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EDITORIAL

Who belongs at the bar? The bar, reciprocity, and the future of legal practice

The Law Society of Kenya (LSK)'s decision to challenge the admission of foreign lawyers has ignited an intense debate in the profession. The question sounds simple, can foreign nationals be admitted to practise law in Kenya? It is not simple. The LSK's position rests on reciprocity. If Kenya opens its Roll to lawyers from another country, Kenyan advocates should be able to practise there on equal terms. That principle is not xenophobic. Professions across the world apply it. Law is not merely a business but a constitutional institution. Admission to the Bar is not a visa. It is a public trust.

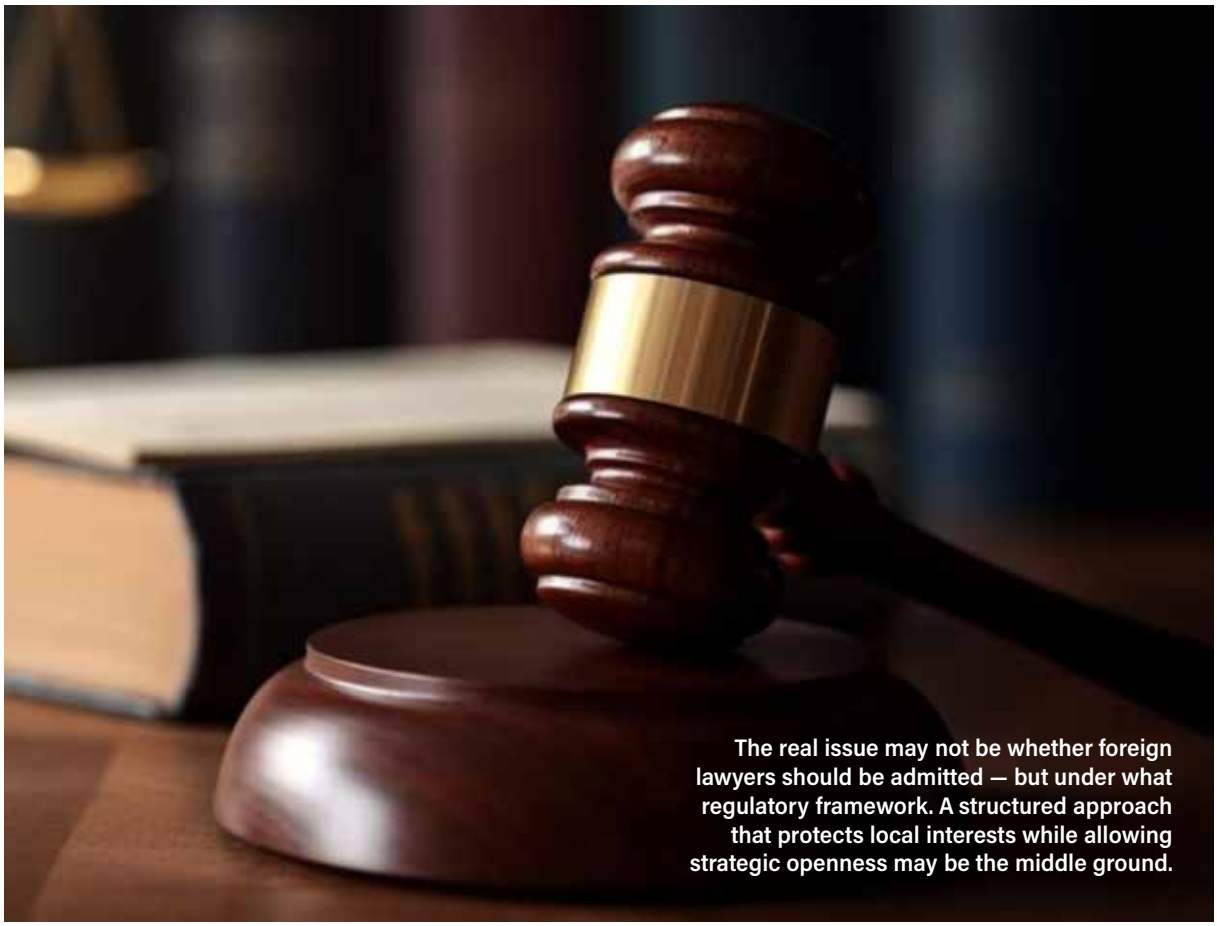
However, there is another side to this debate and it deserves to be taken seriously. Kenya is part of the East African Community. We speak constantly about integration, mobility of labour, and cross-border commerce. Legal practice is already regional. Transactions are regional and litigation increasingly has regional implications. If we cannot articulate a framework for admitting foreign lawyers, we risk looking protectionist rather than principled.

The real problem is clarity. Our Advocates Act was not drafted with modern regional mobility in mind. It provides qualifications for admission, but does not address structured reciprocity in a contemporary integration framework. That gap has now collided with economic anxiety inside the profession. Let us speak honestly. Many young advocates are barely surviving, remuneration orders are ignored, clients delay payments for months, law firms quietly collapse and pupils struggle to find good training contracts. In that climate, any perception that the market is being opened without safeguards feels threatening.

We must be careful not to confuse structural weakness with external intrusion. If Kenyan advocates are underpaid, the solution is not rhetorical resistance to foreign nationals. It is enforcement of fee standards, internal reform, strengthening welfare and serious engagement with the changing nature of legal work, including technology and cross-border advisory practice.

At the same time, the profession cannot relinquish its regulatory duty. Admission standards must be clear. If reciprocity is required, let Parliament say so expressly. If equivalence of qualification is sufficient, let the Council of Legal Education articulate it transparently. The worst outcome is ambiguity that leaves admission to ad hoc interpretation.

There is also a constitutional dimension that cannot be ignored. Article 27 speaks to equality and non-discrimination. Any exclusion based solely on nationality must be grounded in law and not instinct. However, constitutional equality does not eliminate regulatory discretion. The Constitution does not demand that every profession dissolve its licensing requirements. It demands rationality and legality.



The real issue may not be whether foreign lawyers should be admitted — but under what regulatory framework. A structured approach that protects local interests while allowing strategic openness may be the middle ground.

The Bar must guard its gate but it must do so by statute and principle. What worries me more than the admission question itself is the tone the debate has taken in some corners. If we frame this as foreigners versus Kenyans, we shrink a serious legal issue into a tribal reflex. The better framing is this, what framework best protects the integrity of the profession while respecting constitutional commitments and regional realities?

This moment is also a test for the new LSK leadership. The LSK cannot afford reactive politics but must lead with clarity. That means commissioning a structured review of the Advocates Act on foreign admission, engaging the Judiciary and the Council of Legal Education, and articulating a reciprocity model that protects local advocates without breaching constitutional principles. The courts must also tread carefully. A rushed ruling could entrench confusion rather than resolve it. The question is not whether foreign lawyers are good or bad for the profession. The question is whether the current law clearly authorises their admission and if it does not, whether that gap should be filled legislatively.

This debate is healthy. It forces us to confront what the Kenyan Bar is becoming. We cannot preach regional integration in public and retreat into isolation when regulation becomes uncomfortable, nor can we pretend that economic stress within the profession is imaginary. The profession deserves protection, and the law demands clarity. If we get this wrong, we risk either diluting regulatory integrity or appearing defensive and insecure. If we get it right, we create a transparent framework that strengthens the Bar and clarifies Kenya's place in regional legal practice. The gate must be guarded by law and if we are serious about strengthening the profession, we must look inward as much as we look outward.

COVER STORY

RIPE times: Charles Kanjama and the LSK at a Constitutional crossroads

By Teddy Odira

Introduction

On the evening of 19 February 2026, as results filtered in from the Law Society of Kenya's electronic voting system, a pattern became clear. Senior Counsel Charles Kanjama had secured a decisive lead.[1] By the time the final tally was announced, he had been elected the 52nd President of the Law Society of Kenya (LSK) for the 2026–2028 term, defeating policy and legislative development expert Peter Wanyama in a closely watched race. Kanjama garnered 3,728 votes in an election that drew thousands of advocates across the country to participate in one of the most consequential contests in the Society's recent history.[2]

In his brief remarks after the declaration, Kanjama thanked members for exercising their democratic will and called for unity within the profession. The tone was measured. There was no triumphalism. Instead, he spoke of responsibility. The setting was professional, almost understated. But the stakes were not. The LSK assumes new leadership at a time when Kenya's constitutional order is under strain. The 2027 General Election is less than eighteen months away. Public confidence in institutions remains fragile. Judicial independence has been tested by political rhetoric and social media campaigns. Lawyers themselves are divided over how forcefully the Bar should confront the state.

What kind of leadership does the Law Society of Kenya require at this moment, and what does Charles Kanjama's "RIPE" agenda offer in response? This article examines that question. It looks at the man, the office he now holds, and the institutional and political environment in which he must operate.

The making of a Senior Counsel

Charles Kanjama was admitted to the Bar in 2003 after studying law at the University of Nairobi and completing training at the Kenya School of Law.[3] Over the next two decades, he built a practice that combined commercial law, constitutional litigation, and governance advisory work. He is the Managing Partner at Muma & Kanjama Advocates, a Nairobi-based firm known for corporate and public law matters. In 2022, he was conferred with the rank of Senior Counsel, an honour reserved under

[1]Africa Legal, 'Charles Kanjama SC and Teresia Wavinya Nicholas elected to lead the Law Society of Kenya for 2026–2028, at a "pivotal time" for the nation' (19 February 2026) Africa Legal https://www.africa-legal.com/news/charles-kanjama-sc-and-teresia-wavinya-nicholas-elected-to-lead-the-law-society-of-kenya-for-2026-2028-at-a-pivotal-time-for-the-nation/125657 accessed 28 February 2026.
[2]ibid.
[3]Charles Kanjama, 'Curriculum Vitae – Charles Kanjama SC' (Charles Kanjama, 2026) https://charleskanjama.com/curriculum-vitae-charles-kanjama-sc/ accessed 28 February 2026.

the Advocates Act for advocates who have demonstrated distinction in practice.[4]

Beyond litigation, Kanjama holds qualifications as a Certified Public Secretary and Certified Public Accountant. These credentials are not ornamental. They signal familiarity with institutional governance, compliance, and financial management, skills that matter for a body like the LSK which manages significant member contributions and projects such as the Wakili Towers development.[5]

Within the profession, he is not a newcomer to leadership. He served as the first elected Chair of the LSK Nairobi Branch from 2016 to 2020. During that period, the branch formalised governance structures, institutionalised audits, and strengthened administrative systems. He later chaired the Nairobi Legal Awards Trust and participated in national LSK committees, including work on the Advocates' Remuneration Order review and law reform initiatives.

In short, Kanjama arrives at the presidency with experience in both advocacy and administration. Whether that experience translates into effective national leadership remains to be seen.

The office and its burdens

The Law Society of Kenya is not merely a professional association. Under section 4 of the Law Society of Kenya Act 2014, its statutory objectives include upholding the Constitution, advancing the rule of law, protecting the independence of the judiciary, and assisting members in matters relating to conditions of practice and welfare.[6]

LSK President Charles Kanjama

This dual mandate, constitutional guardian and professional regulator, makes the office of LSK President uniquely demanding. The President must represent lawyers' interests while also defending broader constitutional values. Recent presidencies illustrate the tension. Outgoing President Faith Odhiambo was widely recognised for taking firm public positions on police conduct, judicial reform, and governance concerns.[7] In doing so, she reinforced the LSK's watchdog role. But assertive leadership also invites friction with state actors.

Kanjama inherits an office that is visible, sometimes controversial, and deeply symbolic. The presidency carries both constitutional and moral weight. It is expected to be independent of partisan control while remaining firmly anchored

[4]ibid.
[5]Peace Muthoka, 'Wakili Towers Groundbreaking Marks a New Dawn for Kenya's Legal Profession' (Africa Times Network, 30 January 2026) <https://africatimesnetwork.co.ke/wakili-towers-groundbreaking-marks-a-new-dawn-for-kenyas-legal-profession/\> accessed 28 February 2026.
[6]Law Society of Kenya Act 2014, s 4(b), (h).
[7]Griffins Abuora, 'Kenya dispatch: Law Society president resigns from police brutality compensation panel over independence concerns' (JURIST, 10 October 2025) https://www.jurist.org/news/2025/10/kenya-dispatch-law-society-president-resigns-from-police-brutality-compensation-panel-over-independence-concerns/ accessed 28 February 2026.

in constitutional principle.[8] This context matters. If the President is perceived as too close to political power, the Bar's credibility suffers. If he is seen as reflexively antagonistic, he risks isolating the profession from constructive reform dialogue. The office requires balance, discipline, and clarity of purpose.

Inside the RIPE agenda

Kanjama campaigned on a four-pillar platform branded as "RIPE": Rule of Law; Integrity and Independence; Practice and Welfare; and Engagement. The slogan was memorable. The substance requires scrutiny.

Rule of law

The first pillar commits the LSK to proactive defence of constitutionalism. Public reporting indicates that Kanjama intends to support rule-of-law monitoring, litigation in the public interest, and stronger institutional oversight. This aligns squarely with the LSK's statutory mandate. However, implementation is the real test. Public interest litigation requires resources and coordination. If the LSK expands its constitutional litigation footprint, it must ensure that interventions are principled rather than political. Success here would be measurable. We will expect publication of rule-of-law reports, strategic court interventions, and consistent public statements grounded in constitutional text rather than partisan rhetoric.[9]

Integrity and independence

This pillar has both internal and external dimensions. Internally, it promises transparent governance of the LSK, including accountability around major projects and finances. Externally, it commits to defending judicial independence and professional ethics. Kenya's Constitutional framework under Articles 159–172 emphasises judicial independence.[10] The LSK's role in safeguarding that independence is critical, especially in the face of political commentary targeting judges. But integrity must also apply within the profession. If allegations of misconduct arise among advocates, a credible disciplinary process is essential. Independence is hollow without accountability.[11]

Practice and welfare

Perhaps the most practically urgent pillar concerns lawyers' working conditions. Kenya has over 20,000 advocates.[12] Many junior lawyers report delayed pay, insecure contracts, and mental health strain. Kanjama has indicated that he intends to address workplace challenges and welfare concerns. Concrete measures could include revitalising welfare funds, negotiating improved payment structures for state counsel, and strengthening mentorship networks. These reforms often require legislative engagement and financial restructuring. But if delivered even partially, they would speak directly to the frustrations that mobilised younger voters in this election.

Engagement

The final pillar seeks stronger internal cohesion and structured external dialogue. Internally, this means meaningful inclusion of regional branches and diverse practice areas. Externally, it means systematic engagement with Parliament, the Judiciary, and civil society. Engagement is a double-edged concept. Constructive dialogue can produce reform. But engagement without clear boundaries risks co-option. The

[8]Law Society of Kenya Act 2014, s 4(b), (h).
[9]'The R.I.P.E. Manifesto' (Charles Kanjama, 31 January 2026) https://charleskanjama.com/manifesto/ accessed 28 February 2026.
[10]Kenya's Constitutional framework under Articles 159–172 emphasises judicial independence.
[11]ibid.
[12]Law Society of Kenya, Annual Report 2023 (LSK 2024) 7.

effectiveness of this pillar will depend on the clarity of the LSK's red lines.

Between the bar, the bench, and the state

The relationship between lawyers and judges in Kenya has been tense in recent years. Social media criticism of judicial decisions has sometimes crossed into personal attacks. Public trust in institutions depends on measured discourse. Kanjama's previous involvement in Bar–Bench committees suggests an appreciation for institutional dialogue. If he can rebuild professional respect while preserving lawyers' right to critique judgments through lawful channels, he will strengthen the system as a whole.

Relations with the Executive and Parliament will be equally important. As 2027 approaches, legislative proposals affecting elections, public finance, and institutional design will intensify. The LSK must decide when to support, when to amend, and when to oppose. Kanjama has publicly emphasised non-partisanship. That stance will be tested. The LSK's credibility depends on consistent constitutional reasoning, not shifting political alliances.

The profession from within

Internal reform may prove as significant as external advocacy. The future of the Bar depends on young advocates who feel heard and supported. Mental health, fair remuneration, mentorship, and inclusive leadership are not secondary issues. They shape the profession's integrity. A lawyer under economic or psychological strain cannot effectively defend the Constitution. If the Kanjama presidency can deliver even incremental progress, clear welfare guidelines, improved communication, transparent budgeting, it will alter how members experience the Society.

The Road to 2027

The next General Election will almost certainly generate litigation and constitutional disputes. The LSK's preparedness will matter. Electoral law reforms, boundary delimitation, funding of electoral bodies, and enforcement of Chapter Six on leadership and integrity are live issues. The LSK may file amicus briefs, support public interest cases, or issue advisory statements. Here again, clarity is key. The Society must articulate constitutional principles in advance, rather than reacting only when crises erupt.

Conclusion

Charles Kanjama begins his term with a clear electoral mandate and a structured agenda. That is a strong foundation. But leadership in the LSK is measured not by slogans but by outcomes. Indicators of success will include transparent governance, credible constitutional advocacy, improved member welfare structures, and principled engagement with state institutions. Indicators of failure would include silence in the face of constitutional erosion, internal fragmentation, or rhetorical promises without institutional follow-through.

The phrase "RIPE times" suggests readiness. Whether this moment is truly ripe for renewal depends on execution. The Law Society of Kenya has often stood at the centre of constitutional defence. In the years ahead, it will again be tested. As the 2027 horizon approaches, the question will not simply be who leads the LSK. It will be whether the Bar, under that leadership, rises to meet its constitutional calling.

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[13]'Online attacks against judges threaten judicial independence, CJ Koome warns' *Eastleigh Voice* (18 August 2025) https://eastleighvoice.co.ke/national/198017/online-attacks-against-judges-threaten-judicial-independence-cj-koome-warns accessed 28 February 2026; '"UN cites cyberbullying as a threat to judicial independence" – CJ Koome' The Judiciary (5 May 2025) https://judiciary.go.ke/un-cites-cyberbullying-as-a-threat-to-judicial-independence-cj-koome/ accessed 28 February 2026.

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Re-imagining the Kenyan society: The place of individual pursuits in shared realities

By John Joseph Wamwara

(Lecture delivered at Moi University School of Law (MUSOL) during the Dean's Biannual Lectures in the presence of both MUSOL and CMG Argwings Kodhek Faculty of Law Students, Faculty, Moi University members and the Public on February, 19th 2026)

1.0 Introduction

While preparing for this lecture. I have been influenced by many things including many writers both Kenyan and international. I believe that while we may not have negotiated the society that we have found ourselves in, we have a stake in what it is right now, and we could shape it into the society that we wish to bequeath our forebears. Kenya is a typical example of an 'imagined community.[1] Originally constructed as British colonial outpost useful for exploitation of its natural resources and a shining trophy for British imperialism, we have since accepted our common comradeship, 'irrespective of the actual inequality and exploitation,'[2] existing in our nation. And just as it was imagined, so can it be reimagined. We can use our shared colonial past, post-colonial experiences and recent shared experiences to lay a firm foundation of the society that will serve our interest and which will gladly pledge our loyalty and service.

We will need to ask hard questions including why the Kenyan society as imagined by the British has continued to teeter on the brink of failure. We need to further ask, if the ideals of the independence leaders were so pure, how come sixty-plus years after independence we have failed to realize the aspirations for independence? What have we done that has failed to deliver victory against poverty, ignorance and disease – the triple threats that Jomo Kenyatta declared war against at independence?

I believe that Kenya has punched below its weight. I believe that we have never fully understood the essence, the purpose and the aspirations of the Kenyan nation. That is why we have failed to realize our potential. It is also why we struggled to forge a glorious destiny as our contemporaries such as the Asian Tigers – Singapore, South Korea and Malaysia have succeeded to do. It is high time we asked these hard questions. This is the time to explore what the Asian Tigers did differently. It is the best time to negotiate and re-imagine the nation that we want from the nation that we have had, one that we have, and the one that we are bound to have if we do not change our course and refresh our identity and the ideals of

[1]Adopting Benedict Anderson's, Imagined Communities: Reflections of Origin and Spread of Nationalism (2006)
[2]Id. At 7

community. The French struggled with crafting a common ideal until they settled on, ***"Liberté, Égalité, Fraternité (Liberty, Equality, Fraternity)***." Americans were a loose collection of European emigrants until they declared, ***"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness."*** Opening their borders to anyone who would seek to join them in the pursuit of what has been called – the American Dream. Their citizens are willing to spill blood and lay down by lives to defend their rights to live by those ideals. We do not need to reinvent the wheel, we can learn from these two nations. We will do well to agonize until we identify that for which we unite our hopes, our aspirations, our strength and dreams. We must be convinced that achieving these ideals are so important that we deliberately subordinate personal ambitions in favour of the collective good of the Kenyan nation. This is what I consider the re-imagination of the Kenyan nation.

2.0 The Kenyan society in perspective

2.1 Pre-colonial & colonial foundations of the Kenyan Society

By the time of the 1884 – 1885 Berlin Conference, immigration into the East African region by the different communities that occupy this region had been mostly complete. For nearly 200 years, the different communities had been established. They organized along linguistic and cultural identities. While some communities were nomadic pastoralist, most others were settled agriculturalists. Each community understood the extent of their borders and where there were disputes, they had measures to resolve those disputes. Where pacific means of settling those disputes failed, they would resort to war. These were a common part of everyday life that did not threaten the existence of the different communities. Somehow though, there was relative peaceful co-existence between African (Bantu, Nilotic and Cushitic), Arab and Asian communities that settled in this region.

Prior to the Berlin conference, European control of the African continent was limited to a few north, horn (Egypt and the Suez), south (most of South Africa) trading outpost along the Coast of the African continent. The scramble and partition of Africa happened without the involvement of Africans. The colonial powers understood how important the raw materials and natural resources of Africa and its markets were important to their economic growth. The British and the French had been more aggressive in acquiring new territories in Africa. To avoid warring over the different African territories, German Chancellor Bismarck of Germany convened to the Berlin conference the Western European powers. At the end of the conference the whole of the African continent was haphazardly divided into spheres of influence among these powers. Only Ethiopia, South Africa (Ruled by whites of British and Dutch descent) and Liberia (Since America had resolved to settle its freed slaves there) had been left. There were two other important resolutions from the conference, "King Leopold's presence in the Congo Basin was recognised in return for free trade in the area; and, second, any European power could prohibit others from challenging certain territory by bringing it under effective control. Preferably, control should be established by signing treaties with African chiefs or alternatively by military conquest."[3] At the end of the process:

[3]Jutta Bolt, "The Partition of Africa,' in Ewout Frankema, Ellen Hillbom, Ushehwedu Kufakurinani and Felix Meier zu Selhausen (eds), The History of African Development, African African Economic History Network (2023), p.83. Available at DOI: https://doi.org/10.18174/590864

> [T]he British possessed African territories stretching from Egypt to South Africa, divided only by German East Africa. In West Africa, British diplomacy initially proved no match for French military action in the upper Niger basin. France extended its rule from Senegal far into Central Africa. Still, the British claimed the Niger river mouth, and a substantial part of the hinterland to form present Nigeria. Looking at the map of West Africa it is clear that the British carved out the areas that were most suitable for international trade, but they left large parts of the West African interior to the French. In East Africa, however, the British claimed large parts of the hinterland. Finally, Portugal obtained large territories on both the East and West coast of the African continent.[4]

Following the 1885 Berlin conference which recognized the British Claim to the Eastern Africa region; the British awarded the concession for the administration of the region to the Imperial British East Africa (IBEA) company in 1888. However, due to different challenges, it was soon clear that the company had failed to establish any meaningful and profitable control over the region. To resolve this –

> [N]egotiations had been proceeding between the British Government and the Imperial British East Africa Company for the transfer of the Company's responsibilities in East Africa to the Imperial Government. The Company's withdrawal from Witu in 1893 has already been mentioned. On the 1st July, 1895, a British Protectorate was declared over the Company's territory between the Coast and Naivasha, the territory west of Naivasha having been included in the Uganda Protectorate. The Company received £ 200,000 for the surrender. The boundaries of the East Africa Protectorate were defined by proclamation on the 31st August, 1896.[5]

The British therefore took over the administration. By 1905, the laws that were applicable in the protectorate were –

(a) Among Mahomedan natives in the dominions of the Sultan of Zanzibar, Mahomedan law, or the Shariah as expounded by the Shafei school of commentators.
(b) Among natives in the rest of the Protectorate, native law and custom, provided it is not repugnant to justice or morality; and among all natives such Acts and Ordinances as are specifically applied to them (vide Ordinance 2 of 1903).
(c) Among non-natives, applied Indian Acts, local Ordinances and Regulations, and where these are inapplicable the Common and Statute law of England existing at the time of the -passing of the Order-in-Council, 1897.[6]

While the 1897 Order-in-Council recognized the native laws and customs, the British officials would only apply them if they were convinced that they were not repugnant to justice and morality. Reading this phrase, "repugnant to justice and morality," within the civilization and acculturation project that the Western enterprise was, almost every native cultural practice, belief, and morality (to the Western administrator, settler, and missionary) was repugnant to justice and morality. It was clear that in the

[4]Id. at 88
[5]British Colonial Office, REPORT ON THE COLONY AND PROTECTORATE OF KENYA FOR THE YEAR 1927, NO. 1425 (1929), http://libsysdigi.library.illinois.edu/ilharvest/Africana/Books2011-05/5530244/5530244_1927/5530244_1927_opt.pdf last visited 10/12/2018.
[6]R W. Hamilton, East Africa protectorate law reports containing cases determined by the High Court of Mombasa, and by the Appeal Court at Zanzibar, and by the Judicial Committee of the Privy Council, on Appeal from that Court - 1897-1905 (1906).

colonial society, the British interests, culture and laws would come before any native interest, culture or laws.

