December2024

[100]BBC NEWS, Kenya Revenue Authority 'lost$39m to hacker, https://www.bbc.com/news/world-africa-39351172 Accessed 10 December 2024

[101]Daniel Solove J and Paul Schwartz M, Privacy and Data Protection in a Digital Age (OUP 2018); Sara Quach and Park Thaichon, 'Digital Technologies: tensions in privacy and datas' Journal of the Academy of Marketing Science, 2022

[102]Abiero, D. (2024). "Technology-Facilitated Rights and Digital Authoritarianism: Examining the Recent Internet Shutdown in Kenya." Centre for Intellectual Property and Information Technology Law (CIPIT) < https://cipit.strathmore.edu/technology-facilitated-rights-and-digital-authoritarianism-examining-the-recent-internet-shutdown-in-kenya/> Accessed 22 November 2024

[103]Business Daily, 'Digital Activism: Delicate balance in public officials' right to privacy,' https://www.businessdailyafrica.com/bd/corporate/tea/activism-delicate-balance-in-public-officials-privacy=4667266 Accessed 22 November 2024

[104]*Ibid*

[105]Laibuta M., "Gen Z, right to privacy, and a revolution." (2024) https://www.laibuta.com/data-protection/gen-z-right-to-privacy-and-a-revolution/ Accessed 22 November 2024

[106]Jurists News, 'Gen Z Leads Digital Uprising Against Economic Injustice in Kenya,' https://www.jurist.org/commentary/2024/07/gen-z-leads-digital-uprising-against-economic-injustice-in-kenya Accessed 22 November 2024

[107]Nation Television, 'Telcos on the spot for aiding the police to snoop on mobile phones,' https://youtu.be/scwxd102j7Y?si=ALs6T7BhPuFplpXk Accessed 22 November 2024

stressing that privacy and the rule of law are fundamental democracies.[108] The KHRC said that the expose revealed the telcos' complicity in aiding and covering up abductions and killings by rogue police.[109]

6. The view of African tradition on freedom of expression

Is it entirely true that Africans do not embrace the right to freedom of expression mainly because most African cultures do not permit it? Seleoane argues that even though freedom is a universal right, Africans have failed to demonstrate any interest in embracing it and developing a unique African approach to it.[110] Well, this paper agrees that some traditions practiced by Africans may have suppressed the idea of freedom of expression. The true reflection is how our leaders and elders seem not to like the idea of criticism even today. According to Monye,[111] traditional African communities exhibit unique views expressed through hierarchical structures, allowing individual opinions to be expressed within specific structures, such as elders.[112]

However, the position of this paper is that African tradition is not strange to the idea of freedom of expression. A significant number of African cultures acknowledge that people have the freedom of expression. Africans have always embraced the idea of decision-making through community engagement under trees, where every individual is accorded the right to say what they think.[113] According to Chasi, the issues discussed in these forums are driven by the principles of democracy, which included public participation and freedom of expression.[114] They also included the removal of traditional leaders, such as elders, from

Freedom of expression in African tradition is deeply rooted in community-based practices, oral cultures, and the values of dialogue, consensus, and communal responsibility. While not always framed in the same legalistic terms as in modern constitutions or international charters, African societies historically upheld mechanisms that allowed individuals and communities to express themselves—within culturally defined boundaries.

[107]Nation Television, 'Telcos on the spot for aiding the police to snoop on mobile phones,' https://youtu.be/scwxd102j7Y?si=ALs6T7BhPuFplpXk Accessed 22 November 2024

[108]Kenyans.co.ke, 'US Ambassador Responds After Kenya Police Exposed for Violating Privacy' https://www.kenyans.co.ke/news/105831-ambassador-whitman-calls-respect-for-privacy-laws-after-kenya-police-expossed-accessing Accessed 22 November 2024

[109]Steve O., "European envoys raise concerns over wave of abductions in Kenya" 31 October 2024 https://www.theeastafrican.co.ke/tea/news/east-africa/european-envoys-raise-concerns-over-wave-of-abductions-in-kenya-4807234 Accessed 22 November 2024

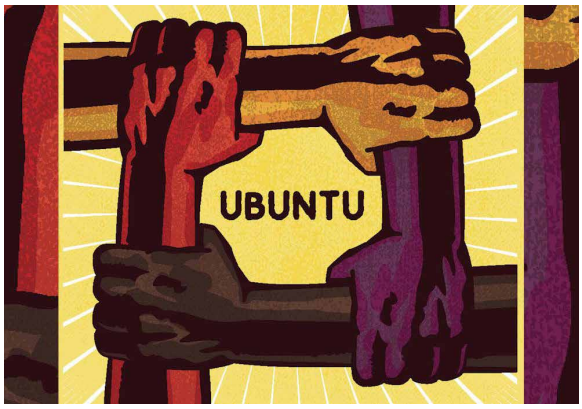
[110]Mandla Seleoane, 'Towards an African theory of freedom of expression?' (2001)20 Politeia: Journal for Political Science and Public Administration 5-21

[111]Stephen Monye, 'Freedom of Expression and Traditional Communities: Who Can Speak and When?' (2017) 29 Southern African Public Law 323

[112]*Ibid*

[113]Kwaku Asante & Ross Herbert, 'African Tradition Upholds Free Speech, Democracy' (29 Apr 2008) https://saiia.org.za/research/african-tradition-upholds-free-speech-democracy Accessed 22 November 2024

[114]Collin Chasi, 'Ubuntu and Freedom of Expression' (2014) Ethics & Behaviour 497



Ubuntu is a traditional African philosophy rooted in the values of humanness, interdependence, dignity, compassion, and community. At its core, Ubuntu affirms the idea that "I am because we are"—that one's humanity is realized through relationships with others. While it varies across regions and languages, the underlying principles are remarkably consistent across sub-Saharan Africa.

those positions and the decision to punish offenders.[115]

Additionally, African tradition encouraged individuals to question their misfortunes. The Shona people have a saying that goes *mwana asingacheme anofira mumbereko*, meaning that a baby that does not cry dies on the back of the caregiver.[116] Like many African mothers, the Shona carry babies on their backs. In the event the baby develops breathing difficulties and does not cry for help, she may end up dying, for the mother will not realize. The interpretation of this paper, and that it is relevant to freedom of expression is that, for one's needs to be assured, one must be allowed to speak out about one's concerns. Conversely, a society where people cannot speak their minds and express their opinions democratically is a dead society.

The Ubuntu philosophy explains how Africans should interact with freedom in their complex yet flexible cultures. Nicolaides believes that Ubuntu's values point towards the realization of fundamental human rights and freedoms, including equality and human dignity.[117] According to Chasi, Ubuntu presents a unified set of cultures that aims to enable Bantu-speaking Africans to express themselves and interact harmoniously freely.[118]

7. Comparative analysis: South Africa's stance

South Africa, a nation that has undergone a profound transformation from apartheid to a vibrant democracy, stands at the forefront of this dynamic interplay between technology, freedom of expression, and privacy.[119] Their strategy is said to have begun with the transition to democracy in 1994.[120] This transition led to the adoption of a new constitution in 1996, which included explicit guarantees for fundamental rights, including privacy and freedom of expression.[121]

Effective laws

These are the POPIA, ECTA, and PAIA.[122] POPIA protects personal information processed by public and private bodies by establishing minimum requirements for the lawful processing of personal information.[123] ECTA aims to promote legal certainty and

[115] *Ibid* 503
[116] *Ibid* 505
[117] Nicolaides A, 'Duty, Human Rights and Wrongs and the Notion of Ubuntu as Humanist Philosophy and Metaphysical Connection' (2022) *Athens Journal of Law* 123-136
[118] Collin Chasi, 'Ubuntu and Freedom of Expression' (2014) Ethics & Behaviour 497
[119] Jane Duncan., 'Monitoring and defending freedom of expression and privacy on the internet in South Africa.' School of Journalism and Media Studies, Rhodes University https://www.apc.org/en/pubs/giswatch-2011-special-edition-1 Accessed 22 December 2024
[120] *Ibid*
[121] *Ibid*
[122] Swales L. 'The Protection of Personal Information Act and data de-identification.' S Afr J Sci. 2021; 117 (7/8), Art. #10808. https://doi.org/10.17159/sajs.2021/10808 Accessed 22 December 2024
[123] *Ibid*

enforceability in electronic communications and transactions.[124] PAIA, conversely, ensures that individuals have the right to access information held by public and private bodies. Hence, it supports freedom of expression by enabling the free flow of information. South Africa also hosts an independent judiciary.[125] The Constitution guarantees this independence, and the courts, in collaboration with relevant bodies such as the prosecution, impose harsh penalties and heavy fines to deter infringement of these fundamental rights.[126]

Responsive public service

The Batho Pele governs this service with " People First" principles.[127] This consists of Consulting Users of Services, Setting Service Standards, Increasing Access, ensuring courtesy, Providing More and Better Information, Increasing Openness and Transparency, Monitoring and Evaluating Improving Public Service.[128] The Government is equally committed to taking administrative and policy measures to promote these fundamental rights.[129]

Effective enforcement

The Information Regulator is the primary body promoting privacy, data protection, and freedom of expression.[130] It vigorously monitors and enforces compliance with the POPIA and ensures that individuals' privacy rights are protected.[131] Additionally, it works with other agencies, such as the Right2Know Campaign and Privacy International, to conduct compliance checks and advocate for privacy and freedom in South Africa.[132]

On the other hand, South African courts recognize the public interest defense in cases involving the publication of information, balancing the right to freedom of expression, privacy, and data protection.[133]

How South Africa has handled the constriction of digital civic space

With rampant technological advancements, South Africa has been ranked as one of the best-developing countries in terms of protecting fundamental rights and participating in democratic governance.[134] In response to the increasing violations of freedom of expression and privacy rights, South Africa has hastened international cooperation by participating in international forums and cooperating with other countries to address global digital rights challenges and share best practices.[135] In collaboration with civil society groups and digital rights advocates, she has launched public awareness campaigns to educate citizens about their digital rights and how to

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[124]C.M. van der Bank., 'The right to privacy- South African and Comparative Perspectives' European Journal of Business and Social Sciences, Vol. 1, No. 6, pp 77-85, October 2012 https://www.academia.edu/6272127/THE_RIGHT_TO_PRIVACY_SOUTH_AFRICAN_AND_COMPARATIVE_PERSPECTIVES_A Accessed 22 December 2024

[125]Jane Duncan., 'Monitoring and defending freedom of expression and privacy on the internet in South Africa' School of Journalism and Media Studies, Rhodes University https://www.apc.org/en/pubs/giswatch-2011-special-edition-1

[126]*Ibid*

[127]Department of Public Service and Administration (South Africa). (1997). "Batho Pele – People First: White Paper on Transforming Public Service Delivery." https://www.dpsa.gov.za/dpsa2g/documents/acts&regulations/frameworks/white-papers/transform.pdf Accessed 23 November 2024

[128]*Ibid*

[129]Constitution of the Republic of South Africa, 1996, s 14 & s 16 https://www.gov.za/documents/constitution/chapter-2-bill-rights Accessed 23 November 2024

[130]The Media Policy and Democracy Project for the Right2know Campaign., 'The Surveillance State: Communications surveillance and privacy in South Africa' March 2016

[131]Ibid

[132]Ibid

[133]Botha v Smuts & another [2024] ZACC 22,

[134]Tony Roberts., 'Digital Rights in closing civic space: lessons from ten African countries https://www.ids.ac.uk/opinions/digital-rights-in-closing-civic space-lessons-from-ten-african-countries

[135]*Ibid*

protect privacy online while enhancing their freedom of expression.[136]

The efforts to promote these rights in South Africa differ from those in Kenya. Indeed, despite being a developing country, the government is doing all it takes to progressively realize the rights of its citizens to privacy, data protection, and freedom of expression. We can learn a lot from them and change the situation in Kenya.

8.Recommendations and conclusion

Findings

This paper has broadly illuminated the complex but significant concept of the right to privacy, data protection, and freedom of expression, as well as the problems that arise from online freedom of expression. It sought to examine how freedom of expression is protected in cyberspace by HR law, both through state practices and approaches adopted by courts, and its implications for data privacy. The paper argues that the Internet's days of being just another means of communication are long gone. It is now the "public space of the 21st century—the world's town square, classroom, marketplace, coffeehouse, and nightclub."[137] For this reason, it should be protected. Nonetheless, the paper notes with concern that the Internet's growth has equally led to its increased usage for illicit purposes, which amounts to privacy invasion and prompts governments to undertake social media and censorship.

This paper concludes that while online freedom of expression may be violated by censorship, there are valid concerns that limitation may also be necessary due to the misuse of cyberspace.

