

INFLUENCE OF POLITICAL FACTORS IN THE ENFORCEMENT OF HUMAN RIGHTS CHARTER IN KENYA

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ABSTRACT

The Universal Declaration of Human Rights in 1948 represents a bold attempt by the UN organization to give a concrete and authoritative expression to the definition of human rights contained in the UN human rights Charter. Researchers have found out that as much as Kenya is a signatory to the UN charter on Human rights, human rights Abuses still remain pervasive, this begs the question why this scenario, this study sought therefore to establish the extent to which political factors have influenced the enforcement of human rights charter in Kenya. The independent variable in this study is political factors and dependent variable is UN human rights charter. The study was conducted in Kenya and the specific objective was to assess the overall political culture in Kenya. The study population comprised 420 members of parliament who served during president Moi regime and Kibaki regimes, 800 officers, experts and scholars of humans rights in UN offices in Nairobi, victims of civil and political rights violation and 500 law fenforcers totaling to 1720 out of which a sample of 123 was used. This study used theoretical framework of political idealism and power theory as an approach to respectively explain the centrality of state and non state actors in facilitating the enforcement of human rights. The findings indicated that ethnicity and historical injustices are the political cultures that influence enforcement UN human rights charter in Kenya. The paper further recommends that; the state should ensure all persons in Kenya abide by the rule of law, by making them account for their days in power.

Keywords: Political factors, influence, enforcement, human rights.

INTRODUCTION

The twin issues of political factors and enforcement of UN human rights charter in Kenya has continued to capture the imagination of the analysts of the Kenyan political scene for various reasons. Governance in Kenya has been based on dominant personalities, around whom personality cults have developed, rather than on institutions and values Adar, K. G. (1998). Majority of citizens have felt greater affinity to their ethnic identity, kinship and community ties than to the institution of the state. Political power and enforcement of UN human rights charter is viewed through ethnic and clan prism rather than through the nation of the nation state and thus has led to constant ethnic conflict which has been a challenge in enforcing of UN human rights charter. From 1990s in principle Kenya has embraced the UN human rights charter in her constitution. But doubts still abound. Is the enforcement of UN human rights

charter in Kenya still in process, Maina, W. (1996). Recent experiences in Kenya, the process of constitutional change, promulgation of new constitution and the electoral process indicate that even if there is a new constitution and fresh leadership after every five years still there is constant complains of lack of enforcement of UN human rights charter in Kenya, Baah R, (2000).

RESULTS AND DISCUSSION

The political culture in Kenya

There were several issues linked to the political culture that was practiced in Kenya. These issues included lack of openness among the political class, violence and threats used by politicians to win elections and political opportunism, Amnesty International. (1997). This study revealed that 39.2% of respondents believed that lack of openness influenced enforcement of human rights, 32.52% said violence and threats while 28.45% of respondents said that political opportunism influence human rights enforcement. Further Since independence, Kenya has been subjected to political regimes that have sought to define and implement governance within the context of violence, intimidation, corruption and the general lack of transparency and accountability, Mutua, M. (1993).

This study reveals that political factors influence enforcement of human rights charter. The researcher had to diagnose the indicators of how political factors influence the enforcement of human rights charter. In probing more several key human rights activist who were interviewed on whether enforcement of human rights charter in Kenya was influenced by political factors they identified strong ethnic divisions, polarized politics, political manipulation, socio-economic disparities, deepening levels of poverty and endemic corruption. Therefore the researcher found out that enforcement of UN human rights charter in Kenya was influenced by political factors. The researcher has categorized these factors as socio-historical, ethno-political, socio-economic and legislative. These factors were a major contributor to the violence witnessed in the country after the 2007 elections. This is indicated by regional political parties, tribal political leadership and regional voting blocks. The researcher further observed that enforcement of human rights in Kenya faced drawbacks from perennial land conflicts, tribal conflicts, election violence, refugee problems and internally displaced people and terrorism, Chabal, P. (2002).

Probing the scale to which intransigence / lack of openness in Kenya has influenced the enforcement of human rights charter in Kenya, a total of 65 respondents which is 53% felt that it influences greatly. A total of 20 respondents which is 16.2% cited minimal influence. While a total aggregate of 38 respondents which are 31% said that intransigence factors did not influence.

These findings indicated that intransigence/ lack of openness influenced greatly the enforcement of human rights in Kenya. The researcher therefore established that lack of openness as a political culture perpetuated and subsequently left behind an undesirable legacy on inter-communal interactions in the country, in that, the notion of statehood was imposed on communities that historically lacked inter-communal coherence thus affecting the enforcement of UN human rights charter in Kenya.

