



Kenya: Constitution and Culture - What It Means to Kenya

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OPINION

By Mshai Mwangola

"As part of the second liberation...there has been an increasing recognition and appreciation of African culture, but Kenya nonetheless still requires radical change in people's brainwashed minds and perceptions as to the true meaning of culture (mission)

Does Kenya have a national culture? What is its relevance to the Kenyan constitution?

On Saturday September 20, I moderated a panel discussion at this year's Storymoja Festival. Our discussion was focused on questioning the wisdom of entrenching culture as has been done in the 2010 constitution. It became increasingly evident to me, as the discussion proceeded, that much of the unease with the current constitutional position on culture stems from differing understandings of what constitutes culture. book

The CKRC pointed out in 2003 that constitutions all over the world fall into three categories when it comes to their approaches to culture: those that consider culture as a retrogressive phenomenon, those that affirm culture as an important aspect of national life, and those that understand culture as being inextricably linked to science and technology. The 1963 Kenyan constitution falls into the first category. A creation of the colonial era, as the CKRC noted, it was under-girded by a deep-seated attitude that African cultures by their very nature are backward, immoral and repugnant to justice unless proven otherwise. The constitution's perception is that African cultures significantly contribute to attitudes of polarisation and inter-tribal (ethnic) conflicts instead of playing the role of unifying, edifying and addressing petty antagonisms. The constitution therefore takes an approach that seeks to subvert and curtail the African cultures, and to that extent even their positive value may after all be questionable.

Hence, in the half-century following independence, it became all too easy to blame most of Kenya's biggest challenges on culture, more precisely the 'backward traditions of African culture'. This fossilised remnant from the colonial era remained obdurately chained to the past, seemingly impervious to any possibility of evolution and expansion beyond the parameters frozen in time by anthropological reports. The destructive consequences of what one might call tribalism such as political clashes and nepotism in government institutions, human rights abuses such as female genital mutilation, even scourges such as corruption and larceny were all blamed on

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(African) culture - even as Western culture was held up as the ideal to aspire to. No wonder then, that some of the most adamant opposition to the entrenchment of culture in the constitution comes from those who are also the most ardent at fighting these ills.

The limited understanding of culture bequeathed us by the colonial state permeated far beyond its use of customary law to govern 'natives' who were thus inextricably tied to tribes. It created a mind-set that froze culture in the race and, or, ethnicity moulds cast in the colonial past, and created a tug of war between the nation and the diversity of communities of belonging whenever it came to questions of identity. Colonialism privileged some identities - racial, religious and social. This elite defined the constitutional norm. The 'others' were marginalised on the grounds of their identity and culture. Hence the nagging questions that bother Kenyans persist into the second half-century of independence: Am I Kenyan before all else? What does it truly mean to say Kenya Kwanza (Kenya First)?

The delegates at the Bomas constitutional conference embraced the making of a new national covenant as an opportunity to settle such questions. They abandoned the first mind-set discussed above, choosing in its place the most progressive of the three approaches - to affirm culture, defined as the cumulative civilisation of the Kenyan peoples, as the very foundation of the nation. So important was this epistemological shift that they added a chapter on culture to the Bomas Draft to clearly articulate it, with a framework providing for both a national culture and a diversity of cultures within the nation. This enlightened approach was retained by the Committee of Experts in its first two drafts, but was subverted by the Parliamentary Select Committee on the review of the constitution, which totally ignored the views of the people of Kenya at Bomas, adopting in its report the view that "culture need not be entrenched in the constitution", and recommending the deletion of the chapter. The CoE gave in and adopted a compromise position that retained culture in the constitution but watered it down considerably, abridging the chapter into a single article, even while conceding in its report that the provisions on culture were not contentious. The CoE made concessions on two grounds. To buy political goodwill, it left untouched articles that touched on the rights of communities, particularly those that had to do with historically marginalised communities. Then, it gestured towards the third category of constitutions, making provision for a constitutional, legal and regulatory framework that would facilitate the promotion of the arts and sciences. This was largely to pacify the economic elite, specifically focusing their elaboration of the provisions on culture on the concerns of the creative industries. In essence, what this amounted to was a strange hybrid that acknowledged the centrality of culture to the idea, spirit and entity of nationhood (articulated in the second mind-set), while simultaneously mutilating much of the articulation that gave it life beyond sphere of the economy, bringing us to the uneasy state of affairs that exists today.

That said, the 2010 constitution has still made definite steps in at least acknowledging the critical software essential if Kenya is to truly fulfil its promise as a nation. Article 11, in what might be considered the philosophical heart of the constitution, articulates culture as "the foundation of the nation". In my mind, it sits comfortably in the foundational chapters following the preamble that speak to the very essence of who we are as Kenyans and what Kenya is as a nation.

So, what is a national culture? It is the cumulative civilisation of who we are as one people (not a medley of peoples), one nation. It is that intangible essence that we recognise when we say "We are One". It is that essential DNA that Frantz Fanon refers to in the ground-breaking chapter On National Culture in *The Wretched of the Earth* that makes a nation out of the diversity of communities, and peoples governed by a single state. In Fanon's words, a national culture is "the whole body of efforts made by a people in the sphere of thought to describe, justify, and praise the action through which that people has created itself and keeps itself in existence". A national culture does not just happen by chance, it is the intellectual product of a collective endeavour that a people embrace as their vision of what they are at their very best. To paraphrase him, our Kenyan culture "take(s) its place at the very heart of the struggle for freedom that Kenya is carrying". It is not the preserve of any one body, elite or otherwise, but the whole of our efforts together - carrying within the contradictions, aspirations, and essence reflective of ourselves - to exist as an identifiable entity within the world. Our national culture is what makes us Kenyan. What price do we pay for not making this reality tangible?

The author sits on the Governing Council of the Kenya Culture Centre, and is the research, projects and communications officer at the African Peacebuilding Network Hub.

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