Recommendations

1. In calling for regulation, a clear definition of what constitutes illegal or harmful content ought to be provided.[139] IHR instruments like the ICCPR,[140] ACHPR[141] as well as the CoK[142] outline restrictions on freedom of expression for reasons like national security or protecting rights and reputations. However, the specifics of what constitutes harmful content vary widely across jurisdictions, creating challenges in balancing privacy and freedom of expression. Kenya would need to define such content.
2. Requiring companies to meet performance targets for content violations. Regulations can hold internet companies accountable by setting specific targets for their content moderation systems, focusing on outcomes achieved rather than processes. For instance, requiring platforms to publish annual data on the prevalence of content that violates their policies and assessing whether they have maintained such content below a certain threshold can lead to greater oversight or penalties for repeated failures.[143] However, defining the threshold is crucial to avoid unintended consequences, such as

[136]Firoz C. and Jonathan K., 'Towards a Public Law Perspective on the Constitutional Law of Privacy in South Africa in the Age of Digitalization.' Journal of African Law https://www.cambridge.org/core/journals/journal-of-african-law/article/towards-a-public-law-perspective-on-the-constitutional-law-of-privacy-in-south-africa-in-the-age-of-digitalization/7C59251723CFA61FED14D33F4BD3E6F5
[137]Hillary Clinton, 'Internet Rights and Wrongs: Choices and Challenges in a Networked World' (Lecture, The George Washington University, Washington D.C., 15 Feb 2011)
[138]*Ibid*
[139]UN Human Rights Office, *Regulating Online Content: The Way Forward* (2020)
[140]ICCPR art 19
[141]ACHPR art 27(2)
[142]Constitution of Kenya 2010 art 33(2)
[143]Monica Bickert., 'Online Content Regulation' (Meta February 2020)

In South Africa, technology has emerged as a powerful tool for amplifying voices, democratizing access to information, and challenging traditional power structures. Rooted in a Constitution that guarantees freedom of expression (Section 16), digital platforms have provided new, dynamic ways for citizens—especially youth, activists, and marginalized communities—to speak out, organize, and engage in public discourse.

companies narrowing the definitions of harmful content to meet targets.[144]

3. Holding internet service providers responsible for having specific systems and procedures to carb harmful content. This approach is the best way to guarantee that freedom of expression and privacy rights are balanced. By requiring procedures like routine public reporting of enforcement statistics, user-friendly methods of reporting content, or external review of policies, this regulation might provide states with the information they need to evaluate social media firms' efforts objectively.[145]
4. Kenyan courts should continue working towards developing jurisprudence that will guide the current and future generations on how best to exercise their online freedom of expression while respecting each other's privacy.
5. Kenya should benchmark the models that have been adopted by countries such as South Africa and strive to develop proper policies and measures that will guide in promoting online freedom of expression while maintaining privacy and data protection.

Conclusion

Technology serves both as a powerful enabler of freedom of expression and a formidable challenge to privacy and data protection. By examining and adopting the robust practices of countries like South Africa, Kenya can navigate this intricate landscape, ensuring a harmonious balance that upholds digital rights while safeguarding individual privacy.

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[144] *Ibid*

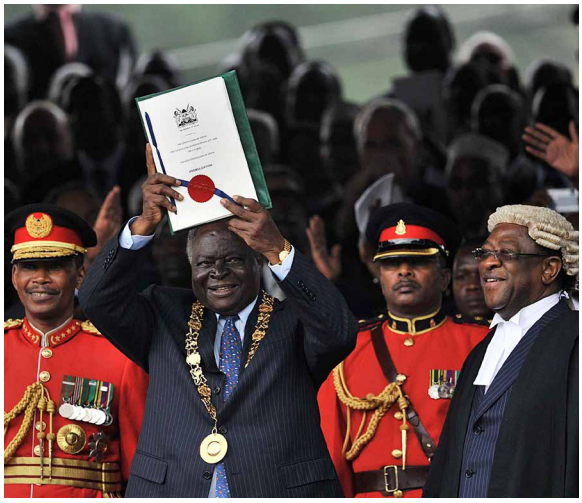
[145] Monica Bickert, 'Online Content Regulation' (Meta, February 2020); Alice Munyua, Grace Githaiga and Victor Kapiyo, 'Intermediary Liability in Kenya' https://www.apc.org/sites/default/files/IntermediaryLiabilityinKenya Accessed 22 November 2024

Monitoring and evaluation of legislation in Kenya: The need to be Deliberateness

By Ouma Kizito Ajuong'

The Constitution of Kenya, 2010 propagates several principles and ideals including; transparency, access to information and accountability. In essence these principles are akin to taking responsibility and, in this context, seeking an understanding of the impact of legislations written and passed in Kenya hence the concept of monitoring and evaluation. While a lot of focus is always given to the process of public participation pre-presidential assent, monitoring and evaluation of legislation is often looking at the law as it works. Monitoring and evaluation of legislation therefore means a systematic process of tracking the implementation and impact of legislation, assessing their effectiveness in achieving the intended goals, identifying the challenges faced when implementing the law and the areas of improvement. Monitoring and evaluation often entails identifying the set indicators such as; defining specific measures that indicate the intended outcome of a legislation, such as improved service delivery or reduced crime rate; monitoring and evaluation through collecting data; and stakeholder engagements or review of periodic reports.

Is the process of monitoring and evaluation of legislation important? The short answer is that the process of monitoring and evaluation of legislation in Kenya is very important. It is a tool for governance. It is important to acknowledge that legislation is a means to govern the people of Kenya. Different legislations and regulations help the government to push different agendas in different facets such finance, health, housing and many others. When we monitor and evaluate the implementation of legislation, there is a sense in which there is monitoring and evaluation of progress. In the realm of governance, there are also legislations that are meant to actualize the Constitution, 2010. Monitoring and evaluation of these pieces of legislation helps in growing the principles and culture of democracy and constitutionalism. Monitoring and evaluation of legislation further helps in identifying areas of improvements and



The Constitution of Kenya, 2010 is a landmark legal document that redefined the country's governance, rights, and national values. Promulgated on August 27, 2010, it replaced the independence-era constitution and established a new social contract between the Kenyan state and its citizens. It is widely regarded as one of the most progressive constitutions in Africa.

The Parliament of Kenya plays a central role in the legislation process, law-making, oversight, and representation as provided under the Constitution of Kenya, 2010. It is a bicameral legislature made up of the National Assembly and the Senate, each with distinct mandates but working together in the legislative process.

evaluation. As much as pieces of legislation are drafted to work for some time; laws are neither static nor meant to work in perpetuity. Laws are living trees and are meant to evolve and it is only through monitoring and evaluation that there can be a discovery of where to amend or change.

Monitoring and evaluation of legislation in Kenya is also important with regards to cleaning the statute book. This has been a big issue in Kenya for a very long time.

Kenya, a common law jurisdiction, and having been a British colony inherited a lot of laws from their colonial masters. As a consequence; there still exists legislation in Kenya that are outdated or archaic or poorly designed. There are also other laws that are repugnant and unconstitutional. There are also laws in Kenya that may be termed as redundant. This is to say that while they are in the statute book; statutes such as the Methylated Spirit Act may be looked at or revised to be consolidated. There may be also need to consolidate other pieces of legislation. This is fusing legislation with similar subject matter. An example for me is Persons with Disabilities Act and the Sign Language Bill. Are these not similar legislation? These can only be revised and corrected through a constant and deliberate steps of monitoring and evaluation of legislation. What are the systems of monitoring and evaluation of legislation in Kenya?

The Parliament of Kenya does not just have a role to draft and pass legislation, but also has a role to monitor and evaluate legislation as an oversight role. Committees within parliament play a role of overseeing the implementation of laws and conducting evaluations through hearings and investigations. This is however not continuous and it is often based on specific topical matters. The other institution that is largely does monitoring and evaluation of legislation is the Law Reform Commission. Reading the mandate of the commission, gives the impression that there is some monitoring and evaluation of legislation

In Kenya, courts do not legislate in the traditional sense, as legislative power is constitutionally vested in Parliament (Article 94 of the Constitution of Kenya, 2010). However, courts play a crucial role in shaping the law through judicial interpretation, development of common law, and constitutional adjudication, which often influences or fills gaps in legislation. This is sometimes informally referred to as "judge-made law."

only that it is limited to keeping the law consistent with the Constitution of Kenya, 2010 and international instrument. There may therefore be need to look at the mandate of the commission beyond the "reform" tag.

The Courts through interpretation of legislation often also do monitoring and evaluation of the law. There are so many times that judges strike out part or whole of legislation. A lot of times judges term pieces of legislation as unconstitutional and ask parliament to correct. This may be correctly be seen as monitoring and evaluation of legislation. The only challenge with the judges is that they do not act on their own motion. Kenyan citizens also largely participate in monitoring and evaluation of legislation as much as they are limited by awareness. There are other bodies in Kenya that also participate in monitoring and evaluation such as the office of the ombudsman but again, these public offices are limited to specific pieces of legislation. As much as it is a role that has been this role of monitoring and evaluation of legislation seem to be bestowed on different bodies; it faces a number of challenges which include; data limitation, political influence and challenges in limitation of data collection.

The essence of this article however is to make the process of monitoring and evaluation of legislation deliberate. This may be done in many ways. Through the Office of the Attorney General, a department may be created with the mandate of monitoring and evaluation in principle to work with the law reform commission. The other avenue is Parliament. As much as parliament passes legislation; there may be need to create a committee with the exclusive role of monitoring and evaluation of existing legislation. The other role is with drafters of legislation. Legislation gives duties and responsibilities but that is not enough. Creative drafting may demand that the drafter ties a legislation to a monitoring and evaluation mechanism. This may be by imposing certain timelines or creating some kind of enforcement by another body. This is perhaps to emphasize the point that no draft persons want to write laws that are never implemented.

"It is the greatest good to the greatest number of people which is the measure of right and wrong." Jeremy Bentham

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From paper tigers to iron teeth: Transforming Kenya's anti-corruption framework into effective governance

By Purity Whitney Nabwoba

Abstract

Corruption, especially in government, ranks among the top most issues that Kenya is grappling with. The pervasive nature of the vice has sparked debates into the intricacies around the topic, ranging from its deep rootedness, causes, effects and the probability of Kenya ever being a corruption free country. The most rampant forms of corruption in Kenya include and are not limited to bribery, looting, nepotism and fraud. Corruption in Kenya has been experienced on three main levels: institutional level, bureaucratic level and political level. The foregoing can be attributed to among other factors, political interference, lack of accountability and judicial inefficiencies.

It is in the foregoing regard that this paper sets out to give an appraisal of the legal and institutional framework on corruption in Kenya, the role of the rule of law in eradicating corruption and the gap between paper and practice. This paper further seeks to give a comparative analysis of the legal framework on corruption from other jurisdictions and also give recommendations in addressing the same. This exploration aims at identifying and proposing workable solutions in combating corruption in Kenya.

Corruption in Kenya is a pervasive issue that has persisted across multiple administrations, affecting governance, economic growth, and public trust. Below is a detailed overview of the current state, historical context, and key challenges related to corruption in Kenya:

Keywords: *Kenya, corruption, government, good governance, rule of law, legal and institutional framework*

Introduction

The issue of corruption in Kenya dates back to the colonial period. In this era, legislative amendments were viewed as the solution. In the post-colonial period, corruption was again an issue as the then Kenyan government was characterized as authoritarian and anti-democratic where anticorruption crusaders were hounded. This led to the adoption of the Public

The Integrity Centre serves as the headquarters of Kenya's Ethics and Anti-Corruption Commission (EACC), the nation's principal agency tasked with combating corruption and promoting ethical standards in public service.

Officers Ethics Act 2003, in a bid to promote good governance. The same was to no avail as all arms of government were deemed as accomplices to corruption. Parliament failed to pass anti-corruption laws, the judiciary deviated from the core concern for anti-corruption and instead advocated for the administrative rights of those being prosecuted for corruption, ministers accused of corruption scandals resigned and returned to power after investigative officers' white washed their acts and the attorney general was unwilling to prosecute leaders accused of corruption.[1]

Later, anti-corruption agencies were viewed as the best forum to address the issue. This led to the formation of the Kenya Anti-Corruption authority which was met with judicial disapproval as the then constitution only gave prosecutorial powers to the attorney general.[2] The need for constitutional entrenchment of an independent anti-corruption agency was evident. This is what led to the establishment of an Ethics and Anti-Corruption Commission under the 2010.[3] constitution. This was further backed by constitutional provisions on national values and principles of governance which bind all state organs and state officers at both levels of government.[4] The national values and principles of governance include, transparency, openness, rule of law, democracy, participation *inter alia*.

However, despite all anti-corruption efforts hereinabove, corruption still exists in the current Kenyan government and at a very high index rate. The Ethics and Anti-Corruption Commission has been termed as a toothless dog[5] and the law has been regarded to as nothing more than a piece of paper. A recent report published by

[1]Gathii, J. Thuo, *Kenya's long anti-corruption agenda--1952-2010: Prospects and challenges of the ethics and anti-corruption commission under the 2010 constitution*, The Law and Development Review 4.3 (2011): 184-237.
[2]*Ibid*
[3]*Constitution of Kenya* 2010, Chapter 6
[4]*Constitution of Kenya* 2010, article 10
[5]Business Daily, Why EACC is toothless in the war against corruption, December 27, 2020 <https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/why-eacc-is-toothless-in-the-war-against-corruption-2101180>

Transparency International, a reliable global anti-corruption organization indicated that Kenya got a corruption perception index score of 32 out of 100. This score falls below the Sub-Saharan African countries average of 33 and the global index of 43.[6]

Therefore, this paper seeks to assess the effectiveness of the existing legal and institutional framework on corruption in Kenya. This paper posits that corruption is both a legal and ethical issue. Legal in the sense that acts of corruption violate the Kenyan laws and most especially the constitution of the Kenya 2010 which is the supreme law of the land. On the other hand, corruption is an ethical issue in that it has led to erosion of public trust in the government and also, its lack of proper personal ethical standards or rather, lack of a Kenyan ethical culture that has led to acts of corruption permeating the government.

