

## ASPECTS OF TRADITIONAL GIKUYU JUSTICE (Kihooto)

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### Abstract

*This paper describes aspects of traditional justice among the Gikuyu of Central Kenya. It seeks to demonstrate some of the ways in which the concept of kihooto as a moral principle guided and controlled traditional life, maintaining a morality that preservesthe integrity of the individual and such social values as peace and harmony.*

### 1. Kihooto defined

The word *kihooto* is derived from the root *hoota* 'which means 'to defeat' or 'to convince' in a moral sense. Benson's Kikuyu-English Dictionary renders *kihooto* as 'that which convinces, an unanswerable argument, a powerful plea; proof, right, reason, justice; equity, fairness'<sup>1</sup>.

*Kihooto* is used in everyday language in a variety of contexts. In all the contexts the word is employed to appeal to people's sense of right and wrong, reasonableness or rationality, fairness and equity. The nearest English equivalent to *kihooto* is justice, but the traditional Gikuyu concept of *kihooto* is much more comprehensive and applies to practically every aspect of personal and community life. *Kihooto* can therefore be broadly defined as the reasonable order of things. In substituting justice for *kihooto* it is helpful to bear in mind this definition.

The Gikuyu possess a number of proverbs which help to illustrate how justice is traditionally conceived. One of the most quoted proverbs says, 'A just answer breaks the bow set ready to shoot' (an arrow) (*Kihooto kiunaga uta mugeete*).

*Kihooto* here could be a good reason, a convincing argument, a powerful plea, which the person who is about to be shot throws as the effective defence against the stretched bow. This proverb means that justice prevails over the force of might, also that it overcomes all that is not just and right. My informants in the field described justice as that which has irresistible force of right because it is indisputable and self-vindicating.

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1. Benson, T G (ed) 1964. *Kikuyu-English Dictionary*, 163. Oxford: Clarendon.

Another proverb says, 'He who is driven away by justice does not return, but he who is driven away by a club (weapon) returns' (*Muigatwe na kihooto ndacokaga, no muingatwo na njuguma ni acokaga*).

If, for instance, a man was seeking redress from another for some wrong done to him (real or imagined) the use of force or threats would not effectively stop him from pressing his claim and seeking settlement. His children would even take up the matter after his death. However, a convincing argument or reason or any other just settlement of the matter would render him unable to return.

Another proverb has it that 'Justice resists all efforts to chase it away' (*kihooto gitingatikaga*). Justice is not only unyielding, it also resists all efforts to conceal it. Thus justice is conceived as a living thing, able to heave out of any place where it is buried and to vindicate itself against its enemies such as falsehood and irrationality. In this connection another proverb is employed, 'Truth does not die' (*Ma ndikuuaga*). People may employ various devices such as falsehood, cunning and malice to cover up truth and to frustrate justice. But so long as truth is concealed and justice is denied, matters drag on with no final or proper settlement, draining individuals and the community alike of the vitality of life. But justice stands triumphant in every matter that is eventually straightened out. Hence another proverb, 'Justice cannot be leap-frogged' (*kihooto gitingiagararika*), meaning that it is futile to ignore justice.

## 2. Justice and traditional Gikuyu morality

The Gikuyu conceive their morality as the 'reasonable order of things' (*kihooto*). They considered their morality reasonable because they understood its function in life. Moral rules were obeyed because they made sense. Obedience to them guaranteed the welfare of both the society and the individual. The traditional society considered that morality was essential for the good of the community and of the individuals who constituted the community. The individual and his community were inseparable, and so the welfare of one was vital for the welfare of the other.

Justice (*kihooto*) was a vital component of the traditional Gikuyu moral systems. In Gikuyu conception to say that a person has a sense of justice is to say that the person is convinced that there is a reasonable way of doing things to which he subscribes. The society had a reasonable way of doing things. At the individual level it was reasonable to be honest. That is, to be reliable and trustworthy, to fulfil one's duties, and to keep appointments and promises. When a person was scrupulous in this way people trusted and liked him, and assisted him in his efforts to get wealth and gain in being honest.

It was reasonable to be courageous, that is, to be brave and industrious. The courageous person acquired wealth which not only met his material needs, but also gave him a measure of independence and helped to earn him an honoured place in society. It was reasonable to be generous. The generous person who gave liberally (not prodigally) and spoke graciously to other people had no enemies. Generosity placed people in a state of indebtedness to return the good done to them. At the community level, moral values such as honesty, justice, diligence, generosity and

temperance were reasonable because they promoted trust, peace, harmony and goodwill which were necessary for its well-being.

The centrality of justice in the Gikuyu moral system is perhaps best seen within the context of some basic ideas or beliefs held by the traditional Gikuyu society. These ideas concerned community life. They particularly concerned the rights, privileges and responsibilities of the individuals who constituted the community.

## 2.1 The ideal community life

The first basic idea concerned the ideal community life. This was a community that enjoyed prosperity, harmony, goodwill and peace. This ideal was ensured when members of the community lived up to their sense of justice. People demonstrated their sense of justice by subscribing to certain attitudes and modes of conduct which were supposed to be a reasonable way of achieving prosperity, social harmony, goodwill and peace. One such was that every person should endeavor to be as self-sufficient as possible. In the words of an old man interviewed, '*kihooto* is that a man should have his own cow, his own plot of land and his own wife'. Equally important, every married woman was entitled to her own hut, her own house-hold effects (most of which she acquired herself) and her own plot of land in which she grew food for her household. How strongly the idea of personal ownership and self-sufficiency was held, is evidenced by the traditional elaborate system of property identification.