In 1920, the Kenyan territory (as currently constituted) became, first a colony and then a protectorate of the United Kingdom. The principal purpose for the protectorate was to generate profitable gain to the British economy. As originally imagined, Kenya was supposed to exist and be administered in a manner as to generate profitable gain to the British Empire. Did this purpose ever change? And if it did, did it change to continue serving the interest of Western powers who continue to influence most governance decisions that we make?

For profit, prestige, opportunities for resettlement of British aristocrats was the Kenyan state imagined. After independence nothing of our composition has changed. Has the purpose for our existence changed? How much of the original purpose for imagining the Kenyan state remains? Have we had a chance to reimagine the Kenyan state in order for it serve the dreams and aspirations of her people?

2.2 Kenyan independence movement and Pan-Africanism

The Kenyan independence movement, while in limited ways was unique to the particularities of the Kenyan society, aligned its aspirations to those of the Pan-African movement. The Pan-African movement is as old as the history of oppression and racial domination and exploitation of the African races. However, the movement found expression in the Western ***"slaves who created a vision of the unity of the struggles of the African peoples at home and abroad," effectively "creating a vision of the world which was larger than the nation or ethnic group from which the slave was captured… aspirations of the slave were larger than the plantation and the vision of the slaveholders."***[7] Born out of Africa but with the firm belief that a common approach is what was needed to overcome slavery, to celebrate, and to protect the rich African heritage. As W.E.B. Du Bois aptly summarizes it –

> *"The idea of one Africa uniting the thought and ideals of all native peoples of the dark continent belongs to the twentieth century and stems naturally from the West Indies and the United States. Here various groups of Africans, quite separate in origin, became so united in experience, and so exposed to the impact of a new culture, that they began to think of Africa as one idea and one land. Thus, late in the eighteenth century, when a separate Negro Church was formed in Philadelphia, it called itself "African"; and there were various "African" societies in many parts of the United States. It was not, however, until 1900 that a black West Indian barrister, H. Sylvester Williams, of Trinidad, practising in London, called together a "Pan-African" Conference. This meeting attracted attention, put the word "Pan-African" in the dictionaries for the first time, and had some thirty delegates, mainly from England and the West Indies, with a few coloured Americans."*[8]

When first conceived, Pan Africanism was a movement of Africans in diasporas' – the United States and West Indies – a vision of Africa and what it could be with their contribution, modernizing this world that many of them had never gone to and that many would not get the opportunity to visit. It manifested in various forms, but at independence struggles of most African States, it could be described as –

[7]Horace Campbell, *Pan African Renewal in the 21st Century*, 1 African Journal of Political Science / revue africaine de science politique 84–98 (1996).
[8]George Padmore (ed.), colonial and coloured unity: a programme of action; history of the Pan-african congress, (1963).

"[A]n inclusive movement seeking to realize the unity transcending the European-made boundaries now dividing the African continent, the Pan-African movement represents the search for organization and community… Organization is needed to mobilize resources and directly implement such goals as the full achievement of African freedom, rapid economic growth, societal modernization, unity in foreign affairs, and a restoration of African culture. These goals of Pan-Africanism coincide with the objectives of African nations, but the new states are too weak, economically, politically, and militarily, to fulfill their demands on a self-sufficient basis."[9]

In different times, the Pan-African movement manifested differently. In the United States, for example, during the 19th century of the ***great revival movements, African Americans felt strongly commissioned to take Christianity to Africa in the hope that this will lead to not only evangelizing Africans but also the establishment of their versions of modern (Western) states.***[10] Then with the setting of colonies in Africa, emerged the Western Pan Africanist who believed that ***the only way to help Africa is by the internationalization of the colonial administrations in Africa to allow educated blacks in the West to serve in these colonies.***[11] The internationalization of colonial administration was a major resolution of the first Pan African Congress in 1919 in Paris.[12] W.E.B. Du Bois, American academic and African enthusiast, organized the Paris Congress and a series of other congresses. Of these congresses, the 5th Congress held in London in 1945 stands out because it was more inclusive of African freedom fighters and far-reaching in its call for *Africa for Africans* and the call for independence. Here is the final resolution of the Congress –

"The delegates of the Fifth Pan African Congress believe in peace. How could they do otherwise when for centuries they have been victims of violence and slavery. Yet if the world is still determined to rule mankind by force, then Africans as a last resort may have appeal to force, in order to achieve freedom, even if force destroys them and the world.

We are determined to be free; we want education, the right to earn a decent living; the right to express our thoughts and emotions, and to adopt and create forms of beauty. Without all these we die even if we live.

We demand for black Africa autonomy and independence so far and no further than it is possible in this 'One World' for groups and peoples to rule themselves subject to inevitable World Unity and Federation.

We are not ashamed to have been an age-long patient people; we are willing, even now to sacrifice and strive to correct our all too human faults; but we are unwilling to longer starve while doing the world's drudgery, in order to support by our poverty and ignorance a false aristocracy and a discredited Imperialism. We condemn monopoly of capital and rule of private wealth and industry for private profit alone. We welcome economic democracy as the only real democracy; wherefore are going to complain, appeal and arraign; we are going to make the world to listen to the facts of our condition. For their betterment we are going to fight in all and every way we can.

To this statement we append the immediate

[9]Charles F. Andrain, *The Pan-African Movement: The Search for Organization and Community*, 23 PHYLON (1960-) 5–17 (1962).
[10]Alexandre Mboukou, *The Pan African Movement, 1900-1945: A Study in Leadership Conflicts Among the Disciples of Pan Africanism*, 13 Journal of Black Studies 275–288 (1983).
[11]*Id.*
[12]*Id.*

and specific demands of various peoples of African descent."[13]

The African delegation to the Fifth Congress included leading luminaries such as Dr. Kwame Nkrumah of Ghana, Jomo Kenyatta of Kenya, Hastings Kamuzu Banda of Malawi, and Obafemi Awolowo and Jaja Wachuku from Nigeria. It is this Congress that spearheaded a global approach to the fight for the independence of the African states. While these congresses were instrumental in the African struggle for independence, it was the view of most native Africans that the Afro-Americans and the West-Indians could only play a supportive role. The actual job of liberating the African continent had to be left to the native Africans to keep the tone of the unrest against colonialism such as to force the colonialist to either negotiate an exit or be forced to surrender the territories.[14]

There were generally three aspects of the Pan African movement:

i. a desire to attain economic and social progress through pragmatic, or functional, unions;
ii. a motivation to establish a sense of cultural unity among relatively homogeneous peoples and to restore the cultural heritage of a pre-colonial past; and
iii. a motivation for unions primarily due of ideological considerations.[15]

Independence came, but the three ideals of the Pan-African movement were not wholly realized. Each independent African state took its own tangent. The leader independent leaders quickly moved to consolidate their power and cozy up to

Prof. Bethwel Ogot

colonial powers. Sadly, while the colour and the name of the oppressor changed, oppression of the African never ceased. That is the same story that is unfortunately shared of the Kenyan experience.

The full aspirations of independence were never realized. It could not be realized when those who sought to reflect the black soul, were themselves white artefacts.[16] We must take what lessons we need from Western civilization, yet we must reclaim what it means to be African, to be Kenyan. Once we know what being Kenyan and the Kenyan society that we wish to establish, then we can avoid the pitfall that our independence leaders fell into.

2.3 Independence Kenya and our experience of collective failure

Has the Kenyan independence experiment really failed, or are we not appreciative of the quantum leaps we have made as a country? Kenyan historian and academic Prof. Bethwel Ogot, considered the experience of post-independence Kenya and declared the Kenyan project dead. He

[13]W. E. B. (William Edward Burghardt Du Bois, Fifth Pan-African Congress Final Resolution, Ca. October 1945. W. E. B. Du Bois Papers (Ms 312). Special Collections and University Archives, University of Massachusetts Amherst Libraries Location (1945), http://credo.library.umass.edu/view/full/mums312-b107-i461 (last visited Oct 14, 2018).
[14]Mboukou, *The Pan African Movement*, supra note 4 at 278 – 279.
[15]Andrain, *The Pan-African Movement*, supra note 3 at 3 – 6.
[16]Fsnno Frantz, Black Skin: White Masks.

has opined that it had not taken off in any meaningful way. The Kenyan state had forcefully disrupted the communal ordering of the Kenyan society. By the time the British left, not many Africans had bought into the new way of doing things. It was easier to keep the communities' ways of ordering than to fully adopt the new way. The political leaders made it worse; they exploited the schism oscillating between nationalist rhetoric and ethnic chauvinism whenever either furthered their personal interests. Most of the Kenyan independence leaders had also embraced extreme Western capitalism that it made perfect sense for them to' 'create a nation of ten millionaires and one million beggars."[17] For these and many others sad experiences in independent Kenya, Prof. Bethwel Ogot declared the Kenyan project dead. I am afraid I agree with him.

Not long ago, Dr. David Ndii, a Kenyan economist and political commentator added his voice to the chorus declaring, "Kenya has never been a more distant idea than it is now at the beginning of the 21st Century. Nationalism is dead, replaced by sub-nationalism, (for) the tribe has eaten the nation."[18] Borrowing from Benedict Anderson, he opines that, "failure to develop and propagate a national narrative alluring enough to nurture a "deep, horizontal comradeship" beyond the tribe,"[19] is partly why the Kenyan project failed. He identifies four opportunities that we have squandered which we could have used to build nationalism: Jomo Kenyatta's Administration's decision at independence that wealth was more important than people; in 1992 at the resumption of multiparty democracy when nationalism could have trumped tribalism, it didn't; in 2003 when Mwai Kibaki was elected on nationalist (inclusive) politics and in 2010 – 2013 with the promulgation and implementation of Kenya's Constitution 2010.[20] In all those cases individual avarice, tribalism and corruption triumphed. Ndii concludes that:

> *"When people find that they cannot live together they part company. Kenya is for the most part an abusive relationship. It is about time we start talking about ending it. This ought not be a difficult conversation."*[21]

While Ndii, came to this conclusion of dissolving the Kenyan nation. I believe we have not done everything necessary to renegotiate the terms of this Union. Our grandparents may have a fresh memory of what united the push for independence, our parents may relate better to why we never really got Uhuru. Ours is to ask, now that we don't understand the Kenyan project, what can we do to change the status quo. I believe we have a right to deconstruct to rebuild a better Kenya. Hence my call for reimagination of the Kenyan society.

3.0 The place of individual pursuits in the Kenyan reality

3.1 Of being and realizing self

The African Ubuntu philosophy states that, "I am, because we are." I must first be for a 'we' to exist. There is a place for individual exploits. The very best of us must help us 'imagine' what is possible with us. There is a place for personal talent in the reimagination of the Kenyan society. As John Rawls states:

[17]This statement has been attributed to JM Kariuki, the Kenyan patriot assassinated for speaking against Jomo Kenyatta's government's exploitation of the poor and land grabbing by the powerful in government.
[18]David Ndii, "Kenya is a Cruel Marrriage, it is Time we Talk Divorce," Daily Nation Newspaper, December 6, 20217.
[19]Id.
[20]Id.
[21]Id.

> Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. Therefore in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests. The only thing that permits us to acquiesce in an erroneous theory is the lack of a better one; analogously, an injustice is tolerable only when it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice are uncompromising.[22]

The inviolability of the individual and their place in the negotiation of the commonwealth comes before everything else. We must allow the best of us to open our eyes to what is possible in our society. In this new society, we will order it in such a manner that it is:

> [N]ot only designed to advance the good of its members but when it is also effectively regulated by a public conception of justice. That is, it is a society in which (1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles. In this case while men may put forth excessive demands on one another, they nevertheless acknowledge a common point of view from which their claims may be adjudicated. If men's inclination to self-interest makes their vigilance against one another necessary, their public sense of justice makes their secure association together possible. Among individuals with disparate aims and purposes a shared conception of justice establishes the bonds of civic friendship; the general desire for justice limits the pursuit of other ends. One may think of a public conception of justice as constituting the fundamental charter of a well-ordered human association.[23]

It is this sense of justice that will protect the interest of individuals in such a way that they would be willing to subordinate individual interests to the 'general will or public interest. For within the public interest individual interests requiring that, "equality in the assignment of rights and duties," and where there is social and economic inequality, "inequalities of wealth and authority are only just if they result in compensating benefits for everyone, and in particular for the least advantaged in the society."[24]

We will in this reimagined Kenya work to help people realize the best of themselves, then work to ensure that each of us has, "equal right to most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others," and that, "social and economic inequalities are arranged so that they are both reasonably expected to be to everyone's advantage and attached to positions and offices open to all."[25]

[22]John Rawls, A Theory of Justice, Harvard University Press (1991), p. 4 - 5
[23]Id at 6 - 7
[24]Id. at 13
[25]Id. at 53

There must a place for every one of us. And that in this society, we will never be judged by the names that we carry or the presumption of ethnic community but by the extent of our talents and our potential to contribute to the remaking our society. Let us be clear in highlighting the high ideals of enlightened society. Let these ideals demand the best from us. Let this society invest fully in us and expect our full contribution to making this society better for us, for our families and for our descendants.

3.2 Realizing I in we

I like to warn everyone who cares to listen to me that whenever there is a claim to 'WE', that they should stop to ask which version of 'WE' is invoked. For there are different version of 'WE', as I explain in this poem.

The different versions of 'we'

We, oh how common the word!
We, how compelling a word!
We, how magical the word!
For it calls into action,
It stirs into a frenzy,
It justifies our madness.
But wait, which version of the WE,
Do we invoke this time?
For there is the We of I imposing my will,
To authenticate my interest I invoke the We,
There is also the We for escaping responsibility,
It is not easy to apportion blame in a mob,
Then there is the We that demeans intellect,
For a group is as wise as the dumbest of its members,
Then there is the We that recruits,
Foot soldiers for a hidden I that pulls the strings.
And then,
Then there is the WE that enjoins,
It is the rarest of the WEs,
It is as rare as having lightening strike a place twice,
As rare as having similar fingerprints.
So then,
Which version of We do we have,
In this claim that 'it is our time to eat'?
When I am a cart pusher, hardly making ends meet.
Which We is entailed in 'we are the ruling tribe'?
When you are a nurse, off work because the government won't pay your salary.
Where is the We, when your brother is forcefully disappeared?
Where is the we when a citizen is deported?
For clearly refuting a 'We the people claim'.
Which is the We when you can't get a job, afford an education, erk a living?
How can it be a We, when I have no hope that tomorrow is a brighter day?
Ask therefore, when a claim is made,
We must...
We can't...
We will...
We won't...
We have...
We...
Which version of the We it is,
For I am pretty sure it is not the we that enjoins.[26]

It is for these reasons that I will ask that we choose the We that enjoins in the re-imagination of the Kenyan Society. We must learn what is important to our society. We must work with them in diagnosing our problems and coming up with remedies. The I in the we must therefore choose to engage, must be an effective honest communicator, must buy into the vision of a greater more prosperous Kenya. Must realize that there is strength in Unity. Must realize that compounded vision for Kenya is better than the perfect vision of just one of us.

And yes finding the perfect WE, requires work and patience. We must be ready to work hard at it. Agree to disagree in dignity. We must understand that people will not

[26]John Joseph Wamwara, The Different Versions of We, February 2018.

disagree with us because they don't buy into the vision, but that we all are talented to think and process information differently. No one will be too big for the commonwealth, but no one must be left behind. Every thought however vain must be considered and retired by the force of reason of the adopted idea. That WE must confront and deal a deathly blow to the debilitating scourge of tribalism and egotism. Then can WE truly listen when people share their ideas.

3.3 The strength of a multi-stranded rope

"If you want to go fast, walk alone. If you want to go far, walk with others." Is a known proverb. It is also the same proverb that I wish us to employ in understanding why there is strength in numbers. Alone one can build a mansion, at best a palace. Together we can build a city. The kind of city we want to build cannot be the cities in "Amezidi" or "Walenisi." It must be cities designed by the best architects, with foundations laid by the best Engineers, planned by the best planners, interiors designed by the best designers, painted by the best painters, administered by the best administrators, adjudged by the best judges, fed by the best farmers, defended by the most brilliant military commanders, taught by the most brilliant scholars, entertained by the best thespians and musicians. Whatever it is that the city needs, only the best of experts in those fields should supply the needs of this city.

There is a need of everyone. There is a place for everyone and more. Let the world come and learn, marvel and benefit from what we wish to create. What we seek to achieve can only be achieved if we employ the diversity of talent, culture and values that every one of our communities possess. Each strand of our society is needed to make this rope that posterity will pull at, but it will remain strong.

late Raila Odinga

4.0 Kenya Re-imagined

4.1 The failed Journey to Canaan

There have been previous attempts that challenged the dominant political expression of the Kenyan governance. They have come in different forms. They have succeeded partly but failed largely. I believe failure has been mostly a structural challenge rather than weak efforts. Well, what could we expect when we put new wine in old skins?

Let me address the latest effort led by the late Raila Odinga – the journey to Canaan. Well, I do hope you know he was not hoping to transplant us to some imaginary place called Canaan in the middle East? I have been to the width and breath of the state of Israel. I have been through the four quarters of Jerusalem. Yet I will choose this country called Kenya over Israel any day. I am also sure they will not will not accept any claim of citizenship from me, real or metaphorical, to this land Canaan. But that the journey to Canaan is figurative of the journey that Kenya must take from the heavy crushing

slavery of poverty, tribalism and ignorance. It is a figurative journey from the weight of Western imposed values, practices, and Laws that have left the Kenyan public more impoverished, tired and hopeless. It was a journey to what is possible with this country. And I am moved to declare that its time has come. I am encouraged to join Isaiah in declaring that it is the year of the Lord's favour upon this land (Kenya):

The Spirit of the Sovereign LORD is on me,
because the LORD has anointed me to
proclaim good news to the (*Kenyan*)poor.
He has sent me to bind up the (*Kenyan*)
brokenhearted, to proclaim freedom for the
(*Kenyan*) captives and release from darkness
for the (*Kenyan*) prisoners,[a]
2 to proclaim the year of the LORD's favor
(*on Kenyans*) and the day of vengeance of
our God, to comfort all who mourn,
3 and provide for those who grieve in Zion—
to bestow on them a crown of beauty
instead of ashes, the oil of joy instead of
mourning, and a garment of praise instead
of a spirit of despair. They will be called
oaks of righteousness, a planting of the
LORD for the display of his splendor.
4 They will rebuild the ancient ruins and
restore the places long devastated; they
will renew the ruined cities that have been
devastated for generations.
5 Strangers will shepherd your flocks;
foreigners will work your fields and
vineyards.
6 And you will be called priests of the LORD,
you will be named ministers of our God. You
will feed on the wealth of nations, and in
their riches you will boast.
7 Instead of your shame you will receive a
double portion, and instead of disgrace you
will rejoice in your inheritance.
And so you will inherit a double portion in
your land, and everlasting joy will be yours.
8 "For I, the LORD, love justice;
I hate robbery and wrongdoing. In my
faithfulness I will reward my people and
make an everlasting covenant with them.
9 Their descendants will be known among
the nations and their offspring among the
peoples. All who see them will acknowledge
that they are a people the LORD has
blessed."[27]

I want to quote Koigi Wa Wamwere from a lecture he gave in this very hall about three years ago, "I know that heaven is possible here on earth. My experience in the Sweden during my exile made me realize that it is possible to experience heaven on earth. In the way that they have organized their society to meet the needs of its citizens and residents, this is the heaven that most people in our society seek."

The bliss and things we pray for right now, we can realize if we choose to work hard at it. We are a hardworking people. We are enterprising as well. We only need the courage to dismantle the system that has not worked for us and will not work for us since it was not meant to work for us.

4.2 The detour to Singapore

Now we are being told that we are headed to Singapore. And just like Canaan journey it is figurative and not literal. The 744 square Kilometer Island of Six Million people would not accommodate the Fifty million plus of us. Yet their rise in just 40 years is something that we could emulate. To learn from and hopefully surpass Singapore. Let those who are selling Singapore tell us which of these measures that Singapore took, that they are willing to undertake as well:

i. Government by Law and not of men: They established a government where no one was above the Law. When we have the constitution (the

[27]Book of Isaiah 61:1 -

paper promulgated on 27th August 2010), just that - a paper; while THE CONSTITUTION (the will and the whims of those in power) actually ruling this country; wow ready are we for government of laws and not of men as Singapore established as early as 1959?.

ii. Ruthless Investigation and Punishment of Corruption: No one would escape Corrupt Practices Investigation Bureau (CPIB) imposing heavy fines and/or long prison sentences. Even the most powerful members of the Cabinet and senior members of the Public service were subject to CPIB. In a country where even murder trials can be fabricated or withdrawn depending on whether you have fallen out or are in favour of those in power; how ready are we to experience the empowering yet humbling power of the Law?

iii. Visionary yet pragmatic Leadership: Yew Kuan Lee laid a foundation of selfless leadership that they continuous until now. Who is the leader who is ready to make the sacrifice of leading like Yew Kuan Lee?

iv. Meritocratic, Independent, and Efficient Public Service: Well when we think that power comes with the right for the one in power and their associates to eat, do we have the courage to consider meritocracy as a basis for appointment promotion in the public service?

v. Accountability and Performance Orientation: We have the structure for this, we can commit to it better.

vi. Rule of law and Public Order: There are so many cultural and social practices that we must help our society overcome to fully realize the power of the Rule of Law and Public Order.

Marcus Garvey was a Jamaican political leader, publisher, and activist who became one of the most influential figures in Black nationalist and Pan-African movements in the early 20th century.

These six measures transformed the political, economic and social culture o Singapore. The journey to Singapore is a values journey. What values are we ready to resign? What values are we ready to acquire if we wish to mimic and hopefully surpass the Singaporean rise from a third world country to first world country in forty years?

