



CIVIC (RE)EDUCATION: THE POTENTIAL ROLE OF CIVIL SOCIETY ORGANIZATIONS IN SUSTAINABLE NATIONAL RECONCILIATION INITIATIVES

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ABSTRACT

This paper advocates for the involvement civil society organizations in community initiatives for civic awareness and reconstructing ethnic harmony. It mainly explores the potential role of the civil society as a facilitator in closing the national-local gap in National reconciliation efforts. Much emphasis is placed on the civil societies' ability – in conjunction with community leadership and institutions – to operationalize a community-interst approach to reconciliation, which is both location and situation specific. The issue is whether, a co-operation between the civil society and the local human and institutional capacities of the host community is an alternative to the wider national approach to ethnic reconciliation. This article also highlights possible successful initiatives at the local level while drawing comparative perspectives from around the world.

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INTRODUCTION

In a bustling city somewhere in Africa, during rush hour traffic, there were two motorists whose cars had caused a traffic snarl-up. The bone of contention was that neither of them would give way to the other, protesting that the other driver was the one at fault. Angry exchanges of words ensued. This went on for some time, till something had to be done, and somebody had to do it. A fellow citizen who had observed the happenings unfold took the initiative and decided to step in. He spoke in a conciliatory tone, and caused the motorists to calm down. He then proceeded to show them the Highway Code and illustrated to them their foibles. The motorists then realized how much the obduracy had caused the other motorists in terms of time. The one in the wrong then proceeded to give way and soon the traffic in the city flowed smoothly. The above mirrors the situation in post-electoral conflict in Kenya. In the aftermath of the constitutional failure of December 2007 - January 2008, which resulted in the post-election violence, an urgent need for reconciliation arose. Some of the causes of the violence were reported as being; ethnic discrimination, political incitement, unequitable resource distribution, fundamentalist ethnocentricity, all these fuelled by a bungled election process. This led to the explosion of ethnically-motivated violence. Ironically, a positive result of these negative developments was the increasing consciousness at the national as well as the local to the effect that civic education had to be regarded as a precondition for

political stability and socio-economic progress. Consequently, this paper looks into the role of the civil society in disseminating civic education at the local community level in an attempt to facilitate ethnic reconciliation. This, it is hoped, will enable us to bridge the national-local gap at the same time expediting the achievement of international peace and security.

Civil Society in Early 90s Pro-Democracy Activism

The Clamour for Multi-partyism

The demand for constitutional change in the post-independence period began at the turn of the 1990s with the first call for a return to the multiparty system of government in line with the changes already taking place elsewhere in the world, especially in Eastern Europe and other African countries. The excesses of former regimes led to the clamour for change that reached a feverish pitch in the early 90s (Tukero; in Ojienda, 2004:41). According to PLO Lumumba, the post-independence amendments to the independence constitution carried out by parliament, were driven by political interests rather than the interests of the nation or the citizens. He states thus; The post-independence constitutional amendments orchestrated in parliament were raised to respond to strategic and myopic political imperatives. Little consultation was undertaken while the outreach role of parliament was downplayed; with the consequence, that the current constitution is a patchwork of political expediency

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submerged in the sea of illegitimacy. The patchwork has commanded little respect in the organization of government, and in the organization and exercise of public power resulting to arbitrariness, political manipulation and the subversion of the role of law (Lumumba, 2002). The eventual introduction of the multiparty system of government in December 1991 was accompanied by the re-establishment of an electoral management body – the Electoral Commission of Kenya (ECK) – appointed by the president. This body introduced the requirement that a winning presidential candidate must receive at least 25 per cent of the votes cast in at least five of the eight administrative provinces of Kenya. With these three changes to the constitution, the country proceeded to the first post-independence multiparty elections including the first presidential election in December 1992. However, the party that had been in office since independence – the Kenya African National Union (KANU) – won the elections.