Corruption in Kenya is a deeply entrenched issue that goes beyond individual wrongdoing. Tackling it requires political will, institutional reforms, and active citizen engagement. While progress has been made, sustained efforts are necessary to break the cycle of impunity and promote a culture of integrity.

Understanding corruption in Kenya

The Anti-Corruption and Economic Crimes Act defines corruption as any acts of dishonesty by public officers including and not limited to bribery, embezzlement of public funds, abuse of office, fraud and breach of trust.[7] Other authorities have commonly defined corruption as 'an inappropriate behavior or abuse of authority for personal gain by public officials, guilty of dishonesty especially involving bribery and abuse of public office for private gain.[8] This paper endorses the Kenyan definition of corruption.

Practically, corruption in Kenya has been said to be experienced in three main forms. That is, institutional corruption, bureaucratic corruption and political corruption.[9] Institutional corruption refers to a form of corruption where members of a certain public department, institution or office collaborate in carrying out corrupt activities such as kickbacks in giving procurement tenders, and sharing the profits thereof. On the other hand, bureaucratic corruption is where a specific officer solicits a bribe for offering public services which would otherwise not be paid for and political corruption is where politicians use their political influence and/or power in getting government deals fraudulently.[10]

[6]TI Kenya "2024 Corruption Perceptions Index Reveals How Weak Anti-Corruption Measures Undermine Climate Action and Contribute to The Violation of Human Rights" <https://tikenya.org/2025/02/11/2024-corruption-perceptions-index-reveals-how-weak-anti-corruption-measures-undermine-climate-action-and-contribute-to-the-violation-of-human-rights/>
[7]Anti-Corruption and Economic Crimes Act, Act No.3 of 2003
[8]Gathii, J. *Thuo. Corruption and donor reforms: expanding the promises and possibilities of the rule of law as an anti-corruption strategy in Kenya*, Conn. J. Int'l L. 14 (1999): 407.
[9]Anassi, Peter, Corruption in Africa: *The Kenyan experience: A handbook for civic education on corruption*, (2004).
[10]*Ibid*


Former Kiambu Governor Ferdinand Waititu

Conceptualizing corruption vis a vis the Rule of Law in Kenya

The rule of law is a legal principle that states that no one is above the law and that each arm of government should function independently in ensuring checks and balances. The doctrine is meant to restrict state powers and subsequently, protect citizens from arbitrary acts of the state. The judiciary arm of government is a key role player in ensuring the rule of law.[11] The arm is constitutionally mandated to interpret the law in a manner that promotes and upholds the rule of law.[12] In a bid to discharge the foregoing function, the judiciary has been actively involved in combating corruption through among other ways, prosecution of high-profile cases and adoption of an anti-corruption strategies.[13]

For instance, in the case of *Waititu v Republic*, the supreme court of Kenya convicted the governor of Kiambu county for receiving Kshs. 25.6M as kickbacks for a road tender of Kshs. 588M. He was sentenced to 12 years imprisonment with a fine of Kshs. 53.7M.[14] Further, the court of appeal in the case of *Moses Kasaine Lenolkulal v Republic* convicted the former governor of Samburu for abuse of power by giving himself a government tender to supply fuel of Ksh. 84M.[15] At the implementation level, the national governance principles of participation, openness, accountability and transparency are crucial guidelines in combating corruption. For instance, it is a rule of law that county governments should make public, all financial reports such as the Annual Development Plan, the County Fiscal Strategy Paper, the County Integrated Development Plan and finally, the County Government Implementation Report.[16] Such reports are to be availed quarterly.[17] This ensures the citizens' right to access to information as guaranteed under the Access to Information Act 2016 hence empowering citizens to hold their respective governments to account.

Since corruption in Kenya is mostly witnessed through misappropriation of public funds, making financial reports by all county governments publicly available demands adherence to the rule of law principles of transparency, openness and accountability hence significantly combating

[11]Mutua, Makau. "Justice under siege: The rule of law and judicial subservience in Kenya." Human Rights Quarterly 23.1 (2001): 96-118.
[12]*Constitution of Kenya* 2010, art 159
[13]Judiciary, 'Judiciary Adopts New Strategy to Fight Corruption' <https://judiciary.go.ke/judiciary-adopts-new-strategy-to-fight-corruption/>
[14][2021] eKLR
[15][2019] eKLR
[16]*Public Finance Management Act* 2012, s. 164
[17]*Ibid*

corruption failure of which such citizens can seek to enforce the same through courts.

The causes of corruption in Kenya

i) Weak institutional framework

In Kenya, several institutions are charged with the role of combating corruption. These include and are not limited to the Ethics and Anti-Corruption Commission, the Office of the Director of Public Prosecutions, the office of the Auditor General, the judiciary, the Directorate of Criminal Investigations and the office of the Controller of budget.

However, corruption still pervades the Kenyan government. This is mainly attributed to the lack of capacity and will by these institutions to eradicate the same.[18] The hereinabove institutions lack the necessary financial and human resources to enable them to investigate and prosecute corruption cases.[19] Consequently, the Ethics and Anti-Corruption Commission, the principal institution in fighting corruption in Kenya, has been equated to a toothless dog.[20] Despite the constitutional entrenchment for the independence of the commission in order to ensure its effectiveness, the commission is yet to prosecute any high profile case that would deter high state officials from engaging in the same. Instead, the commission has been said to target petty offenders while bigger corruption cases permeate the government.[21]

On the other hand, other institutions such as office of the Office of the Director of Public Prosecutions have been just as ineffective on the matter. This is manifested through the several withdrawals of cases citing the need to save tax payers' money.[22] A perfect example is the Arror & Kimwarer scandal. In a case involving misappropriation of Ksh. 63B which was meant to build the two dams, the suspects were acquitted on grounds of inability to present witnesses as well as sufficient evidence.[23] This shows the ineffectiveness of the Kenyan anti-corruption institutions hence the need to enhance their capacity in terms of human and financial resources to enable them to effectively investigate and prosecute corruption cases.

ii) Government; the judge in its own case; Lack of political goodwill

The government, which is the executive arm of government, is charged with the role implementing laws including anti-corruption laws. On the other hand, the *nemo iudex in causa sua* principle of natural justice demands that no one shall be a judge in their own case.[24] It therefore averts logic, to trust the government to implement anti-corruption laws when it is the one that is violating such laws. Consequently, instead of government institutions fighting corruption in Kenya, it has institutionalized corruption.[25] For instance, president Ruto has recently vowed to take serious measures to combat corruption.[26] This is despite the

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[18]Hope, K. R, Kenya's corruption problem: causes and consequences, Commonwealth & Comparative Politics, 52(4), 493–512 (2014) < https://doi.org/10.1080/14662043.2014.955981>

[19]Onyango, G. (2022). The art of bribery! Analysis of police corruption at traffic checkpoints and roadblocks in Kenya. International Review of Sociology, 32(2), 311-331.

[20]"*Kenya Corruption Profile*", Business Anti-Corruption Portal. Archived from the original on 14 July 2015. Retrieved 14 July 2015.

[21]Daud, Yussuf M. *A review of effectiveness of anti-corruption strategies and institutions in Kenya*, African Journal of Commercial Studies 4.4 (2024): 303-318 <https://doi.org/10.59413/ajocs/v4.i4.5>

[22]Mwale, Anne, 'Explained; Why the ODPP withdraws high-profile court cases', Kenya News Agency <https://www.kenyanews.go.ke/explained-why-the-odpp-withdraws-high-profile-court-cases/>

[23]*Richard Malebe v Director of Public Prosecutions & 2 others* [2020] eKLR

[24]*Principles of Natural Justice*, <https://nios.ac.in/media/documents/SrSec338New/338_Introduction_To_Law_Eng/338_Introduction_To_Law_Eng_L6.pdf>

[25]Gichohi, C.W, *Institutionalization of Corruption in Kenya: A Review of Disintegration of the Moral Fabric*, Karatina University <https://karuspace.karu.ac.ke/server/api/core/bitstreams/e909fde3-b433-4d8e-a683-a39a94353e66/content>

[26]Capital News 'Ruto vows decisive war on corruption, urges independent institutions to step up efforts', <https://www.capitalfm.co.ke/news/2024/11/ruto-vows-decisive-war-on-corruption-urges-independent-institutions-to-step-up-efforts/>

Political interference in the fight against corruption in Kenya is one of the most persistent and damaging barriers to accountability, transparency, and justice. While Kenya has a legal and institutional framework to combat corruption, political influence often undermines investigations, prosecutions, and public confidence.

populace perceiving him as the most corrupt state official and naming him '*kasongo*', meaning the most corrupt and dishonest man.[27]

Additionally, several failed prosecution attempts have been blamed on top government officials cushioning their allies.[28] Consequently, anti-corruption efforts in Kenya fall into deaf ears as the same people who are expected to combat corruption are the same people perpetrating it.

iii) Lack of proper implementation strategies

While Kenya has a robust legal framework on anti-corruption, the anti-corruption laws in Kenya have been equated to a mere piece of paper. This is due to the gap between paper and practice which is implementation. First, as earlier stated hereinabove, the anti-corruption institutions lack capacity in terms of financial human resources to investigate and prosecute high profile cases. Second, the asset recovery strategy adopted to acquire illicitly obtained property[29] has also faced challenges. For instance, acquisition of both internationally and domestically hidden property has been problematic as the recovery is pegged on the collaboration between Kenya and other countries. Further, the move to have the EACC investigate corruption cases and prosecutes offenders alongside the Office of the Director of Public Prosecutions has raised concerns about lengthy court cases and a backlog of corruption trials. Additionally, a perception of political interference in some prosecutions has undermined public trust in the process. The Kenyan court system is mostly overburdened, which leads to lengthy delays in corruption cases hence allowing defense teams to exploit loopholes and delay tactics.[30]

iv) Political interferences

Government persons on high positions of power often shield their friends/or accomplices in corruption cases. This is manifested through frequent dropping of charges by relevant authorities. These significantly contributes to the pervasive nature of corruption in Kenya.

v) Cultural acceptance

Corruption has become the order of the day. Corruption has been normalized at all levels of public service. Private persons

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[27] *TRT Africa*, 'How Kenya's President Ruto got 'Kasongo' nickname; President William Ruto's new nickname has sent social media wild in Kenya. (11 January, 2025)' <https://trtafrika.com/lifestyle/how-kenyas-president-ruto-got-kasongo-nickname-18252699>

[28] Mwanzia, Diana, 'Is Kenya's fight against corruption finally winning, or is it another political mirage?' *Transparency International Kenya* (March 26, 2025) <https://tikenya.org/2025/03/26/is-kenyas-fight-against-corruption-finally-winning-or-is-it-another-political-mirage/>

[29] Omondi, M. *Asset Recovery in Corruption Cases: Towards a More Efficient Legal Framework for Recovering Assets* (Doctoral dissertation, University of Nairobi), (2021)

[30] Odhiambo, M. A. *Evaluation of the effectiveness of whistle blowing as a corruption intervention mechanism in the public sector: the case of Mombasa Ethics and Anti-Corruption Commission in Kenya (Doctoral dissertation, Africa Nazarene University)*, (2022)

Corruption in Kenya directly fuels underdevelopment by diverting vital resources, weakening institutions, and eroding public trust. Addressing corruption is essential to unlocking Kenya's development potential and improving the quality of life for all citizens.

often offer bribes to government officials for preferential treatment hence breeding a culture of corruption. This is common with the traffic police.

Effects of Corruption

i) Underdevelopment

Corruption remains the greatest impediment to Kenya's development. This is because the money meant for development and provision of government services is often diverted into individuals' pockets. Additionally, corruption as a sign of poor governance, scares away investors as the security of their investments is questionable. These investors end up going to other countries with less corruption hence Kenya remains underdeveloped.

ii) Poverty

According to the Ethics and Anti-Corruption Commission, Kenya loses an estimated KSh. 608 billion/= (7.8% of the country's GDP) to corruption annually.[31]

This burden is later transferred to tax payers who are living at less than 1$ per day.[32] Corruption seeks to benefit the rich minority at the expense of the rich majority. Hence, increased poverty rates in the country.

iii) Loss of public trust

The public perception is that leadership is a platform for individual enrichment in Kenya. Consequently, the public has shifted its belief in a democratic government to view

[31]The star, 'Kenya loses Sh608bn to corruption annually – Mudavadi', <https://www.the-star.co.ke/counties/coast/2024-08-16-kenya-loses-sh608bn-to-corruption-annually-mudavadi>

[32]The Global Economy, 'Kenya: Poverty at 1.90 USD per day' <https://www.theglobaleconomy.com/Kenya/poverty_ratio_low_range/>

government as a corruption agency that feeds on tax payers' money.

iv) Erosion of moral and ethical values

The normalcy of corrupt acts such as offering bribes has led to breeding a generation of youths who believe in bribing your way to government opportunities as well as escape legal obligations.

v) Poor government services

Since lumpsums of government funds are diverted into individuals' pockets, less is left to cater for effective service delivery hence poor public services such as health, education among others.