5.0 A foundation for an African renaissance

What can we learn from Garvey's era that is relevant today for Black liberation theory? Can self-determination be achieved in contemporary Black communities besieged by self-negation and a quick-fix cultural mentality based on crude materialism? Surely there is something from the Garvey legacy that needs to be put into practice in contemporary Black

[28]Mark Christian, *Introduction to the Special Issue: Marcus Garvey and the Universal Negro Improvement Association: New Perspectives on Philosophy, Religion, Micro-Studies, Unity, and Practice*, 39 Journal of Black Studies 163–165 (2008).

communities. By keeping Garvey alive in our teaching, studies, conferences, and publications, there is hope that his message of self-determination will eventually come into greater practice throughout the African continent and the African Diaspora.[28]

Like Mark Christian, you may wonder why Marcus Garvey and his movement may be relevant in the efforts are reimagining the Kenyan society , well, it is only right to start describing the *black renaissance*[29] of the early 20th century that Marcus Garvey providentially found himself involved in and rapidly built into a worldwide movement. While there were many Negro movements in the early 20th century, a few people and places stand out as the leading lights towards the new negro awareness. West Indies and Harlem are foremost of these places. From early 1900s West Indians were foremost in the fight for negro interest and in championing an alternative conceptualization of the Negro. As Johnson Fenton aptly put it in early December 1919 –

We of America owe much to the West Indian. We owe much to the intellectuality and the indomitable will of these Islanders. First of all, the blood of the West Indian has given us William Stanley Braithwaite, the foremost living American critic. It has given us Bert Williams, the world's greatest blackface comedian. It has given us Marcus Garvey, who has presented the world the magnificent plan of a Black Star Line, which though it should meet with loss, would still be a source of inspiration to the black millions for generations to come. In every field of our American life we find the West Indian pushing ahead and doing all in his power to uphold the dignity of the Negro race. In every industry, in every profession, in every trade, we find this son of the islands holding aloft the banner of Ethiopia. When the great day of our liberation comes, we will find the West Indian foremost in the ranks of those fighting with his armor on and his sword raised aloft. In fact, this Negro renaissance is due largely to the aggressive mind of our brother from the islands, and for it we thank him and his Creator.[30]

Harlem, New York City, was the harbinger of black artists and cultural awareness. It was "the largest of many urban areas in which blacks from the American South, the Caribbean, and Africa were forging a common racial identity, including 'kindred centers'."[31] It is from here that the works of people such as Claude McKay,[32] Langston Hughes,[33] Alain LeRoy Locke,

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[29]Ernest Julius Mitchell, *"Black Renaissance": A Brief History of the Concept*, 55 Amerikastudien / American Studies 641–665 (2010).
[30]Johnson Fenton, The Favourite Magazine December 1919, as reported by Ernest Mitchell, "Black Renaissance", at 642.
[31]Id. at 644.
[32]Feted for great literary pieces including the protest poem – If We Must Die – following the 1919 racial protests and deaths in the United States. Here is the poem –
If we must die—let it not be like hogs
Hunted and penned in an inglorious spot,
While round us bark the mad and hungry dogs,
Making their mock at our accursed lot.
If we must die—oh, let us nobly die,
So that our precious blood may not be shed
In vain; then even the monsters we defy
Shall be constrained to honor us though dead!
Oh, Kinsmen! We must meet the common foe;
Though far outnumbered, let us show us brave,
And for their thousand blows deal one deathblow!
What though before us lies the open grave?
Like men we'll face the murderous, cowardly pack,
Pressed to the wall, dying, but fighting back!
Claude McKay, "If We Must Die", Poetry Foundation (1919), https://www.poetryfoundation.org/poems/44694/if-we-must-die (last visited February 18, 2026).
[33]Read I Too poem and other protest work from Langston Hughes. Langston Hughes, "I, Too", Poetry Foundation (1926), https://www.poetryfoundation.org/poems/47558/i-too (last visited February 18, 2026).

Aaron Douglas, Zora Neale Hurston, Duke Ellington, Josephine Baker, and W. E. B. Du Bois found not the only expression but adaptation in everyday life and philosophy of the people of African descent. It is this melting pot of ideas that Marcus Garvey found himself in when he came to New York in 1916. It was the ripe moment for his ideas because "[h]e came to the United States… at a time of great disenchantment among Afro-Americans who had pursued the 'American Dream,' until they had to concede that the dream was not dreamed for them… Marcus Garvey gave them the vision of a new dream, a new promise, and a new land, restoring hope where hope had been lost."[34]

4.3 Servitude of the African man

For Garvey, "[t]he world has made being Black a crime, and I have felt it in common with men who suffer like me and instead of making it a crime, I hope to make it a virtue."[35] It was, therefore, his goal that the African realizes that there was nothing inferior about being black, in fact, the African, and the other races were equal and that there was no intermediary between him and God.[36] His philosophy drew therefore from the nationalist black Christianity of his time and of the times before him.[37] His was a philosophy that united "the concepts and practices of spiritual salvation, moral grounding, and political liberation."[38] In Christianity, he could craft divinity for the black race. He could not just defend it, but he could also celebrate beauty, and find the divine will in being negro. He, therefore "places great emphasis on the agency of all Africans and on their obligation to free themselves, recover and reclaim their Divine identity and ancient heritage, realize their inherent potential as world-makers, and vindicate and liberate Africa among the nations of the world."[39]

Finally, Garvey also engages in redefining the image of God. If God created man in his own image after his own likeness, then surely the God of the negro can only be black. On Karenga summarizes Garvey's philosophy thus –

Closely linked to Garvey's key anthropological concept of humans is the image of God as a reflection of the people who worship him. In a word, even as humans are in the image of God, God likewise expresses himself in the images of the people who worship Him. In his

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[34]john Henrik Clarke, Marcus Garvey: The Harlem Years, 5 The Black Scholar 17–23 (1973).
[35]tony Martin, Race First: The Ideological and Organizational Struggles of Marcus Garvey and the Universal Negro Improvement Association (1976), at 25
[36]"I repeat that God created you masters of your own destiny, masters of your own fate, and you can pay no higher tribute to your Divine Master than function as man, as He created you. The highest compliment we can pay to our Creator; the highest respect we can pay to our risen Lord and Savior, is that of feeling that He has created us as His masterpiece; His perfect instruments of His own existence, because in us is reflected the very being of God. When it is said that we are created in His own image, we ourselves reflect His greatness, we ourselves reflect the part of God the Father, God the Son, and God the Holy Ghost, and when we allow ourselves to be subjected and create others as our superior, we hurl an insult at our Creator made us in the fullness of ourselves...The difference between the strong and weak races is that the strong races seem to know themselves; seem to discover themselves; seem to realize and know fully that there is but a link between them and the Creator; that above them there is no other but God and anything that bears human form is but their equal in standing and to that form there should be no obeisance; there should be no regard for superiority. Because of that feeling they have been able to hold their own in this world; they have been able to take care of the situation as it confronts them in nature; but because of our lack of faith and confidence in ourselves we have caused others created in a like image to ourselves, to take advantage of us for hundreds of years" – Marcus Garvey, The Resurrection of the Negro, Easter Sunday Sermon Delivered at Liberty Hall, New York City, N. Y. April 16th, 1922. Reported in Amy Jacques Garvey, Marcus Garvey, The Philosophy & Opinions of Marcus Garvey, or Africa for the Africans (2009), The Journal Of Pan African Studies 2009 EBOOK. http://archive.org/details/ThePhilosophyOpinionsOfMarcusGarveyOrAfricaForTheAfricans (last visited Oct 14, 2018).
[37]Maulana Karenga, *The Moral Anthropology of Marcus Garvey: In the Fullness of Ourselves*, 39 JOURNAL OF BLACK STUDIES 166–193 (2008).
[38]*Id.* at 169.
[39]*Id.* at 170

remarks on "the Image of God," he notes that each people has an ideal of God as seen through their own particular perspectives or their "own spectacles." Thus, he says Black people have their own ideal… Noting the ethnic and racial character given to the universal God by Jews and Gentiles, that is, White Christians, Garvey states that as for "the God of Isaac and the God of Jacob let Him exist for the race that believes in [Him]"…But "we [Black people] believe in the God of Ethiopia, the everlasting God - God the Father, God the Son and God the Holy Ghost, the one God of all ages." He concludes stating that "that is the God in whom we believe but we shall worship Him through the spectacles of Ethiopia."…Garvey insists on not only a Black God but also a liberation theology and ethics and a politics of redemption for a whole people.[40]

This theology and philosophy slowly seeped into the African continent. Some African scholars who went to Europe and America read Garvey's writings and materials in these capitals. While a few openly identified as members of UNIA, a great many accepted his vision of a liberated Africa. They used his teachings to refute the missionaries' preaching of gradualism as regards freedom of the African; to challenge the Western Christianity's wholesale rejection of African cultural practices; to challenge the image of God as depicted by the Western Christianity, and to champion a cultural awareness that reconciled the reality of being African. As Okwui Enwezor aptly puts it "Marcus Garvey's 'return to Africa' movement provided the political ballast; what the Harlem Renaissance writers and Garvey provided was a view of blackness (of Africanness if you will) that found value and beauty in African culture and history as subjects of their art; much in the same way that African sculpture and religious rituals had penetrated Cubism and Surrealism."[41]

While thousands of black people took to the New York streets to take part in what came to be known as the Marcus Garvey Parades,[42] he began a revolution that changed the Africans' perception of themselves, of other races, and of how they are to relate to the other races and their environment. This movement developed at a time when Africans, especially in Kenya,[43] started questioning some of the teachings of Western Christianity.

Marcus Garvey's vision of a new united Africa, equal, if not superior to other regions is what we need to develop to help us think outside the frames and glasses that informed our vision of ourselves. We must have the courage to question everything including the visualization of God and and the blackman's plans in his salvific plans. If we accept, the European conceptualization of blackness, then we will not have the courage to seek our proper place in the brotherhood of nations.

Civilizations are circlic, the earliest recorded civilization was Egyptian (African). The next civilization is African. What stops this African renaissance from being centered here (in Kenya)? For as it were in European Renaissance, so can it be in African Renaissance:

> Cradled in the city-state of Florence in northern Italy, the Renaissance was

[40] *Id.*

[41] Okwui Enwezor, *The Short Century: Independence and Liberation Movements in Africa, 1945-1994 – An Introduction*, in Kennell Jackson & Okwui Enwezor (Eds.), The Short Century: Independence and Liberation Movements in Africa, 1945-1994 (2003).

[42] RBGSTREETSCHOLAR IMHOTEp, The Story of Marcus Garvey-A Documentary Film, https://www.youtube.com/watch?v=wycPDPuaNWk (last visited Oct 14, 2018).

[43] *Id.* at the 40th minute – It is reported that Garvey's *Negro World* would be smuggled into Kenya. People would be gathered around the reading of Garvey editorial, where young men would be tasked to memorize it and spread across the Kenyan population thirsty for Garvey's message of independence and liberation for the African continent.

> spearheaded by Florence's array of geniuses: people like the painter, sculptor, architect and engineer Leonardo da Vinci (1452-1519), the statesman and political philosopher Niccolo Machiavell i (1469- 1527), and the sculptor, and poet Michelangelo Buonarroti (1475-1564). These, among others, were men of universal genius, men of ideas, great thinkers and artists. Men who, in their 'Great Quest for Truth', created intellectual ferment in the scholastic circles of the emerging domain of 'Humanistic Philosophy…
>
> The men and women of the Renaissance, by the range of their enquiries, the freshness of their skepticism and the sharpness of their observation, gave impetus to the search for truth. They searched the histories of antiquity for precedents that could guide them to the truth. We consider this approach telling because for any great idea or movement to thrive, the prime requisite is the emergence of a reputable group of men and women to popularize it.[44]

European Rennaissance thinkers contended with 2000 years of settled principles of what was considered reality. The absolutism of fate in determining who has the right to rule. They confronted the threat of death for anyone who dared to question positions settled and granted by force the church and state. What they confronted and overcome was far more overwhelming than our present troubles. They had the courage to shine the light of 'truth, empirical truth,' and they brought down two millennia assumptions.

I recently listened to Elisha Ongoya, SC Engage Talk where he stated, that his many years of experience has tamed his aspirations to change the Kenyan society. Unlike my mentor and friend, the few years between his many years and my modest years afford me the courage to still hope that I can change the Kenyan society. I am here to champion exactly the opposite. I am here to tell you that you have what it takes to ask hard questions, challenge the settled notions of governance and social ordering that have failed to serve our world in a just manner. I want to challenge you to confront the mediocrity of democracy as espoused and experienced by the Kenyan society. I hope that you come up with something that will be in place 1000 a thousand years from now. Let posterity hear of Dolla the Kenyan philosopher, Kiphone the Jurist, Owuor the African nativist….and a great number of you have sat here and will have the courage to help reimagine Kenya.

Niccolo Machiavell

You have what it takes…will you have the courage to take the first step?

Thank you.

John Joseph Wamwara (SJD & LLM, Emory University, LLM, Geneva Academy of IHL & Human Rights, University of Geneva/Graduate Institute, PGD in Law, Kenya School of Law, LL.B, University of Nairobi), is an Advocate of the High Court of Kenya, Dean and Associate Professor of Law at CMG Argwings Kodhek Faculty of Law at Tom Mboya University (Homa Bay Kenya0. He is the immediate former Dean of Moi University School of Law(Eldoret, Kenya).

[44]Gilbert E. M. Ogutu, African renaissance: Athird millennium challenge to thought and practice in African philosophy, https://share.google/tVVXH9HpyRYG8tCCy last accessed on 19th, February 2026.

Constitutionalism, not fundamentalism: A key value that the LSK President should have

By Alvin Mwangi

In the words of the Chief Justice Emeritus, Dr. Willy Mutunga, "A constitution does not survive because it is beautifully written. It survives because people defend it." The Law Society of Kenya (LSK) being one of the bodies that is mandated to defend the constitution, its President should definitely be someone who embodies the values of constitutionalism, and not someone who has opposed the 2010 Constitution, which has already delivered, and will continue to deliver, profound benefits to the Kenyan people.

With Faith Odhiambo having shown Kenyans the power that LSK has had especially during the June 2024 Protests around good governance, protecting this reputation and keeping the LSK free from interference is essential. The 2010 Constitution has brought important gains for Kenyans, and these must be safeguarded.

In 2026, a year already charged with emotion and intense political campaigning ahead of the 2027 elections, Senior Counsel Charles Kanjama was elected President of the Law Society of Kenya. As he takes office, it is vital that he leads a vigilant LSK that listens to and responds to the concerns of citizens, not just those of its members. He must be observant to a parliament that remains selfish in most of its work in

Outgoing LSK President Faith Odhiambo

recent times, to a judiciary that remains underfunded and backlogged with numerous cases, to an EACC and ODPP that is just there. Time is not ripe for a conservative President who may quickly support the current government of the day as opposed to the rule of law. He must make LSK stronger, Faith has shown us the power of LSK, the

shoes she has held are very big and from Faith Odhiambo, a strong President, we can not afford to have anything lesser. Given the history around 2024, and going into 2027, lawyers need him to be there for the people. From the already raised bar, we expect an even raised bar.

The LSK president must look at human rights with the principles of universality and indivisibility. Anyone undermining any aspect of human rights is not fit to hold that office. Just like Faith did in most of the cases; there were results, impact and even at some point I felt like I was experiencing a rebirth of LSK. It is important that the LSK president holds and has a clean track record of bodies of work that they have done to protect human rights over the years. Any president that is anti-human rights and a government mouthpiece must be rejected. An LSK President that calls out the government, holds them to account is a President that will help Kenyans keep the whole system of government in check. The country does not need a president that will be "in bed" with the government and help in crafting anti-human rights laws and policies.

With various bills expected to be tabled or already being tabled that would suppress freedom of speech and movement, Charles Kanjama must support and defend protestors. I cannot imagine going into the 2027 elections with a silent LSK President.

A president with a tainted past is as we have learnt even in the Kenyan elections a big red flag. Anyone who has associated with Europe and US based organizations to promote human rights violations should be barred from that seat. With a bit of a tense political environment, we need Kanjama to be bold and not be bought by the current regime into silence.

In 2027, we can not get back to wishing we could have thought better. Critical questions are vital to ask ourselves; will he protect and defend our Constitution? Will he oppose the Constitution of Kenya

New LSK President Senior Counsel Charles Kanjama

2010? Will he outrightly promote human rights and constitutionalism in Kenya? Will he be "bought" by the government? Will he embody pan-Africanism over foreign western ideologies? Will he speak truth to power and not adjust truth to suit power? Will he be neutral in times of injustice? Will he speak for Kenyans in moments of crisis, and not the state? Will he shrink access to regional offices?

Kenya is headed to a time when the Constitution will be tested to its core, Senior Counsel Charles Kanjama must protect and defend the Constitution and the Kenyan people. The people are watching.

Alvin Mwangi is a Human Rights Advocate.

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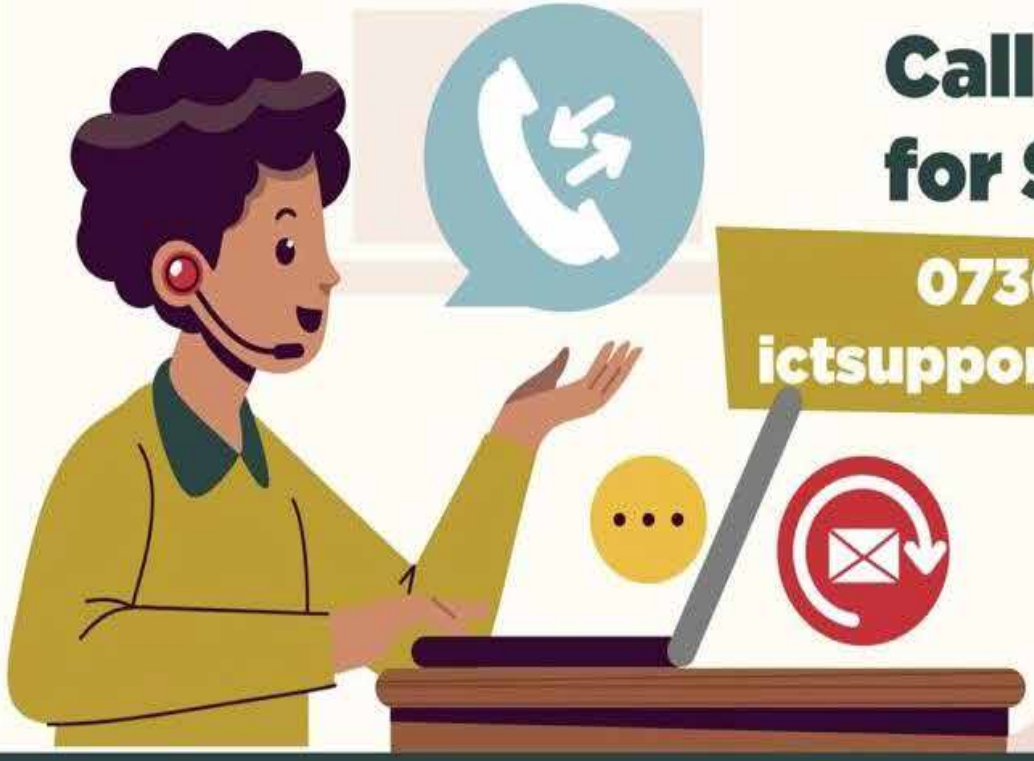

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ELECTION CAMPAIGN VIOLENCE

Politics of violence: A definition of the 2027 election campaigns? The 2025 by-elections proof of concept?

By Ouma Kizito Ajuong'

I begin writing this paper by citing the law. The Election Offences Act, which is the primary legislation dealing with matters of election offences, frowns upon violence during the election period. It states that a person should not directly or indirectly threaten to inflict injury, damage property, harm or cause harm to another person. These offences are often linked to the intention or the motive to induce or compel a person to support a person or a particular political party, forcing a person who is not intending to vote to vote in a particular way. Where a person commits these offenses, he is liable upon conviction to a fine not exceeding two million Kenyan shillings or a prison term not exceeding six months.

This is a law that has been in the statute book since 2016, perhaps influenced by electoral violence in the past. Ten years down the line, matters electoral violence and campaigns marred with death and violence are still part of Kenya's political fabric. Just a few days ago, news headlines were filled with the chaos at the ACK Witima Church in Othaya, where worshipers were attacked by armed people, tear gas was lobbed and a number of people were injured. This was allegedly meant to prevent Rigathi Gachagua from "campaigning" in the church. As violent as this may be, the 2025 By-elections can only be described as shocking events.

The politics of violence in Kenya refers to how political competition, power struggles, and elections have at times been linked to organized violence, ethnic tension, and state repression. It is deeply rooted in historical grievances, land disputes, inequality, and elite manipulation.

I am talking about the violence in *Kasipul-Kabondo* by-elections that could not go away even on election day leaving the Homa Bay Town Member of Parliament injured. As if not enough, there was massive violence in *Malava* that led to people being injured, vehicles torched and a lot of other properties damaged. *Magarini* was not spared either; there were reported tensions involving the Kilifi South Member of Parliament. There was also the *Mbeere North* contest that was heated to the boiling point. Were the 2025 by-elections a precursor to the 2027 general elections? Was it a proof of concept? If so, then how ugly are things to get in 2027? In this paper I desire to discuss violence in Kenya's political processes as I seek to offer solutions on how to eradicate the said violence.

Election violence in Kenya is less about spontaneous conflict and more about political competition shaped by ethnicity, inequality, and institutional weaknesses. While reforms have improved stability, sustainable peace depends on accountability, inclusive governance, and economic opportunity.

So, what is political violence? As much as it has a contested definition, as a concept, political violence is simply violence that may be attributed to political competition.

This takes a number of shapes thus, terrorist attacks, armed revolutions, political assassinations and armed protests leading to death, displacements, sexual assaults, damage of properties as well as civil strife.

A glimpse into the history. Violence as a result of politics in Kenya may be traced back to the colonial-era and post-independence times. These were conflicts resulting from the politics of land ownership for instance, there were a lot of assassinations attributed to the resistance against the ownership of land by the colonial masters as well as assassinations emanating from building of the Kenya-Uganda Railway. There was also a lot of political violence mattered to the natives who were on the mission to mobilize to seek independence of Kenya as a Republic.

There was also a lot of political violence in the post-independent Kenya. This is often attributed to repression of the opposition and the opposition politics. This includes a lot of political assassinations that run from Jomo Kenyatta's administration to President Moi's regime. Campaign and election related violence begin in earnest in 1992 with the re-introduction of the multi-party elections. President Moi is documented to have warned against a return to multi-party democracy as it had the potential to divide the country and lead to ethnic clashes which indeed occurred in 1992, 1997 and 2007 in an enormous way although widely seen to be government and elite sponsored.

The other element of the elections related violence in 1992, 1997 and 2007 was the deployment of goons. This was widely witnessed in the Coastal region leading to deaths and displacements of persons. There was the emergence of militia groups such as the *Jeshi la Mzee*, the *Chinkororo* and ultimately the *Mungiki* in 2007 who

reigned violence during the tribal clashes in 2007 with absolute impunity. The 2007 post-election violence in Kenya stands alone as far as the history of election related violence is concerned as more than a thousand people lost their lives with millions displaced and the country almost went into civil war. 2007 to be fair came with a raft of reforms and changes in the laws, the elections and governance system, including the infamous ICC cases.