The Call for Federalism/Majimboism

The rise of the democratization movement in Kenya, particularly the search for a new constitution in the early 1990s, revived the concern for old minorities such as ethnic groups, faith communities, and racial groups that had been neglected. The demand for federalism in Kenya re-emerged alongside the demand for a multiparty system of government (Chege; in Barkan, 1994). The population in many ethno-regional zones believed that they had been marginalized in the distribution of national resources under the centralized KANU regime (Republic of Kenya, 1969). At the same time, the population in ethno-regional zones that had presumably gained disproportionately from the skewed distribution of the national resources also demanded federalism when the control of the central government (the presidency) seemed to shift to a different ethno-regional zone with the advent of multiparty electoral system (Rothchild, 1969).

The Push for Comprehensive Constitutional Change in the Run-Up to the 2005 Referendum

Opposition parties and civil society organizations began, therefore, as early as 1993 to demand ‘comprehensive’ constitutional reforms as well as adjustment of other legislations to bring them all in tune with the newly introduced multiparty system of government, especially competitive multiparty elections (Karuti; in Wanjala and Kibwana, 1998). By 1997, it became clear to Moi’s government that the winds of change could no longer be resisted (Wanjala; in Kibwana, Akivanaga and Wanjala, 2002). Minimum constitutional reforms were introduced that saw the reintroduction of competitive politics (Ibid: 359). By 1998, agreement had been reached on the process of constitutional change. A review Commission was established to collect and collate views from Kenyans and prepare a draft constitution to be deliberated on by a constitutional assembly established for that purpose. The leading civil society organizations in this process included the National Convention Council, especially its executive wing – the National Convention Executive Council, the Convention Council for Constitutional Change, the Kenya Human Rights Commission, and the Law Society of Kenya. This came about due to the reluctance of the government of the day to engage in constitutional review (Tukero, *ibid*). In response, religious, civic and professional groups, as well as

private persons, took it upon themselves to see that that constitutional reform took off (These included Ufungamano group, NCCCK, PCRC among others).

The Inter Parties Parliamentary Group

However, the KANU government resisted the demand for constitutional reform until the ‘mass action’ that civil society initiated in the middle of 1997 when it appeared that the country would go to the next (second) multiparty elections without any further constitutional changes (Akivanga; in Wanjala and Kibwana, 2002). The then Government yielded to pressure from civil society activists, who organized protests and other methods of getting the attention of both the regional as well as the international community. The mass action compelled the KANU government to accept some constitutional, administrative and legal reforms – minimum reforms - through collaboration among all the parliamentary parties: the Inter-Parties Parliamentary Group (IPPG) that excluded the civil society organizations (Akivanga, YEAR). The IPPG introduced a range of constitutional, legal and administrative reforms that helped to bring fairness to the 1997 elections (Wanjala, 2005). However, the IPPG initiative produced only a single amendment to the constitution: the increase of the number of ECK commissioners to 21 and provision for parliamentary political parties’ influence in the nomination of ECK members and for the President to appoint them. The rest of the IPPG changes concentrated on different laws (Acts of Parliament) that had a bearing on the electoral process (The Public Order Act; The Preservation of Public Security Act; The Chief’s Security Act; among others).

The Peoples Constitution Review Commission

Thus, by the time the country went to the 1997 elections, only a single change had been made to the constitution out of the mammoth comprehensive constitutional reforms that the civil society and political parties expected. Moreover, the government offered to undertake constitutional reforms through parliament while civil society organization wanted a ‘people-driven’, or a ‘*Wanjiku*’ driven process. At this point, civil society decided to proceed with the formulation of a new constitution without government involvement. The People’s Constitution Review Commission (PCRC) was appointed at Ufungamano House with Ooko Ombaka as chair. The commission had already begun provincial visits to solicit views from the public when the KANU government decided to initiate an official review process: it pushed for the enactment of the Constitution of Kenya Review Act and appointed the Constitution of Kenya Review Commission (CKRC) with Prof. Yash Pal Ghai as its chairman. The interaction between democracy and community against the background of positive inter-ethnic co-operation In a situation where democracy does not address the community’s demands and does not generate new bases for social interaction and collective identity, the influence of populist and fundamentalist movements in the country develops or heightens, leading to new authoritarian regimes (Ogot; in Ogot and Ochieng, 1995).

