

KABARAK LAW REVIEW

Volume 3 (2024)

CALL FOR PAPERS

REFLECTING ON
60 *Years*

OF THE KENYAN REPUBLIC





Introduction

12 December marks a significant day in Kenyan history. With the first amendment of the Independence Constitution in October 1964, Kenya became a republic on 12 December 1964.¹ This year, 2024, Kenya celebrates sixty (60) years of its republic. The third volume of *Kabarak Law Review*, to be published on 12 December 2024, is dedicated to commemorating these 60 (sixty) years of the Kenyan republic. In spite of the sixty (60) years, can we truly say we have enjoyed six decades of republicanism. Has Kenya upheld the true tenets of being a republic?

Kabarak Law Review therefore invites **original, insightful contributions, especially inter-disciplinary studies, reflecting on 60 years of the Kenyan republic**. This call for papers invokes questions such as:

- What does sixty (60) years of being a republic mean?
- Has Kenya achieved the goals of republican government?
- Have the Kenyan people enjoyed their republic?
- Is Kenya that 'public thing'?
- What do we, as Kenyan youth, need to think and do to preserve and advance the Kenyan republic for the next sixty (60) years?

¹ Githu Muigai, *Power, politics and law: Dynamics of constitutional change in Kenya 1887-2022*, Kabarak University Press, 2022, 192.



The idea of a 'republic'

The idea of 'a republic' has been conceptualised throughout history by various societies. A republican entity is one where the people play a central role in governance. It is from the people that the authority which the leaders exercise emanates from, an authority which ought to be exercised on their behalf. Government is meant to serve their welfare.²

Haiti was the first Black republic attaining independence in 1804 after the slaves, who formed the majority population, orchestrated the only successful slave rebellion in history.³ The Haitian populace affirmed the ideas of political rights, individual and collective liberty and class equality.⁴ The Haitian Declaration of Independence and the conception of the black nation had a negative reception among western states.⁵ The Revolution had shaken the colonists' and slavers' complacency on their unquestioned racial superiority, hence deeply affecting white psychology.⁶ On attainment of the republican status, Haiti became the target for isolation campaigns and embargoes to deter revolt and mitigate the radical consequences of the Revolution.⁷ The Haitian state was rendered ineffective leading to a limited civic participation and capacity to serve the people.⁸ Concentration of power in the hands of the Haitian military and divisions based on race and class difference negatively impacted Haiti's growth. Over the centuries, military control, remarkable foreign influence and interference and dictatorship were significant features of the ailing Haiti Republic.⁹

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REPUBLIC

- 2 Morris Kiwinda Mbondenyi and John Osogo Ambani, *The new Constitution of Kenya: Principles, government and human rights*, LawAfrica, 2012, 17.
- 3 Adam Getachew, 'Universalism after the post-colonial turn: Interpreting the Haitian Revolution' 44(6) *Political Theory* (2016) 822; Cyril Lionel Robert James, *The black Jacobins: Toussaint L'Ouverture and the San Domingo Revolution*, Random House, New York, 1963, 370.
- 4 Franklin Knight, 'The Haitian revolution' 105(1) *American Historical Review* (2000) 106; Robin Blackburn, 'Haiti, slavery and the age of democratic revolution' 63(4) *William and Mary Quarterly* (2006) 650.
- 5 John Baur, 'International repercussions of the Haitian Revolution' 26(4) *The Americas* (1970) 411; Blackburn, 'Haiti, slavery and the age of democratic revolution' 658-660.
- 6 Knight, 'The Haitian Revolution' 114.
- 7 James, *The black Jacobins*, 70.
- 8 Blackburn, 'Haiti, slavery and the age of democratic revolution' 671.
- 9 James, *The black Jacobins*, 70.