The other kind of political violence in Kenya is one often related to picketing and violence from the police who always seek to repress the protests. Protests as already discussed were a characteristic of politics just before the re-introduction of multi-party politics in Kenya and it was carried on with the opposition with regards to elections more so in 2013 and 2022. *Maandamano* as commonly known, for a long time was seen as a political party thing. The ODM Party for instance has always complained of its members killed by the police during the peaceful protests. In recent times, picketing and protests have taken a different form with the *Gen-Z* protesting against the Finance Bill, 2024 making a mark in the history of Kenya. The police and the State have always been seen as the "offenders" and accused of allegedly killing, and injuring protestors including innocent by standards such as baby *Pendo*. The violence in these cases is always seen to largely come from the police. A lot of things have therefore changed save for the politics of violence that seems to transcend time hence the question why violence and how can this be done away with? The causes of political violence in Kenya are intrinsic to the politically active population in Kenya. A lot of these reasons can be traced back to Kenya's independence leadership and the subsequent regimes. It is a bit difficult to pigeon hole the reasons for political violence in Kenya as social or economical as there is a sense in which there is an overlap.

One of the key factors that contribute to political or election violence as earlier hinted

In 2024, Kenyan Gen-Z led nationwide protests against the proposed Finance Bill 2024, marking one of the most significant youth-driven political movements in the country's recent history.

During the presidency of Daniel arap Moi, multiparty elections were marked by violence, especially in Rift Valley and Coast regions. Thousands were displaced in clashes widely seen as politically instigated to weaken opposition support bases.

are historical injustices. In Kenya, there is a belief that only those in political power and specifically the Presidency get a share of the national cake. This is a justifiable belief that can be traced back to the previous regimes. President Jomo Kenyatta as the father of the new nation is said to have favored those from his tribe to the detriment of the rest of Kenya in so far as government appointments and development. The same was done by Moi under whose watch his Kalenjin community flourished. After this Mwai Kibaki and Uhuru Kenyatta did not do any better in spite of the Constitution of Kenya, 2010. A lot has always been said about the Sessional Paper No, 10 of 1965 that became an instrument of marginalization. The other historical injustices are related to land as a resource. Because of these, elections have been viewed as a do-or-die affair hence the emotions and the violence.

Related to this is the deep-seated concept of tribalism. The idea of tribalism in Kenya is always attributed to the failure of the first administration to unite the people of Kenya along the said factor of squeezed resource distribution and historical injustices. Because politics in Kenya is mobilized along tribal lines, elections and politics have always been this tribe against that tribe, hence, violence. When the contest cannot be adequately solved through the system in a believable way. Tribalism, like many concepts, is a creation of the political elite. It is a divide-and-rule kind of thing that Kenyan politicians must have learned from the colonial masters.

The other factor that causes political violence is the culture. A lot of people in the political "space" see political competition as war.

They always want to go beyond the debate and feel that the only way to make politics and elections "interesting" is to fight. Think of the words used in elections and political contests? "*Jeshi la Baba*," "*Risasi Moja*" as much as they are not to be taken in the literal sense, they always portray war, a fight and winners and losers. A lot of commenters in this regard always fault Kenya's election system as a *winner-takes-it- all.* Poverty and politics of money is also a major factor to violence. This happens because the politicians in Kenya understand the class differences and disparities. They are therefore able to get idle, available and desperate youth to pay them and create a "goon-like" structure to fight for them, hence violence.

Politics of violence are also propagated by weak institutions. With the advent of the Constitution of Kenya, 2010, there was thinking of building institutions however, this seems to have failed. The independent police always get involved in political violence more than any other institution. It is very rare to hear that the police arrest persons who have participated in political violence, the 2025 by-elections violence, a case in point. The National Cohesion and Integration Commission (NCIC) may be described as a toothless dog at best, as political violence still descends in Kenya.

For violence not to define 2027, there is a need to look at all these issues in a holistic manner. For sure, there is nothing good that may come from violence other than death and destruction.

A new dawn at the bar: Honoring Senior Counsel Charles Kanjama and Teresia Wavinya Nicholas, the trailblazers of LSK's bold future

By Stephen Odhiambo

Prologue

It is written in sacred scripture that where there is no vision, a people cast off restraint; yet where responsibility is embraced, a nation finds its footing. Leadership is never a private ornament, it is a public trust, sustained not only by those who hold office but by those who choose to participate. In every generation, moments arise that test whether we shall remain spectators of history or become its conscious architects. In such moments, silence speaks, turnout testifies, and collective will either ascends or recedes.

In my present stewardship as the Chairperson of the Law Students Association of Kenya (LSAK), Nairobi Central Region, entrusted with the institutional mandate and representative confidence of this region, I stand in awe of the seismic shift that has reshaped the leadership of the Law Society of Kenya (LSK). While I am not yet enrolled at the Bar and thus did not participate in the ballot of 19 February 2026, I find it instructive that, akin to the thousands of eligible advocates who abstained, the electorate recorded a turnout of roughly 8,600 votes from a membership exceeding 20,000. That numerical dissonance is not a trivial statistic, it is a diagnostic revelation.

It signals a troubling disengagement whose implications extend beyond the confines of professional governance.

Such reticence mirrors the peril that confronts us as a republic ahead of the 2027 General Elections, where diminished civic participation risks attenuating our collective mandate and producing outcomes that inadequately reflect the breadth of the sovereign will. It stands as a grave reminder that democracy is neither self-executing nor self-sustaining; it endures only through deliberate and sustained engagement.
I watched with bated breath as the results unfolded, heralding a new era for our legal fraternity. This piece is my heartfelt tribute to Senior Counsel Charles Kanjama and Teresia Wavinya Nicholas, the newly elected President and Vice President of LSK, who

New LSK President Senior Counsel Charles Kanjama

have not only clinched victory but ignited a renewed vision of justice, integrity, and advocacy in Kenya. Their triumph is not merely electoral, it is an affirmation that principled leadership can pierce through political turbulence, especially as we approach the 2027 General Elections.

In a nation where the rule of law often feels like a fragile thread, Kanjama SC and Nicholas emerge as master weavers ready to fortify it. Charles Kanjama, a titan of the bar with over two decades of steadfast practice, has been elevated to the 52nd LSK President with 3,728 (44% of) votes, outpacing Peter Wanyama who garnered 2,616 (31% of) and outgoing Vice President Mwaura Kabata who secured 2, 086 (24.7% of) votes . This was not a mere win, it was a mandate from approximately 8,600 advocates who recognized in him a rare blend of courtroom excellence and moral fortitude. Admitted to the bar in 2003 after earning his LLB from the University of Nairobi and a Postgraduate Diploma from the Kenya School of Law, Kanjama has cultivated expertise in constitutional litigation, commercial law, tax, intellectual property, ICT, arbitration, and mediation. As Managing Partner at Muma & Kanjama Advocates and the inaugural elected Chair of LSK's Nairobi Branch, serving two consecutive terms from 2016 to 2020 where he championed reforms in branch governance and member welfare, he is well acquainted with navigating institutional storms.

Kanjama's ascent comes at a pivotal time for Kenya, as he described in his post election remarks. With the 2027 polls on the horizon, his presidency promises to confront executive overreach and judicial inefficiencies with resolve. Critics raised concerns about his association with conservative Christian forums such as the Kenya Christian Professionals Forum, where he serves as Chairman. Yet in public debates he dismissed such characterizations, unveiling a R.I.P.E agenda grounded in Rule of Law, Integrity, Practice Expansion, and Engagement, with particular emphasis on young lawyers' welfare and eliminating masqueraders who undermine the profession. Addressing questions regarding

his stance during the 2010 Constitution referendum, Kanjama SC has underscored that his record in advancing constitutional values since promulgation demonstrates unwavering commitment to its enforcement. In his acceptance statement, he expressed his readiness to work with the incoming Council to build united leadership that will protect members, defend the rule of law, and serve the Society with courage and clarity over the next two years. I view him as a beacon of multidisciplinary mastery, being both a Fellow of the Chartered Institute of Arbitrators and a Certified Public Accountant among other distinctions. His election symbolizes more than leadership, it signals restoration of faith in a profession challenged by impunity.

Turning to Teresia Wavinya Nicholas, the Vice President-elect who emerged victorious in a competitive all-women race against Debra Ajwang and Elizabeth Wanjeri, we witness the rise of an exceptional legal strategist. Since her admission to the bar, Nicholas has combined public service, private practice, and professional leadership with remarkable effect. She currently serves as the lead legal advisor to the Governor of Machakos County, guiding legislative drafting, shaping policy, and ensuring that executive actions remain aligned with national law.

In parallel, she leads Teresia Wavinya & Company Advocates as Managing Partner, while consistently advocating for the welfare of young advocates and professional integrity. Her tenure on the national governing council of the Law Society of Kenya (LSK), including as Convener of the Committee on Land and Climate Justice, has been marked by decisive actions against fraudulent practitioners and initiatives to strengthen institutional compliance. Teresia Wavinya Nicholas's career reflects a synthesis of expertise, diligence, and principled leadership, and she now carries the promise of advancing a resilient, ethical, and forward-looking bar.

LSK Vice President Teresia Wavinya Nicholas

What renders this leadership truly transformative is their synergy. Kanjama's seasoned gravitas complements Nicholas's grassroots dynamism, forming a tandem capable of addressing case backlogs, ethical breaches, and political interference. In her acceptance remarks, Nicholas commended her competitors and affirmed her commitment to constitutional responsibility. For law students, this moment is profoundly instructive. It demonstrates that steadfast dedication to justice, rather than mere rhetoric, paves the path to leadership.

These expectations are echoed by outgoing LSK President Faith Odhiambo, who congratulated Kanjama on his resounding victory and urged him to serve with distinction, noting that Kenyans will look to his leadership during a high-stakes electoral period. Likewise, former LSK President Nelson Havi, SC, who endorsed Kanjama during the campaign, affirmed that the Society is in safe hands and called

Ougoing LSK President Faith Odhiambo

upon him to serve with excellence. In a similar vein, Hon. Linda Kiome Gitonga has emphasized humility, integrity, and discipline in leadership, virtues that resonate with the steady approach Kanjama has pledged. Many others have also expressed their support and shared similar hopes for Kanjama's tenure, reflecting a broad and unified expectation for principled and effective leadership.

Yet, tribute must coexist with scrutiny. Transformative leadership demands measurable reform. Will their administration reduce case backlogs that burden our courts? Can they consolidate unity within the LSK to withstand external political pressure as 2027 nears? How will they innovate support structures for young lawyers navigating economic hardship within the profession? As we approach 2027, the enduring test will be their defense of constitutionalism against lawlessness and intimidation. From my vantage point as a humble student leader, I respectfully urge them to empower the next generation through mentorship, pupillage reform, and policies that make access to justice a lived reality rather than a distant ideal.

Charles Kanjama, SC and Teresia Wavinya Nicholas, this moment marks both a personal milestone in your distinguished journeys and a collective inflection point for the profession. The ceilings you have shattered now give way to the bridges you are called to construct. The future architecture of Kenya's legal order will, in no small measure, bear the imprint of your stewardship. From the lecture halls and libraries of Nairobi-Central's law schools, we observe with admiration and extend our earnest confidence that your tenure shall be both reformative in substance and enduring in impact.

Stephen Odhiambo is a penultimate-year law student at Jomo Kenyatta University of Agriculture and Technology (JKUAT), currently serving as Chairperson of the Law Students Association of Kenya (LSAK), Nairobi Central Branch. He has held editorial roles including Managing Editor of the Federation of African Law Students, Managing Editor of the JKUAT Law Review, and Associate Editor of Young African Leaders Journal of Development. He also served as Deputy Country Director of Lawrit Journal of Law.

POSTOPERATIVE NEGLIGENCE

Investigating postoperative medical negligence: Legal accountability and a personal tribute

By Darryl Isabel

Abstract

Postoperative medical negligence continues to be a major concern within healthcare systems, particularly in Kenya, where patients depend on hospitals for vigilant monitoring and timely intervention after surgery. Despite a comprehensive legal framework established through the Constitution of Kenya, statutory provisions, and professional regulation, failures in postoperative care still lead to preventable harm. This study analyzes postoperative medical negligence by examining the applicable legal standards, judicial interpretation, and the components required to establish liability, including duty of care, breach, causation, damages, and hospital responsibility. Drawing on Kenyan case law and statutory obligations, the study highlights how systemic weaknesses such as understaffing, inadequate monitoring, poor communication, and weak oversight undermine patient safety and frustrate the enforcement of legal protections. This study adopts a reflective approach, drawing on the personal loss of my younger sister during postoperative care to illustrate the human impact of institutional failures. It emphasizes that legal accountability alone is insufficient and calls for practical hospital reforms, ultimately recommending stronger postoperative monitoring, stricter regulatory enforcement, and greater patient empowerment to reduce preventable harm and restore trust in healthcare.

Postoperative medical negligence refers to medical malpractice that occurs after a surgical procedure, when a healthcare provider fails to provide the accepted standard of care during recovery, resulting in harm to the patient.

1.0. Introduction

The period following surgery places heightened responsibility on healthcare providers to ensure vigilant monitoring and prompt responses to complications. In Kenya, shortcomings in postoperative management have increasingly brought medical negligence into sharper legal

and ethical focus.[1] Effective postoperative care is essential for early detection of complications, support of recovery, and prevention of avoidable harm.[2] Therefore, failure to meet established standards of care may result in serious injury or death, underscoring the need for legal accountability.[3] Kenyan law, including Article 43 of the Constitution on the right to health, provides a normative foundation for patient protection.[4] In addition, statutory frameworks such as the Medical Practitioners and Dentists Council Act (Cap 253) establish professional standards of practice.[5] These legal instruments also create mechanisms for holding medical practitioners accountable. Consequently, understanding their operation is key to safeguarding patient rights in postoperative care.

Despite these legal protections, lapses in postoperative care remain a significant problem, often due to systemic challenges such as understaffing, insufficient training, inadequate monitoring protocols, or poor communication among healthcare teams.[6] Such lapses create a gap between the law's intent and the actual protection of patients in hospitals, particularly in high-dependency units.[7] Previous research and Kenyan case law, such as *Amisi v Siaya County Referral Hospital*, address breaches of duty and hospital liability, yet they often overlook how systemic issues contribute to negligence in postoperative care. Addressing these systemic shortcomings is thus crucial to ensure that legal protections effectively translate into real-world safety for postoperative patients.

This study examines the legal standards governing postoperative care in Kenya and the practical challenges that undermine their enforcement, highlighting the relationship between law, hospital systems, and professional accountability. It is motivated by the loss of my sister, Berryl Joy, during her postoperative recovery, an experience that revealed the human cost of failures in monitoring and institutional care. By analyzing how Kenyan law addresses postoperative medical negligence and the systemic factors that contribute to preventable harm, the paper underscores the urgent need to strengthen patient safety and accountability in healthcare institutions.

2.0. Legal framework and standard of care

Postoperative care engages both clinical responsibility and legal accountability, particularly where lapses in monitoring or intervention result in patient harm. In Kenya, such claims are grounded in the established elements of medical negligence: duty of care, breach, causation, and damage. Hospitals and practitioners are required to meet standards set by statute and professional regulation. This section explores the legal and institutional framework governing postoperative care, relevant legislation, and case law, while drawing on personal experience to highlight lessons for strengthening patient safety.

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[1]Donald Dinnie, Nomonde Sithole, 'Medical negligence – Kenyan court awards record damages for unauthorised surgery & poor care' (Financial Institutions Legal Snapshot, 13 June 2025) < Medical negligence – Kenyan court awards record damages for unauthorised surgery & poor care | Financial Institutions Legal Snapshot> accessed 08 January 2026.

[2]Pandit, M. S.; Pan dit, Shobha, 'Medical negligence: Coverage of the profession, duties, ethics, case law, and enlightened defense - A legal perspective. Indian Journal of Urology 25(3) 372-378, Jul–Sep 2009. | DOI: 10.4103/0970-1591.56206

[3]ibid

[4]Torpuot Kueth Chuol Both, 'Understanding Medical Negligence in Kenya; Knowing Your Rights as a Patient' (Bare Advocates, 8 July 2025) < Understanding Medical Negligence In Kenya; Knowing Your Rights As A Patient - Bare Advocates> accessed 08 January

[5]Medical Practitioners and Dentists Council Act (Cap 253), Section 4A.

[6]Awino Okech, 'Medical Malpractice and Patient Advocacy in Kenya' (The Elephant, 29 March 2018) < Medical Malpractice and Patient Advocacy in Kenya - The Elephant> accessed 08 January 2026.

[7]Sylvia Wandia Wanjohi, 'Appraising the Legal and Regulatory Framework on Medical Negligence in Kenya' (LLB Research Project, Strathmore University Law School, June 2020) 24-28.

2.1. Definition of medical negligence and standard of care

Medical negligence occurs when a healthcare provider or institution fails to exercise the standard of care expected of a reasonably competent professional, resulting in harm to the patient.[8] In postoperative management, this duty is heightened because patients are vulnerable, often incapacitated, and dependent on attentive monitoring.[9] The standard of care encompasses timely detection of complications, accurate documentation of patient status, appropriate intervention, and effective communication among healthcare staff.[10] In light of that, hospitals have a non-delegable duty to ensure these standards are met, which extends beyond individual practitioners to include nurses, support staff, and institutional systems.[11] The Kenyan law establishes these duties through the Constitution, statutes, and professional guidelines. Article 43 of the Constitution of Kenya guarantees every person the right to the highest attainable standard of health, imposing a constitutional duty on healthcare institutions and practitioners to provide safe, ethical, and competent care.[12] This legal framework confirms that postoperative care is a legal obligation, not a matter of discretion, and its breach gives rise to liability in negligence.

This constitutional guarantee is reinforced by statutory instruments, notably the Health Act, 2017 (sections 4 and 5), which obligates health institutions and providers to ensure quality care, patient

Medical negligence, also referred to as medical malpractice, is a complex area of law that arises when a healthcare professional's action or omission causes harm to a patient. Fundamentally, it is about a breach of the duty of care a medical practitioner owes to their patient.

safety, and ethical practice, and the Medical Practitioners and Dentists Act (Cap 253, sections 4, 11, and 20), which empowers the Medical Practitioners and Dentists Council to regulate professional conduct, enforce standards, license practitioners, and discipline negligence or misconduct.[13] Together, these provisions create a legal framework holding both individual healthcare professionals and institutions accountable for maintaining acceptable standards, particularly in vulnerable settings such as postoperative care. Consequently, failure to meet these duties, whether through individual oversight or systemic shortcomings, constitutes a breach actionable in negligence.[14] The law positions postoperative care not as a mere clinical task but as an enforceable right, anchoring the assessment of hospital failures and guiding

[8]B M Musau & Company, 'Medical Malpractice Litigation in Kenya' (B M Musau & Company, 3 July 2024) < Medical Malpractice Litigation in Kenya - B M Musau & Company, Advocates LLP> accessed 08 January 2026.
[9]Kai Li, Jiayi Wang and Daniel I Sessler, 'Continuous Ward Monitoring and Intensive Postoperative Management' (2024) 137(6) *Chinese Medical Journal* 631.
[10]Linda M Posthuma and Benedikt Preckel, 'Initiatives to Detect and Prevent Death from Perioperative Deterioration' (2023) 36(6) *Current Opinion in Anaesthesiology* 676-682.
[11]Constitution of Kenya, 2010, Article 43
[12]Health Act, 2017, sections 4 and 5
[13]Medical Practitioners and Dentists Act, Cap 253, sections 4, 11,20
[14]Powless Law Firm, 'Liability for Post-Op Monitoring Failures & Negligence' (Powless Law, 17 September 2025) <Liability for Post-Op Monitoring Failures & Negligence - Powless Law> accessed 09 January 2026.

Case law (also called judicial precedent) refers to law that is created by court decisions rather than by statutes passed by Parliament.

the remedies available to patients who suffer harm.

2.2. Case law and judicial interpretation

Kenyan courts emphasize the importance of professional standards in postoperative care. In the case of *Amisi v Siaya County Referral Hospital*, the plaintiff developed complications after a caesarean section and required a second surgery to remove instruments allegedly left behind.[15] The court held that the hospital's failure to provide adequate postoperative monitoring and timely intervention constituted a breach of duty, demonstrating that negligence can arise from both individual and institutional lapses.[16] The plaintiff was awarded general and special damages, interest, and costs, reinforcing hospitals' responsibility to maintain proper systems of care and ensure patient safety.[17] These measures underscore that accountability is not confined to individual practitioners but extends to the institutional level, encompassing hospital systems, supervisory structures, and operational oversight mechanisms.

Similarly, in the case of *Naila Qureshi & Another v Dr Raffique Parker & Others* (High Court, Civil Case 610 of 2007), the court awarded Kshs 157 million to the claimants after negligence during a hysterectomy at Aga Khan Hospital directly caused avoidable harm.[18] Failures identified included inadequate informed consent and the absence of a necessary urology consultation.[19] The judgment reinforced that adherence to established professional protocols is mandatory, and patients are entitled to remedies when healthcare providers breach these standards.[20] The aforementioned cases underscore that legal liability in medical negligence arises from deviations from accepted norms rather than outcomes alone. For this study, these decisions establish judicial benchmarks for postoperative care and highlight the legal recognition of systemic failures, reinforcing the critical importance of monitoring, timely intervention, and institutional accountability in safeguarding patient welfare.

2.3. Personal reflection

Losing my sister during her postoperative recovery exposed me to the harsh reality of how vulnerable patients are when hospitals fail to uphold the required standards of care. I witnessed firsthand how lapses in monitoring, delayed responses, and poor communication can turn routine care into a life-threatening situation. While the law sets clear duties for hospitals and practitioners, my experience revealed that these rules often remain words on paper, leaving patients like my sister exposed. It was deeply painful to see how systemic shortcomings such as communication gaps and inadequate

[15]Amisi v Siaya County Referral Hospital & another (Civil Suit 5 of 2019) [2022] KEHC 12117 (KLR) (17 August 2022)
[16]ibid
[17]ibid
[18]Naila Qureshi & Another v Dr Raffique Parker & Others (*High Court, Civil Case 610 of 2007*)
[19]ibid
[20]ibid

supervision magnified preventable risks. This personal loss has made me acutely aware of the human consequences behind legal concepts like duty of care and breach, and the urgent need to transform legal protections into real-world vigilance. Reflecting on her experience motivates me to advocate for stronger hospital practices, better accountability, and a culture that prioritizes patient safety so that no other family has to endure the same heartbreak. In sum, Kenyan law provides a clear and robust framework for assessing medical negligence in postoperative care, grounded in constitutional rights, statutory duties, and judicial precedent. Hospitals and medical practitioners are legally obliged to uphold a standard of care that prioritizs patient safety, and courts have shown readiness to impose liability where these standards are breached. However, personal experiences and case law alike reveal persistent gaps between law and practice. The next section, builds on this framework by examining how courts establish a causal link between lapses in postoperative care and patient harm, and how responsibility is attributed within healthcare institutions.

3.0. Components of medical negligence

Medical negligence is a serious concern in healthcare, especially postoperatively when patients are highly vulnerable. In Kenya, establishing negligence requires proving duty of care, breach, causation, damages, and hospital liability. Each element is legally significant, as it must show that a failure in care directly caused harm. Postoperative care is complex, involving continuous monitoring, timely intervention, accurate documentation, and clear communication. This section examines these components using the case of *Paul Semenye v Aga Khan Hospital & 2 Others (2006)* to show how courts assess negligence while reflecting on lessons from my sister's experience to highlight real-world consequences.