Possible Future Prospects: Civic (Re)Education for Healing and Reconciliation

Having illustrated past successes of the civil societies’ involvement, it can be reasonably concluded that they have

shown the ability to organize themselves strategically in order to achieve the targeted objectives. The central assertion of this paper is that civil society organizations have a primary role to play in educating as well as re-educating the citizens in their local communities on matters of civic education. This is particularly necessary and profound considering the systematic erosion of prior knowledge of civic education in the aftermath of the post election violence. In the interest of moving towards national dialogue, healing and reconciliation, concerted efforts and a working relationship between the community leadership and civil society, organizations need to be forged. Civic education and re-education plays well in the economic structure of healing and reconciliation. This is achieved by the creation and propagation of socio-political and constitutional capital at the community level which may be viewed as a long term investment for an inclusive, constitutional and cohesive community as well as national society. Konrad (1998:83) makes a case for civic education by civil society organizations as a precondition for development. In his writing he draws an illustration from the *Cocoyoc Declaration* which states: Development is also freedom of opinion and its dissemination, including the right to give and receive ideas and propositions. There exists a deep rooted need to participate in the structuring of the bases of one's experience, and to play a part in structuring the future of the world (Konrad, 1998).

Civil Society as Community Leadership

As a Geographically-Situated Entity

Civil society may be identified with the geographic region in which it operates. In this regard it can be stated to be the civil society leadership in the area of its control. This means that it will be charged with the responsibility of carrying out its mandate within its territorial jurisdiction.

As the Protector of Right-Bearing Members

Civil Society qualifies as community leadership in the sense that it is the protector of the rights of the individual members of society. This it does by offering civic education aimed at enlightening the community members in a way that empowers them to protect their rights. Knowledge of rights by the constituent members will ensure mutual understanding and harmonious co-existence.

As a Repository of Values and Bearer of the Living Law

With its machinery, civil society is capable of maintaining a record of the indigenous laws of any community. This it does in order to figure out ways and means of approaching the community in various issues. To this end, it is capable of documentation of the customary laws of those people with a comprehensive codification of specific norms. The process of documentation is more often than not participatory. It involves the elders of that society who have lived there the longest and who were subject to customary rules long before the institution of formal laws. This is an important step that makes the smaller communities feel that they are participating in the socio-legal development of the laws to which they are subject.

As an Administrative Entity

Civil society in its local operation is an autonomous administrative unit in that it is not subject to any outside

control. It has in place its systems and functions in a manner prescribed by its internal rules usually predicated on the principle of the best interest of the community. The civil society acts as a unit of administering the progress towards national healing and reconciliation. Since the approach mooted in this paper is community-based, the civil society will facilitate the closing of the national-local gap by effectively managing the resources geared towards social inclusion and cohesion.

Civil Society as the Impartial Arbitrator

Civil society has the capability of using alternative dispute resolution mechanisms in resolving conflicts between various parties. This is possible if it maintains a strictly non-partisan policy. In this manner, the civil society organization maintains an objective viewpoint of the unfolding issues.

Civil Society as the Holder of the Conditional Right to Information

The right to information is a fundamental human right since its realization is central to the fulfilment of other human rights. This right is recognised by the international law texts namely Article 19 of the International Covenant on Civil and Political Rights and Article 9 of the African Charter on Human and Peoples Rights

Unfortunately, [in Kenya] even simple policies on health and education are not easily accessible to the public, even though such information is crucial and can have such a major positive effect on people's lives... right to information laws open up government records to public scrutiny, thereby arming citizens with a vital tool to inform themselves about what the government has done, at what cost and how effectively.

In the Kenyan situation, there are no provisions for a right to information. In this regard the civil society exercises this right on behalf of the Constitution. This means that until a Constitutional recognition is given of this right, the civil society provides the conditional right to information.