Legal & Institutional Framework on Anti-Corruption in Kenya

Legal framework

Kenya has several legislations on anti-corruption. These include both national and international legislations. At the national level, anti-corruption laws include and are not limited to the Constitution of Kenya 2010, the Ethics & Anti-Corruption Commission Act, the Anti-Money Laundering Act, the Public Procurement Act and the Public Officer Ethics Act.

At the international level and by virtue of article 2 (5) and (6) of the constitution of Kenya 2010, Kenya has binding international anti-corruption laws both at the regional and international level. These include, United Nations Convention Against Corruption (UNCAC), the African Union Convention on Preventing and Combating Corruption (AUCPCC) and the East African Community (EAC) Protocol on Preventing and Combating Corruption. Accordingly, Kenya has enacted legislations to implement the foregoing international instruments by virtue of article 21 (4) of the constitution.[34]

2.2.1.1 National/Domestic Framework

a) The Constitution of Kenya 2010

The constitution of Kenya 2010 is the supreme law of the land.[35] Chapter 6 of the Kenyan constitution provides for leadership and integrity.[36] Further, article 10 of the same constitution provides for the national values and principles of governance including openness, accountability, transparency and the rule of law.[37] The same constitution establishes an independent commission called the Ethics and Anti-Corruption commission under article 79 which is the principal body on matters corruption in Kenya.[38] The constitution further establishes other bodies such as the judiciary,[39] Office of the Directorate of Criminal Investigation[40] and the office of the Auditor General[41] who aid combating corruption.

b) The Ethics & Anti-Corruption Commission Act 2011

An Act of parliament that establishes the Ethics and Anti-Corruption Commission.[42] It also provides for the powers[43] and the

[33] *Constitution of Kenya* 2010, art. 2 (5) & 2 (6)
[34] *Constitution of Kenya* 2010, art. 21 (4)
[35] *Constitution of Kenya* 2010, article 2
[36] *Constitution of Kenya* 2010, Chapter 6
[37] *Constitution of Kenya* 2010, art. 10
[38] *Constitution of Kenya* 2010, art. 79
[39] *Constitution of Kenya* 2010, art. 159
[40] *Constitution of Kenya* 2010, art. 157
[41] *Constitution of Kenya* 2010, art. 229
[42] *The Ethics & Anti-Corruption Commission Act* 2011, s. 3
[43] *The Ethics & Anti-Corruption Commission Act* 2011, s. 13

The Public Officers Ethics Act (Cap 183) is a key piece of legislation in Kenya aimed at promoting integrity, transparency, and accountability among public officers. It sets standards of ethical conduct to ensure that public servants serve the public interest and uphold public trust.

functions of the commission including investigations and public education on Ethics.[44] Further, section 28 provides for the independence of the commission.[45] The section states that the commission, will discharging its functions shall be free from the control of any authority including the government.

The Act empowers the EACC to investigate and prosecute cases of corruption without government's interference.

c) The Anti-Corruption and Economic Crimes Act (2003)

Defines corruption to include offences such as bribery, fraud, and abuse of office.[46] The Act provides for economic crimes such as tax evasion, money laundering, embezzlement *inter alia*. Further, section 3 of the Act provides for the power of the Chief Justice to appoint special magistrates to handle corruption cases.[47] Section 16 establishes an advisory board[48] whose role is to advice the commission on the exercise of its powers and functions.[49] The Act also provides for procedure for investigating corruption offences as well as reclaiming illicitly acquired public property. Last but not least, the Act provides for penalties for corruption-related crimes including a fine not exceeding Kshs.1M, imprisonment for a term not exceeding 10 years or both.[50]

d) The Public Officers Ethics Act (2003)

This is an Act of parliament that provides for a code of conduct for all public officers. These include, no improper enrichment, care for public property, rule of law, professionalism, conflicts of interest among others. The Act also provides for the mandate of each commission to have their own code of

[44] *The Ethics & Anti-Corruption Commission Act* 2011, s. 11
[45] *The Ethics & Anti-Corruption Commission Act* 2011, s. 28
[46] *Anti-Corruption and Economic Crimes Act* 2003, s. 2
[47] *Anti-Corruption and Economic Crimes Act* 2003, s. 3
[48] *Anti-Corruption and Economic Crimes Act* 2003, s. 16
[49] *Anti-Corruption and Economic Crimes Act* 2003, s. 17
[50] *Anti-Corruption and Economic Crimes Act* 2003, s. 48

conduct separate from the general code of conduct for all public officers.[51]

e) The Proceeds of Crime and Anti-Money Laundering Act (2009)

The Act provides for the crime of money laundering and other related crimes. The Act establishes a Financial Reporting Center[52] whose principal objective is to identify proceeds of crime and combat money laundering.[53] Part VI of the Act establishes the Asset Recovery Agency (ARA) whose main role is to seize assets acquired through corruption.

f) The Public Procurement and Asset Disposal Act (2015)

The Act is aimed at ensuring transparency and accountability in government procurement. The Act provides for the rules of procurement,[54] principles of procurement and asset disposal,[55] and the role of county governments including the power to ensure compliance.[56] Further, the Act establishes the Public Regulatory Authority (PPRA)[57] whose role revolves around overseeing public tenders.[58]

g) The Bribery Act (2016)

This is an Act of parliament that criminalizes among other related offences, giving and receiving bribes.[59] The Act provides for penalty of bribery offences which is imprisonment for a term not exceeding 10 years, a fine not more than Kshs.5M or both.[60] Lastly, the Act imposes a duty on private entities to have in place, procedures for prevention of bribery[61] and the penalties thereof in case of non-compliance.[62]

f) Penal Code (Cap 63

It addresses corruptions through provisions on abuse of power, fraud, embezzlement of funds *inter alia*. The code provides for penalties ranging from imprisonment to fines and potential loss of power.

Section 128A of the penal code addresses offences by public officers. Section 127 further deals with fraud and breach of trust by public officers.

Regional Framework

a. African Union Convention on Preventing and Combating Corruption (AUCPCC)

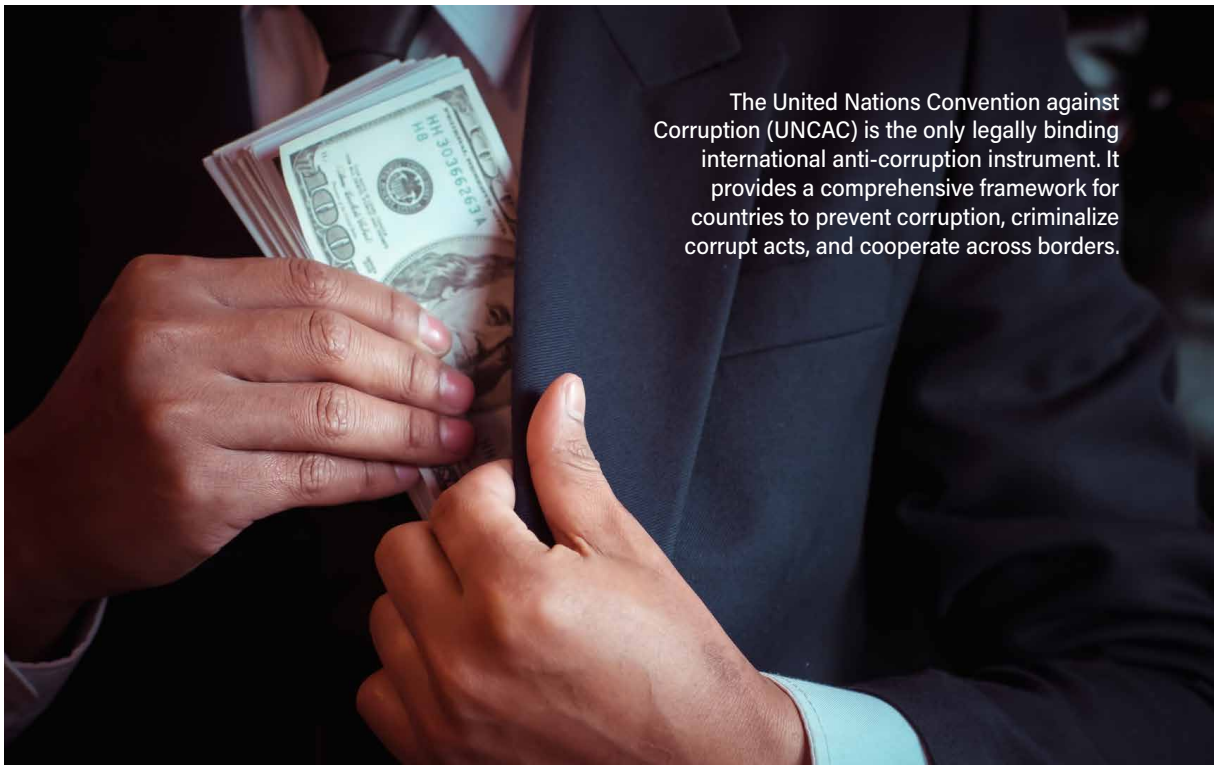
Kenya signed the African Union Convention on Preventing and Combating Corruption on 17th December, 2003. The same was ratified the on 3rd February, 2007, making it legally binding in Kenya.

The AUCPCC has formed the basis for enactment of several domestic anti-corruption laws such as the Bribery Act (2016), the Public Procurement and Asset Disposal Act (2015), the Proceeds of Crime and Anti-Money Laundering Act (2009) *inter alia*.

b. East African Community (EAC) Protocol on Preventing and Combating Corruption

The EAC Protocol on Preventing and Combating Corruption was adopted by the

[51] *Public Officer Ethics* 2003 Act, s. 5
[52] The *Proceeds of Crime and Anti-Money Laundering Act* 2009, s. 21
[53] The *Proceeds of Crime and Anti-Money Laundering Act* 2009, s. 23 (1)
[54] The *Public Procurement and Asset Disposal Act* 2015, Part VII
[55] The *Public Procurement and Asset Disposal Act* 2015, Part VI
[56] The *Public Procurement and Asset Disposal Act* 2015, Part ILL
[57] The *Public Procurement and Asset Disposal Act* 2015, s. 8
[58] The *Public Procurement and Asset Disposal Act* 2015, s. 9
[59] The *Bribery Act* 2016, ss. 5, 6, 13
[60] The *Bribery Act* 2016, s. 18
[61] The *Bribery Act* 2016, s. 9
[62] The *Bribery Act* 2016, s. 10



The United Nations Convention against Corruption (UNCAC) is the only legally binding international anti-corruption instrument. It provides a comprehensive framework for countries to prevent corruption, criminalize corrupt acts, and cooperate across borders.

EAC Heads of State including Kenya's head of state in 2012. Kenya ratified the Protocol in 2016, making it legally binding under regional law.

The instrument has similarly formed the basis for enactment of several anti-corruption laws herein.

International Framework

a. United Nations Convention Against Corruption (UNCAC)

Kenya signed the United Nations Convention Against Corruption on 9th December, 2003. This followed ratification on 9th December 2005, making the convention legally binding in Kenya.

The foregoing regional instrument has formed the basis for enactment of anti-corruption legislations in Kenya such as the Anti-Corruption and Economic Crimes Act (2003), the Bribery Act (2016), the Public Procurement and Asset Disposal Act (2015), the Proceeds of Crime and Anti-Money Laundering Act (2009) *inter alia*.

Institutional Framework

The principal anti-corruption body in Kenya is the Ethics and Anti-Corruption Commission. However, there exist other authorities that work in conjunction with the EACC in fighting corruption in Kenya on different levels. These include, the Office of the Auditor General, the Office of the Directorate of Criminal Investigations, the Office of the Director of Public Prosecution *inter alia*.

a) Ethics & Anti-Corruption Corruption Commission

It is established under article 79 of the constitution of Kenya 2010 and by the Ethics & Anti-Corruption Act. EACC is the principal authority for enforcement of the provisions of chapter 6 of the constitution on leadership and integrity through conducting investigations and recommending for prosecution, corruption offences. The commission is independent and free of government interference.

b) Office of the Director of Public Prosecutions (ODPP)

It is and independent body established under article 157 of the Constitution of Kenya 2010. It works in conjunction with the EACC by investigating and prosecuting individuals suspected of corruption as well as economic crimes.

c) Directorate of Criminal Investigations (DCI)

Established under article 247 of the Constitution and section 28 of the National Police Service Act.

It has an Anti-Corruption and Economic Crimes Unit established in 2013 to enforce the Anti-Money Laundering Act. Section 35 of the National Police Service Act provides for the DCI's duty to investigates corruption-related crimes, including financial fraud and economic crimes.[63] The office of DCI works under the National Police Service but in collaboration with other institutions such as the EACC to combat crime such as corruption crimes.

d) Office of the Auditor-General

This another independent office established under article 229 of the Constitution of Kenya 2010. The office's main role is to audit public institutions and government accounts to ensure compliance with the rule of law in handling public funds. The office aids in combating corruption by reporting on misuse and mismanagement of public resources.