3.1. Duty of care and breach

The duty of care is fundamental to any medical negligence claim. It requires medical practitioners and hospitals to provide care in line with accepted professional standards.[21] In postoperative settings, this duty is especially important because patients are highly vulnerable to complications that demand vigilant monitoring, timely intervention, and effective communication among staff.[22] In the case of *Paul Semenye v Aga Khan Hospital & 2 Others (2006)*, the hospital was responsible for supervising a patient after surgery to ensure that any complications were promptly addressed.[23] The court found that the hospital breached this duty by failing to maintain adequate monitoring, delaying critical interventions, and lacking proper oversight, showing that negligence can arise from both individual errors and systemic weaknesses.[24] The case affirms that hospitals bear an ongoing duty of care in postoperative settings, and that failures in monitoring or oversight can amount to medical negligence.

Building on the court's recognition of an ongoing duty of care, hospitals are legally and ethically required to put in place effective monitoring systems, maintain accurate medical records, and ensure that staff are adequately trained to identify early signs of patient deterioration. Timely responses to warning indicators, such as changes in vital signs, are essential

[21]Samwel Wesonga, 'How to Claim Relief for Medical Negligence' (Muma & Kanjama Advocates, 27 June 2025) < How to Claim Relief for Medical Negligence - Muma & Kanjama Advocates> accessed 12 January 2026.
[22]John Sincavage et al, 'Postoperative Complications and Risk of Mortality after Laparotomy in a Resource-Limited Setting (2021) Journal of Surgical Research, 260, 428–435
[23]Jimmy Paul Semenye V Aga Khan Health Service, Kenya T/A The Aga Khan Hospital & 2 others [2006] eKLR
[24]ibid

to preventing serious complications and reducing avoidable harm.[25] In this way, the duty of care extends beyond individual practitioners to encompass institutional systems and practices.[26] Therefore, upholding these obligations protects patients, reinforces accountability, and affirms that comprehensive postoperative care is both a legal requirement and a moral responsibility for healthcare providers.

3.2. Causation and damages

Causation plays a decisive role in medical negligence claims by linking a proven breach to the injury suffered by the patient.[27] Kenyan courts apply the proximate cause standard, requiring that the harm complained of be a reasonably foreseeable outcome of the medical failure in question.[28] In *Paul Semenye v Aga Khan Hospital & 2 Others* (2006), the court was satisfied that the patient's postoperative complications flowed directly from delayed intervention and inadequate monitoring, thereby establishing the necessary causal connection.[29] The case demonstrates how courts evaluate whether systemic lapses in postoperative management materially contribute to patient harm.

Where causation is established, the focus shifts to damages as a mechanism for redress and deterrence.[30] Courts assess the extent of physical injury, financial loss, and emotional suffering arising from postoperative complications, including the need for additional treatment or prolonged hospitalization.[31] Awards of damages serve not only to compensate affected patients but also to signal the legal consequences of failures in postoperative management.[32] In this way, the assessment of causation and damages reinforces accountability while highlighting the importance of effective postoperative systems in preventing foreseeable harm.

3.3. Hospital liability and personal reflection

Hospitals may be held accountable not only for the conduct of individual practitioners but also for systemic and institutional failures under the principles of vicarious and institutional liability.[33] Even where healthcare professionals act competently, deficiencies such as understaffing, inadequate monitoring protocols, weak supervision, or ineffective escalation systems may expose the hospital to legal responsibility for resulting harm.[34] In *Paul Semenye v Aga Khan Hospital & 2 Others* (2006), the court affirmed that liability is not confined to isolated clinical errors but extends to broader institutional shortcomings, highlighting the obligation of hospitals to maintain effective operational, managerial, and procedural safeguards to protect patients.[35] The decision reinforces that patient safety in postoperative care depends on effective institutional systems as well as individual clinical competence, and that hospitals will incur liability where those systems fail to prevent harm.

This legal position resonates strongly with my sister's experience, where postoperative

[25]Dinnie, Sithole, 'Medical negligence – Kenyan court awards record damages for unauthorised surgery & poor care' (n 1)
[26]ibi
[27]Musau & Company, 'Medical Malpractice Litigation in Kenya' (n 8)
[28]ibid
[29]Jimmy Paul Semenye V Aga Khan Health Service, Kenya T/A The Aga Khan Hospital & 2 others [2006] eKLR
[30]Wesonga, 'How to Claim Relief for Medical Negligence' (n 21)
[31]Musau & Company, 'Medical Malpractice Litigation in Kenya' (n 8)
[32]ibid
[33]Bharatiya Nyaya, 'Vicarious Liability for Doctor's Negligence' (23 April 2025) <Vicarious Liability for Doctor's Negligence> accessed 20 January 2026.
[34]ibid
[35]Jimmy Paul Semenye V Aga Khan Health Service, Kenya T/A The Aga Khan Hospital & 2 others [2006] eKLR

confusion was not recognized as a warning sign and timely assistance was not provided. The delay in intervention had devastating consequences, ultimately resulting in severe injury to her brain stem. Her case demonstrates that formal legal standards offer little protection unless they are supported by effective institutional systems capable of responding promptly to patient deterioration. This personal perspective highlights that institutional accountability is both a legal requirement and a moral imperative, as organizational failures can have a lasting impact on patients' lives and profoundly affect their families. Strengthening oversight, improving staffing levels, and enforcing clear monitoring and escalation protocols are therefore essential to preventing avoidable harm and restoring trust in postoperative care.

Understanding the components of medical negligence provides a comprehensive framework for examining the failures that can occur in postoperative care. Duty of care, breach, causation, damages, and hospital liability together establish the criteria by which courts assess responsibility and provide remedies. These legal principles also reveal how systemic weaknesses within hospitals can contribute to negligence. The next section explores systemic issues in postoperative care, including staffing, training, equipment, and regulatory oversight, and considers how these factors influence patient safety and legal accountability.

4.0. Systemic issues in postoperative care

Postoperative care is highly dependent on the effectiveness of hospital systems, policies, and resources. Even when individual medical practitioners act competently, systemic weaknesses can compromise patient safety and result in legal breaches of duty. In Kenya, gaps such as understaffing, inadequate training, lapses in monitoring, equipment failures, and poor communication have repeatedly been linked to preventable complications after surgery. These systemic factors not only jeopardize patient outcomes but also create grounds for medical negligence claims. Understanding these underlying issues is essential to ensure hospitals meet professional and legal obligations. This section examines key systemic challenges in postoperative care, explores their contribution to breaches, and reflects on how these deficiencies relate to my sister's experience.

4.1. Hospital system weaknesses

One of the most significant contributors to postoperative failures is weakness within hospital systems.[36] Understaffing and inadequate training reduce the capacity of healthcare providers to monitor patients effectively, recognize early signs of deterioration, and respond promptly to complications.[37] Even where clinical protocols exist, poor supervision and high patient-to-staff ratios undermine consistent standards of care.[38] Additionally, monitoring lapses, including infrequent vital sign checks, delayed responses to warning signs, and incomplete record-keeping, are often worsened by equipment shortages or malfunctioning devices.[39] These constraints limit the ability of medical teams to identify and address complications in a timely manner. As a result, conditions that might otherwise be manageable can escalate

[36]Richard Mogeni, 'Patients at Risk Under Kenya's New Health Bill' (Capital FM, 17 October 2025) < DR RICHARD MOGENI: Patients at Risk Under Kenya's New Health Bill » Capital News> accessed 20 January 2026
[37]Tigist Sintayo Gebre, 'Implementation of the WHO Surgical Safety Checklist in Kenya — A Case of Mater Misericordiae Hospital ' (Strathmore University, MBA Healthcare Management Dissertation, May 2023) 51
[38]Kimiti & Associates Advocates, 'Medical Negligence in Kenya: Insights from the Qureshi v Parker Case' (2025) (Kimiti & Associates Advocates, 24 June 2025) < Medical Negligence in Kenya: Legal Case Breakdown in 2025> accessed 20 January 2026.
[39]Mogeni, 'Patients at Risk Under Kenya's New Health Bill' (n 36)

rapidly into serious or life-threatening outcomes.

My sister's experience illustrates the human cost of these systemic failures in postoperative care. Lapses in monitoring, and coordination delayed the recognition of her deteriorating condition and prevented timely intervention. Her case demonstrates that even when individual healthcare providers attempt to act diligently, institutional shortcomings can override their efforts and expose patients to preventable harm. This reality highlights the urgent need for hospitals to strengthen staffing levels, improve training, maintain functional equipment, and enhance communication among medical teams. In light of that, addressing these systemic issues is essential to safeguarding patient safety, preventing avoidable suffering, and restoring trust in postoperative care.

4.2. Regulatory oversight and legal implications

Regulatory oversight is central to preventing systemic failures that undermine patient safety in postoperative care.[40] In Kenya, the Kenya Medical Practitioners and Dentists Council (KMPDC) is responsible for setting professional standards, conducting inspections, and disciplining practitioners or healthcare institutions that breach their obligations.[41] Hospital boards further support this framework by implementing internal policies, supervising staff performance, and ensuring compliance with patient safety and clinical protocols.[42] When effectively applied, these oversight mechanisms promote accountability and help maintain consistent standards of care within healthcare institutions.

Conversely, weak or inconsistent oversight creates conditions in which systemic deficiencies may persist unchecked.[43] Failures in supervision, communication, or staffing can erode accountability and allow substandard practices to become routine, increasing the risk of preventable patient harm.[44] In postoperative negligence cases, including circumstances similar to my sister's, courts have recognized that such institutional shortcomings may be as significant as individual clinical errors in establishing liability.[45] This highlights the need for sustained and effective regulatory enforcement to protect patients and ensure that healthcare institutions meet their legal and ethical responsibilities.

4.3. Policy and risk management

Improving postoperative care requires comprehensive policy and operational reforms to strengthen patient safety within healthcare institutions.[46] Hospitals must implement effective monitoring protocols, maintain adequate staffing levels, ensure that essential equipment is reliable and functional, and establish clear communication channels among healthcare providers.[47] Accreditation programmes,

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[40]David Kariuki, 'Patient Safety Regulation Is Key in Healthcare Sector' (Africa-Press, 5 January 2026) < Patient Safety Regulation Is Key in Healthcare Sector - kenya> accessed 20 January 2026.
[41]Kenya Medical Practitioners and Dentists Council, 'Vision, Mission & Mandate' (KMPDC)<Vision, Mission & Mandate – Kenya Medical Practitioners and Dentists Council> accessed 20 January 2026.
[42]Sue Ellen Wagner, *The Board's Role in Quality Oversight and Patient Safety* (American Hospital Association, 8 November 2023) <The Board's Role in Quality Oversight and Patient Safety | AHA News> accessed 20 January 2026.
[43]Eliud Kibii, 'Devolution on Trial: Leadership Failure Pushes Kenya's Health System to the Brink' (The Star, 9 November 2025) < Devolution on trial: Leadership failure pushes Kenya's health system to the brink> accessed 20 January 2026.
[44]ibid
[45]Lawqora Team, 'Understanding the Legal Implications of Postoperative Care Negligence' (Law Qora, 22 June 2024) <Understanding the Legal Implications of Postoperative Care Negligence - Law Qora> accessed 20 January 2026.
[46]Piel P Kuol, et al, 'Addressing the State of Surgical Care in Kenya: Challenges, Opportunities, and Future Directions' (2024) 86 Annals of Medicine & Surgery 6913–6915.
[47]ibid

adherence to clinical guidelines, and regular internal audits help reinforce professional standards and institutional accountability.[48] Facilities that integrate structured risk management frameworks consistently experience fewer postoperative complications and a reduced risk of legal claims.[49] Implementing these measures not only protects patients from preventable harm but also promotes a culture of accountability and continuous improvement in healthcare delivery.

These policy and operational gaps are not merely theoretical, but are reflected in my sister's postoperative experience, where delayed intervention and insufficient supervision contributed to serious harm. Her case demonstrates that even where individual practitioners act competently, weaknesses within hospital systems can intensify preventable injury. This underscores the necessity of systemic reform to translate professional standards into effective practice. Implementing such reforms is essential to protecting patients, reducing avoidable harm, and restoring public trust in healthcare institutions.
Systemic issues in hospitals, from staffing shortages and training gaps to equipment failures and weak oversight, directly influence the quality of postoperative care and the likelihood of legal breaches. Addressing these challenges is crucial not only for safeguarding patients but also for aligning institutional practices with legal and ethical standards. The next section presents targeted recommendations to strengthen monitoring protocols, enforce professional standards, and raise public awareness, aiming to reduce systemic risks and enhance patient safety in postoperative care.

5.0. Recommendations

Medical negligence, failures in postoperative care, and systemic weaknesses in hospitals show that legal frameworks alone are not enough to protect patients. Gaps such as inadequate monitoring, understaffing, and poor communication continue to expose patients to avoidable harm. Reflecting on my sister's experience, these failures underscore the urgent need for practical, patient-centered reforms. Strengthening hospital systems, enforcing professional standards, and clarifying accountability are essential to improving patient safety and preventing similar outcomes in everyday clinical practice.

5.1. Strengthen postoperative monitoring and staffing standards

Improving postoperative care requires deliberate institutional commitment rather than complex structural overhaul.[50] Hospitals must implement robust monitoring systems to ensure postoperative patients receive continuous and attentive care, including regular vital sign checks, standardized escalation protocols, clear handovers between shifts, and the use of dedicated postoperative wards.[51] Adequate staffing remains essential, with nurse-to-patient ratios that allow meaningful observation and timely intervention, supported by ongoing training in postoperative management.[52] These measures are practical, cost-effective, and achievable within existing hospital structures, with a direct impact on reducing preventable harm.[53] By embedding these standards into routine practice, hospitals strengthen patient safety, uphold

[48] < Quality_of_Care_Certification_Framework_for_the_Kenyan_Health_Sector-March2020.pdf>
[50]Nataliya Brima et al, 'Improving quality of surgical and anaesthesia care in sub- Saharan Africa: a systematic review of hospital-based quality improvement interventions. BMJ Open 2022;12 1-12.
[51]ibid
[52]Maddie Wong, Zione Banda, Josephine Nabulime, Nira Matunda, Edina Nkangala and Rebecca Silvers, 'The landscape of perioperative nursing education in Africa: a scoping review' (2024) Frontiers in Medicine 11:1432262 1-5.
[53]ibid

Medical negligence in Kenya refers to situations where a healthcare professional or facility fails to provide the standard of care reasonably expected in the medical community, resulting in harm, injury, or death to a patient. The law treats these as negligence claims under tort law, and successful claims can lead to compensation (damages) for the injured person.

professional obligations, and significantly reduce exposure to negligence-related liability.

5.2. Enhance accountability and patient empowerment

Effective protection of patients requires both strong regulatory oversight and active participation by healthcare consumers.[54] Regulatory bodies, particularly the Kenya Medical Practitioners and Dentists Council, must consistently enforce professional and ethical standards through regular inspections and timely investigation of complaints.[55] Hospitals should complement this oversight by maintaining internal reporting systems that allow lapses in care to be identified and addressed promptly.[56] Equally important is patient empowerment, ensuring that patients and their families are informed of their rights and understand how to report unsafe practices or deviations from expected care.[57] Informed patients act as an additional safeguard, reinforcing compliance and fostering a culture of accountability.[58] When regulatory enforcement is combined with patient awareness, postoperative care standards improve and preventable harm is significantly reduced.

6.0. Conclusion

Medical negligence in postoperative care remains a pressing issue, revealing critical gaps in monitoring, staffing, communication, and hospital systems that can have devastating consequences for patients and their families. This paper has highlighted how lapses in care after surgery can lead to preventable harm, underscoring the vital importance of vigilance, timely intervention, and institutional accountability. The loss of my sister gives these issues a profoundly personal dimension, reminding me and all who read this that behind every discussion of standards and reforms is a human life, a family, and a story interrupted by avoidable errors. Strengthening monitoring protocols, ensuring adequate staffing, improving regulatory oversight, and empowering patients with knowledge are practical measures that can save lives and restore trust in the healthcare system. This paper is offered as a tribute to my sister, whose life was cut short, and as a call for change, urging healthcare providers and institutions to embrace compassion, diligence, and accountability so that no other family has to endure the pain of preventable loss.

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[54]The Vellum Team, 'Kenya Approves New Law to Improve Patient Safety and Healthcare Standards' (Vellum Kenya, 1 August 2025) <Kenya Approves New Law to Improve Patient Safety and Healthcare Standards | Vellum Kenya> accessed 28 January 2026.
[55]Perpetua Etyang, 'KMPDC shuts down 158 health facilities in Nairobi over safety concerns' The Star (online, 28 August 2025) < KMPDC shuts down 158 health facilities in Nairobi over safety concerns> accessed 28 January 2026.
[56]Ministry of Health, IFC, World Health Organization and PharmAccess Foundation, 'Kenya Patient Safety Survey Report 2014: An Assessment of Compliance with Patient Safety Standard' (2014) 12-13.
[57]Lucy Vivi, 'Kenya's Most Poorly Appreciated Patient's Right: "Informed Consent" The Legal Dilemma' (LinkedIn, 15 March 2022) < (20) Kenya's Most Poorly Appreciated Patient's Right: "Informed Consent" The Legal Dilemma | LinkedIn> accessed 28 January 2026.
[58]ibid

The promise and peril of Artificial Intelligence (AI) in the judicial administration: Citation of non-existent act by the judiciary the Kenya Agricultural and Processed Food Products Development Authority (APEDA) case

By Derrick Wamalwa

Abstract

With the rise of technology AI has been on the forefront, gearing every aspect of life. The Judiciary of Kenya recently proposed integrating AI into court processes, driven by the desire to keep pace with global technological advancements. Recently, the court of appeal in Kenya quoted the Geographical Indication Act 2019 as law. In reality Kenya has no such dedicated act. Moreover, recent trends have emerged with advocates using AI to draft submissions. And without even cross-checking the submissions, they serve them to the counsels of the other parties.

AI can speed up research albeit we shouldn't cast shadows on its ability to hallucinate non-existent laws, ultimately that's where human judgement comes in. Law is built on precision and accuracy, and if those foundations crack, even slightly then the confidence of our justice system takes a huge hit. This article proposes that with the rise of tech, it is good for the judiciary to embrace technology, but as an assistant, not a crutch. It further assesses the risks and liabilities and proposes solutions.

Artificial Intelligence (AI) is increasingly transforming the legal field globally — including in countries like Kenya. Its involvement spans legal research, court systems, regulation, compliance, and even judicial decision-making support.

Introduction

AI involvement with law has been growing drastically. Since the 2016 early innovation of chatbots, over 1200 UK legal professionals have integrated AI into their firms for client engagement, legal document creation and analysis and legal research.[2] Similarly, in the USA an article from Harvard University captured how large

[2]Stu White, 'How AI is reshaping the future of legal practice' (The Law Society, 20 November 2024) <https://www.lawsociety.org.uk/topics/ai-and-lawtech/partner-content/how-ai-is-reshaping-the-future-of-legal-practice> accessed 3rd November 2025.

law firms are adopting AI tools for enhanced productivity, new capabilities and improved client outcomes.[3] Even with that, one of the significant issues raised by clients from those top law firms is, I quote,

> *"Clients are now asking us directly what the impact of AI is going to be on their matters, but they still caution us to be careful with confidentiality and accuracy."*[4]

From the foregoing, in the global space AI is adequately utilized, albeit the major concern still remains on its accuracy and precision. Justice Lenaola in May of the year 2025 that lawyers had filed AI-generated submissions containing fabricated authorities.[5] Thus, the option of whether to allow the use of AI systems in the judicial sector, therefore, must not reflect a choice between ethics and efficiency.

The APEDA case ultimately serves as a modern cautionary tale on the effects of AI in the legal field. Moreover, it has been established that AI systems can be biased and produce errors and discrimination, resulting in the infringement of human rights.[6] The Wisconsin Supreme Court ruled in the Loomis case; a judge must maintain full autonomy of judgment and not base their decision exclusively on the indications derived from AI.[7]

Ergo, from the foregoing analysis, this article seeks to address how AI is a transformative tool, but unregulated use of AI poses legal, ethical, and institutional risks.

Risks of artificial intelligence

Addressing hallucinations & false citations

The case of ***Kenya Agricultural and Processed Food Products Development Authority (APEDA) v Krish Commodities Limited [2025] KECA 1587 (KLR)***,[8] concerned whether the word "Basmati" could be treated as a Geographical Indication (GI) in Kenya and whether its inclusion in the respondent's rice trademarks should bar their registration. APEDA, an Indian authority, argued that "Basmati" refers to a special long-grain aromatic rice grown in specific regions of India and Pakistan and should be protected from misuse. The Registrar of Trademarks and the High Court, both rejected this, finding that APEDA had no proprietary rights in Kenya and that "Basmati" had not been recognized or registered locally as a GI. On appeal, the Court of Appeal upheld those findings, holding that intellectual property rights are territorial, and without domestic registration or recognition, APEDA could not claim protection in Kenya. The Court also found no evidence that the respondent's

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[3]Robert J Couture, 'The Impact of Artificial Intelligence on Law Firms' Business Models' (Harvard Law School Center on the Legal Profession, 25 February 2025) <https://clp.law.harvard.edu/knowledge-hub/insights/the-impact-of-artificial-intelligence-on-law-law-firms-business-models/> accessed 3rd November 2025.

[4]Ibid.

[5]Isaac Lenaola, 'Justice Lenaola warns lawyers against using AI in court submissions, citing fake references' (Capital News, 16 May 2025) <https://www.capitalfm.co.ke/news/2025/05/justice-lenaola-warns-lawyers-against-using-ai-in-court-submissions-citing-fake-references/> accessed 3rd November 2025. Full quote " *"Yesterday, I was reading a case where a judge was horrified because of what had happened to him. Lawyers filed submissions using AI. All the authorities were fake. The language was beautiful, but when the judge cross-referenced the authorities, all of them were created by artificial intelligence,"* he emphasized that while the judiciary remains committed to technological innovation, the legal profession must exercise caution when incorporating AI tools in legal work particularly in legal drafting and submissions

[6]M Artigot i Golobardes, G Grasso, P Iamiceli and M R Maugeri (eds), Artificial Intelligence, *Judicial Decision-Making and Fundamental Rights* (2nd edn, Scuola Superiore della Magistratura 2024) <https://www.scuolamagistratura.it/documents/20126/1750902/JuLIA_handbook%20Justice_final.pdf> accessed 3rd November 2025.

[7]Recent Cases: State v Loomis — Wisconsin Supreme Court Requires Warning Before Use of Algorithmic Risk Assessments in Sentencing' (2017) 130 Harv L Rev 1530 <https://harvardlawreview.org/print/vol-130/state-v-loomis/ > accessed 3rd November 2025.

[8]Kenya Agricultural and Processed Food Products Development Authority (APEDA) v Krish Commodities Limited [2025] KECA 1587 (KLR)

use of "Basmati" within its composite marks was misleading. The appeal was therefore dismissed in its entirety.

Para 38 of the judgement stated that: Kenya, at the time material to this controversy and until the enactment of the **Geographical Indications Act in 2019**, chose to comply with its TRIPS obligations through its trademark regime. Section 40A (5) of the *Trademarks Act* (Cap. 506) which the appellant principally relies on provided that: "Geographical names or other indications of geographical origin may be registered as collective trademarks or service marks." Moreover paragraph 25 stipulated that: As was noted in argument, Kenya has since (in 2019) adopted a sui generis framework for geographical indications; but at the time material to this controversy, the Trademarks Act provided the operative pathway. And paragraph 30 stipulated that: At the material time, section 40A was the operative route for protection of geographical indications in Kenya, the dedicated **Geographical Indications Act only being enacted in 2019**. Only through such a dedicated process can clarity, fairness, and legal certainty be achieved.[9]

From the foregoing, the mentioning of Geographical Indications Act, 2019 in the APEDA case which is a non-existent in Kenya's statutes books illustrates an AI-generated inaccuracy due to overgeneralization from regional or international legal trends. The **APEDA case** highlights the dangers of unverified AI-generated information in judicial reasoning, as the Court of Appeal cited a non-existent Geographical Indications Act 2019. This incident underscores the urgent need for human oversight and verification to preserve the accuracy and credibility of judicial decisions.