By forcing ethnic communities that previously lived independently of each other to live together, the leaders gave no thought to the possibility of the emerging state being ethnically

polarized. Further, through the government policies that favored the investment of resources only in high potential areas that had ample rainfall and fertile lands, the government spawned asymmetrical development in Kenya. Indeed, soon after independence, the government has continued to invest only in areas where they would earn the highest returns. Consequently, inequalities in the development of the various regions of the country were evident. Similarly, the GDP per capita disparity between the various regions of the country was very wide; about 45 per cent of the country's employment was concentrated in fewer than 15 towns, Cobbah, J. (1987).

The resultant disconnection between the various ethnic communities and regions of the country provided the ethno-regionalized basis for political and economic discrimination of some citizens. It is rather unfortunate that this trend found support from a class of post-colonial political elite, who preferred it, both as a bargaining chip to bolster their political influence and as a tool to lock out of government their perceived opponents Kenya: Post-Election Political Violence. *London: Article 19, December (1998)*. Although successive post-colonial governments were expected to dispel the problems that had been evolved by the colonial legacy, this went largely unaddressed. For various reasons, the political class in successive governments opted to entertain and nurture these inequalities. It is therefore not surprising that the underlying regional imbalances and the attendant inter-ethnic inequalities easily informed the persistent struggles over the country's resources, such as land, and access to public services. This socio-historical reality had a negative effect on the implementation of human rights and democratic governance Donnelley, J. (1989).

The violence and threats on the enforcement of UN human rights charter in Kenya

On violence and threats a total aggregate of 70 respondents which is 57% of the respondents held the view that violence and threats greatly influences the enforcement of human rights charter in Kenya, a total of 40 respondents which is 33% said that threats and violence averagely influences the enforcement while 13 respondents which is 11% said that it less influences. The findings show that majority of the respondents 57% rate that violence and threats greatly influences negatively the enforcement of UN human rights. On this basis the 2007 post-elections violence in Kenya was partly a culmination of citizens' dissatisfaction with a system of governance that demonstrated overt weaknesses and inherent inequities. At the time of the outbreak of the violence, two things were overt. First, ethnocentrism transpired throughout the country's political substratum. Secondly, because of vested ethnic interests and presidential power that was personalized" Kenya: Post-Election Political Violence. *London: Article 19, December (1998)*. These two issues have endlessly posed certain challenges to the effective realization of democracy and enforcement of human rights in the country. It is important to note that Kenya, like many other African countries, was, and still is, guilty of deliberately defining citizenship within the narrow prism of ethnic belonging Adar, K. G. (1998).. Consequently, one of the most acute problems the country has been facing is the endless struggle to integrate its different communities into a democratic modern nation, without compromising their respective ethnic identities. Generally, ethnocentrism, 'African socialism and its application to planning in Kenya' has had manifold implications: it has encouraged the politicization and manipulation of ethnic identities to extreme measures; and it has led to the exclusion of some communities from government affairs. In other words, it has more often than not led to the personalization of political power. Furthermore Prior to the enactment of the 2010 Constitution, personalization of political power was made possible by the unilateral amendment of the now repealed Constitution by the then subsisting political class. By 1991, for example, the country's Constitution (now repealed) had been amended

about 32 times in order to afford more comfort and power to the incumbent presidents, their tribe-mates and cronies (Ghai, Y and McAuslan, B. 1970). Amongst the amendments was the insertion of section 2A, which legally made Kenya a one party state until that provision was repealed in 1991. Generally, Kenya's ethno-politics led to the misplaced assumption that it was essential for one's ethnic community to win the Presidency in order to have unrestricted access to state resources, office and services. Hence, governmental authority, particularly the Presidency, was perceived, more or less, as the preserve of the person in office and his tribe mates, and could therefore be abused without any serious repercussions. This explains why every tribe in the country coveted the Presidency, and why losing it was so costly and therefore unacceptable. It is also understandable why, since the re-introduction of multi-party politics in 1991 to date, the country's political parties are mainly regional, ethnically based and poorly institutionalized Maina, (W. 1996). It is rather unfortunate that the ethnic factor in Kenya's politics has often been dismissed, overlooked or considered secondary, although it has been one of the staunchest challenges to the realization of democracy, enforcement human rights and socio-political reconstruction. Rothschild rightly warned against such an attitude by emphasizing that 'as long as observers cavalierly dismiss ethnicity as an irrational relic of the past, they will be unable to recognize its force and attraction in contemporary times'. True to Rothschild's words, the governance crisis in Kenya and the attendant undermining of democracy and enforcement of human rights could not have reached the 2007 magnitude if the underlying ethno-political factors had been resolved beforehand.

