

TRANSFORMED GOVERNANCE SYSTEMS

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ABSTRACT

Purpose of the study: Governments in Africa have a wealth of indigenous governance systems practised in rural communities in Kenya. The indigenous systems that are functioning in Africa are hardly recognized by the existing government. Thus, the study objective is to analyse the similarities and contrasting areas in the two-governance system for transformed governance.

Research methodology: The study relied upon the existing literature to make inferences concerning the current study.

Findings: The formal institutions of contemporary governance already accommodate indigenous governance in various forms albeit implicitly. The study anticipates that contemporary indigenous policies are, ultimately, only as strong as the framework of governance that supports them.

Conclusion: For good governance to be established on the continent, the content and nature of the laws in force have to be re-worked to reflect the norms and values of the African people. Fundamental to this shift is an understanding that indigenous governance exists and is practised by Meru Community (*Njuri -Ncheke*).

Recommendations: The article recommended that there is need to be a conceptual shift in how we understand the framework of Contemporary governance (County Government) of Meru and the indigenous governance of *Njuri Ncheke*.

Keywords: *Transformed governance, Contemporary governance, indigenous governance, Governments in Africa, Njuri Ncheke, Meru Community Kenya*

INTRODUCTION

In the year 2010, the Kenyans voted for a constitution with an organisational structure as an express recognition that decision-making about the government services, to communities required the involvement of indigenous peoples at the highest levels. The previous constitution abolished the system of representation and avoids any mention of indigenous governance. The current study challenges the policymakers to advocate a focus on practical measures to alleviate indigenous disadvantages in Meru. The article argues that to achieve practical results, government policies must consider how best to facilitate the inevitable exercise of indigenous governance at the national and county levels. The article draws attention to the continuing importance of indigenous governance in Kenya Constitutional framework. The article emphasises a comparative analysis between indigenous governance and contemporary governance in Meru County and their practical implementation. The distinction is captured broadly, in the difference between government and governance.

The article does not focus on the need for formal recognition of indigenous government within the constitution of Kenya but on county legislation, although this may be an important part of any strategy to ensure indigenous governance is properly accounted for in government law policy. Instead, the article makes a case for lawmakers to recognise that indigenous governance already exists in some counties without legal recognition. The study proposes that the *Njuri Ncheke* must be accounted for in developing laws to protect and maintain indigenous social, cultural, and political rights. It is concerned with how the relationships between groups and institutions operate within the laws of the nation, and not only how the county implements its legislation. The article draws on two theories by the Functionalist Theory and the Evolution Theory of Governance as advanced by Ferdinand (1936) and Tonnies (1951) respectively.

The Evolution Theory argues that traditional societies are seen as relationship-based and functionalists' theory as a market relationship-based, which is a contrasting difference and one practical argument to substantiate the claim that indigenous governance needs to be taken seriously as a part of the constitutional framework of the County of Meru. The evolution theory as a theoretical approach to the place of law in society focuses on the practical reality that society is constituted of co-existing communities with allegiance to laws other than those of the central government. The theorist argues that for the formal legal system to reflect the normative relation that develops in the interaction of the different laws, customs and systems of governing of these communities. Second, the article argues that the political legitimacy of

the society as a whole is enhanced when the political integrity of different social groups within the society is recognized.

The article draws on a strand of liberal and communitarian philosophy, which makes the case for formally recognising the community, as well as individual interests in the political framework of the nation. The study accepts that, in practical terms, supporting the governance mechanisms of different groups in society is, in itself, a measure to improve the social and economic conditions of those groups. Functionalists' theory emphasises of quality of governance structure as one of the key indicators for successful development and economic well-being within indigenous communities. Kimenyi (2002), provides a similar definition for governance, focusing on control over the making of political rules; governance is the stewardship of formal and informal political rules of the game. The points that article underlines how should the state facilitate the autonomy and effectiveness of indigenous governance in the relationship between indigenous communities and county government.

STATEMENT OF THE PROBLEM

Africa as a continent is in dire need of a political system that will affect the life of the people economically and socially. Traditional legal knowledge (customary laws and traditional institutions) in the mid of 20th century and before has been considered by most African states as archaic, uncivilised and an obstacle to development. However, recently some African states and scholars seem to have recognised the drawbacks of discriminating policies toward customary laws and traditional institutions. A study carried out about the comparison of indigenous governance with contemporary governance (Diamond, 2007) argues that indigenous governance could be used as an alternative system to contemporary governance in Ethiopia. The researcher's intention is to show the gaps in the *Njuri Ncheke* system and the contemporary governance system with a view to establishing key values and principles that can be integrated for transformed governance.