In the COMPAS case,[10] the court highlighted that AI support may relieve the decision-maker from the burden of motivation and may help to qualify decisions with a veneer of "scientificity" and "neutrality" which today surrounds algorithmic evaluation and gives it a peculiar – yet unfounded – authority.[11] The risk is that the advice provided by an AI system will be blindly followed by a judge, without further autonomous assessment of the peculiarities of the case and of the applicable law.[12] The UK court in **Frederick Ayinde v The London Borough of Haringey**[13] stated that;

> *"This comes with an important proviso, however. Artificial intelligence is a tool that carries risks as well as opportunities with it. Its use must take place therefore with an appropriate degree of oversight, and within a regulatory framework that ensures compliance with well-established professional and ethical standards if public confidence in the administration of justice is to be maintained.*
>
> *In the context of legal research, the risks of using artificial intelligence are now well known. Freely available generative artificial intelligence tools, trained on a large Such tools can produce apparently coherent and plausible responses to prompts, but those coherent and plausible responses may turn out to be entirely incorrect. The responses may make confident assertions that are simply untrue.*

[9] *APEDA v Krish Commodities Ltd* [2025] KECA 1587 (KLR) [25], [30], [38].
[10] Ibid.
[11] Engel C, Linhardt L and Schubert M, 'Code is law: how COMPAS affects the way the judiciary handles the risk of recidivism' (2025) 33 *Artificial Intelligence and Law* 383–404 < https://doi.org/10.1007/s10506-024-09389-8 > accessed 3rd November 2025.
[12] Ibid.
[13] *Ayinde v London Borough of Haringey and Al-Haroun v Qatar National Bank* [2025] EWHC 1383 < https://www.judiciary.uk/wp-content/uploads/2025/06/Ayinde-v-London-Borough-of-Haringey-and-Al-Haroun-v-Qatar-National-Bank.pdf > accessed 3rd November 2025.

They may cite sources that do not exist. They may purport to quote passages from a genuine source that do not appear in that source." (Para 5 and 6).

Also, in **Mata v Avianca, Inc. (US, 2023)**, the case of *Mata v Avianca*, Inc. in the Southern District of New York was the watershed moment. Attorneys for the claimant submitted a brief citing six entirely fictitious cases generated by ChatGPT.[14] The authorities appeared authentic, complete with plausible neutral citations and formal judicial reasoning. Only when opposing counsel and the court attempted to locate the decisions did the fabrication come to light.

The court-imposed sanctions under Rule 11 of the Federal Rules of Civil Procedure, noting that the attorneys had made "false and misleading statements" and failed to exercise due diligence.[15] Crucially, the court rejected the suggestion that AI's sophistication absolved the lawyer: "Technological assistance cannot supplant the duty of counsel to ensure accuracy."[16]

The case illustrates a principle now echoed globally: *that lawyers cannot outsource their professional judgment to algorithms.* To supplement that in ***Handa & Mallick* [2024] FedCFamC2F 957 (Australia)**, Australia's *Handa & Mallick* involved solicitor Dayal, who submitted hallucinated authorities generated by AI in a family law matter.[17] The Victorian Legal Services Board disciplined him, prohibiting him from handling trust money or practicing unsupervised for two years. Dayal argued he had not appreciated the risk of hallucination. The tribunal was unsympathetic: ignorance of a tool's limitations is no defense.[18] The case marks an inflection point, that technological literacy is now part of the duty of competence.

Thus, the global trajectory of case law, professional guidance, and regulatory standards demonstrates a clear and inescapable lesson: AI does not and cannot shift responsibility away from the advocates and judges. If the integration of AI into legal practice is to be sustainable, the profession must respond not with avoidance but with structured adaptation.[19]

Ergo, from the foregoing Those who use artificial intelligence to conduct legal research and drafting judgements notwithstanding these risks have a professional duty therefore to check the accuracy of such research by reference to authoritative sources, before using it in the course of their professional work. This duty rests on lawyers and judges who use artificial intelligence to conduct research themselves or rely on the work of others who have done so.[20]

Suffice to say, if AI is going to be part of legal practice, then AI training and literacy must be part of legal training. Regulators, professional bodies, and universities share a collective duty to ensure that junior lawyers are not left to learn through error or in the most unforgiving of environments, the courtroom.[21]

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[14]*Mata v Avianca, Inc* No 1:22-cv-01461 (SDNY, 2023).
[15]ibid, sanctions ruling, para 23.
[16]ibid, para 28.
[17]*Handa & Mallick* [2024] FedCFamC2F 957.
[18]ibid, disciplinary ruling, para 19.
[19]Tahir Khan, 'Oops! AI Made a Legal Mistake: Now What? AI Hallucinations, Professional Responsibility, and the Future of Legal Practice' *The Barrister Group Blog* (21 October 2025) <https://thebarristergroup.co.uk/blog/ai-made-a-legal-mistake> accessed 3rd November 2025.
[20]Ibid.
[21]Craig Smith, '"Hallucinated" cases are affecting lawyers' careers – they need to be trained to use AI' *The Conversation* (31 October 2025) <https://theconversation.com/hallucinated-cases-are-affecting-lawyers-careers-they-need-to-be-trained-to-use-ai-265898> accessed 3rd November 2025.

Recommendations

The above discourse then begs the question of "what's the way forward (considering that AI is here to stay)"

The article proposes three recommendations: ***Mandatory verification of citations; Judicial AI-use guidelines; Training judges & staff on AI risks & uses.***

Mandatory Verification of Citations

In his annual report on the federal judiciary at the end of 2023, Chief Justice John Roberts warned that any use of AI requires caution and humility. Citing non-existent cases, he wrote, is always a bad idea.[22] From the foregoing, it is prudent to state that AI may hallucinate false case citations. And that it is necessary to Verify the citations by trying different search terms in a case law database, as AI can create false answers.[24]

Thus, while these hallucinations may occur as a result of improper AI usage, it is the duty of the attorney and judge to check all facts and citations before submitting a document to court and drafting a judgement, just as it has always been.[24]

To conclude, it should be made mandatory for counsels and judges to cite the authorities they use, precisely and adequately.

Training judges & staff on AI risks & uses

In the case of, Kaur v. Desso from U.S. District Court in the Northern District of New York, the court explicitly found that the plaintiff's attorney admits that he was aware at the time that AI tools are known to 'hallucinate' or fabricate legal citations and quotations, but he felt pressured to rush the pleading due to imminent deportation. Nevertheless, the court imposed a $1,000 fine and mandated CLE training on AI for the attorney, saying that the need to check whether the assertions and quotations generated were accurate trumps all.[25]

The reach of the MOOC (Massive Open Online Course) underlines an important demand for AI capacity building in judicial communities worldwide. By offering accessible and adaptable training online, this project fosters more inclusive AI capacity-building and development in the legal field.[26] This shows a growing demand for AI training in the judiciary, and that online, flexible learning helps make such training more inclusive and widespread. Thus, to conclude it is important for legal officers and judges to understand how AI is used, the risks and the future it portrays.

Judicial AI-use guidelines

Lord Justice Birss, Lead Judge for Artificial Intelligence, said:

> *"The use of AI by the judiciary must be consistent with its overarching obligation to protect the integrity of the administration of justice and uphold the rule of law. I welcome the publication of the latest AI Guidance, which reinforces this principle and the personal responsibility judicial office holders have for all material produced in their name. I*

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[22]Neupane T, 'As more lawyers fall for AI hallucinations, ChatGPT says: Check my work' *Cronkite News* (Arizona State University) 28 October 2025 < https://cronkitenews.azpbs.org/2025/10/28/lawyers-ai-hallucinations-chatgpt/ > accessed 3rd November 2025.
[23]Texas State Law Library, 'I can't find a case I looked up. Is it an AI error?' T*exas State Law Library Legal FAQs* (14 July 2025)< https://www.sll.texas.gov/faqs/ai-hallucinate-citation/ > accessed 3rd November 2025.
[24]Ibid.
[25]Langan M G, Foss M J and Wells G R, 'The Growing Misuse of Gen AI in Federal Court' *Northern District of New York Federal Court Bar Association News & Announcements* (30 September 2025) <https://ndnyfcba.org/the-growing-misuse-of-gen-ai-in-federal-court/> accessed 3rd November 2025.
[26]UNESCO, 'Training judges, lawyers and prosecutors in Artificial Intelligence and the Rule of Law' (12 September 2022) < https://www.unesco.org/en/articles/training-judges-lawyers-and-prosecutors-artificial-intelligence-and-rule-law> accessed 3rd November 2025.

Artificial Intelligence (AI) in judicial administration refers to the use of technology to support court operations, case management, legal research, and decision-making processes — without replacing judicial officers, but enhancing efficiency and access to justice.

encourage all judicial office holders to read the guidance and apply it with care."[27]

Conclusively, the UK judiciary issued AI guidance emphasizing understanding AI limits,[28] Protecting confidentiality,[29] verifying outputs,[30] guarding against bias,[31] and maintaining judicial accountability.[32] To conclude, borrowing from the UK legal system, it is necessary for courts and tribunals to develop AI guidelines(if the integration is going to happen).

Conclusion

In conclusion, the promise and peril of artificial intelligence in judicial administration lie in its dual ability to enhance and endanger the justice system. AI can help you write faster, but it can also mislead you. It can make fake laws, wrong numbers, and false cases look real. Never trust it blindly. Always verify every detail yourself. Truth and accuracy must always come from humans, not from machines.

The APEDA case in Kenya, where the court cited a non-existent *Geographical Indications Act 2019*, illustrates how unchecked reliance on AI can compromise judicial credibility. Therefore, the judiciary must embrace AI as a supportive tool, not a substitute for human judgment. Mandatory verification of citations, clear judicial AI-use guidelines, and comprehensive training for judges and legal practitioners are vital. Ultimately, technology should serve justice - not distort it - and the human duty of truth, accuracy, and accountability must remain at the heart of every legal decision.

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[27] *Artificial Intelligence (AI) – Judicial Guidance (October 2025)* (Courts & Tribunals Judiciary, 31 October 2025) < https://www.judiciary.uk/guidance-and-resources/artificial-intelligence-ai-judicial-guidance-october-2025/> accessed 3rd November 2025.
[28] *Artificial Intelligence (AI) – Guidance for Judicial Office-Holders* (Courts & Tribunals Judiciary of England & Wales, October 2025) <https://www.judiciary.uk/wp-content/uploads/2025/10/Artificial-Intelligence-AI-Guidance-for-Judicial-Office-Holders-2.pdf > accessed 3rd November 2025.
[29] Ibid.
[30] Ibid.
[31] Ibid.
[32] Ibid.

SOVEREIGNTY

Operation absolute resolve: Lessons from the U.S.-Venezuela crisis and the subtle imperative for African sovereignty

By Stephen Odhiambo

Abstract

This article provides a critical analysis of Operation Absolute Resolve, the January 2026 U.S. intervention in Venezuela, exploring how power, authority, and geopolitical calculation shaped the crisis. It examines the operation's impact on political legitimacy, leadership dynamics, institutional cohesion, and regional stability, highlighting how unilateral actions by a global power can fracture domestic governance and trigger humanitarian consequences. While the focus is on the interplay of power and unity within Venezuela and the broader international system, the article's epilogue reflects briefly on the lessons this episode offers to African states about safeguarding sovereignty, institutional resilience, and strategic autonomy in a world where external coercion can disrupt domestic order.

In January 2026, U.S. military forces carried out a large-scale strike in Venezuela that led to the capture of President Nicolás Maduro and his wife, who were flown to the United States to face narco-terrorism and drug-trafficking charges. Maduro's detention triggered international outcry and accusations of violating Venezuela's sovereignty.

1. Introduction

The conflict between the United States and Venezuela is not merely a bilateral dispute between a global superpower and a resource-rich developing state;[2] it is a condensed theatre of modern geopolitics where ideology, oil, sovereignty, international law, and global power asymmetries collide.[3] It is a conflict that

[2]Aman Namra, *US attack on Venezuela told as a story of resources, sovereignty and global politics* Just International (8 January 2026) https://just-international.org/articles/us-attack-on-venezuela-told-as-a-story-of-resources-sovereignty-and-global-politics/ accessed 10/01/2026.

[3]*US Strengthens Grip on Venezuela by Seizing Two Oil Tankers, Including One Flying the Russian Flag* (Le Monde, 8 January 2026) https://www.lemonde.fr/en/international/article/2026/01/08/us-strengthens-grip-on-venezuela-by-seizing-two-oil-tankers-including-one-flying-the-russian-flag_6749200_4.html accessed 10/01/2026.

Hugo Chávez (1954–2013) was the President of Venezuela from 1999 until his death in 2013 and one of the most influential—and controversial—leaders in Latin American politics.

has evolved across decades,[4] mutated across administrations,[5] and reverberated far beyond the Caribbean basin into Latin America, Europe, Asia, and crucially, the African continent. To treat the U.S.–Venezuela conflict as an isolated case of "failed socialism" or "authoritarian backsliding" is to misunderstand its deeper architecture.[6] This commentary approaches the issue not as propaganda for any side, but as a critical, historically grounded, and normatively conscious analysis that interrogates both power and principle. As Frantz Fanon once warned, *"Each generation must, out of relative obscurity, discover its mission, fulfill it, or betray it."*[7] The Venezuelan crisis forces the present generation, especially in the Global South, to confront uncomfortable questions about sovereignty, economic coercion, democratic legitimacy, and the true limits of international law.

2. Historical roots: Oil, empire, and dependency

Venezuela's entanglement with U.S. power predates Hugo Chávez by nearly a century.[8] The discovery of oil in the early twentieth century transformed Venezuela into a strategic asset within the U.S.-led hemispheric order.[9] American oil companies rapidly entrenched themselves in Venezuela's extractive economy, shaping not only production but governance structures.[10] This pattern mirrored what dependency theorists would later describe as the "peripheral incorporation" of resource-rich states into global capitalism.[11]

During the Cold War, Venezuela was framed as a democratic ally of the United States,

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[4]Philip Brown, Rhoda Margesson, Rebecca M. Nelson and Clare Ribando Seelke, *Venezuela: Background and U.S. Relations* (Congressional Research Service Report R44841, 6 December 2022) https://www.congress.gov/crs-product/R44841 accessed 10/01/2026.

[5]Ibid

[6]Ibid

[7]Dustin J Byrd and Seyed Javad Miri, 'Introduction' in *Frantz Fanon and Emancipatory Social Theory: A View from the Wretched (Brill, Studies in Critical Social Sciences,* vol 142, 13 September 2019) ch 1, 1–6 doi: https://doi.org/10.1163/9789004409200_002;https://brill.com/display/book/edcoll/9789004409200/BP000001.xml accessed 11/01/2026;see also, Frantz Fanon, *The Wretched of the Earth* (Constance Farrington tr, Penguin 1967) 145.

[8]Richard Lapper, *Living with Hugo: U.S. Policy Toward Hugo Chávez's Venezuela* CSR No 20 (Council on Foreign Relations, Center for Preventive Action, November 2006) (uncorrected proofs).

[9]Eyanir Chinea, 'US attack on Venezuela: Why oil has been at the center of Venezuela-US conflicts for decades' *El País* (International, 4 January 2026) https://english.elpais.com/international/2026-01-04/why-oil-has-been-a-longstanding-source-of-tension-between-venezuela-and-the-united-states.html accessed 11 January 2026. See also, Diana Roy and Amelia Cheatham, 'Venezuela: The Rise and Fall of a Petrostate' *Council on Foreign Relations* (Backgrounder, 30 November 2018, updated 31 July 2024) https://www.cfr.org/backgrounders/venezuela-crisis accessed 12 January 2026.

[10]Brett Wilkins, 'The History – and Hypocrisy – of US Meddling in Venezuela' *Venezuelanalysis* (7 January 2019) https://venezuelanalysis.com/analysis/14263/ accessed 17 January 2026.

[11]1. Dietrich CRW. One Periphery: The Creation of Sovereign Rights, 1949–1955. In: *Oil Revolution: Anticolonial Elites, Sovereign Rights, and the Economic Culture of Decolonization*. Global and International History. Cambridge University Press; 2017:26-60.

in contrast to revolutionary Cuba.[12] Yet this democracy was fragile, exclusionary, and heavily dependent on oil rents.[13] The Punto Fijo Pact stabilized elite power but marginalized vast segments of society.[14] When oil prices collapsed in the 1980s, the social contract imploded, culminating in the 1989 Caracazo uprising, a violent rupture that exposed the costs of IMF-backed austerity and elite-driven governance.[15]

The emergence of Hugo Chávez must therefore be understood not as an ideological accident but as a structural response to decades of inequality,[16] foreign economic influence,[17] and political exclusion.[18] Chávez's Bolivarian Revolution sought to reclaim national sovereignty over oil,[19] redefine democracy through popular participation,[20] and resist U.S. hegemony. This project, radical in rhetoric and redistributive in policy, immediately positioned Venezuela as an ideological adversary to Washington.

2.1.The Chávez era: Sovereignty as defiance

Under Chávez, Venezuela nationalized key industries, redirected oil revenues toward social programs, and built alliances with states antagonistic to U.S. dominance, including Cuba, Iran, Russia, and China.[21] To supporters, this represented a long-overdue assertion of sovereignty.[22] To critics,[23] it marked the erosion of liberal democratic norms and economic rationality.

The United States responded with a mixture of diplomatic pressure, funding of civil society opposition, and rhetorical hostility.[24] The 2002 coup attempt against Chávez,[25] briefly successful before mass mobilization restored him to power,[26] remains one of the most contentious moments in U.S.–Venezuela relations. While direct U.S. orchestration remains disputed, Washington's rapid recognition of the coup government severely damaged its credibility and reinforced Venezuelan suspicions of imperial interference.[27]

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[12]Tiago Soares Nogara, 'The Reorientation of Venezuelan Foreign Policy During the Punto Fijo Era: A Focus on South American Integration' *Opera* N° 36 (enero-junio 2025) 133–151, 135.
[13]Ibid
[14]Jonathan DiJohn, 'The Political Economy of Anti-Politics and Social Polarisation in Venezuela, 1998-2004' Crisis States Research Centre Working Paper Series 1 No 76 (Crisis States Research Centre, London School of Economics and Political Science, December 2005) 4
[15]Margarita López Maya, 'The Venezuelan Caracazo of 1989: Popular Protest and Institutional Weakness' (2003) 35 *Journal of Latin American Studies* 117, 117
[16]Strønen, I. Å. (2022). Venezuela's oil specter: Contextualizing and historicizing the Bolivarian attempt to sow the oil. History and Anthropology, 33(4), 472–495. https://doi.org/10.1080/02757206.2020.1762588.
[17]Ibid
[18]Ibid
[19]Franziska Wöckel, 'The Main Actors and Their Role in the Bolivarian Revolution in Venezuela' (Magisterarbeit, Carl von Ossietzky Universität Oldenburg, 2 July 2008) 35
[20]Ibid
[21]See *Venezuela: The Rise and Fall of a Petrostate, Council on Foreign Relations* (backgrounder) https://www.cfr.org/backgrounder/venezuela-crisis accessed 12 January 2026 (nationalisation of foreign assets and use of oil revenues for social missions under Chávez); Bolivarian missions (Wikipedia) https://en.wikipedia.org/wiki/Bolivarian_missions accessed 11 January 2026 (Chávez social programs funded with oil revenues); Venezuela's 'black gold' allies: How China, Russia and Iran... Euronews (13 January 2026) https://www.euronews.com/2026/01/13/venezuelas-black-gold-allies-caracas-links-to-cuba-china-russia-and-iran accessed 11 January 2026 (alliances with Cuba, China, Russia, Iran).
[22]Ibid
[23]Time, *How Democracy Died in Venezuela* (16 January 2026) https://time.com/7346715/venezuela-maduro-government-democracy-trump/ accessed 18 January 2026
[24]See Venezuela: Background and U.S. Relations, CRS Report R44841 https://www.congress.gov/crs-product/R44841 accessed 12 January 2026 (U.S. policy tools including diplomatic pressure and support for opposition).
[25]The Editors, 'Notes from the Editors, June 2002' (2002) 54(2) Monthly Review https://monthlyreview.org/articles/mr-054-02-2002-06_0/ accessed 12 January 2026.
[26]Ibid
[27]Ibid

From this moment onward, mistrust hardened into doctrine. Venezuela framed the United States as an existential threat to its sovereignty, while the U.S. increasingly portrayed Venezuela as an authoritarian petro-state undermining regional stability. Dialogue became episodic; confrontation became structural.

3. Post-Chávez Venezuela and the escalation of conflict

3.1. Post-Chávez Venezuela: Crisis and continuity

The death of Hugo Chávez in 2013 marked a turning point, but not a rupture.[28] Nicolás Maduro inherited not only Chávez's political mantle but also a collapsing oil market, institutional fragility, and deep polarization.[29] Unlike Chávez, Maduro lacked personal charisma, military credibility, and economic luck.[30] The result was a perfect storm: hyperinflation, currency collapse, mass emigration, and humanitarian crisis.

It is here that the U.S.–Venezuela conflict intensified dramatically.[31] Washington escalated sanctions, targeting Venezuelan officials, state institutions, and ultimately the oil sector itself.[32] These sanctions were framed as tools to restore democracy, pressure authoritarian elites, and protect human rights.[33] However, their material impact on ordinary Venezuelans has been devastating, complicating the moral narrative surrounding their use.

The recognition of opposition leader Juan Guaidó as "interim president" in 2019 represented the apex of U.S. interventionist posture.[34] While legally justified by some through constitutional interpretation, the move lacked effective internal control and international consensus.[35] It exposed a central paradox: external recognition cannot substitute for domestic power. When regime change failed to materialize, the policy credibility of the United States suffered.

3.2. Sanctions as weapons: Economic warfare revisited

Sanctions sit at the heart of the U.S.–Venezuela conflict. In theory, they are a non-violent alternative to military force. In practice, they function as instruments of economic coercion with uneven moral consequences. Comprehensive sanctions on oil exports, financial transactions, and international trade have crippled Venezuela's ability to generate revenue, import essential goods, and stabilize its economy.[36]

The critical question is not whether the Maduro government bears responsibility for mismanagement, it does, but whether sanctions exacerbate suffering beyond any reasonable proportionality. International humanitarian principles caution against collective punishment. When sanctions restrict access to medicine, food, and basic services, they raise serious ethical and legal concerns.

For African nations, this is a familiar story. Zimbabwe, Sudan, Libya, and Iran offer parallel cases where sanctions, while politically targeted, inflicted broad social harm. The Venezuelan case thus serves as a warning: economic sovereignty remains

[28] *Venezuela: Background and U.S. Relations*, CRS Report R44841
[29] Ibid
[30] see n22
[31] See *New U.S. Sanctions on Venezuela*, CRS Insight (5 September 2019)
[32] Ibid
[33] Ibid
[34] United States Recognizes the Opposition Government in Venezuela and Imposes Sanctions as Tensions Escalate. *American Journal of International Law*. 2019;113(3):601-609. doi:10.1017/ajil.2019.41
[35] see n30
[36] Ibid

vulnerable to global financial architecture dominated by a few powerful states.