Bridging the National-Local Gap: Civil Society Engagement in Dialogue and Reconciliation in the Local Community

Civil societies are capable of effecting mechanisms on a small scale that facilitate the local application of national standards of reconciliation. As Ramesh Thakur re-emphasizes in the closing chapter of his book (*Dealing with Guilt Beyond Crime: The Strained Quality of Universal Justice*) retributive justice is not, by definition, the only road to peace, stability and the protection of human rights. Sometimes, restorative justice through truth and reconciliation commissions may offer a better solution to fractured societies recovering from atrocities. Elaborating on this, an even more important conclusion Thakur draws is that, whatever the choice, it can never be made without consulting the country involved, "not the least because it is that country that paid the price in the past and will have to live with the immediate and long-term consequences of the decisions made."

Education in citizenship is the very core of rural reconstruction. They are the participants of the ethnic conflicts and the victims of the same. In this manner civil society has the potential of stemming this destructive cycle of violence.

Situational Specificity and the Neutral Test

In their engagements, the civil society organizations have to tailor their operations so that they are circumstance specific. This means that due consideration should be given to the situation on the ground. It must be taken into consideration that some communities were hit by more horrific atrocities than others. Consequently the approaches used must vary so as to correspond to the situation on the ground; must be specific to every communities unique needs and must be complementary to the ultimate objective of reconciliation.

Towards the achievement of the end of reconciliation, the civil society must present itself as a neutral entity incapable of being ascribed any ethnic identity. This will promote the mutual trust relation between the civil society and the host community. Thus, the ultimate test of neutrality will lie in the inability, in all probability, to have an ethnic, political and economic identity ascribed or assigned to the civil society (Durham, 2004). Ramesh Thakur observes that, "the involvement of NGOs in international criminal proceedings is a complex process fraught as much with danger as with great potential". He gives due recognition to the fact that NGOs have access to networks and grassroots information and are often on-site when atrocities occur. As a result, they have first-hand knowledge of events. Thus civil society has the best ability to identify potential witnesses. This puts NGOs in a unique position to gather and present evidence at international criminal trials. Durham, however, also points to the tension between the political nature of many NGOs and the judicial requirement of impartiality.

Comparative Degrees of Negative Ethnicity

In their engagements, the civil society organizations must be conscious of the level of ethnic intolerance that prevails in the area in which they are situated. They should make use of any available tolerance indicators for example the level of violence that was witnessed in that particular area. This will enable them to determine the type of approach to be used.

The Soul of Forgiveness: Pro-Dialogue and Reconciliation Approaches

Participatory Consensus Building

This entails taking the initiative to design an all inclusive platform where the various conflicting interests may be brought out into the open, followed by a systematic method of reconciling these polarities through negotiations and mediation.

Information and Awareness Based

In this approach, the civil society will mostly be involved with providing information on various aspects that touch on the life of the community. This will encourage a free flow of ideas and thoughts from both the civil society representatives as well as the community members.

Rights Based

This involves creating an enabling environment for forgiveness, reconstruction, rehabilitation, reconciliation through conveying to the citizens their constitutional rights. In addition the community may be sensitized on their right to participate in the peace building process. However, much caution must be exercised so as not to ignite in the aggrieved parties the desire for revenge available in the various mechanism of recourse mainly the criminal justice system.

As Martha Minow states in her book, *Between Vengeance and Forgiveness*, the most prominent positive quality of criminal prosecution is that "it transfers the individuals' desires for revenge to the state or official bodies. The transfer cools vengeance into retribution, slows judgment with procedure, and interrupts, with documents, cross-examination, and the presumption of innocence, the vicious cycle of blame and feud" (Minow, 1998:26). These sentiments may not be totally true in cases where there is a volatile and uneasy calm. This implies that criminal proceedings may not always be the best route towards long-term conflict resolution and reconciliation in fractured societies.