What is social transformation?

The concept of social transformation is being increasingly used as a general framework for describing the goals and forms of the social organization of society. One approach is a central focus is on the increased social differentiation of society introducing new specialization and organizational structures as the knowledge of solving problems increases. For example, the social sciences have moved far beyond the general practitioner to ever more specialized competencies for dealing with the problems and good functioning of the human organic system. This perspective in the tradition of Durkheim and the sociologist Talcott Parsons can best be

described as the functionalist's tradition of social transformation (Corothers, 2006). A quite different tradition of social transformation thought is the focus on the capacity of social organizations to foster human creativity, aspirations, the realization of rights, and social justice. This makes service to the human person the focus on the change in social institutions. This might be described as the critical traditions of social transformation thought following the social justice perspective of the churches or the theoretical criticism by Polanyi and other of the neo-liberal policies (Aristotle, 2004).

This focus on the continual reorganization of society to better serve the person may have been less important in the Greco-Roman era when the emphasis of much social philosophy was on the service of the person to the community. However, in the development of European society, there was progressively more emphasis on forming social institutions to respond to the dignity of the person. Examples of this are in the development of parliamentary forms of governance (Jenkins, 1999) judicial reforms such as the jury system to decide criminality more respectful of the persons involved. The development of the concept of governance to serve human rights in Locke, emphasis on representative government and balancing of powers of government to limit the powers of governing bodies have been important in this critical tradition of social transformation.

The thinking which led up to the French Revolution emphasized the natural creativity of the person and the nobility of the working classes. The defence of the legitimacy of the great social movements of labour organization and governance by the labouring class were further elements of social transformation thought (Chambua, 2002). The focus of the critical traditions of social transformation is the concentration of political, economic, cultural and other forms of life opportunities in a relatively small elite and the perennial deprivation of the great majority of the people of a nation. The transformation is to create a social, political and cultural structure that grants equality of opportunity to all (Amienyi, 2005).

The Challenge of the devolved government for Social Transformation

The critical tradition of social transformation is particularly important in the African context because much of the social structure of colonial occupation persists in the contemporary post-colonial African Political – economic system. Europe occupied Africa as they had occupied other parts of the world, denying the rights and human dignity of the native African people. The conquerors of Latin America tried to justify their treatment of the native civilization by denying that they were human beings. This became a major philosophical and theological issue at the time (Kimenyi, 2002). The colonial policy of indirect rule tended to select and reward

African heads of local government who were willing to cooperate in the control and exploitation of the native African people. African languages, culture and forms of the community were simply pushed into the background (Bates,1983). There was little development of local and representative government enabling participation in the government of the colonial government right up to the time of independence. When the colonial governments withdrew, many of the independent governments continued to use the colonial extractive system controlling rural areas through districts, commissioners or others with personal loyalties to presidential figures. The responses to the request of rural people for education (Davidson,1998).

The Critical Approach to Transformation in Contemporary Societies

The social transformation of the formal European colonies began in Latin America in the 1820s and the British Empire with movements in the early 1900s. In Africa, the planning of independent governance for the development of a modern government, culture and the flowering of African art needs to be grown. The planning of formal dimensions of social transformation in Africa began especially after World War II, and then leaders such as Nkrumah led the transformation in Africa- inspired governance in areas such as Ghana in the 1950s (Aseka, 2005).

Decentralized Transformation

The transformative leaders emphasised the rejection of the European models of socio-political and cultural development introduced in the colonial and early independence period and the gradual formulation of the indigenous model of development. This indigenization process has happened in virtually all former colonies. The analysis of social transformation in Africa must include a focus on the process of development from within and from below rejecting the modernization model of development which looked on Africa as a development vacuum and emphasized the introduction of the European / American Model of Extension. The early independence governments began to introduce schools; health centres and agricultural improvements, but then had to withdraw from much of this in the structural adjustment period in the 1980s (Wiredu, 1995) However, in many parts of Africa the rural and lower status urban communities began to advance their improvements relying on traditional forms of leadership and organization and blending in new technology with their methods of traditional problem solving (Davidson, 1998). The transformative leaders in post-colonial societies are the development of the capacity of the lower-status people to critically challenge the exploitation

and dependence on the centralized, urban-based governing classes and develop a culture of confidence in their leadership and collective initiative.