4. International law and global perspectives

4.1. International Law: Sovereignty, non-intervention, and double standards

International law occupies an ambiguous space in the U.S.–Venezuela conflict. On paper, principles of sovereignty, non-intervention, and self-determination are foundational norms of the UN Charter.[37] In practice, their application is selective.[38] The unilateral imposition of sanctions without UN Security Council authorization raises serious legal questions.[39] So too does the recognition of alternative governments without effective territorial control.[40]

Yet Venezuela itself has not been a model of compliance. Allegations of electoral irregularities, suppression of dissent, and erosion of judicial independence complicate any simplistic defense of sovereignty.[41] International law does not shield governments from accountability, but neither does it license powerful states to bypass multilateral processes.[42]

The deeper issue is structural inequality within international law itself.[43] Enforcement mechanisms disproportionately reflect geopolitical power rather than legal consistency.[44] This reality resonates deeply with African states that have long experienced the instrumentalization of law by dominant powers.

4.2. Africa and Venezuela: Distant mirrors, shared lessons

Why should African nations care about the U.S.–Venezuela conflict? Because it mirrors dilemmas Africa knows too well: resource dependence, external interference, elite capture, and contested sovereignty. Venezuela's oil mirrors Nigeria's, Angola's, and Libya's. Its sanctions echo those imposed on Zimbabwe. Its political polarization reflects post-colonial governance struggles across the continent.

African states must resist the temptation to view Venezuela solely through Western

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[37]UN Charter arts 1–2 (sovereign equality of states, prohibition of use of force, non-intervention) and relevant GA principles on friendly relations and self-determination; see United Nations General Assembly Resolution 2625 (XXV) *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States* (24 Oct 1970) (prohibiting intervention and affirming sovereignty and self-determination), see also *Intervention (international law)* (Article 2(4) prohibition and limited exceptions)

[38]See commentary on selectivity and enforcement challenges in international law and powerful states' interpretations of non-intervention and sovereignty norms; S Gbadebo, *Economic Coercion and State Sovereignty: Unilateral Sanctions Under International Law* (SSRN, 13 Dec 2024) (on unilateral sanctions as contested legal tools) https://ssrn.com/abstract=5252612 accessed 11 January 2026.

[39]See generally J Schmidt, 'The Legality of Unilateral Extra-territorial Sanctions under International Law' (2022) 27 *Journal of Conflict & Security Law* 53 (examining legality of sanctions absent Security Council authorisation) https://academic.oup.com/jcsl/article/27/1/53/6528963 accessed 8 January 2026; and experts' critique of unilateral coercive measures as contrary to common international legal standards in *Unilateral Coercive Measures: Effects and Legality Issues, Yale Journal of International Law* (20 Jun 2023) https://yjil.yale.edu/posts/2023-06-20-unilateral-coercive-measures-effects-and-legality-issues accessed 13 January 2026.

[40]see generally J Cole, 'Recognition Rules: The Case for a New Framework' (2025) NYU Law Review discussion (arguing for effective control as criterion) https://nyulawreview.org/wp-content/uploads/2025/06/100-NYU-L-Rev-785.pdf accessed 8 January 2026; and Mirza Nazim Beg, 'Recognition of Governments vs. Recognition of States: Legal Distinction' (2025) *Indian Journal of Law & Legal Research* (on legal and political aspects of government recognition) https://www.researchgate.net/publication/393631770_Recognition_of_governments_vs_recognition_of_states_legal_distinction_contemporary_relevance_and_challenges accessed 8 January 2026.

[41]Time, How Democracy Died in Venezuela (16 Jan 2026)

[42]See n38

[43]See commentary on how international law's enforcement reflects power politics, including veto power dynamics in the UN Security Council and impacts on legal consistency in practice; see UN experts' critique regarding breaches of foundational norms and power disparities in enforcement, e.g. Reuters reporting on U.N. legal criticisms of unilateral actions in Venezuela context https://www.reuters.com/world/americas/legality-us-capture-venezuelas-maduro-focus-united-nations-2026-01-04/ accessed 8 January 2026.

[44]Ibid

media frames. Equally, they must avoid romanticizing anti-imperial rhetoric that excuses domestic failure. The lesson is not to choose sides, but to choose principles: economic diversification, institutional accountability, regional solidarity, and strategic non-alignment.

Africa's increasing engagement with multipolar actors like China, Russia, BRICS, offers alternatives, but not panaceas.[45] Venezuela's alignment with non-Western powers has not insulated it from crisis.[46] Sovereignty without competence is hollow; resistance without reform is unsustainable.[47]

5. Radical objectivity and accountability

5.1. Radical objectivity: Holding all sides accountable

A radical yet objective analysis must hold both Washington and Caracas accountable. The United States has historically over-relied on coercive tools,[48] underestimated Venezuelan nationalism, and instrumentalized democracy and narcotics-control discourse as extensions of power projection. Venezuela's leadership, for its part, has mismanaged the economy, hollowed out democratic institutions, tolerated corruption, and increasingly relied on coercion rather than consent.[49] To acknowledge one without the other is to abandon analysis for ideology.

True solidarity with the Venezuelan people requires rejecting false binaries.[50] It demands policies centered on humanitarian protection, negotiated political settlements, and accountability mechanisms that do not punish civilian populations for elite misconduct.[51] Maximalist strategies,[52] whether sanctions without exit ramps or repression without reform have repeatedly failed. Dialogue, however politically unpalatable, remains the least destructive path available.

6. The January 2026 turning point: Operation absolute resolve

6.1. The operation: Capture and immediate consequences

Any contemporary analysis of the U.S.–Venezuela conflict must now contend with the events of January 2026, which fundamentally altered both the legal and geopolitical landscape.[53] In what

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[45]For context on African states' engagement with multipolar actors (China, Russia) and related governance debates, see *Venezuela: Background and U.S. Relations, Congressional Research Service* Report R44841 (on geopolitical alignments) https://www.congress.gov/crs-product/R44841 accessed 18 January 2026; and scholarly work on sanctions and sovereignty challenges globally, e.g. S Gbadebo (2025) Economic Coercion and State Sovereignty https://ssrn.com/abstract=5252612 accessed 8 January 2026.

[46]Ibid

[47]Ibid

[48]Venezuela: Political Crisis and U.S. Policy, CRS Report R44841, see also, Venezuela Accuses Trump Administration of 'Piracy' After Oil Tanker Seizure, Time (coverage of U.S. framing of narco-security operations) https://time.com/7340189/venezuela-trump-administration-maduro-oil-tanker-seized-piracy/ accessed 10 January 2026.

[49]Ibid

[50]*See New Report Documents How U.S. Sanctions Have Directly Aggravated Venezuela's Economic Crisis* (WOLA report on humanitarian impact and calls for reconsidering sanctions) https://www.wola.org/2020/10/new-report-us-sanctions-aggravated-venezuelas-economic-crisis__trashed/ accessed 6 January 2026;

[51]Ibid

[52]Cf. *New Report Documents How U.S. Sanctions Have Directly Aggravated Venezuela's Economic Crisis* (WOLA discussion of sanctions' humanitarian costs and calls for reevaluation) https://www.wola.org/2020/10/new-report-us-sanctions-aggravated-venezuelas-economic-crisis__trashed/ accessed 6 January 2026

[53]For background and significance of January 2026 *U.S. military action in Venezuela, see: U.S. Confrontation With Venezuela, Council on Foreign Relations* Global Conflict Tracker (updated Jan 9 2026) https://www.cfr.org/global-conflict-tracker/conflict/instability-venezuela accessed 10 January 2026; see also Greg Myre, *"What's Happening With the U.S. and Venezuela, Explained"*, Time (6 Jan 2026) https://time.com/7344628/us-venezuela-trump-maduro-oil-drugs-war-explainer-questions-answered/ accessed 10 January 2026.

Washington termed *Operation Absolute Resolve*,[54] U.S. forces conducted targeted airstrikes in Caracas and executed a rapid military operation that resulted in the capture of President Nicolás Maduro and senior members of his inner circle, including his spouse.[55] The detainees were transferred to the United States and arraigned in New York on long-standing narco-terrorism indictments previously issued by U.S. federal courts.[56]

The symbolism of this moment was impossible to miss.[57] A sitting president of a sovereign state was physically removed by a foreign military power and presented before a domestic criminal court, not pursuant to extradition, but through force. In the language of power politics, it was a demonstration. In the language of law, it was a rupture. For the United States,[58] it signaled the willingness to collapse the distinction between criminal justice and foreign policy.[59] For much of the Global South, it revived an older anxiety: that sovereignty remains conditional, revocable in practice even when absolute in theory.

The operation marked an unprecedented escalation. Unlike prior sanctions, covert pressure, diplomatic isolation, or symbolic recognition of alternative leadership, this was direct kinetic intervention against the executive authority of a state with which

Former President of Venezuela Nicolás Maduro

the United States was not formally at war.[60] While Washington framed the action as a law-enforcement necessity rooted in counter-narcotics obligations,[61] the military nature of the operation blurred legal categories and invited accusations of regime change under a criminal law veneer.[62]

Former President Donald Trump's justification leaned heavily on the long-running U.S. indictment of Nicolás Maduro as the head of a transnational narcotics conspiracy.[63] According to this narrative,

[54]AP, *"US plans to 'run' Venezuela and tap its oil reserves... after operation to oust Maduro", AP News* (3 Jan 2026) https://apnews.com/article/venezuela-us-explosions-caracas-ca712a67aaefc30b1831f5bf0b50665e accessed 8 January 2026. see also *Trump Announces U.S. Military's Capture of Maduro*, U.S. Department of Defense press release (Jan 2026) https://www.war.gov/News/News-Stories/Article/Article/4370431/trump-announces-us-militarys-capture-of-maduro/ accessed 8 January 2026.
[55]Ibid
[56]The Reported Capture of Nicolás Maduro, Military.com (3 Jan 2026) https://www.military.com/feature/2026/01/03/reported-capture-of-nicolas-maduro.html accessed 8 January 2026.
[57]See analysis of legal and symbolic implications of the 2026 operation for sovereignty and international norms, e.g. *The US capture of President Nicolás Maduro – and attacks on Venezuela – have no justification in international law*, Chatham House (4 Jan 2026) https://www.chathamhouse.org/2026/01/us-capture-president-nicolas-maduro-and-attacks-venezuela-have-no-justification accessed 8 January 2026.
[58]Cf. Chatham House analysis (2026) (on blurred lines between law enforcement and military force in Maduro's capture) https://www.chathamhouse.org/2026/01/us-capture-president-nicolas-maduro-and-attacks-venezuela-have-no-justification accessed 8 January 2026.
[59]Ibid
[60]See n 53
[61]See n 55
[62]see Chatham House expert analysis (2026)
[63]See n 55

US President Donald Trump

Venezuela had ceased to function as a state and had instead become a criminal enterprise masquerading as government.[64] The logical implication of this framing is profound: if a leader is designated criminal by a powerful state, the protections of sovereignty may be deemed forfeited. This logic, if normalized, threatens to hollow out the foundational premise of the international system.[65]

6.2. Leadership and character: Donald Trump and Nicolás Maduro

In any serious geopolitical analysis, understanding the personalities and leadership styles of principal actors is not a superficial add-on but a key to interpreting decisions under duress, strategic impulses, and crisis behaviors.[66] In the U.S.–Venezuela confrontation, the contrasting characters of Donald Trump and Nicolás Maduro help explain not only what happened but how and why it unfolded as it did.[67]

i. Donald J. Trump: Populist power, personalist rule

Donald Trump's leadership style has been extensively analyzed by political psychologists and commentators as emblematic of populist, self-referential, and highly personalist governance.[68] Trump often frames political reality in binary terms such as winners vs. losers, loyalty vs. betrayal and privileges decisive, centralized authority over institutional constraint.[69] This is not mere rhetoric; scholarly leadership studies describe Trump's political personality as ambitious, dominant, and highly self-confident, with a strong "need for power" and a directive approach that favors personal judgment over bureaucratic expertise.[70]

Trump's foreign policy behavior mirrors these traits. His invocation of a modernized **Monroe Doctrine**, sometimes dubbed the "Donroe Doctrine" by critics reflects a willingness to reinterpret historical doctrine to assert hemispheric dominance, framing regional leadership as both a strategic necessity and a personal vindication.

In public statements and decisions leading up to and including *Operation Absolute Resolve*, Trump displayed a transactional

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[64]Cf. analysis of U.S. position and rhetoric after the 2026 operation in Time explainer and Reuters reporting, e.g. *What's Happening With the U.S. and Venezuela?* https://time.com/7344628/us-venezuela-trump-maduro-oil-drugs-war-explainer-questions-answered/ accessed 8 January 2026; Reuters U.S. Senate blocks war powers resolution... (14 Jan 2026) notes legal/political debate in U.S. context https://www.reuters.com/world/us/us-senate-blocks-effort-rein-trumps-venezuela-war-powers-2026-01-14/ accessed 8 January 2026.

[65]See n 61

[66]Consuelo Thiers and Leslie E Wehner, 'The Personality Traits of Populist Leaders and Their Foreign Policies: Hugo Chávez and Donald Trump' (2022) 66 *International Studies Quarterly* sqab083.

[67]Ibid

[68]Ibid

[69]Aubrey Immelman, *The Leadership Style of U.S. President Donald J. Trump* (2017) https://digitalcommons.csbsju.edu/psychology_pubs/107/ accessed 8 January 2026; See also *Donald Trump, Populism, and the Age of Extremes* (2019) on extreme personality features in political leadership.

[70]Ibid

and performative instinct characteristic of his broader political persona: tough ultimatums to Cuba, threats toward regional governments, and blunt declarations about running Venezuela and exploiting its oil resources suggest a calculus in which power is leverage and spectacle is policy.[71] This style prioritizing decisive action over deliberative process, has made Trump both unpredictable and formidable, but also prone to overreach and legal ambiguity, as critics inside the United States and abroad have underscored.

ii. Nicolás Maduro : Paranoid nationalism and adaptive authoritarianism

Nicolás Maduro's character and leadership style have evolved from his roots as a union organizer and Chávez loyalist into a paranoid, nationalist, and highly survival-oriented leadership posture.[72] Scholarly profiles depict Maduro, like Chávez,[73] as what some analysts call an "oppositional nationalist": a leader who perceives threats everywhere, frames internal and external actors as existential enemies, and mobilizes political support through appeals to patriotism and resistance against foreign interference.

Unlike the charismatic flamboyance of Hugo Chávez, Maduro's public persona has been described as more transactional and pragmatic, a figure who balances coercive authority with opportunistic negotiation and survival tactics.[74] Despite losing democratic legitimacy in contested elections and presiding over one of the most severe economic collapses in modern history,[75] he has maintained power through tight control over the military, media, and state apparatus, along with narratives that externalize blame and reinforce a siege mentality.[76]

While personality typing exercises sometimes label Maduro as an ESFP (extraverted, adaptable) with assertive traits,[77] such frameworks should be interpreted with caution. What is most clear from his behavior is a pattern of situational adaptability combined with deep suspicion of rivals and foreign adversaries,[78] qualities that have enabled him to navigate prolonged crises but have also intensified repression and institutional decay.[79]

iii. Contrasts and consequences

The juxtaposition of Trump and Maduro reveals not merely different political

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[71]See political psychology analyses of Trump's public leadership persona showing narcissistic, performative, and transactional features, e.g. *The Psychology of Trump's 2025 Presidency: Traits, Behaviours…* (2025) Simply Put Psych (describing Trump's grandiose self-image and strategic rhetoric) https://simplyputpsych.co.uk/global-psych/the-psychological-of-trumps-2025-presidency-traits-behaviours-and-underlying-dynamics accessed 8 January 2026.

[72]See *Nicolas Maduro: A populist without popularity* (European Center for Populism Studies profile) (describing Maduro's populist authoritarian consolidation and leadership behaviour) https://www.populismstudies.org/nicolas-maduro-a-populist-without-popularity/ accessed 10 January 2026.

[73]Ibid

[74]Cf. *Maduro, the failed heir to Hugo Chávez's Bolivarian Revolution, Le Monde* (6 Jan 2026 https://www.lemonde.fr/en/international/article/2026/01/06/maduro-the-failed-heir-to-hugo-chavez-s-bolivarian-revolution_6749137_4.html accessed 10 January 2026.

[75]*Venezuela's Maduro… systematic repression and control mechanisms*, WOLA (analysis of authoritarianism, repression, and institutional manipulation under Maduro) https://www.wola.org/analysis/venezuela-authoritarianism-and-resistance/ accessed 10 January 2026.

[76]Ibid

[77]see *Nicolás Maduro: Profile, Biography, Personality Type* (Boo World) https://boo.world/database/profile/984242/nicol%C3%A1s-maduro-personality-type accessed 11 January 2026.

[78]see *Nicolás Maduro: the Venezuelan president in Trump's crosshairs… Al Majalla* (profile of Maduro's pragmatic negotiation alongside coercion) https://en.majalla.com/node/328274/profiles/nicol%C3%A1s-maduro-venezuelan-president-trumps-crosshairs-has-been-captured accessed 12 January 2026. See also, *Venezuela: Authoritarianism and Resistance* (WOLA) (documenting arbitrary detentions, political repression and durability strategies) https://www.wola.org/analysis/venezuela-authoritarianism-and-resistance/ accessed 12 January 2026.

[79]*Venezuela's Nicolás Maduro blames unrest… The Guardian* (reporting on crackdowns and narratives of enemy threats) https://www.theguardian.com/world/article/2024/aug/01/venezuela-election-results-nicolas-maduro-protests-gonzalez-machado accessed 12 January 2026.

ideologies, but contrasting modes of exercising authority. Trump operates within a democratic superpower's executive prerogatives, leveraging personal legitimacy and institutional leverage domestic and abroad. Maduro, by contrast, governs through internal securitization, crisis management, and a politics of resistance that frames all external criticism as imperialist aggression.

Both personalities,[80] Trump's transactional assertiveness and Maduro's oppositional nationalism contribute to a dynamic in which negotiation yields to confrontation, and where legal niceties give way to power contests.[81] Understanding these characters helps illuminate why *Operation Absolute Resolve* did not produce an orderly transition but instead thrust Venezuela into a constitutional, geopolitical, and humanitarian maelstrom.

6.3. Legal shockwaves: International Law at crossroads

From the standpoint of international law, Operation Absolute Resolve confronts some of the most foundational norms of the post-1945 legal order. Article 2(4) of the United Nations Charter prohibits the threat or use of force against the territorial integrity or political independence of any state, subject only to two recognised exceptions: self-defence under Article 51 in response to an armed attack, and enforcement action authorised by the Security Council under Chapter VII. As affirmed by the International Court of Justice in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States)*, the right of self-defence arises only where an armed attack has occurred, and any use of force must satisfy the requirements of necessity and proportionality. In the absence of a prior armed attack attributable to Venezuela, and without Security Council authorisation, neither exception appears applicable to the January 2026 intervention.

In the case of Venezuela, the United States did not claim that Caracas had launched an armed attack on U.S. territory or forces within the meaning of Article 51, nor did Washington seek or obtain UN Security Council authorization for the use of force.[82] As such, experts across legal institutions conclude that the operation was prima facie inconsistent with the Charter's prohibition on force.[83]

Instead, the United States advanced an unconventional hybrid justification, framing Operation Absolute Resolve not as a response to an armed attack but as a form of transnational law-enforcement aimed at narco-terrorism and the apprehension of individuals under U.S. indictment,[84] including President Nicolás Maduro. Official rhetoric likened the operation to the capture of Manuel Noriega in Panama, characterizing Maduro as a "fugitive of American justice" rather than a protected head of state.[85]

However, this framing sits uneasily with settled international jurisprudence. In

[80]Thiers & Wehner (2022) on noncooperative, conflict-inducing leadership traits in foreign policy for populist figures like Trump, and authoritarian consolidation literature on Maduro's regime.
[81]Ibid
[82]See 2026 *United States intervention in Venezuela* (no claim of Venezuelan armed attack against the United States; discussion of legal criticisms on lack of self-defence or UN authorisation).
[83]Criticisms from legal experts that the U.S. action violated the UN Charter's prohibition on use of force, lacking UNSC authorisation or self-defence basis, are documented in the legality section of the 2026 U.S. intervention article. See The Guardian, *Is there any legal justification for the US attack on Venezuela?* (quoting experts that the US action was "in breach of the UN Charter, ... crime of aggression" contrary to art 2(4)) https://www.theguardian.com/world/2026/jan/03/is-there-any-legal-justification-for-the-us-attack-on-venezuela-trump-maduro accessed 16 January 2026.
[84]See reporting on the U.S. framing of the operation as law enforcement against narcotics indictments against President Maduro, with defence officials characterising it as a "surgical law enforcement operation" amidst Security Council debate.
[85]*Maduro is a Fugitive from American Justice, Voice of America* (29 December 2025).

Arrest Warrant (Democratic Republic of the Congo v Belgium), the International Court of Justice made clear that criminal jurisdiction and enforcement powers do not permit the use of force on the territory of another sovereign state, even where serious international crimes are alleged. The Court emphasized that enforcement measures must respect sovereignty and cannot be unilaterally imposed through coercive action. By implication, the existence of criminal indictments, however grave, does not displace the prohibition in Article 2(4) of the UN Charter.

This position is reinforced by *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States)*,[86] where the ICJ rejected policy-based or punitive rationales for the use of force, holding that only self-defence against an armed attack or Security Council authorization can justify military action. Similarly, in *Oil Platforms (Iran v United States)*,[87] the Court reaffirmed that even where states invoke security or enforcement interests, the threshold of an "armed attack" under Article 51 must still be met.

Accordingly, international law does not recognise law-enforcement, drug suppression, or criminal prosecution as independent legal bases for unilateral military action involving armed force. As leading commentators have observed, the use of military force to effect arrests or regime-targeted enforcement absent host-state consent or Security Council authorization constitutes a violation of Article 2(4). In this vein, Geoffrey Robertson KC has characterised the operation as contrary to the Charter and tantamount to aggression,[88] while Elvira Domínguez Redondo has similarly described it as an unlawful use of force, noting that neither criminal indictments nor counter-narcotics objectives can substitute for the Charter's narrowly defined exceptions.[89]

These legal critiques have translated into unequivocal diplomatic and institutional responses. At an emergency United Nations Security Council meeting on 5 January 2026 convened at Colombia's request, Venezuela's UN Ambassador Leonor Zalabata Torres expressly denounced the U.S. military operation as "a clear violation of the sovereignty, political independence and territorial integrity of Venezuela," asserting that the unilateral use of force "constitutes an act of aggression" under the UN Charter and customary international law.[90]

In the same session and in a separate statement on 3 January, UN Secretary-General António Guterres, through his spokesperson, stated that he was "deeply concerned that the rules of international law have not been respected" and that the United States' military action against Venezuela set "a dangerous precedent," underscoring that all UN members must "fully respect … international law, including the UN Charter."[91]

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[86]Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), Merits, Judgment, I.C.J. Reports 1986, p. 14.

[87]Oil Platforms (Iran v. U.S.), 2003 I.C.J. 161.

[88]Geraldine McKelvie, *Is there any legal justification for the US attack on Venezuela? The Guardian* (3 Jan 2026) (quoting Geoffrey Robertson KC that the US action breaches art 2(4) and constitutes "crime of aggression", and Elvira Domínguez-Redondo calling it "crime of aggression and unlawful use of force") https://www.theguardian.com/world/2026/jan/03/is-there-any-legal-justification-for-the-us-attack-on-venezuela-trump-maduro accessed 16 January 2026.

[89]Ibid

[90]See Stabroek News, *UN chief Guterres raises concerns … legality of US operation* (Colombian Ambassador Leonor Zalabata Torres condemning the operation as "a clear violation of the sovereignty … and territorial integrity of Venezuela" under the UN Charter) https://www.stabroeknews.com/2026/01/05/news/world/un-chief-guterres-raises-concerns-about-instability-in-venezuela-legality-of-us-operation/ accessed 14 January 2026.