George Ayittey depicts how pre-colonial Africa was characterised with 'participatory forms of democracy, rule of customary law, and accountability'.¹⁰ These pre-colonial governments practiced free market trade even for foreign merchants, which even current global systems cannot boast of.¹¹ Largely, the leaders were not despots, and in the event of one abnegating responsibilities or constitutional duties, they would be removed.¹² Contrary to the western fallacy that despotism is acceptable in African societies, he highlights how despotism was tackled by African societies by appointing leaders and removing those deemed unfit through consultative bodies like the council of elders.¹³



Mahmood Mamdani opines that the first generation of post-colonial Africans inherited an entrenched colonial legacy.¹⁴ Mamdani demonstrates that colonial perceptions, institutions and practices were deeply ingrained in the continent's blueprint and remained largely undisturbed after independence. The only difference was the colonialists' alleged physical absence.¹⁵ He highlights the continuities of colonialism in anti-colonial nationalism and the roles ethnicity and race played in African states.¹⁶ Mamdani alludes that in the re-imagined African framework, adoption of alternative political practices and forms of citizenship is necessary to enhance political inclusivity.¹⁷ Against a history of settler colonialism in Africa,¹⁸ African republics have struggled with indigeneity and its definition, decolonisation and the place of colonially crafted customary law that negates African values.¹⁹

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- 10 George Ayittey, *Africa unchained: The blueprint for Africa's future*, Palgrave Macmillan, 21.
 11 Ayittey, *Africa unchained*, 21.
 12 Ayittey, *Africa unchained*, 21.
 13 George Ayittey, *Defeating dictators: Fighting tyranny in Africa and around the world*, Palgrave Macmillan, 2011, 43.
 14 Mahmood Mamdani, *Citizen and subject: Contemporary Africa and the legacy of late colonialism*, Fountain Publishers, 1996, 95.
 15 James Biedzynski, 'Reviewed work: *Citizen and subject: Contemporary Africa and the legacy of late colonialism* by Mahmood Mamdani' 13 (1) *Journal of Third World Studies* (1996) 284.
 16 Mamdani, *Define and rule: Native as political identity*, Harvard University Press, 2012, 85; Mamdani, 'Beyond settler and native as political identities' 43(4) *Comparative Studies in Society and History* (2001) 654.
 17 Mamdani, *Define and rule*, 82.
 18 Mahmood Mamdani, 'Settler colonialism: Then and now' 41 (3) *Critical Inquiry* (2015) 596.
 19 Mamdani, 'Beyond settler and native as political identities' 662.



In contrast, modern African governments are characterised by ‘vampire parasitic elite minority groups’ as products of borrowed institutions that are incomprehensible to them.²⁰ Ayittey has conceptualised banana republics and coconut republics in the African context, the former being those that sometimes work with sporadic availability of amenities such as electricity and water and characterised with petty corruption.²¹ The latter is characterised as despotic governance that is ruthlessly inefficient, lethal, which eventually implodes.²² This form of governance has mutated overtime to be characterised by ‘no rule of law, no accountability, no democracy of any form, and even no sanity’, thus qualifying as a hardened coconut republic.²³

There has been a proliferation of dictatorial republics in Africa especially after 1965.²⁴ A majority of African states after attaining independence pronounced themselves as republics.²⁵ Liberia was created in 26 July 1847 by freed slaves and was supposedly untouched by colonisers. However, it was a ‘decaying republic’ and a ‘fiefdom’ of the American Firestone Company that dealt with rubber production.²⁶ In fact, Ayittey classifies Liberia as a ‘coconut republic’ showing how President Charles Taylor of Liberia established an anti-terrorist unit to terrorise the people, had wheelbarrows as ambulances and allowed people to purchase doctoral degrees.²⁷

North-African states such Morocco, Tunisia, Algeria Libya and Egypt overthrew the Ottoman established monarchies.²⁸ Egypt under the leadership of Gamal Abdel Nasser ousted King Farouk ending the 140-year-old Turkish dynasty.²⁹ Although the rebel group that conducted the coup proclaimed a ‘republic’ and dismantling of the monarchy, they banned or suppressed opposition groups paving the way for the foundation a military dictatorship.³⁰ This is emblematic of the post-colonial African phenomenon where the will of the people seems lacking in public affairs, hence a situation where the word ‘republic’ is used although its true meaning not actualised.

20 Ayittey, *Africa unchained*, 21-22.

21 Ayittey, *Defeating dictators*, 33.

22 Ayittey, *Defeating dictators*, 33-34.

23 Ayittey, *Africa unchained*, 21.

24 Valentin-Yves Mudimbe, *The invention of Africa: Gnosis, philosophy, and the order of knowledge*, Indiana University Press, 1988, 105.