A perfect example of this institution's role in combating corruption is the recent exposure of the SHIF-SHAH health insurance questionable facts on the supplier of these services.

e) Controller of Budget

Established under article 228 of the constitution. It aids in combating corruption by monitoring the use of government funds to ensure public funds are spent lawfully and within approved budgets.

f) Public Procurement Regulatory Authority (PPRA)

Established under section 8 of the Public Procurement Act. It plays an oversight role in public procurement to ensure compliance with procurement laws. It also investigates procurement irregularities and corruption in tenders.

g) Judiciary

it is an independent arm of government established under article 159 of the constitution. Its main role is to interpret and enforce laws including anti-corruption laws. It has an Anti-Corruption and Economic Crimes Court established as part of the Judiciary's reforms to enhance efficiency in corruption cases. The court handles corruption-related cases to ensure expediency in corruption cases.

Additionally, as herein earlier stated, the judiciary plays a crucial role in combating corruption through enforcement of the rule of law, convicting and causing the impeachment of corrupt government officials as in the Waititu and John Waluke cases.

h) Kenya Revenue Authority (KRA)

Established by the Kenya Revenue Authority Act of 1995.[64] The authority has an Intelligence and Strategic Operations Unit which aids in combating corruption by investigating tax evasion and other financial offences related to corruption.[65]

[63]National Police Service Act, s.35
[64]Kenya Revenue Authority Act 1995, Cap 469, Laws of Kenya
[65]*Ibid*

Gaps/challenges in the legal & institutional anti-Corruption framework in Kenya

From the foregoing legal framework, it is right to say that Kenya has a robust legal and institutional framework on anti-corruption. However, there is an apparent gap between the law on paper and practice. Consequently, it is safe to deduce that the problem lies at the implementation stage. The non-implementation and ineffectiveness of the foregoing legal and institutional framework is attributed to factors such as political interference, weak and/or incapacitated institutions such as the EACC, delays in prosecutions on the part of the judiciary and the Office of the Director of Public Prosecution among others.

Comparative analysis

Having established that the pervasive nature of corruption in the Kenyan government can be attributed to non-implementation, this paper seeks to study and highlight key anti-corruption implementation strategies that the countries of Rwanda, Seychelles and Botswana have adopted. The choice of the foregoing countries has been informed by Corruption Perception index reports published by Transparency International, a reliable global organization, indicating relatively low rates of corruption in these countries. Noteworthy, these countries legal and institutional framework are closely similar to Kenya's.

a. Seychelles

Has been ranked as the least corrupt country in Sub-Saharan African with a score of 72 and ranking number 18 globally.[66] The effectiveness of the country's anti-corruption laws and institutions is as a result of among other factors, the adoption and implementation of the National Anti-Corruption Strategy, whistleblowing protection policies, and e-government initiatives.

The National Anti-Corruption Strategy is a guideline for the Seychelles government in combating corruption.[67] It provides for enforcement and prevention mechanisms through other ways, public engagement and education.[68] On its implementation, the Anti-Corruption Commission of Seychelles frequently holds public sensitization initiatives to educate the public on the meaning of corruption, its effects, methods of spotting corruption, reporting mechanisms and the functions of the commission in combating corruption.[69] This has led to nationalization of anti-corruption campaigns in Seychelles hence the high score.[70]

Further, the government has adopted e-government services as a way of combating bureaucratic corruption. The idea is to limit personal interactions with government officials that would otherwise provide a platform for corruption including bribery.

Cooperation between the government, private citizens and government institutions is also one of the major factors of low corruption rates in Seychelles. The government at the implementation level, has adopted reforms that are aimed at combating corruption such as digitalization of government services. On the other

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[66]Transparency International, 'Corruption Perception Index' <https://www.transparency.org/en/cpi/2024/index/syc>
[67]The National Assembly of Seychelles Report of The International Affairs Committee on the SADC Protocol Against Corruption <https://www.nationalassembly.sc/sites/default/files/2021-11/IAC%20Report%20on%20the%20SADC%20Protocol%20Against%20Corruption.pdf?utm_source=chatgpt.com>
[68]*Ibid*
[69]Gaswaga, Duncan. *"The Anti-Corruption Commission of Seychelles."* JACL 1 (2017): 1.)
[70]Ibid

hand, the private sector is also empowered by the Seychelles government through promoting the freedom of speech and democratization to report corruption cases. Seychelles' anticorruption institutions such as the commission, are also devoted to investigating and prosecuting corruption offences hence relatively lower corruption rates.[71]

b. Botswana

The 2024 Transparency International Corruption Perception Index report ranked Botswana number 43 out of 180 countries in fighting against corruption with a score of 57.

The foregoing can be attributed to Botswana's robust implementation framework on anti-corruption. First, Botswana is one of the few countries that have a specific legislation that protects whistleblowers.[72] The legislation protects individuals reporting corruption cases. Whistleblowers have played a crucial role in fighting corruption in Botswana as they expose the corrupt activities of the government and other public officials.[73]

Additionally, the country has also adopted the Declaration of Assets and Liabilities Act of 2019 which obligates state officials to declare their net assets and liabilities.[74] This has ensured transparency and accountability in governance hence reducing corruption in Botswana.

Besides the foregoing legal reforms, Botswana has embraced the role of civil society organizations and the media in combating corruption. Civil societies in Botswana have offered necessary information to aid the government and anti-corruption institutions come up with the national strategy plan against corruption. On the other hand, the empowerment of the media as an independent institution with public trust has played a crucial role in combating corruption in Botswana through investigative journalism and exposure of corruption related cases in the government.

Furthermore, Botswana has enhanced the capacity of its anti-corruption institutions such as through increased funding, capacity building *inter alia*. This has ensured adequate financial and human resources hence effective probes into corruption scandals in the government of Botswana.

Lastly, Botswana's investment in public awareness has significantly led to low corruption rates in Botswana. The Directorate on Corruption and Economic Crime (DCCEC) often conducts nationwide awareness initiatives to educate the public on corruption risks and reporting mechanisms.[75] Botswana's anti-corruption education in schools has also contributed to low corruption rates by instilling ethical values and integrity among students.

c. Rwanda

Rwanda has always ranked among the top five countries in Sub-Saharan Africa with least crime rates.[76] This is attributed to the political will and strict enforcement of the rule of law in Rwanda.

Political will has been a cornerstone in anti-corruption campaigns in Rwanda. This

[71] *Anti-Corruption Act* of Seychelles of 2016, s. 69
[72] *Whistleblower Act* 2016, Laws of Botswana
[73] Abiodun Omotoye, *An Overview of the Role of Non-State Actors in Preventing and Combatting Corruption in Botswana: Challenges and Opportunities*, Vol. 5 No.2 (2016) <https://www.ccsenet.org/journal/index.php/par/article/view/59771>
[74] *Declaration of Assets and Liabilities Act* 2019, Laws of Botswana
[75] Public Education: Mandate, The Directorate on Corruption and Economic Crime [accessed January 2018
[76] Transparency International, 'Towards Enforcement of African Commitments Against Corruption' <https://www.transparency.org/en/projects/enforcement-of-african-commitments-against-corruption/data/tea-cac-rwanda?utm_source=chatgpt.com>

is manifested through the devotion of the government to eradicate corruption through the adoption of the zero tolerance for corruption policy.[77] Rwanda's government devotion to good governance has played a crucial role in combating corruption rates in Rwanda.

Additionally, the strict enforcement of the rule of law has played a key role in fighting corruption in Rwanda by insinuating that no one is above the law. This has led to successful prosecutions of high profile personnel hence combating corruption. An example is the sentence of the former minister of State for Primary and Secondary Education for 5 years imprisonment for trying to receive a bribe to influence private school ranking.[78] Another case is the case of Dr. Sabin Nsanzimana, the Director General of the Rwanda Biomedical Centre who was prosecuted in the courts for embezzlement and mismanagement of public funds.[79] Rwanda's government's dedication to eradicating corruption as well as strict enforcement of the rule of law are borrow worthy practices in effectively combating corruption in Kenya.

Concluding remarks

The pervasive nature corruption in the Kenyan government is both a legal and ethical issue. This is because, corruption offences violate anti-corruption laws such as the constitution. On the other hand, corruption is an ethical issue as it violates the public code of ethics and the national values and principles of governance which have a moral underpinning. However, the ineffectiveness of the anti-corruption laws is more of an ethical issue than it is a legal issue. This is because, of the erosion of ethical behaviors such as honesty in the Kenyan government which form a cornerstone for good governance. Therefore, to effectively combat corruption, there is need for ensuring restoration of high ethical standards in the Kenyan government. This can be achieved through among other ways, moral trainings of government officials as well as the younger generation on anti-corruption principles.

Recommendations

This paper proposes the following recommendations;

Strict enforcement of the rule of law. From the foregoing analysis on the legal framework, Kenya has a very comprehensive and sufficient legal framework. The *status quo* on corruption in the Kenyan government is therefore attributable to non-implementation. It is in the foregoing regard that this paper proposes strict enforcement of the rule of law by holding all state officers to account, like in the case of Rwanda.

Strengthening the existing institutional framework. It is safe to say, from the hereinabove institutional framework, that Kenya, like Seychelles, has a sufficient institutional framework. However, the efficiency of such institutions is dependent on their capacity to discharge their functions. It is in this regard, that this paper suggests that the Kenyan government should strengthen anti-corruption institutions such as the the EACC and the ODPP, with adequate financial and human resource to effectively discharge their anti-corruption mandate.

Ensure strict independence of the ODPP and other investigatory institutions. Political interference has been noted herein as one of

[77]"Rwanda Anti-Corruption Policy", Government of Rwanda. June 2012. < https://www.minijust.gov.rw/fileadmin/user_upload/Minijust/Publications/Policies/Rwanda_Anti_Corruption_Policy.pdf>
[78]Kwibuka, Eugene, "Special chambers in Rwandan courts to try corruption cases", The New Times, (3 June, 2018).< https://www.newtimes.co.rw/article/153441/News/special-chambers-in-rwandan-courts-to-try-corruption-cases.>
[79]Pellegatta, Michela (2020). Case of Rwanda: a transition towards Good Governance. Berlin: ERCAS

Whistleblower protection is critical in the fight against corruption. Individuals who report corrupt acts often face serious risks, including job loss, intimidation, or physical harm. Effective legislation that protects whistleblowers encourages more people to come forward with information, thereby enhancing transparency and accountability.

the impediments to eradicating corruption in Kenya. Consequently, this paper suggests the adoption of legal reforms to ensure independence of the anti-corruption institutions in order to prevent high profile leaders from cushioning their corrupt allies.

Incorporation of Civil Society Organizations. The role of CSOs in combating corruption has been greatly acknowledged in the implementation strategies of the countries herein such as Botswana and Seychelles. Throughout, CSOs have been seen to be instrumental in giving workable recommendation strategies to the governments to ensure a corruption free country. It is on this basis that this paper proceeds to recommend inclusion of CSOs in formulation of the government's anti-corruption reforms since CSOs have direct links with the populace.

Adoption of a whistleblower's protection legislation. The role of whistleblowers in combating corruption has been sufficiently elucidated in the case of Botswana. This paper suggests that the government of Kenya should enact a Whistleblowers Protection Act whose main objective is to provide protection to people reporting corruption cases. This will encourage involvement of the private sector in eradicating corruption.

Nationalization of anti-corruption moves. While corruption pervades, cooperation and engagement of all stakeholders will give a holistic approach to combating corruption. For instance, the media being the fourth arm of government plays a crucial role in combating corruption through investigative journalism and exposure of corruption cases in the government. This will exert pressure on the government to desist from corrupt acts. On the other hand, the EACC should frequently conduct nationwide campaigns against corruption and educate the public on the meaning and forms of corruption as well as the mechanism for reporting hence nationalizing anti-corruption efforts.

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LEGAL EVOLUTION

Emerging jurisprudence from the tax appeals tribunal: A polemic analysis

By Munyisia Kevin

Without debate, without criticism, no administration and no Country can succeed and no republic can survive.

Introduction

Recently, the Judicial Service Commission (JSC) placed in the dailies an advert for among inter alia, members of the Tax Appeals Tribunal (TAT). This is representative of the coming to an end of an era for some of the present members. In the spirit of transparency and building on positive criticism in the public sphere, such a phenomenon becomes necessary to undertake an audit of the jurisprudence emerging from the Tribunal as presently constituted and such lessons to populate the in-tray of the incoming cohort.

Since the establishment of the Tax Appeals Tribunal by the *Tax Appeals Tribunal Act*, No. 40 of 2013, it has become an integral facet of tax administration in Kenya. Generally, Tribunals as quasi-judicial bodies offer a specialised avenue of dealing with disputes. Joash Dache, in his concept paper on reforming Tribunals in Kenya, notes

The Tax Appeals Tribunal (TAT) is an independent quasi-judicial body in Kenya established to handle disputes between taxpayers and the Kenya Revenue Authority (KRA). It provides a specialized forum for resolving tax-related matters in a fair, timely, and efficient manner.

that Tribunals broaden access to justice and offer speedy resolution away from the strictures of court process.[1] Being specialised in nature, concretization of jurisprudence in the field should be its nature. Has this been the case with the TAT? Well, let us explore the hits and misses to the absolutely mortifying and possible lessons or prescriptions thereon well into the second decade of its existence.