Dimensions of Reconciliation

Self reconciliation

This kind of solidarity with humanity will reveal a deeper meaning and understanding of the human person. This will be best achieved through provision of counselling services. For optimum results, there should be co-ordinated and concerted effort between the civil society and the communities religious leadership. Those who participated directly or vicariously in the post poll violence need to forgive themselves in order to start the reconciliation process.

Between members of an ethnic community

Within a single ethnic community there may be, during times of polarization, quabbles between its members. There is a tendency for the radical ethnics to develop resentment towards those perceived not to share their passion and zeal. For these groups within the same ethnic community to reconcile, there have to be the concerted effort between civil society and the ethnic community's leadership. This will invariably comprise that ethnic community's elders.

Cross-ethnic reconciliation

Given that community comprises of different ethnic groups, during a period of polarization individual members may develop unsolicitous attitudes towards each other. This involves the systematic dismembering of negatively connotated ethnic identities. The process in itself, allows for the reconstruction of ethnic harmony and the subsequent improvement of social relationships.

The Uneasy Case of Contentious Issues

Anticipating the Contested Legitimacy of the Civil Society

The civil society being a private organisation can be attacked on the grounds of its legitimacy. An issue may be brought as to who appoints them as they are not elected. It is also vague, who sets their agenda or interprete their mandate. Further,

questions as to the source of their funding may arise. Being private organisations, the civil societies are not accountable to anyone. They are privately funded and therefore are operating at the whims of their most generous benefactor. In the community setting, it is possible that a propagandist may raise these issues to make the community doubtful of the civil society's intentions.

Tackling the Land Issue

Land is an emotive issue in Kenya. It is indeed evidenced in the Ndung'u Land Report (2005) that there has been irregular and unfair allocation of land since independence. It will be in vain if the issue of land policy that is prevalent in Kenya today is not revisited. The issue of land ownership has led to ethnic clashes witnessed in the yesteryears. The centrality of land as a principal source of livelihood in Kenya means that the control and allocation of land has been a contentious issue since before independence. It is no wonder that 'land issue' in Kenya featured prominently as Agenda IV during the Annan-led negotiations. The independence government had a role to play in the illegal allocation of land. Both the Bomas Draft and the Wako Bill proposed to create a National Land Commission to which was delegated the regulation, control and allocation of land. Subsidiary legislation was also envisaged to further specify policies. Land also impinges on some of the most fundamental rights of a citizen. Since the constitution guarantees the right to life, land may be viewed as a means through which the citizen may earn his livelihood. In connection to this, the constitution must be reformed to recognise the entitlement to rights in land as a fundamental right for every citizen. As such, land as a resource should be closely regulated by the state and not left to the market forces. Along with the land reforms that are long overdue, should be attendant land-reclamation policies that will ease the pressure on the public in terms of land ownership in fertile areas. It will further attenuate the debilitating effects of poverty by improving food security to the populace. Land reclamation will witness a reverse in deforestation and water shortage. It will be an all-encompassing catalyst for national development (Ngugi, 2008). It is my conviction that if we as a nation undertake to change how we use our land, we may change many of the aspects that are unsatisfactory.

The constitution should be reformed so as to review the right to own property, especially land. That right should be reconceptualised as a licence from an autonomous and independently constituted national body that shall be in control of land. This body shall then be regarded as holding the land in trust for the people of Kenya (Syagga, 2006). There should be a limit to the volume of acreage that may be owned by an individual. Of particular interest is the issue of absentee landlords. In response to this sorry state of affairs, idle land should be taxed out of existence. Stringent penalties should be meted on those individuals who will be found to have illegally acquired land. There should be a systematic integration of traditional dispute resolution mechanisms in the statutory regime. This will be much better than protracted litigation. The chances of success are higher as there is direct participation by those affected and a compromise is more easily reached. The statutes relating to land rights in Kenya are a prolix of legislations that are apt to bring about confusion (Lugulu, 2007). To remedy this situation, they must of necessity be

consolidated into one unified document that will ensure clarity and ease conveyance transactions in land (Syagga, *ibid*). An objective assessment of the IDPs, the landless, and the squatter situation ought to be made. A programme for resettlement should be designed with keen attention being paid to methods in which they can have legal rights to land conferred on them. In order to prevent illegal land transactions where innocent buyers are fleeced of their hard-earned money by unscrupulous individuals, (the Mau Forest situation arose from such a transaction where individuals who had originally grabbed land, later disposed of them to unsuspecting buyers) a comprehensive survey of all land in Kenya should be carried out. This should then be disseminated to the general public through publications by the Ministry for Lands and the Ministry for Information.