This represents the educational dimension of social transformation. Among the many models of this popular critical education, (Bates,1983) stands out as a method of this education for governance from below. Important is the capacity of lower-status groups to develop their forms of education for critical analysis of politics. The transformative leaders in post-colonial societies are changed from the measurement of development from Gross National Product which favours the wealthy elites to measurement in terms of the general standard of living throughout the society, especially the standards of lower-status groups. This emphasis on the equitable welfare of all sectors of society, a distributive justice view of development, represents the national development model dimension of social transformation.

Another dimension adopted by social transformers is the degree to which the culture and the power structure encourage the formation of civil society organizations dedicated to defining in concrete contexts the human rights of groups and systematically works to protect and promote the rights of this and other groups in the society. Civil society formation and action could be regarded as the ethical, moral, value dimensions of social transformation (Bratton, 1994). One of the major aspects of a civil society group is to define the cultural values of the progress and the cultural and the political-economic contribution of the group to the progress of the nation (Barkan, 1994). Colonial and post-colonial governments, dedicated to the suppression of public criticism of their repressive policies do all they can to systematically prevent the voice of civil society groups.

Another proposed dimension of social transformation action is the movement to devolve governance away from the centralized big man governance to more local governance which encourages local community organizations to monitor and push for services (Bratton, 1994), Devolution in so far as it involves all citizen's ineffective government decision making is a major political dimension of social transformation. Big man governance controls decision making down to the local community system through a patronage system that rewards persons for their loyalty to the personal wishes of the central government chief—and the personal interests of ethnic friendships linkages of the clique around the big man. The next aspect of social transformation is the readiness of the public to become part of movements that seek to bring in basic value changes in society. Movements attempt to involve all the people in the nation or at the international levels to bring about specific changes in attitudes toward minority groups such as women and vindicate the groups involved. Social movements represent the

dimension of the extensiveness of social transformation. The seventh dimension of social transformation is the adoption of public governmental policies which favour universal good education.

Social Transformation facing an Entrenched in Devolved Power Structure

The favoured African people in the colonial period were those who were able to get an education in the government or missions schools and get jobs in the colonial governments. When independence came, those holding positions in the colonial government moved to the top of the national governments with privileged access to large landholdings and investments in the expanding economies of independence (Abbink, 2000). These people became the new wealthy elites of Africa, favouring their financial investments through their influence on government decision making. Much of the concentration of power is favoured by a system of personalized controls of political decision making forming the big man rule instead of the rule of a just legal system (Diamond, 2010). In Kenya, for example, in the period after independence Kenyatta pushed through the parliament a series of amendments of the constitution which gave the executive enormous personal decision-making power. One of the most negative aspects of this socio-political system is the formation of an elite urban-based bureaucratic class that lives by obtaining positions in the governing bureaucracy which will guarantee an income and safe upward mobility for a lifetime as long as one does not question the ruling elite. This system results in the virtual abandonment of the rural lower-status people to inferior education.

Where can Social Transformation begin in the African context?

Although the post-colonial power structure is resilient to the efforts, to bring about a just social order need sacrifice. Africa as a whole and individual countries have witnessed several major époques of social transformation since the colonial period. We can learn how to bring about social transformation by examining the various efforts over the independence period. The First outstanding political thinkers such as Nkrumah and Nyerere who participated in movements that were formulating transformative visions but who themselves took initiatives to form a new socio-political organization with very specific social-political changes. The African independence movements were also motivated and supported by major international changes such as independence of other colonial dependencies, the formation of the United Nations and other socio-political currents in the world (Adesida, 2001)

The Social Transformation Vision of Current Political Leaders in Kenya

The colonial powers left many challenges for social transformation in Africa, the colonial favouring of the absolute power of leadership rather than participatory governance, promoting

rivalry among ethnic groups as a divide and conquer tactic, the emphasis on individualistic upward mobility rather than a commitment to community, favouring racial and nationalistic identities favouring the European models of development over indigenous Africa development capacities. Each of the founders of the African nations brought an important foundational vision of what social transformation means in the African context. Among the many dimensions of the transformational perspectives, the emphasis of Nkrumah on pan Africanism led to the importance of nations working together for independence and cooperative development (Diamond, 2007).