Political opportunism and lack of principled leadership in Kenya

Regarding the factor of political opportunism and lack of principled leadership, a total aggregate of 75 respondents which is 60% highly agreed that political opportunism and lack of principled leadership influenced enforcement of human rights charter in Kenya, 30 respondents which is 23% agree while 17 respondents which is 14% less agree. From the above findings 75 respondents who are 60% felt that political opportunism and lack of principled leadership do greatly influence the enforcement of UN human rights charter in Kenya. Therefore the researcher feels that out of the response above, political opportunism and lack of principled leadership is another issue that influences the enforcement of UN human rights charter in Kenya. Therefore it is noted that political opportunism and lack of principled leadership is the order of the day in Kenya, citing the frequent party hoping, parliamentary allegation of bribery to pass crucial bills that are against enforcement of human rights and the politicians not being driven by service to the country but their own selfish interests Mwakungu, N. (2008).

Electoral process and civil service in the enforcement of UN human rights charter in Kenya

Regarding the scale to which electoral process in Kenya has influenced the enforcement of human rights charter a total of 123 respondents filled the questionnaire out of which 69 respondents who are 55% of the respondents said that the electoral process posed a great influence, while 49 respondents who are 40% said that it posed minimal influence and 6 respondents who are 5% said that it did not pose any influence. These findings affirmed that the electoral process though regularly conducted in Kenya the results always cause violence because the processes of these elections are not free and fair. The electoral process in Kenya and its outcome are concluded that it has been open to manipulation and thus in several occasions it has sparked violence thus undermining the enforcement of human rights charter. Discussing on the essentials of free and fair elections as a prerequisite for democratic

governance and enforcement of UN human rights charter cannot be over-emphasized. Although it would be too simplistic to identify democratic governance with the holding of elections, it will not at all be simplistic to say that entrenchment of appropriate long term electoral reforms is a recipe for democratic governance Maina, W.(1996) .Indeed, Kenya has been conducting elections after every five years but the extent to which these have been credible is questionable and the response above confirms rife malpractice of which characterize pre- determined elections outcomes. Therefore the electoral process in Kenya may not pass the democratic test hence the research felt that the faulty electoral process spills over to affect the realization of achieving effective enforcement of UN human rights charter in Kenya.

CONCLUSION AND RECOMMENDATION

Research has found that Kenya as a signatory to the UN human rights charter is not enough for enforcement of human rights. The research has informed out that other factors influence the enforcement of UN human rights in Kenya. It is generally concluded that the quest to enforce UN human rights charter in Kenya is influenced by political factors and therefore we ignore the political culture gap, we will be unable to close the enforcement gap. Given that researchers have covered in the pursuit of individual, group, tribal and regional interest more than national interest. Therefore Pursuing enforcement of UN human rights in Kenya is determined by the seriousness and commitment of the Kenyan government to establish affirm political culture that is not based on ethnicity, violence and economic disparity. The specific conclusions are as presented below: The influence of political factors especially, ethnicity, violence and threats, polarized politics, political manipulation and economic disparities constitutes motivating factors that influence negatively the enforcement of UN Human rights charter in Kenya. Furthermore the negative political factors and intervening personal regime interests and demands to retain power have made the charter not to be enforced to the international standards. This has attracted the increasing presence of state and non state coercive agents in Kenya to champion for the enforcement of the UN human rights charter. The state has in the process provided for UN human rights charter in the laws of Kenya. Nonetheless, the problems of non application of these principles by Kenya have let to frequent wrangles and violations of Human rights. Whereas the UN devised ways that made the charter to be enforced effectively with fairness, intervening domestic political factors and politicians interests has affected the enforcement since independence in Kenya. The influence is amplified and complemented by the state that accuses other UN human rights actors of using the charter on human rights to continue with the Neo-colonialism policies Arat, Z.F. (1991). The findings established that regimes and incumbent leaders in power play a major role in the enforcing of human rights charter in their states. The findings also show that Kenya is obliged to participate fully in the enforcement of the UN Human rights charter regardless of individual leader's feelings because Kenya is a signatory to the Charter. Political culture makes enforcement of UN human rights charter vulnerable to the whims of political leaders. Thus the political leaders must be made to abide by the rule of law through making them to account for their days in power to serve as an example to future leaders and greatly persuade them not to abuse power while in office since it would become clear that there would always be judgment day.

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