Potential Roles of the Civil Society in Dialogue, Healing and Reconciliation

Provision of an Alternative Dispute Resolution Mechanism

Rather than relying on the mainstream judicial mechanism for settling disputes, an alternative model must be sought in order to enhance the efficiency and speed with which settlements are arrived at. Civil society organizations, in their capacity as an impartial arbiter in the conflict are capable of taking the avenue of Alternative Dispute Resolution. This ensures that a settlement is reached within the shortest time possible while using the least amount of resources.

Provision of Post-Traumatic Counseling and Therapy

It is in the interest of the country's future security that such follow-up counselling services should be extended to those affected by the post-poll violence. Of grave importance is the provision of these services particularly to the children who were the hardest hit victims. In absence of such a programme there is the risk that these victims of yesteryears will develop into the criminal terrorists of the future. Experimental research has proved that habitual occurrence of certain phenomena, say violence every time there are elections or whenever there are disagreements, may imprint in a person, especially a young, impressionable one, that these are effective and acceptable ways to solve problems (Huesman, in Green and Donnersteins, 1998). This, compounded by the fact that the very perpetrators of the post-poll violence may go unpunished, may lead these young people to have a firm conviction in the justification of violence as a means to an end. To stanch the recurrence of threats to peace, civil society organizations need to come up with a scheme for the provision of psycho-social support. This will cater for the victims of the post-election violence. A follow-up mechanism must of necessity be established to ensure a holistic and long term healing of the afflicted persons psyche. Similarly there should be a provision for the rehabilitation and social reintegration of those people who participated in the violence.

Participation in Rebuilding and Resettlement

A prominent character of the post-election violence was that the victims' houses were destroyed by their attackers. In the spirit of reconciliation and restoration, the civil society groups can participate in constructing semi-permanent structures for

the victims whose houses and settlement structures were destroyed. This will be very beneficial in enabling the victims to start over their lives. Prominently emerging from the post-election violence was the fact that the youth participants, having no property to their names, unleashed wanton destruction with impunity as they had nothing to lose. This sad state of affairs may be corrected by the civil society intervention. A micro-credit scheme may be set up by the civil society organization to advance micro-loans to these young people. By so doing, the youth will be empowered to participate in the economic system of their local community. This will inculcate in them a sense of purpose and responsibility subsequently reducing – considerably – the probability that they will be involved in violence and destruction of property.

Translating various Government Documents in Swahili

It is my opinion that the most part of Kenyan population is left out on some of the most important issues that affect them the most. Specifically is the issue of the members of the public being left out when there are official documents from the government that are, more often than not, delivered in complicated Language that is beyond the rationale of the *mwananchi*. With this in mind, most of the citizens rely only on rumours rather than on first hand information. The strategy that we should adopt henceforth is the simplification and translation of these texts so that they are easy to read and understand. This will better enable the objective of disseminating the required information to the public to be easily achievable. In furtherance to this, the documents including the Constitution of Kenya and the respective draft constitutions, should be simplified and translated to Swahili. (Consider the contribution of the Moi University School of Arts and Social Sciences, Kiswahili Department which translated the Constitution of Kenya into Swahili. Another commendable effort is that by the NORPEC/ PEACENET non-governmental organizations who translated the Report of the Commission of Inquiry into the Post-Election Violence (Waki Report) producing the popular version of the Waki Report). In addition, a simplified children's version of the same should be produced. This is inspired by the fact that children in Kenya were the hardest hit group of the post election victims. As such the CIPEV report as well as the IREC report must of essence have children's versions, which may be read by the younger generation with the effect that virtues of democracy and ethnic harmony shall be inculcated in them. This was successfully done in Sierra Leone, where the truth and reconciliation commission's report had a children's version. In this scenario, the children who suffered amputations had the satisfaction of reading the findings and recommendations of the truth and reconciliation commission. This provides the hope that such atrocities would not occur in the future. In addition, our Kenyan situation involves election related violence. As such, the fact that these are future citizens who will be expected to vote, it acts as a safeguard on the country's future.