The hits and the progressive jurisprudential milestones

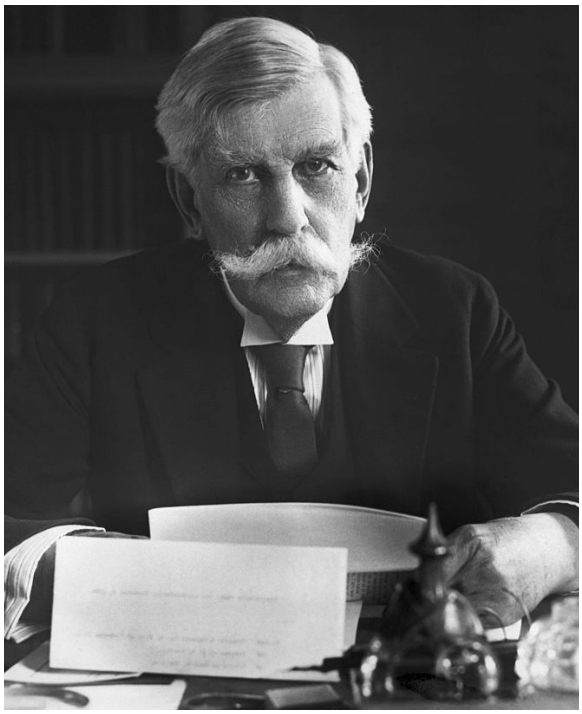
For starters, tax and tax administration are some of the most emotive issues in and

[1]See, Joash Dache, Reforming Tribunals In Kenya - Concept Paper by Joash Dache (2015) KLRC Blog at <https://www.klrc.go.ke/index.php/klrc-blog/522-reforming-tribunals-in-kenya-concept-paper-by-joash-dache> accessed on 24th March 2025.

around governance. More importantly, taxes are by far the most common means in which governments globally fund their operation and provide public goods. This concept, astutely captured by the American jurist Oliver Wendell Holmes Jr, is the price we pay to remain civilised, a position re-affirmed by our very own jurist, Justice G. V. Odunga (as he then was), while striking down the legislation on minimum tax as being unconstitutional.[2] He exemplifies the aspect of the social contract.

In that regard, developing positive and bold jurisprudence on an area as technical as tax requires solid grounding and, above all, a sense of patriotism and nationhood. This is for good reason. First, at the heart of sovereignty is the power to levy taxes. In fact, it is the most consequential of all the powers that a sovereign state or government has. It is the essence of statehood and, as such, should be guarded jealously. Fiscal security is the bedrock of national security, and a nation's fiscal security is as good as its institutions. That is the remit of my critique.

Kenya has a self-assessment tax regime. Since a taxpayer is required to declare and remit what they consider to be taxes, the tax authority is given a wider berth in determining what taxes due ought to have been[3] and is therefore not bound by the returns so submitted.[4] Inevitably, as a result of this unique architecture, cases of tax fraud and evasion have ended up at the Tribunal for adjudication. Notable among them is TAT Appeal No. E111 of 2023 – *Mount Kenya Breweries Limited v Commissioner of Investigations and Enforcement.* This case concerned the assessment of taxes outside the five-year statute of limitation on account of tax fraud, wilful neglect, and gross under-declaration.



Oliver Wendell Holmes Jr. (1841–1935) was a prominent American jurist and one of the most influential Supreme Court justices in U.S. history. Known for his sharp intellect, legal realism, and eloquent opinions, Holmes helped shape modern American constitutional law.

In a boldly progressive gesture, the Tribunal, in a groundbreaking jurisprudential move, laid down the essence of the statute of limitation as a tool for certainty and, in that regard, relied on cases from the United Kingdom. With that essence firmly cemented, in adopting a purposive approach to that essence noted that the landscape of tax interpretation has since changed, and the strict interpretation founded in the *Westminster case* has been watered down by progressive affirmation from the Canadian Supreme Court, among others. For the first time, the Tribunal has set out the debate rolling on the manner of interpretation of tax statutes. Is the strict interpretation for only fiscal statutes where the Constitution indiscriminately militates a purposive approach for itself and all statutes?

[2]See, *Waweru & 3 others (suing as officials of Kitengela Bar Owners Association) & another v National Assembly & 2 others; Institute of Certified Public Accountants of Kenya (ICPAK) & 2 others (Interested Parties)* (Constitutional Petition E005 & E001 (Consolidated) of 2021) [2021] KEHC 9748 (KLR) (20 September 2021) (Judgment) at Paragraph 240.
[3]*Commissioner of Domestic Services v Galaxy Tools Limited* [2021] eKLR.
[4]See, *Tax Procedures Act,* No. 29 of 2015, Section 24(2).

Definitely, that whets our appetite, and the Tribunal must be exalted for that! For the temerity to break free of the shackles of old for the sake of state.

Another boost to the concept of tax fraud is the case of *Mburu v Commissioner of Domestic Taxes*[5] which the Tribunal has shown some consistency in applying it in *Uriri Constituency Development Fund v Commissioner, Legal Services and Board Coordination*[6] that non-filing of returns is proof enough of gross or wilful neglect by a taxpayer which justifies assessment outside the five-year statutory timeframe. This progressive finding underpins the spirit of Article 209 (b) (i) of the Constitution of Kenya, 2010, that the burden of taxation must be borne fairly. Since non-compliant taxpayer such as non-filers unnecessarily burden the compliant ones by increasing their burden to solely bear the burden of raising revenue, such jurisprudence is in the interest of nationhood and, more importantly, sustainable fiscal development. By bolstering compliance, the collective burden on each citizen would be lessened. Alas! Adam Smith, the father of economics, would be proud the burden of taxation must be distributed equally or equitably among taxpayers.

On questions of interpretation of the substantive questions of law and statute, its appreciation of the question of whether VAT is payable on sale and purchase of commercial property. In TAT Appeal No. 14 of 2017 – *National Bank of Kenya Limited v Commissioner Domestic Taxes* which against all odds erred on the side of caution notwithstanding that contemporaneously, the High Court (Lady Justice Mary Kasango) had found in *David Mwangi Ndegwa v Kenya Revenue Authority* [2018] eKLR that no VAT was payable on the sale of land whether residential or commercial. Tactfully and with incredible display of wisdom, owing to the fact that there was stay against the finding of the High Court, correctly found that VAT was payable. This year, the Court of Appeal has exonerated the Tribunal in the case of Civil Appeal No. 65 of 2019 – *Kenya Revenue Authority v David Mwangi Ndegwa*, delivered on 21st March 2025, which has emboldened that finding. As Fidel Castro would have it, when on the right, history will always absolve you. Kudos and well done.

The misses and misconceptions

Aside from the accolades and the bold steps attenuated above, there are the ugly undertones. Bear with me for the discomfort (if any) but again for the sake of state, we must look and reflect on that mirror. All is not that rosy. First, the structure, quality and the depth of analysis by the Tribunal in its judgment deserves a special mention. Not of what is ideal but sadly, the unideal. To say the least, most of its judgements have been Algorithmic and with shallow to no analysis by merely rehashing the facts and pleadings of the parties. The structure is straightjacketed and inherently predictable. Surely, there are lots of improvements to be done here. There is always an art to judgment writing away from the boilerplate and the mundane.

This may sound harsh and critical, but I am not alone here. The High Court will bear me witness on this. As the forum that hears all appeals from the Tribunal, recently in *Awale Ali Hashi v Commissioner Domestic Taxes*,[7] the Court so moved, correctly observed the Tribunal's failure to properly analyse all the facts and issues presented to it. More importantly, in the spirit of fairness, context,

[5] *Mburu v Commissioner of Domestic Taxes* (Income Tax Appeal E064 of 2021) [2023] KEHC 2594 (KLR).
[6] TAT Appeal No. E262 of 2024 – *Uriri Constituency Development Fund v Commissioner, Legal Services and Board Coordination.*
[7] Hashi v Commissioner of Domestic Taxes (Tax Appeal 30 of 2017) [2024] KEHC 12793 (KLR) (Commercial & Admiralty) (3 October 2024) (Judgment).

The TAT encourages resolution of disputes through mediation and negotiation to avoid prolonged litigation. Many cases are resolved amicably before full hearings, saving time and resources for both parties.

and clarity, it behoves to reproduce the following observation of the High Court: -

> *"I note that the Tribunal's decision basically consisted of 3 paragraphs of its own observations and a one sentence finding which did not capture the issues for determination, the reasons for the findings or refer to the evidence on which the decision was founded as envisaged under Section 29 (3) and (4) of the Tax Appeals Tribunal Act. For example, at paragraph 37 of the impugned judgment, the Tribunal observed that the there were serious lapses on the part of the Appellant in filing the self-assessment returns without showing the evidence that informed such an observation. Indeed, none of the Tribunal's observations were backed by any evidence or submissions by the parties."*

The jury is still out, I am told, but the judgments of the Tribunal are public records open for scrutiny and criticism, and savagely at that! A glimpse of the same will show as the High Court at paragraph 45 of the above judgment noted, *"With all due respect to the Tribunal that heard the instant appeal, this court is of the humble view that the judgment fell short a proper judgment as envisaged by the law."* Sadly, that is the true state of affairs of most judgments of the Tribunal: little to no analysis, even on weighty questions of law and fact. It is more of a binary approach to issues as opposed to an analytical view that evolves in light of the circumstances of each case. A pale shadow of the specialisation it was envisaged and tailored for.

The embarrassing and out rightly regressive

The hallmark of any judicial organ or forum is consistency and predictability, more so a forum adjudicating on fiscal issues. One of the procedural questions that have fallen upon the Tax Appeals Tribunal time and again for determination is the question of when time begins running for purposes of computing the limitation of time. Is it at the time of assessment that give rise to the

right to object, or upon being notified of the commencement of a tax audit? For starters, in what can only be seen as a progressive and solid foundation in TAT is Appeal 574 of 2020; *Mzuri Sweets Limited v Commissioner of Investigations and Enforcement*, which determined that time begins running from the time a taxpayer is informed of investigations.

The finding in the foregoing case gels with the finding in the *Mount Kenya Breweries case* (supra) that the essence of the statute of limitation is time is for certainty. When a taxpayer is issued with a Notice of Tax Investigations/audit, the provisions of Section 23 of the *Tax Procedures Act*, No. 29 of 2015, kicks in. The same is to be read cohesively with the statute of limitation under Sections 29 and 31. Having been informed of the commencement of a tax audit, there is certainty that the essence of the statute of limitation is spent, and one is to keep the documentation until the conclusion of the audit and issuance of assessments. Time is to be computed from the date one is informed of the commencement of the tax audit or investigations, i.e. when certainty, the essence of the statute of limitation and not on issuance of assessments. That was a sound and progressive foundation, in my view. It is one of the accolades in the Tribunal's scorecard a century later.

The above grounding and strong take-off notwithstanding, without any colour or right or justification, the Tribunal soon thereafter went on a tangent. It engaged the reverse gear, and with the foot on the gas pedal, full throttle over the cliff. It is a settled judicial practice that when one is to depart from its earlier decision, the option lies in distinguishing it or providing reasons why it is no longer good law. One does not simply ignore it as an unnecessary inconvenience. Nevertheless, the unthinkable has happened. With no reason for departure from its precedent or distinguishing the same, the Tribunal has pioneered a new path of computing time from the date of assessment. What informed this regression? Perhaps one day, we might get an explanation since I have not come across a decision that justified this departure. If there is any, please let me know. I crave to decipher the logic. It bothers me…

Aside from the inconsistence in its jurisprudence as noted above, the Tribunal has also been engaged in what can best be termed as 'judicial legislation'. What do we mean by this? Look at the provisions of Section 51(4) of the Tax Procedures Act, No. 29 of 2015; does it proffer a consequence for the failure by the Commissioner to invalidate an objection within the requisite fourteen (14) days? I have looked at it, I see none. However, the Tribunal, in its wisdom (or otherwise the lack thereof), has imported the consequence listed in Section 51(11) of the Tax Procedures Act, No. 29 of 2015 and held to wit in TAT Appeal No. E063 of 2023 *Bashir Mohamed Muhamud & Mohamed Ibrahim Mohamed v Commissioner, Investigations and Enforcement*, read that failure to invalidate within the requisite fourteen (14) days means the appeal is allowed by operation of law. Such a provision does not exist in law. It is a classic case of reading in. What an innovation! But an embarrassing one at that. Clearly, if the legislature intended it to be so, it would have expressly indicated so.

The above innovation by the Tribunal, aside from being an embarrassing one, flies in the face of the finding by the High Court in *Commissioner of Investigations & Enforcement v Holwadag Construction Company Limited*[8] 'that under the provisions of Section 51(3) of the Tax Procedures

[8]*Commissioner of Investigations & Enforcement v Holwadag Construction Company Limited* (Income Tax Appeal E043 of 2023) [2024] KEHC 8806 (KLR) (Commercial and Tax) (15 July 2024) (Judgment).

In legal proceedings, courts or tribunals often address questions of law and questions of fact. The term suo motu (Latin: "on its own motion") refers to situations where a court or tribunal initiates an action or raises an issue on its own, without a formal request from either party involved in the dispute.

Act, the ingredients of a valid objection are knowable, and therefore an objection that does not comply is void ab initio and therefore does not require a pronouncement on the same. I find such an analogy sound; it is already provided in statute and therefore, one does not need to be reminded what statute already provided. Definitely, in the unambiguous words of statute, a taxpayer's fault in complying with them cannot be visited on the taxman. Tax justice is a two-way street: justice for the taxpayer and justice for the taxman. The High Court in the foregoing case called out the Tribunal over some of its other egregious innovations on the immediacy test.