25 Martin Meredith, *The state of Africa: A history of the continent since independence* Simon & Schuster, 2005, where he analyses this struggle for independence and the political elite that came after in various African countries.

26 Meredith, *The state of Africa*, 23.

27 Ayittey, *Africa unchained*, 436-437.

28 Meredith, *The state of Africa*, 56-60.

29 Meredith, *The state of Africa*, 43.

30 Meredith, *The state of Africa*, 44.





The quest for the Kenyan republic

Upon the establishment of the Kenyan republic on 12 December 1964,³¹ Jomo Kenyatta, then Prime Minister, assumed the presidency.³² This transition ushered in a significant shift in the political landscape. With the dissolution of KADU, the official opposition party,³³ Kenya transformed into a de facto one-party state,³⁴ fundamentally altering the dynamics of governance. This shift paved way for a system that prioritised personal rule over pluralistic democracy.³⁵



Under Kenyatta's leadership, the political landscape underwent a series of centralising constitutional changes,³⁶ presented as responses to public demands.³⁷ However, these alterations primarily served the purpose of consolidating power in the hands of an 'imperial presidency'.³⁸ The underlying motive behind these constitutional amendments

31 Constitution of Kenya (Amendment) Act (No 28 of 1964), Section 4.

32 Constitution of Kenya (Amendment) Act (No 28 of 1964), Section 8.

33 Muigai, *Power, politics and law*, 195.

34 The Referendum (Amendment of the Constitution) Act, 1964; Chanan Singh, 'The republican constitution of Kenya' 14(3) *International Comparative Law Quarterly* (1995) 927.

35 Muigai, *Power, politics and law*, 196.

36 Muigai, *Power, politics and law*, 196.

37 Muigai, *Power, politics and law*, 197.

38 Muigai, *Power, politics and law*, 195, 202. See also, HWO Okoth-Ogendo, 'The quest for constitutional government' in Goran Hyden, Dele Olowu and HWO Okoth-Ogendo (eds), *African perspectives on governance*, Africa World Press, Trenton, 2000.



was the centralisation of authority, a strategic move to bolster the executive's grip on governance. Significantly, the devolved government of the Independence Constitution was quickly repealed and all devolved powers and functions vested in a centralised national government.³⁹ Socio-economic life was also centralised under the ethos of Sessional Paper no 10 of 1965 that reaffirmed the new republican government's preference for continuity of colonial patterns of economic investment rather than affirmative action towards inclusion of the marginalised.⁴⁰

Under Daniel Moi's regime, Kenya, by law, became a one-party state,⁴¹ consolidating power under the ruling party.⁴² In the face of the consequent political instability, Moi sought alternative methods of political mobilisation. This mobilisation manifested in attacks on journalists and the media, intimidation of university lecturers,⁴³ arbitrary arrests, and threats of detention against political dissidents.⁴⁴ Curiously, however, under Moi's rule, the first true attempt to decentralise government functions, especially development planning, began.⁴⁵



The post-election violence of 2007-8, coming soon after a bitterly contested constitutional referendum in 2005, marked probably the lowest moment of the Kenyan republic. These events – sharply contrasted to the high expectations of the 2002 elections that saw the end of the Moi era – shook the Kenyan nation to its core, and violently split its people along tribal lines, essentially bringing Kenya the closest it has ever been to all out civil war.

- 39 Conrad Bosire 'Devolution for development, conflict resolution and limiting of central power: An analysis of the Constitution of Kenya 2010' Unpublished LLD Thesis, University of Western Cape, 2013, 111.
- 40 Barack Hussein Obama 'Problems facing our socialism: Another critique of Sessional Paper no 10' *East Africa Journal* July 1965, 26. See also, Petronilla Mukaindo, Elisha Ongoya 'Decentralisation of power in historical perspective' in J Osogo Ambani, Caroline Kioko (eds) *Decentralisation and inclusion in Kenya: From precolonial times to the first decade of devolution*, Kabarak University Press, 2022, 69-144.
- 41 Muigai, *Power, politics and law*, 224.
- 42 Muigai, *Power, politics and law*, 225.
- 43 Willy Mutunga, 'In search and defence of radical legal education: A personal footnote', Kabarak Law School, Occasional Paper Series 1(1), 2022, 23.
- 44 Muigai, *Power, politics and law*, 226.
- 45 Humphrey Sipalla 'Illegitimate contradictions: The construction of centralisation, exclusion and marginalisation in the Kenyan state' in Ambani, Kioko (eds) *Decentralisation and inclusion in Kenya*, 59.