Civic education and the attendant factors militating against healing and reconciliation

Characterising Civic Education Models

A good citizen must possess the requisite knowledge and capacity on ruling as well as in relation to being ruled, and the

excellence of a citizen may be defined as consisting in a knowledge of rule over free men from both points of view. The idea of citizenship consisted in being a full member of the citystate by participating fully in its management and life. But this is only possible through a government in the neighbourhood bound by a sense of "civic intimacy" (Otieno; in Kibwana, Wanjala and Akivanga, 2002).

Militating Factors

Constitution of Kenya

Constitutions can only provide the skeletal framework for proper governance. However, without specific provisions for educating the citizens on the substantive law, this proper governance will only remain aspirations. The Constitution of Kenya fails in that it does not recognize the right of information. This right is recognized in international law, instruments of which Kenya is a signatory to. This is in direct contravention of the *Vienna Convention on the Law of Treaties* which provides that a state is bound by an international instrument once it ratifies it (Vienna Convention on Law of Treaties, Article 31).

The Report of the Commission of Inquiry into Post Election Violence

Promotion of Cultural Harmony as an aspect is particularly relevant considering that Kenya witnessed election related violence in Dec 2007 - Jan 2008. This led to the formation of the Waki Commission, which produced the Waki Report (2008) wherein the constitution review was stated as one of the steps that should be taken in order to secure a just and prosperous future. This report, however concise, well researched and articulately compiled, falls flat on its face as regards civic education. The Waki Report fails fundamentally due to the very nature of its complex and legally oriented language. In this regard the Report unwittingly rendered itself in a state of restricted circulation, the reason being that the ordinary citizen is incapable of fully comprehending the contents of such a Report. There was a conspicuous dearth of a translated Swahili version of this Report. This is shameful for a country that recognizes Swahili as its National Language. It is also evidence of the disdainfully elitist attitude that prevails in the government circles where it is presumed everybody is intimately acquainted with the Queen's language. Civic education should be dealt with as a right of the public to information. To this end it should be acknowledged that not all of the citizens can fully understand the complex legal language contained in the constitution drafts. Therefore, there is a definite need to simplify this legal language.

Constitution Review Act, 2008

The constitutional review should mirror the ideals of cultural harmony and celebration. This will be accomplished by giving recognition and positive regard for diversity whether ethnic, colour, race etc. It should also reflect the people's frame of government as well as specific institutions and procedures. As Justice Kubo succinctly put it in his judgment in *Ndyanabo v Attorney General*,

The diversity of Kenya is a reality and cannot be ignored. The majoritarian principle espoused by

the Applicants as the only factor to inform the boundary setting process et cetra cannot be the sole criterion of constituting districts or public bodies. It has to be balanced with other principles, e.g equity (Timothy Njoya Case, 2004).

So important is integrating into the constitution-making process, reconciliation and rebuilding inter-ethnic harmony that, Ghai once asserted in answer to the question: Why do constitutions in Africa fail?

They were required to foster new nationalism, create national unity out of diverse ethnic groups, promote equitable development, inculcate habits of democracy and ethnic tolerance. Traditional sources of legitimacy are inconsistent with modern values of equity. During colonialism, economic development was closely checked and regulated thereby creating severe competition for jobs amidst scarce resources. This hampered ethnic harmony (Ghai; in Adelman and Paliwala, 1993).