One more issue is the procedure for determination of questions of law and fact *suo moto*.[9] The jurisprudence in this regard is settled: if a court of law or a Tribunal is to pick an issue on its own motion, the rules of natural justice demand that the Tribunal calls upon the parties to present their case. It cannot be the prosecutor, the judge, and the jury, and by way of judicial fiat, render a verdict without according the parties a hearing. This is the essence of the guidance and the clarity preferred by the late *Majanja J in Kenya Revenue Authority v Imbangua Investments Limited*, which states[10] that parties have to be called upon to state their case before a judicial enterprise can pass judgment. We hope this is work in progress. While appreciating the enormous power donated to judicial establishments, they must still be exercised within the law. They cannot be arbitrary. Heeding to Shakespeare's quip in Measure for Measure, 'O! it is excellent to have a giant's strength, but it is tyrannous to use it like a giant.' I say no more.

Lessons learnt and prescriptions thereon

Of course, there are many more hits and misses, but for reasons that art is long and time fleeting I must pause there. There is one critical take home: there is still great

[9]See, Julians Amboko, Cellnet Limited vs KRA: A Triumph for Tax Justice (2024) at <https://www.businessdailyafrica.com/bd/corporate/companies/cellnet-limited-vs-kra-a-triumph-for-tax-justice--4599766> accessed on 25th March 2025; Acorp *Gifts Kenya Limited v Commissioner of Domestic Taxes* (Income Tax Appeal E087 of 2022) [2024] KEHC 15334 (KLR) (Commercial and Tax) (28 November 2024) (Judgment); *Executive Super Rides Limited v Commissioner General, Kenya Revenue Authority & another* (Tax Appeal 368 of 2023) [2024] KETAT 1137 (KLR) (1 August 2024) (Judgment) - Tax Appeal 368 of 2023

[10]*Kenya Revenue Authority v Imbangua Investments Limited* – HCCOMM ITA E093 of 2023.

Justice Mativo John Mutinga

room for improvement. First, there is a need to re-look at the quality of judgments, analysis, and analytical rigor that goes into the adjudication of these complex fiscal matters. There is always more to a judgment than merely re-stating the case of the parties; that is the voice of the litigants. Where is the judicial voice, roaring and trailblazing tax jurisprudence? For the in-tray, that is definitely something to ponder.

Another prescription is the remedial action upon finding of fault in procedure or substance. As shown above, the Tribunal has more often than not taken a binary approach to prayers, i.e., either grant or reject, allow or dismiss. Rarely are the assessments remitted for reconsideration, even where merited. This binary approach is against the grain of the tenets underpinning tax law in Kenya, more so the question of the burden of proof. As lionised by Mativo J. (as he then was) in *Kenya Revenue Authority v Maluki Kitili Mwendwa*[11] on the three-fold underpinning on the uniqueness of tax law, i.e., government need for revenue, taxpayer being in possession of documents and presumption of correctness. To be fair, Section 29 is definitely wider than just a binary approach. The less I say, the better in that regard.

Conclusion

In conclusion, it is evident that the TAT, albeit excelling in some quotas, has not lived up to expectation of being a specialised organ for tax matters. It has become a weak link towards the realisation of fiscal security and sustainability. Furthermore, it has become a master of judicial avoidance, its judgments uninspiring and devoid of gravitas. Any semblance of technicality, merited or not, has become a ground to avoid delving into the substantial and technical questions of tax for which it was meant. I do not think that is the kind of specialisation that the architects intended the Tribunals to be relegated to. If it is so, then as a jurist and a patriotic legal practitioner, it not only baffles me but leaves more questions than answers.

On the brighter side, some very progressive jurisprudences are healthy for Kenya's fiscal pulse. If the Gen-Z civil unrest on account of the botched *Finance Bill*, 2024 taught us anything, is that Kenyans under the social contract have become wary and cognisant of tax decisions and fiscal policy. They have also made their discontent known. The nudge may be subtle, but precariously latent nonetheless. That is the thesis of this short commentary, the TAT as the altar of tax justice is invited to be the pillar it was designed to be. To develop the law in this area progressively in light of the changing times. Lastly, in the words of Mother Teresa 'I alone cannot change the world, but I can cast a stone across the waters to create many ripples.' I rest my case.

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[11] *Kenya Revenue Authority v Maluki Kitili Mwendwa* [2021] KEHC 4148 (KLR).

Criminalizing Creativity: The State, the stage, and the shame of silencing students

By Munyisia Kevin

The tragedy of our time is not that youths are speaking out. It is that the State is afraid to listen. When a nation turns its arsenal literal or symbolic against its children, the tragedy is not just political; it is civilisational. Kenya is, yet again, on the precipice of becoming a cautionary tale, where literature, art, and youthful imagination are treated not as mirrors of society, but as existential threats to power.

The recent incident involving Butere Girls High School's play 'Echoes of War', and the State's reaction to it, is not merely a cultural faux pas. It is a constitutional betrayal. It reflects a dangerous regression to an era when dissent was dungeon-worthy, satire sedition, and fiction felonious. We are now, it seems, criminalising creativity.

Let's be clear: this wasn't a coup attempt. It was a school play. It wasn't an insurrection. It was student theatre. But in Kenya today, imagination is fast becoming a crime, especially when wielded by the young. And that is a shame. In times not too distant, playwrights like Ngũgĩ wa Thiong'o were jailed for far less, their art seen as insurgency simply because it held a mirror to society's contradictions.

Now, decades later, we appear to be spiralling into that same dark tunnel this time dragging schoolchildren with us. "Echoes of War" a fictional depiction of abduction and abuse is the sort of critical reflection we should be encouraging, not censoring. That the State saw it necessary to intervene so heavily is telling. It speaks volumes about how fragile our institutions have become, and how allergic they are to reflection. We are Narcissus, but instead of drowning in admiration, we drown in paranoia. The law does not, and must not, serve to muffle dissent, fictional or otherwise.

The Constitution of Kenya 2010 enshrines academic freedom, freedom of expression, and the right to participate in cultural life. These are not decorative clauses. They are promises. And we have broken them spectacularly. We must ask: what does it say about us when children can no longer imagine a world different from ours without being branded dangerous? What future are we scripting, if satire and student plays are treated as treason? In silencing Echoes of War, we haven't just muted a performance. We have dimmed the lights on a vital civic stage one where young minds rehearse their futures, critique the present, and process the past. That is the real loss. We are now inductees in a shameful hall where intolerance reigns, critique is crushed, and juvenile artistry is prosecuted. It is time to walk out of this theatre of absurdity, before the curtain falls on our collective sanity. I rest my case!

Munyisia Kevin holds an LL.B (Hons) from Moi University and a Postgraduate Diploma in Law from the Kenya School of Law. He is an Advocate of the High Court of Kenya

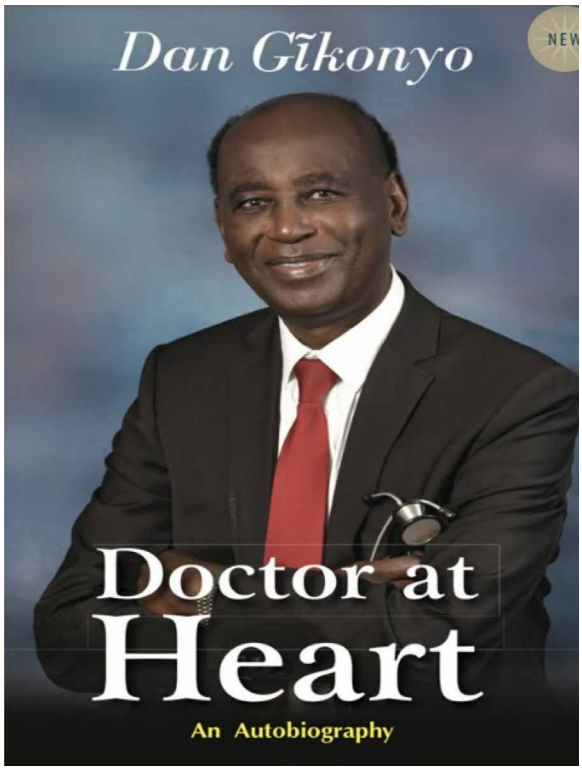
A HEALING JOURNEY/BOOK REVIEW

Doctor at Heart by Dr. Dan Gikonyo

By Wairimu Mburu

In Kenya today, to be a doctor is to walk a tightrope between purpose and exhaustion. I have been observing the struggles of the medical professionals, especially with the seemingly endless strikes and battles with authority. And there are numerous challenges, the long working hours, in overcrowded wards, medical equipment failing more than it functions, impossible choices under immense pressure, underfunded hospitals, - the quiet heroism of medics who carry the weight of life and death on their shoulders, every time they make a decision. And oh, they do this with little recognition and bare minimum institutional support. When having conversations with friends in the medical field, I have registered the undeniable fatigue in their voices, The erring tension between their commitment to healing, and the tears of working in a system that feels indifferent to both doctors and patients. Keeping these in mind, I find myself asking, what keeps them going? What would make one keep serving even when the system around them is determined to wear them down?

With all these reflections going through my mind, I came across the deeply moving and quietly profound autobiography by Dr. Dan Gikonyo, Doctor at Heart. In its pages, I found not only a story of a renowned cardiologist, but also a deep meditation of



sacrifice, purpose, perspective, and legacy. Dr.'s book illuminated for me not only the roots of Dan's excellence but also the spiritual and moral fortitude that can carry a person through the most challenging ground and come out intact and transformed.

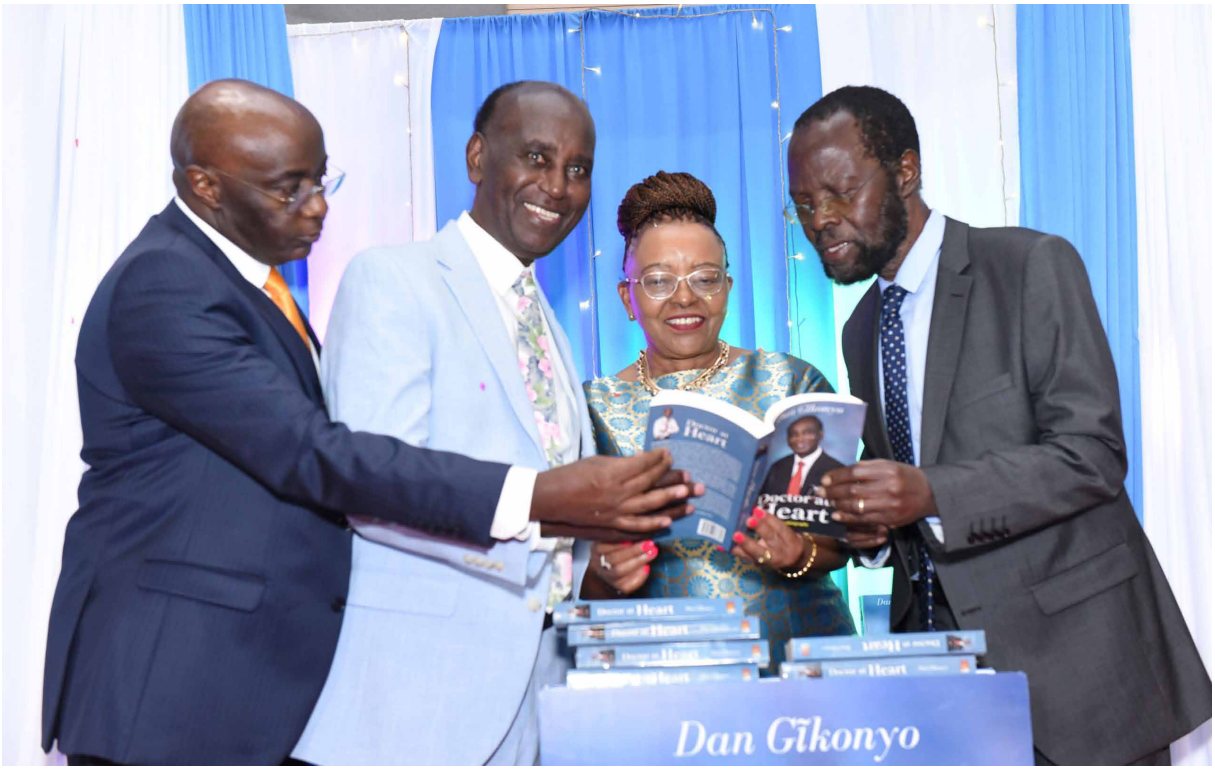
Dr Gikonyo is a well-known name in medical circles, as a pioneer Cardiologist, a respected voice in the health sector, and a co-founder of the Karen Hospital. However, his book strips away all the accolades and titles to reveal the journey behind the name. Dr Gikonyo tells the story of the barefoot boy who dared to dream, beyond his village, the struggles, faith, love, and unmatched commitment to the healing of people and institutions.

Born on the cusp of Kenyan Independence, Dr. Gikonyo's early years unravel in the backdrop of both the promises of a new country and colonial constraints. The personal narrative is deeply intertwined with the one of post-colonial Kenya and the times of Mau Mau. From humble beginnings to a leading cardiologist in the country, Daktari's story is one of relentless pursuit of quiet courage, pursuit of knowledge, and unwavering commitment, clearly showing that medicine is not just a career, it is a calling. I dare say, the book is not only a chronology of achievements, but also a window into the spiritual and ethical compass that guided him to his success.