2010 saw the renewal of the republican dream in Kenya. While the legal abolition of the centralised, fractious and exclusionary Kenyan state and establishment of a decentralised, inclusive and popular sovereign led republic was achieved by the promulgation of the Constitution of Kenya, 2010, its full implementation remains the generational task before us. Remnants of the super centralised Kenyan state, evident in political party attitudes and governmental organisational culture, have subsisted since 2010. The perennial political and social battles over the soul of the Constitution of Kenya, 2010, oftentimes played out before courts of law and almost always directed at swaying the judgement of the court of public opinion, stand in testimony to the continuing quest for the Kenyan republic.

The sub-themes of the 2024 focus on the 60th anniversary of the Kenyan republic include:

- a. A critical appraisal of Kenya's growth as a republic for sixty (60) years.
- b. An analysis of the imperial presidency from 1964-2024.
- c. An analysis of African republicanism in comparative African jurisdictions
- d. Whether Kenya has achieved the public-participation tenet of a true republic in the recent legislations enacted by the Parliament.
- e. An analysis of devolution in the Constitution of Kenya, 2010 in achieving republicanism.

It is from this backdrop that we invite original insightful contributions to the *Kabarak Law Review* Vol 3 (2024) issue along the following categories:

Category A: Full length articles (double-blind review)

These are scholarly pieces between **8,000 words - 10,000 words** exclusive of footnotes. These contributions will undergo **double-blind peer review twice** conducted by scholarly peers who are independent of the Editorial Board.





Category B: Short commentaries (single blind review)

- a. **Honour Your Elders** – this section involves tributes to African elders. This year’s focus will be on Salim Ahmed Salim, Benjamin Obiefuna Nwabueze, Ama Ata Aidoo, Shadrack Billy Otworu Gutto and Mĩcere Gĩthae Mũgo. The contributions are between **3,000 words - 5,000 words**. Authors must send an abstract of **500 words** of the proposed article by **15 March 2024**. The authors of the selected abstracts will be informed by **31 March 2024**.
- b. **Kianjokoma Brothers Tribute/Police Accountability Review** – this section commemorates the lives of Benson Njiru Ndwiga and Emmanuel Mutura Ndwiga (known as the Kianjokoma Brothers), who fell victim to police brutality on 1 August 2021 during COVID-19 curfew enforcement.⁴⁶ It involves short commentaries of no more than **3,000 words** on various aspects of the law and politics of accountability for police brutality.
- c. **Case notes and book reviews** – this section features articles of no more than **3000 words** reviewing a recent book or case of scholarly importance.

Submission guidelines

- All contributions must be the **original work** of the author(s) and must not have been submitted to any other publication for consideration.
- All submissions should be sent through the Online Journal System (OJS) accessible here <https://journals.kabarak.ac.ke/index.php/klr/about/submissions>. Should you have any difficulties using the OJS system, please contact the Editor-in-Chief, *Kabarak Law Review* at kabaraklawreview@kabarak.ac.ke.
- Contributions may be submitted in **English or Swahili** and should be edited for language before submission.
- The authors should adhere to the Kabarak Legal Citation Guide (KALCI) accessible here <https://www.kabarak.ac.ke/kalci>.

Review process

The full-length papers will under-go **double-blind peer review**. The short commentaries in the Honour Your Elders section will under-go **single-blind peer review**. Authors are expected to incorporate the review comments, where necessary, and submit the revised paper by **31 August 2024**. Only the accepted papers at this stage will be published in the third volume.

Deadline for full length articles is **midnight of 30 April 2024**.

Deadline for remaining articles is **midnight of 31 July 2024**.

Please feel free to contact the Editorial Board to clarify any queries you may have on this Call for Papers at kabaraklawreview@kabarak.ac.ke.

⁴⁶ Samson Muchiri, 'A clarion call to never forget', 1 *Kabarak Law Review* (2022) 199-202.