Nyerere emphasis on the peaceful cooperation of ethnic groups bringing Zanzibar into the union –was a model of how to prevent religious and national rivalry (Fadiman, 1973). The plan of Ujamaa community unity and the vision of the Arusha declaration emphasized cooperative advancement rather than individual striving for wealth. Nyerere and other independence leaders stressed selfless services to the national government to counter the culture of individualistic profiteering from government jobs and political favouritism, but this was a transformational ideal that unfortunately only a few African imitated in the year after independence (Jenkins, 1999).

The Rule of Law based on Constitutional Rights

Nearly all of the African nations emerged from a colonial past where the basis of rule was some form of military conquest and the rule was lodged largely in the personal decisions of a governor. The guiding norm of colonial law was the advantage of the mother country, not the rights and welfare of the native people. Virtually all of the personalities who led the independence movements aimed to establish a nation with a constitution promoting a legal governmental system based on human rights usually listed at the beginning of the constitution. Nkrumah also had their convictions about what constituted a good African society and they were implemented. In practice, as African nations formed, the personal plan and preference of the presidential figure often became law (Jenkins, 1999). Constitutions might be referred to, but in Kenya for example Kenyatta casually modified the constitution to fit his wishes. African countries were governed according to organizational plans but the decisions as to who would get jobs, contracts and evaluation were determined largely by friendship and patronage reward for personal loyalty to political bosses.

Developing the Organizational Capacity of the Poor and Marginalized in the County

The power of the poor to transform is in their numbers, but when the poor are organized with good leadership and united to speak with one voice (Wiredu, 1995). From 1850 to 1950 the

poor of Europe, and the USA and other parts of the world achieved the realization of the rights of the working class largely through their organization in the labour unions and the alliance of the labour unions with dissident elites with skills of organization, communication and nation-building visions.

The strengthening of the Civil Society

The strength of the civil society can be measured by the level of the local organization of different interest groups, especially groups of less powerful people personally because of physical, educational and cultural disability and the linkage of these interest groups at the base level, in local and regional associations and finally, in national associations(Wiredu, 1995) The primary objective of civil society groups is to gain the loyalty of members by benefitting their members in terms of income, improve educational, health housing and other response to the demands of the members. Civil society organization and society is most effective in broad democratization, empowering process when it wins legal and administrative protection of especially vulnerable groups such as rural women, the disabled, groups most vulnerable to communicate disease person or families with no access to minimal sustenance or education, those caught in pockets of virtual starvation or disease.

The importance of these organizations is to build general awareness of the need to control autocratic rule which builds on the drive for personal and family wealth and power with a greater sense of human rights applicable to all, the value of support for the rule of law, greater acceptance by international legal and rights organizations, growth of professionalism rooted in profession ethics (Clapham, 1996). It is extremely important that the particular civil society group have very clear goals of improving the life situation of the members and that the organization has a clear set of persistent actions and strategies to meet these goals. These goals can especially improve the well-being of the members and how these advantages can be achieved. It is important that members have some direct control over individuals, such as agricultural technical advisors, and not depend simply on the government.

CONCLUSION

The study sought to debunk the claims of a lack of governance in post-African societies and to show that the converse the collaboration is the case is possible. Governance existed in these societies, albeit, in a different form to western-conceived notions of governance. An attempt has been made to do this with the aid of references to the nature and structure of traditional African communities' societies. The type of governance that existed and how such modes of governance were ultimately controlled by the people and the gods go a long way to show the

ontological connection between the societies and the laws that bound them. African states are to a large extent currently devoid of such connection between the people and the laws that bind them.

In many instances, the laws in force within a state are viewed as alien and foreign laws that the people have no connection with. This has contributed to the dismal state of affairs within African countries. For good governance to be established on the continent, the content and nature of the laws in force have to be re-worked to reflect the norms and values of the African people. This is an essential part of the process of finding solutions to Africa's problems. It is advocated in this study that for Africa to enjoy the fruits of good governance and development, the laws in force on the continent, whilst being contemporary and international, must also still reflect the very essence of African societies, and the values and norms of African people.

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