The Constitution of Kenya Review Act, 2008, has a provision for the dissemination of civic education to the people of Kenya, who are the electorate. Section 27 states as follows:

- (1) The Committee of Experts shall, in furtherance of the completion of the review process, facilitate and promote civic education in order to stimulate public discussion and awareness.
- (2) The Committee of Experts shall ensure that civic education materials are made available in a form accessible to the various categories of persons with disabilities.

Section 35 makes a further provision for the dissemination of information on the proposed new constitution. This is done so as to leave the citizens with an informed base on which to make deliberations on whether they like the new proposed constitution or not. Section 35 reads thus:

- (1) The Committee of Experts shall, upon publication of the Proposed Constitution referred to in section 34, facilitate civic education on the proposed Constitution for a period of thirty days.
- (2) The Committee of Experts shall involve non-state actors in the delivery of civic education.
- (3) The provincial administration shall cooperate with and provide support to the Committee of Experts and non-state actors providing civic education on the draft constitution.

In addition, a Swahili version of the drafts and civic education materials should be disseminated to members of the public who may not be well conversant with English. This is consistent with the recognition in the constitution of Kenya that Swahili is the national language of Kenya. Other than the

adult citizens, it is of utmost importance to formulate a simplified version of the drafts, which may be read by children. This is a means of inculcating in these young minds a culture of constitutionalism.

The Dearth of Knowledge

International Humanitarian Law

Bearing in mind that the participants in ethnic clashes are largely ignorant of the provisions and the protections offered under the Fourth Geneva Conventions on Humanitarian Law, (which deals primarily with protections for the civilians in times of armed conflicts) grave breaches of humanitarian law are expected. This include the attacking of civilians and combatants no longer participating in active hostilities. In this regard the civil society can have an instrumental role in the provision of knowledge on the internationally recognized tenets of humanitarian law. It has been stated by the commentators on the international engagements in peace-keeping and restoration efforts, that citizens are the best guarantors and custodians of conflict resolution process (Otieno, YEAR).

Constitutional Law

This knowledge will be particularly important in enlightening the people about the concept of nationality and being a citizen. A profound knowledge and understanding of the idea of a social contract existing between the citizen as an individual self and as a corporate self. The people need to be informed of the existence of a collective political persona (Ibid). If this is grasped by the ordinary citizens, then the chances of them succumbing to divisive and ethnocentric rhetoric will be reduced.

RECOMMENDATIONS

Planning

Before undertaking such a programme of civic education, careful planning must first be conducted. The targets must be identified, the approaches need to be stated, the sources of funding must be explored and contingent measures put in place. In addition, the community in which the civil society intends to operate from, must of necessity be studied. This will enhance the interaction between these two entities and also prevent a situation where acts or omissions of the civil society offend the host community.

Funding

As has been enumerated above the contributors to the funding of this civic education programme, will be approached and asked to advance such funds as may be necessary for running this programme. While seeking for funds, the route of international co-operation should not be overlooked. It is possible that our local civil society organizations may receive aid from the Global North (developed countries including United States of America, France, Great Britain, among others) within the cosmopolitan statism (In this theory, all resources are regarded as belonging to the citizens of the world collectively. Individual nations are only seen as holding

resources within their borders in trust for the rest) arrangement. This engenders extra-territorial obligations on the developed nations to transfer resources to the developing and the least developed nations.

Pilot Test

A particular community that will act as the petri dish for testing civic education and involvement of civil societies should be selected. Experiences from this engagement will provide a starting point and act as a guide for future prospects of this kind. The strategy that we should adopt henceforth is the simplification and translation of these texts so that they are easy to read and understand. This will better enable the objective of disseminating the required information to the public to be easily achievable.

Evaluation and Social Impact Assessment

On completion of the pilot test there should be an assessment on the social impacts of this civic education process towards achieving the ends of ethnic reconciliation. There will have to be pre-set parameters against which the performance of the civic education programme will be measured.

Implementation

This follows the satisfaction of the set out objectives of the civic education programme. In the event that the desired level of practicability has been achieved the cultural education programme should then be set rolling.

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