[91]See *Venezuela and the UN's Proxy War Moment, Toda Peace Institute* (noting that the Secretary-General warned the operation violated the rules of international law and constituted a "dangerous precedent" and that Article 2's prohibition applies equally) https://toda.org/global-outlook/2026/venezuela-and-the-uns-proxy-war-moment.html accessed 14 January 2026.

Numerous states articulated similar positions. A joint Latin American and European statement by Brazil, Chile, Colombia, Mexico, Spain, and Uruguay condemned the unilateral military strikes as contravening "fundamental principles of international law" and warned that such actions threaten regional peace, security, and the rules-based international order. Spain's foreign minister labelled the intervention "clearly contrary to international law" and "a very dangerous precedent for the future," affirming that respect for sovereign equality and territorial integrity is "non-negotiable."

These responses reflect foundational customary international law norms that complement the UN Charter: sovereign equality, non-intervention, and refraining from the use of force except in self-defence or with Security Council authorization remain core principles upheld by the international community. The invocation of domestic criminal indictments or counter-narcotics narratives as a basis for deploying overwhelming military force on the territory of another sovereign state has been consistently rejected in these fora as insufficient to displace the Charter's strict prohibitions. In sum, while U.S. advocates frame the operation in law-enforcement terms, the prevailing official reactions from the UN Secretary-General and multiple state delegations confirm that the intervention violated Article 2(4) of the UN Charter, lacked a recognized legal basis under international law, and risks undermining long-standing legal constraints on the use of force by setting a precedent that powerful states can unilaterally redefine lawful military intervention.

6.4. Constitutional questions and selective legality

Operation *Absolute Resolve* also reignited longstanding constitutional disputes within the United States concerning war powers and executive authority. Article I, Section 8 of the U.S. Constitution vests Congress with the power to declare war and to authorize, fund, and regulate the armed forces, while Article II, Section 2 designates the President as Commander in Chief with authority to direct military operations once force is lawfully authorized. The absence of any specific congressional authorization for the January 2026 strikes therefore raised immediate constitutional concerns, particularly given that the operation involved airstrikes and special forces deployed in a foreign capital.[92] Critics argued that this exceeded the President's limited unilateral power to repel sudden attacks and instead fell squarely within Congress's war-authorizing prerogative.

Senior members of Congress publicly challenged the legality of the operation. Senate Minority Leader Chuck Schumer described the strikes as unlawful for lack of authorization, while House Minority Leader Hakeem Jeffries and Senator Tim Kaine emphasized that the Constitution assigns decisions on initiating hostilities to Congress, not the executive acting alone.[93] These objections gained institutional force through reference to the War Powers Resolution of 1973,[94] which requires either congressional authorization or a genuine national emergency created by an attack on the United States or its forces.[95] The administration's position, articulated in a

[92]S.J. Res. 11, 119th Cong (2025–2026) (introduced 3 December 2025) (joint resolution directing the removal of U.S. Armed Forces from hostilities within or against Venezuela not authorized by Congress) https://www.kaine.senate.gov/imo/media/doc/dav25m71.pdf accessed 20 January 2026.
[93]Kaine, Schumer & Schiff *Applaud Senate Advancement of Bipartisan War Powers Resolution to Prevent Illegal War with Venezuela* (Press release, 8 January 2026) (Senators advancing the resolution asserting Congress's exclusive constitutional powers over war).
[94]War Powers Resolution 1973 (codified at 50 U.S.C. ch. 33) requires the President to consult with and report to Congress when introducing U.S. armed forces into hostilities and limits deployment unless Congress authorizes continued action.
[95]Ibid

redacted Office of Legal Counsel opinion, asserted that the operation did not amount to "war in the constitutional sense" and thus did not trigger the need for prior authorization, an interpretation widely criticized for stretching executive power while avoiding engagement with the legality of the action under international law.

Congressional efforts to reassert its authority were ultimately unsuccessful. A Senate resolution invoking the War Powers Resolution to bar further U.S. military action against Venezuela absent congressional authorization was narrowly defeated in mid-January 2026, demonstrating the practical weakness of legislative checks on presidential uses of force even where constitutional objections are formally raised. Legal bodies with international law expertise have publicly criticized the intervention as unlawful, with the American Branch of the International Law Association's Board of Directors issuing a January 16 2026 statement finding that U.S. military actions in Venezuela violated customary international law and the UN Charter, and expressing "grave concern" over justifications premised on law-enforcement narratives rather than recognised legal bases for the use of force.[96]

Taken together, the episode illustrates how unilateral uses of force risk eroding both constitutional balance at home and the credibility of legal restraint abroad, reinforcing perceptions, particularly in the Global South, that the application of law

In the early hours of January 3, 2026, United States military forces captured Venezuelan President Nicolás Maduro and his wife, Cilia Flores, in Caracas. The operation, code-named "Operation Absolute Resolve," ended with the couple being flown to the U.S. to face federal charges in New York.

remains contingent on power rather than principle.

6.5. Global reactions: Condemnation, silence, and calculated approval

The U.S. military strikes and the capture of President Nicolás Maduro on 3 January 2026 triggered immediate and sharply divided international responses. Governments from Beijing to Brasília and Pretoria publicly registered concern, with many actors emphasising the primacy of sovereignty and legal norms.[97] China's Foreign Ministry said it was "deeply shocked" and "strongly condemns" the U.S. use of force as violating international law and threatening regional peace and security, and urged adherence to the UN

[96]Statement of the Board of Directors of the American Branch of the International Law Association Regarding the United States Intervention in Venezuela (16 January 2026) https://www.ila-americanbranch.org/statement-of-the-of-the-board-of-directors-of-the-american-branch-of-the-international-law-association-regarding-the-united-states-intervention-in-venezuela/ accessed 18 January 2026.

[97]See *US strikes on Venezuela draw condemnation, concern* (China.org.cn, 4 January 2026) (China condemning U.S. military strikes and forcible removal of President Maduro as violation of international law and sovereignty), https://www.china.org.cn/2026-01/04/content_118259442.shtml accessed 18 January 2026; *World Takes Sides After US Strikes Venezuela and Captures Maduro* (The Wire, 3 January 2026) (Brazilian President Luiz Inácio Lula da Silva calling the strikes and capture an "unacceptable line" and dangerous precedent) https://m.thewire.in/article/world/world-takes-sides-after-us-strikes-venezuela-and-captures-maduro accessed 18 January 2026; U.S. strikes in Venezuela trigger regional and global alarm (VPM/NPR, 3 January 2026) (Colombian President Gustavo Petro condemning the action and expressing concern) https://www.vpm.org/npr-news/2026-01-03/u-s-strikes-on-venezuela-spark-alarm-across-latin-america-and-beyond accessed 18 January 2026.

Charter.[98] Russia's leadership described the operation as an "act of armed aggression" and a violation of sovereignty.[99] Members of the UN Security Council, including China, Russia, South Africa and others, condemned the U.S. action as inconsistent with the Charter's prohibition on the use of force and called for respect for international law.[100] Major Latin American governments similarly lodged harsh rebukes: Brazil's President Luiz Inácio Lula da Silva called the strikes a "grave affront to Venezuela's sovereignty," Colombia's President Gustavo Petro denounced the intervention as an "assault on sovereignty," and Mexico's left-wing government strongly condemned the U.S. airstrikes on Venezuela and rejected the unilateral use of military force, warning that such actions "seriously jeopardise regional stability."[101] While some European leaders urged restraint and adherence to international law without explicit endorsement of the intervention, a handful of other states offered praise or qualified support, with Argentina's President Javier Milei celebrating Maduro's removal as a triumph for freedom.[102]

Commentators across Africa, Latin America, Europe, and Asia framed the crisis as emblematic of broader anxieties about double standards in international law, warning that powerful states may exercise military force unilaterally while weaker states are held strictly to Charter norms.[103] This global mosaic of reactions ranging from outright condemnation to cautious diplomacy and selective endorsement, lays bare the fragility of unilateral assertions of legal and moral authority, exposing how Operation *Absolute Resolve* not only undermines the normative architecture of the post-1945 international order but also risks entrenching a world in which the enforcement of law is contingent on power rather than principle.

6.6. Inside Venezuela: Power vacuum and the criminal state question

Within Venezuela, the immediate aftermath of Maduro's capture was defined less by celebration than by uncertainty. State institutions already weakened by years of politicization and economic collapse struggled to assert authority. Competing factions within the military, civilian bureaucracy, and opposition movements maneuvered to fill the vacuum.

Particularly alarming was the role of organized crime. Armed groups involved in narcotics trafficking, illicit mining, fuel smuggling, and cross-border rackets were not external to the Venezuelan state; they had been woven into its informal governance structures. The sudden removal of the central political figure threatened to fragment these arrangements, raising the risk that criminal actors would assert territorial control in the absence of coherent authority.

This dynamic is familiar to African states that have experienced regime collapse

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[98] *US military action in Venezuela tramples over international law* (China Daily Asia, 4 January 2026) https://www.chinadailyasia.com/article/626491 accessed 18 January 2026

[99] Russia's Foreign Minister Sergei Lavrov said the U.S. action undermines the international order and constitutes an act of armed aggression (*Reuters*, 14 January 2026)

[100] *US comes under fire at Security Council, worldwide for Venezuela raid* (Xinhua, 7 January 2026) https://www.china.org.cn/2026-01/07/content_118265934.shtml accessed 18 January 2026 (Council members including China, Russia, South Africa condemn U.S. action as breach of UN Charter).

[101] *Mexico's Left-wing Govt Condemns US Strikes On Venezuela*, AFP, Barron's (3 Jan 2026) https://www.barrons.com/news/mexico-s-left-wing-govt-condemns-us-strikes-on-venezuela-2b89a034 accessed 18 January 2026

[102] *Reuters*, 'Loud noises heard in Venezuela capital, southern area without electricity' (Reuters, 3 January 2026) https://www.reuters.com/world/americas/loud-noises-heard-venezuela-capital-southern-area-without-electricity-2026-01-03/ accessed 18 January 2026

[103] See PISM, *The significance and implications of U.S. intervention in Venezuela* (17 March 2025) (analysis noting global concern that intervention may erode international legal order and reflect double standards) https://pism.pl/publications/the-significance-and-implications-of-us-intervention-in-venezuela accessed 18 January 2026.

Venezuela holds some of the world's largest proven oil reserves — roughly 303 billion barrels, heavier crude mainly in the Orinoco Belt. The oil infrastructure (pipelines, refineries, export terminals) was built over decades but has suffered from underinvestment, poor maintenance, corruption, and sanctions, severely reducing effective capacity.

without institutional succession. Libya's post-2011 trajectory stands as a cautionary parallel: removing a ruler does not dismantle the networks that sustained his power; it merely liberates them from central restraint.

6.7. Humanitarian consequences: When intervention meets fragility

Venezuela's humanitarian crisis predates January 2026, but the intervention magnified its severity. Chronic food insecurity, a collapsed health system, and mass displacement were compounded by renewed instability, disrupted logistics, and fear-driven capital flight. Even proponents of the intervention acknowledged the high risk of civilian suffering if stabilization did not follow swiftly.

Humanitarian law, though not the primary framework invoked by Washington, remains relevant where civilian harm is foreseeable. The ethical dilemma is stark: even if a leader is criminally culpable, the method of removal can deepen the suffering of those least responsible. This tension lies at the heart of modern intervention debates.

6.8. Economic and strategic stakes: Oil, markets, and geopolitics

Venezuela's oil infrastructure loomed large in post-intervention calculations. Possessing the world's largest proven reserves, the country represents both an economic prize and a structural risk. U.S. officials emphasized the need to rehabilitate production capacity, stabilize global energy markets, and prevent rival powers from consolidating influence in the Caribbean basin.

Markets reacted with caution rather than confidence. While energy prices reflected short-term volatility, investors remained skeptical of rapid recovery absent political legitimacy, security guarantees, and credible governance reforms. For African oil producers, the lesson is sobering: resource wealth attracts interventionary interest, but offers no insulation against instability.

6.9. What comes next: Three possible trajectories

In the wake of *Operation Absolute Resolve* and the unprecedented capture of

Nicolás Maduro, scholars, analysts, and humanitarian observers identify multiple plausible futures for Venezuela, each with distinct risks and opportunities.[104] These scenarios share a core truth: the country's near-term trajectory remains highly uncertain, shaped by domestic fragmentation, geopolitics, and the depth of humanitarian need.

A. First: Prolonged fragmentation and anarchy

The most immediate and widely discussed risk is that Venezuela plunges into a prolonged period of state fragmentation. In this scenario, competing power centers former Maduro loyalists, military factions, criminal networks, armed colectivos, and regional militias contest control of territory and resources. With weakened central authority, criminal ecosystems tied to mining, drug trafficking, and illicit economies expand rapidly, while armed violence escalates in urban and remote zones alike. Humanitarian deterioration which is already acute, would deepen significantly, with widespread food insecurity, disrupted services, and internal displacement surging. Humanitarian actors warn that an absence of political settlement coupled with structural dysfunction could prolong suffering and compel another wave of migration.

This form of fragmentation mirrors what analysts have labeled a "slow unraveling" or state collapse scenario: the political order dissolves into localized governance by armed actors, institutions fail to function, and Venezuela becomes a patchwork of autonomous fiefdoms rather than a coherent state. The secondary effects include massive refugee flows into Colombia, Brazil, and Caribbean states, creating regional pressures that compound humanitarian strain.

B. Second: Conditional stabilization and transitional reconstruction

A more hopeful yet demanding trajectory centers on conditional stabilization, a situation where Venezuelan actors, regional stakeholders, and international partners coalesce around a negotiated transition. This scenario requires concerted political will: a functional interim authority respected by disparate domestic actors; credible security reform that unifies the armed forces under civilian oversight; and large-scale humanitarian relief backed by international organizations such as the IMF and UN agencies.

Experts argue that stabilization cannot rely on military presence alone. It demands institutional rebuilding, including judiciary reform, electoral guarantees, debt restructuring, infrastructure rehabilitation, and reintegration of civil society. With coordinated support, Venezuela could slowly reorient toward a democratic transition, culminating in internationally observed elections and economic recovery plans. However, this path is conditional on political consensus, which remains fragile. Without cohesive civil leadership and security force unity, stabilization risks remaining incomplete or superficial.

C. Third: Escalation, proxy competition, and wider conflict

The third trajectory and arguably the most volatile is escalation, where internal instability converges with external geopolitical competition. Russia, China, Iran, Cuba, and non-state armed groups could

[104]See Center for Strategic and International Studies, 'Potential Scenarios for Venezuela's Future' (CSIS Analysis, June 20 2017; International Monetary Fund, I*MF Managing Director Kristalina Georgieva, IMF ready to aid Venezuela when shareholders give OK* (Reuters, 15 January 2026) (noting economic collapse, migration crisis, and critical conditions that shape future humanitarian and economic paths); The New Humanitarian, *What next for the humanitarian crisis and response in Venezuela?* (14 January 2026)

perceive U.S. action as a threat to their interests and deepen their involvement, either through political backing, economic countermeasures, or indirect support to insurgent factions. This does not necessarily mean a full-blown conventional war, but could take the form of proxy confrontations, covert assistance to opposing militias, or intensified geopolitical rivalry in the Caribbean and Latin America.

Such an escalation would complicate stabilization efforts, entrench opposing blocs, and risk turning Venezuela into a theater of protracted conflict akin to the late stages of Iraq or Libya, albeit with regional nuance. Domestic armed resistance could coalesce around grievances against foreign intervention or in defense of remaining Chavista constituencies, generating cycles of insurgency and counter-insurgency that deepen civilian harm.

Between these three archetypes lies a fourth "hybrid" possibility: an extended period of managed instability where no single actor fully controls the state, but sporadic negotiation, intermittent violence, and partial governance arrangements produce a liminal status rather than clear collapse or recovery. Some analysts suggest that Venezuela might oscillate between instability and partial control for years, driven by conflicting interests and external constraints.[105]

7. Epilogue

The January 2026 intervention did not simply end one chapter of the U.S.–

UN Secretary-General António Guterres'

Venezuela conflict; it widened the fault lines of the international order itself. What was sold in Washington as a surgical strike against criminal governance has laid bare how brittle the norms of sovereignty, international law, and collective security can be when powerful states decide they are optional. From UN Secretary-General António Guterres' alarm that the Charter was disregarded to Latin American governments' warnings that peaceful resolution must come from within,[107] the world has watched a superpower claim the authority to redefine legality in ways that make smaller states vulnerable to political coercion.[108] In the midst of this geopolitical rupture, the undeniable and tragic truth is that the human costs of political and military upheaval are borne first and worst

[105]Ibid
[106]United Nations, *US actions in Venezuela 'constitute a dangerous precedent'* (UN News, 3 January 2026) https://news.un.org/en/story/2026/01/1166698 accessed 16 January 2026.
[107]UN Security Council, *Maduro seized, norms tested: Security Council divided as Venezuela crisis deepens* (UN Geneva, 5 January 2026) https://www.ungeneva.org/en/news-media/news/2026/01/114541/maduro-seized-norms-tested-security-council-divided-venezuela-crisis accessed 16 January 2026.
[108]United Nations, *Noon Briefing by Stéphane Dujarric, Spokesperson for Secretary-General António Guterres* (5 January 2026) https://www.un.org/sg/en/content/highlight/2026-01-05.html accessed 10 January 2026. See also, UN chief, *UN chief raises concern over disregard for international law after US military action in Venezuela* (AA News, 5 January 2026) https://www.aa.com.tr/en/americas/un-chief-raises-concern-over-disregard-for-international-law-after-us-military-action-in-venezuela/3790445 accessed 14 January 2026.

by ordinary people,[109] whose hopes and fears now fill the streets of Caracas just as they do across refugee corridors and humanitarian assessments.

For the United States, Operation *Absolute Resolve* demands a reckoning that is long overdue.[110] Military and coercive instruments may disrupt leadership, but they cannot by themselves generate legitimacy, rebuild shattered institutions, or reconcile fractured societies.[111] To capture a president and then walk away from the broader social wreckage would repeat the very errors that have transformed previous interventions from Iraq to Libya into protracted cycles of instability rather than sustainable order. As the philosopher George Santayana warned, *"Those who cannot remember the past are condemned to repeat it."*[112] The "Pottery Barn Rule" you break it, you own it is no cliché:[113] it is a solemn geopolitical truth that powerful states must embrace, not evade. Responsibility, once assumed through force, becomes indivisible and enduring.

For Africa and the broader Global South, the Venezuelan crisis is more than a distant geopolitical event; it is a warning of what happens when sovereignty is hollowed out and legitimacy is separated from law. States are vulnerable not only to external coercion but also to internal paralysis, intellectual dependency, and institutional fragility. As Cristina Duarte has emphasized,[114] *"There is no sovereignty without a sovereign mindset, and there is no sovereign mindset without sovereign scholarship,"* a call to ensure that African states define problems, set priorities, and marshal knowledge from within rather than outsource their destiny. This internal sovereignty is essential if Africa is to transform structural constraints into strategic advantage, turning challenges into durable progress.

The stakes are immediate. Africa cannot afford hesitation or incremental steps; its future must be claimed with clarity, courage, and persistence. Patrick L.O. Lumumba's words resonate sharply here:[115] *"I believe that we have reached a stage in life in the economic development of Africa where moving forward is perilous, moving backwards is cowardice, and standing still is suicidal - but we must persevere, because winners do not quit and quitters never win."* At the same time, the vision of continental unity articulated by Fanon reminds us that African states must navigate their own paths without reproducing internal tensions or conflicts:[116] *"African Unity is a principle on the basis of which it is proposed to achieve the United States of Africa without passing through the middle-class chauvinistic national phase with its procession of wars and death-tolls … All combinations are possible … What must be avoided is the Ghana-Senegal tension, the Somali-Ethiopia, the Morocco-Mauritania, the Congo-Congo tensions …"*. Fanon's insight emphasizes that the continent's struggle is not only against external domination but also against internal fragmentation and misaligned ambitions. To secure its sovereignty and shape its future, Africa must embrace intellectual independence, institutional strength, and collaborative unity, seizing this historical moment before hesitation becomes a cost too high to bear.

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[109]Ibid

[110]Benjamin N Gedan, *What Will 'Operation Absolute Resolve' Mean for Venezuela and Latin America?* (Stimson Center, 4 January 2026) https://www.stimson.org/2026/what-will-operation-absolute-resolve-mean-for-venezuela-and-latin-america/ accessed 16 January 2026.

[111]Ibid

[112]George Santayana, *The Life of Reason* (1905). – see "Those who cannot remember the past are condemned to repeat it."

[113]Safire, William (October 18, 2004). "Language: You break it, you own it, you fix it". The New York Times. Archived from the original on April 23, 2015. Retrieved February 25, 2014. See also Woodward, Bob (2004). Plan of Attack. p. 150.

[114]Cristina Duarte, *USG Cristina Duarte Remarks for the UN 2025 Academic Conference on Africa: 'The Sovereignty of Mindset: Dismantling the Architecture of Low Ambition'* (Office of the Special Adviser on Africa, 1 December 2025)

[115]Patrick L.O. Lumumba, *Quote on Africa's development imperatives* (Goodreads)

[116]Frantz Fanon, *Toward the African Revolution: Political Essays*, translated from the French by Haakon Chevalier (Grove Press 1967) 187.

Baba did you know?

By Ouma Kizito Ajuong'

Baba did you know?
That just four months after you are gone;
The orange they will split;
And in your name pretend to be of wit,
And not just split but squeeze;
As your people watch in a freeze;
Baba did you know?
That as you lay in the cold;
They will speak so bold;
And claim that you told;
All that you held dear sold;
Baba did you know?
That after you are gone,
Your party in half will be torn,
Half in half as they fight;
Not for the wrong or right;
Baba did you know?
That for power in your name they will claw;
Your people they will aspire to take;
And in your name, themselves king make;
Baba you must have known,
That after you are gone,
They are those who will give another way,
And there are those who will want to stay,
Baba you must have known.

Ouma Kizito Ajuong' is anAdvocate of the High Court of Kenya and a Poet.

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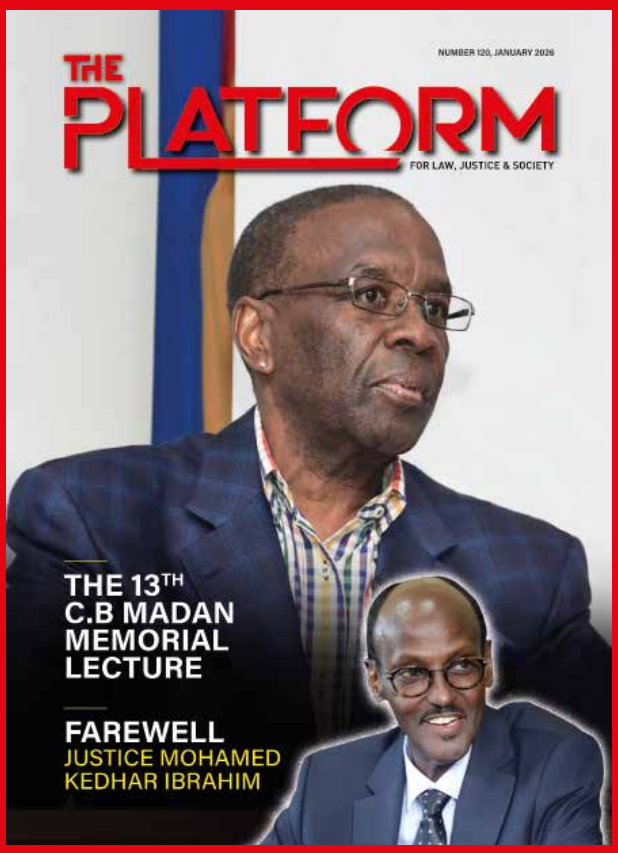
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