The Journey Rooted in Humility.

Dr Gikonyo starts us off by describing his early life in rural Kenya, in the most tender and unflinching way. "Upon the hill by the banks of Kagumo River in Tetu Sub-county, Nyeri County, about three Kilometers from the edge of the Nyandarua Forest…A tranquil place with Gikuyu grassland and evergreen vegetation, of indigenous trees covering the hills and river banks forming a beautiful Lush tropical forest" This is just a part of how the doctor describes his home, and the quiet companionship of rural life, where everyone knows everyone by name. Notably, His immediate neighbor was Wangari Maathai, the future Professor, and Nobel Peace prize winner – speaking volumes that quiet brilliance sometimes flowers in the most unassumed places.

The book doesn't rush. It lingers in the soil of his childhood, in the rustling softness of village life, still undisrupted by innovation, and in the quiet, persistent dignity of his parents. In *the first few chapters*, Dr. Dan helps us meet a young Dan during a country's convulsions, his innocence colliding with the harsh realities of colonialism. You feel the impact of curfews, the tension in whispers, the weight of secrets carried by children too young to understand why freedom had to be paid in blood. And yet, beneath the, there is wonder, at the



Kisumu Governor Prof. Peter Anyang' Nyong'o (R) joins Karen Hospital Founder & Chief Cardiologist Dr. Dan Gikonyo (Second Left) during the launch of his autobiography, Doctor at Heart.

resilience of his mother, at the steadiness of education, and at the unyielding faith that somehow, something better was possible.

To understand this great man, one must understand the soil he sprang from. Dr. Dan Gikonyo begins not with a hospital corridor or the hum of ECG machines, but in the red hills, among the Agĩkũyũ, his people, his roots. Growing up during the height of colonial unrest, he recalls how "freedom" wasn't just an idea tossed around in political speeches, it was felt, fought for, and paid for in blood and silence. The *Mau Mau* rebellion was not merely a news headline, it lived in villagers' voices at dusk and in the cautious footsteps of fathers at dawn. Dr. Gikonyo weaves his personal story with Kenya's collective memory, revealing the psychic cost of war on children who learned early to stand and fight for what they believed in.That grounding in the Agĩkũyũ worldview, where the community is central and the fight for justice sacred, would later guide him in treating not just the illness but the soul of a post-colonial nation.

Education as the key

Amid the ashes of colonialism, something green was growing namely, education, And for young Dan, this would become both a refuge and a mission. As Dr. Dan narrates, his early days in school were a study in contrasts. On one hand, some teachers saw potential in him and watered it with encouragement while on the other, there was a system still bent under the shadow of the colonial hangover, with syllabi that praised the Queen and her Language, while ignoring the elders and dynamics in the village. He observes on a light but personal note that he missed a chance to go to Alliance because e of three things, The English Language, his Date of birth, and his village weather. But this did not stop him as he was hungry, not just for knowledge, but for meaning. Reading became a window. His heart leaped at the adventures in books, but he was also drawn to science. That curiosity wasn't just academic, it was also spiritual and every lesson he absorbed felt like a reclamation: of dignity, of intelligence, of the right to dream beyond what the colonial narrative allowed. The seeds were sown not just for a career, but for a revolution of care.

His time in school, right from primary school, at Kagumo High School, and even university, is rendered with a kind of quiet gratitude, evidently, he never brags, but you sense the immensity of what it meant for a village boy to sit in the halls of the continent's finest institutions. Education, in his telling, isn't a trophy, it is a calling, a weighty, transformative force, planting seeds of responsibility. It stretches the mind, yes, but also the heart.

Politics in Childhood

Politics was not a distant act in Dr Dan Gikonyo's early life, it was a vibration in the air, at home, and neighborhood. He recalls, how many settlers and officers could not conceive the concept of Knya achieving independence, but some had already acknowledged the possibility and were even discussing it. One officer who left an impression on Dan's mind was John Nottingham, a colonial administrator, posted to Tetu as a District Officer. His posting had been done just when the colonial government had declared a state of Emergency, and the countryside was cloaked in tension and whispered warnings.

He walks us through the political atmosphere of the country in the independence era, It was a transformation. The political temperature shaped the moral compass of entire generations, With Kenyatta coming in as president, and the support from Jaramogi Oginga Odinga. Something captured my attention, Dr. Dan Gikonyo quotes Jaramogi's words,

"You know, Kenyatta is the father of African nationalism and the father of the African national movement in this country. We

cannot and we cannot in any sense be more advanced than our leader and master whom I think is more advanced. We are still in the stages of learning politics from him"

In this light, Dr, Dan insists that Jaramogi deserves great respect for how he stood with Jomo Kenyatta. Further, doctor Dan acknowledges honorable Raila bringing in a political handshake with President Uhuru Kenyatta in 2018 and states that maybe this handshake could have healed the age-long enmity between Kikuyu and Luo nations perhaps that handshake could have birthed a new Kenya. It is an event that historians will debate as a possible missed opportunity.

The era seeded in him a conviction that leadership must emerge not from power, but from service and courage. These early political exposures were not about party manifestos; they were about justice, memory, and nationhood. Dr. Dan and other countrymen were being raised to be citizens before they knew what citizenship meant.

Becoming a Man in an Evolving Culture

Dr Gikonyo is deeply reflective, speaking about the push and pull between tradition and modernity. As a young boy in a deeply rooted Agĩkũyũ family, the expectations were clear: learn the land, protect your people, understand the rituals, and carry forward the *ĩhĩĩ* legacy.

But times were changing as Dan was growing up; Christianity, education, and colonial structures were reshaping what it meant to be a man. Circumcision, especially for women, was not just a rite of passage; it became a mirror reflecting the contradictions of a culture in transition. Dr Dan, notes how things changed fast, as in the 1950's circumcision was done the traditional way, whereas in the 1960's it was conducted in hospitals, under partial anesthesia. Furthermore, FGM had now been overridden, with staunch Christians raising their voices against it. Dr. Dan Gikonyo recalls the special journey of going to a hospital and more than anything, this season of his life marked the birth of personal agency. He was no longer a boy looking at the world, he was a man stepping into it.

A Mustard Seed and the Mountain

Dr. Dan Gikonyo takes readers on a deeply personal and reflective journey, offering a vivid recounting of his formative experiences, particularly one significant adventure involving a climb up Mount Kenya. Through this narrative, Dr. Gikonyo explores not only the physical and emotional challenges of the expedition but also the profound insights it gave him into human nature, resilience, and responsibility.

The tale captures a harrowing account of a fellow climber, Sam Wamai, who succumbs to High Altitude Pulmonary Edema (HAPE) during the trek. The decision to leave Wamai behind, while the group continues upward, sets the stage for a key moment of self-reflection for Gikonyo. His narration captures the tension between adventure and compassion, as he grapples with the moral dilemma of choosing between the collective goal and individual well-being. This theme of difficult decisions echoes throughout the book, challenging the reader to consider the fine line between courage and recklessness.

As Dr. Gikonyo recounts his own fears and doubts, particularly while walking across a glacier without proper gear, he brings the reader into his inner struggle. His willingness to continue despite his apprehension speaks to the human desire to prove oneself but also highlights the risks of pushing beyond one's limits. His mentor, Mr. Lovett, plays a crucial role in encouraging Dr. Gikonyo to persevere, reminding him that true valor is found in overcoming fear rather than avoiding it. I believe this experience shapes Gikonyo's later reflections on what it means to push forward in life, both in the face of danger and in personal growth.

The descent from the peak, marked by worsening weather and physical exhaustion, underscores the cost of such ambition. When Dr. Gikonyo falls ill with pneumonia upon returning to school, his encounter with the doctor at the Nyeri General Hospital introduces a critical moment of disillusionment. The indifference of the medical staff prompts Gikonyo to resolve, if ever he becomes a doctor, to never mirror such neglect.

Through this personal narrative, Dr. Gikonyo not only shares a thrilling and challenging adventure but also offers a profound meditation on responsibility, empathy, and the complexities of human decision-making. The journey up Mount Kenya becomes symbolic of the broader life challenges he faces, and his reflections resonate with anyone who has ever faced a moral dilemma or struggled with the fine balance between ambition and care for others.

The chapter T*he Ugly Face of Tribalism* strikes a different tone. It's a necessary jolt, a reminder that even in excellence, prejudice and exclusion linger. Dr. Gikonyo's confrontation with systemic bias doesn't break him, but instead, it deepens his commitment to merit, to integrity. It's here that we glimpse the foundations of the leader he would become, not only a healer of bodies but of broken systems. Dr. Gikonyo paints a vivid picture of how tribal loyalty often dictated opportunities in Kenya's post-colonial landscape, especially in the health sector. His personal story is not just a professional one; it is deeply tied to Kenya's socio-political fabric.

One of the most compelling moments comes when Gikonyo shares his experience during the era of Tom Mboya's tragic death. He reveals how the political tension following Mboya's assassination in 1969 exacerbated tribal divisions in the workplace. Gikonyo's own career was affected as individuals from particular ethnic backgrounds were often given priority for promotions or placements, regardless of qualifications. He recalls how, during this volatile period, the hospital's leadership became more inclined to hire based on tribe rather than merit, deepening the professional divides he had to navigate. In his words, the shadows of Mboya's death loomed large, with the political climate pushing tribalism to the forefront of nearly every decision.

Dr. Gikonyo recounts a time when, despite excelling academically and demonstrating his dedication to his patients, he faced unfair treatment simply because he came from a "non-preferred" tribe. His frustration is palpable as he describes how individuals who were less qualified or competent were given opportunities based purely on their tribal connections. This, he notes, not only hurt his personal aspirations but also undermined the integrity of the medical profession.

Love Is in the Heart of It all

In Love in the Air and Raising a Family, Dr Gikonyo brings out a tenderness that anchors the narrative. His relationship with Dr. Betty Gikonyo is more than romantic, it is a profound partnership of purpose.

The love story between Dr. Dan Gikonyo and Betty unfolds with a rare sincerity that leaves a lasting impression. Unlike the grand gestures or turbulent passions often seen in romantic narratives, theirs is a quiet, intentional love; marked by patience, dignity, and a profound sense of respect.

Dr. Gikonyo introduces Betty with deep admiration, acknowledging not just her beauty but the warmth of her personality and the strength of her convictions. What stands out is how he chooses to pursue their relationship: deliberately, respectfully, and within the framework of both cultural and Christian traditions. There's something deeply moving about the way he seeks the blessing of Betty's family before proceeding, and how he commits to honoring both the

The Karen Hospital

Giküyü and Christian rites during their marriage ceremonies. It reflects a man who values not only his partner but also the community and heritage that shape them.

A particularly touching moment is when a senior doctor jokes about Betty's beauty, and Dr. Gikonyo responds with pride rather than embarrassment. It's a brief exchange, but it says so much about how grounded and confident he is in their relationship. This love story does not seek to dazzle drama but instead reveals a steadfast kind of affection; one built on mutual respect, shared values, and a quiet certainty. As a reader, this narrative evokes admiration. It reminds us that true love isn't always loud or chaotic; sometimes, it's a composed, intentional journey taken with grace and clarity. In a world where love is often rushed or superficial, Dr. Gikonyo's story offers a refreshing return to something more meaningful; love as a lifelong commitment made with care.

The Karen Hospital

Dr Dan and Dr Betty shared a dream, The shared dream of building a world-class hospital is perhaps one of the most moving threads of the book. When they finally begin the journey in *Birth of The Karen Hospital*, it's not a tale of easy funding or smooth approvals. It's grit. Frustration. Setbacks. Risking everything. But more than anything, it's faith; faith in a dream bigger than either of them.

What makes the Karen Hospital story especially powerful is that it's never just about a building. It's about returning home. About creating for Kenya what others told them could only exist in the West. It's about defying doubt; not just theirs, but that of a

Dr. Dan Gikonyo

system conditioned to settle for less. And it's about legacy. About building a space where the next generation of African doctors can train, heal, and believe in excellence.

Yet, *Doctor at Heart* isn't all nostalgia and victory laps. Dr. Gikonyo engages honestly with Kenya's political journey; his views on multiparty democracy, the Moi era, and the Kĩbakĩ Legacy are reflective, even cautious. He does not pretend to have all the answers. But he shows up. As a citizen. As a man of conscience. His medical expertise may have brought him into the rooms of power, but it is his moral clarity that stays with you.

The final chapters, especially *Transforming African Medical Practice and the Future of Medicine and Passing the Baton*, are among the most poignant as he writes not from a place of retirement, but of reflection. Of passing the torch. The questions linger: Who will lead with both skill and soul? What kind of healthcare does Africa deserve? And what does it mean to be truly free, if we cannot care for the bodies; and hearts of our people?

Doctor at Heart left me full. Not just informed but inspired. It reminded me that true greatness is often quiet. It begins in the ordinary: in a parent's sacrifice, in late-night study, in saying no to shortcuts, in believing in your country when it's easier not to. Dr. Gikonyo doesn't write to impress. He writes to bear witness. To offer his story not as a blueprint, but as a spark.

And to Dr Dan Thank you for sharing your story with the world. It is a privilege to have learned from your journey.

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