## 2.2 The right to enjoy one's fruits of labour

The second related idea was that every individual had a right to enjoy the fruits of his labour. Every person had a right to own what he had acquired for himself. He was obliged to recognise not only what belonged to him but also what belonged to other people. That is, he was obliged to safeguard what belonged to him and to avoid appropriating other people's property.

A man safeguarded his property by ensuring that what belonged to him had some evidence of identity or ownership. Where domestic animals were concerned, the owner was obliged to take note of both the physical appearance as well as the circumstances under which he obtained each<sup>2</sup>. Since people were constantly placing animals under the custody of friends and relatives, people distinguished between animals belonging to them and those merely under their custody. Concerning land, the owner of a piece of land may be understood to hold it as a trustee, since land

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2. This was beside the fact that each clan had distinguishing marks on its domestic animals. The marks entailed cutting out patterns on the animal's ears and also dove-tailing of young sheep. This process, known as *kugirima*, helped to minimize disputes between clans over domestic animals. More significantly it was symbolic of the process that went on constantly in community life whereby through discernment of right and wrong, good and bad justice was constantly being appealed to. Hence the Gikuyu expression *kugirima kihooto*.

was the property of the sub-clan. Nevertheless, as long as it was under his name, nobody else claimed it<sup>3</sup>.

### 2.3 Generosity

The third idea concerned generosity. Personal and sometimes exclusive ownership of property was counter-balanced by generosity. People were constantly giving and receiving things. Indeed, some things were owned precisely so that the owner may be able to practise generosity, for as the Gikuyu said, 'The compassionate (cow) is the one which has milk' (*Iri tha ni iri iria*). So the third idea was that the community was obliged to promote the welfare of its individual members within reasonable limits. It had to be within reasonable limits, because the society did not wish to produce social parasites. For instance, although generosity was highly valued and widely practised, nobody was expected to depend entirely on the generosity of other people. For that reason things given were never so sufficient as to kill initiative and the desire for self-sufficiency.

Some of the ways in which the individual's welfare was catered for could be highlighted. Cagnolo makes an interesting comment:

In civilized countries one cannot imagine anyone building his house on another man's land; among the Akikuyu it is an ordinary occurrence<sup>4</sup>.

Cagnolo is referring to the custom whereby relatively poor men or families attached themselves to wealthy landowners as tenants-at-will (*ahoi*) or immigrants (*athami*). Also some poor men became voluntary servants (*ndungata*) of wealthy men in order to earn properly. The initiative for such relationships came from the poor or the needy. They depended on the philanthropy of the wealthy to set them up. According to Leakey,

Men who were poor and who went off to become tenants on the estates of wealthy men did so in the hope that they would be able gradually to acquire sufficient wealth to buy land and become the founders of sub-clans themselves<sup>5</sup>.

It was customary for a man who wished to sell his land to give the first option to his tenants<sup>6</sup>.

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3. Kenyatta quotes an early report on Gikuyu land tenure which says disputes in land were 'surprising few', despite the large stretches of land under cultivation. Kenyatta, J 1938. *Facing Mount Kenya*, 25-6. London.

4. Cagnolo, 1933. *The Akikuyu: Their Customs, Traditions and Folklore*, 56. Nyeri. Cagnolo was a missionary of the Consolata Mission evangelizing the Gikuyu in the 1920's.

5. Leakey, L S B 1977. *The Southern Kikuyu Before 1903*. Vol I, 144. London. L S B Leakey was an ethnographer, born and bred among the Gikuyu.

6. *Ibid*, 106.

In traditional society the poor and the wealthy placed themselves under each other's obligation. If a relatively poor man had a good crop of sweet potatoes, a rich man might place two or three of his rams under his custody for him to fatten them. When eventually the rich man fetched his rams, he customarily gave the custodian a goat in return for his services. In due course this goat produced a herd.

The welfare of the individual was also promoted through the activities of the *ad hoc* councils of committees (*njama*) which were convened from time to time in order to 'pacify the country' (*kwaragamia bururi*). Every section of the society was catered for by these *ad hoc* councils whose main aim was to enforce proper moral conduct. For instance, the extended family group had a council which scrutinized the land matters of the extended family, including such matters as inheritance, debts and the rights of orphans in the extended family. This council admonished avaricious relations who tended to encroach on the property of the others. There was a women's council which demanded fines from elders who harassed or neglected their wives<sup>7</sup>.

## 2.4 The right to freedom of choice

The fourth idea was based more explicitly on the definition of *kihooto* as 'defeat' (*hoota*). This was the idea that the individual had the right to freedom of choice. The logical implication of this idea was that when an individual had exercised his or her freedom of choice, the chances of complaint and discontentment were reduced. Should the individual become discontented with the personal choice, one could reason that there had been no coercion from the family or the community, and he or she was therefore obliged to accept the consequences of the original free choice. The society advised its members to exercise wisdom in the choices they made. In actual fact the society did not abandon the individual to his ignorance, because traditional education was concerned with the right conduct and the instilling of certain attitudes. The average person was therefore more likely to exercise freedom of choice within the context of the reasonable order of things. A young man, for instance, who might be inclined to be intemperate in his sexual morality and might seek love charms from a medicine-man had to renounce freely any desire to be the proud owner of wife, cow and land. Intemperance was incompatible with properly settled family life<sup>8</sup>.

The principle of freedom of choice was particularly relevant in the matter of marriage in a society that did not approve separation and divorce once a marriage had been contracted. Traditionally society provided ample opportunities for young people to know each other well before they made choices for marriages. Particularly for the marriage of the first wife, both partners had to have chosen each other and the girl's father ascertained further whether his daughter had agreed to the marriage

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7. Itotia, J 1945. *Mutiga Iri na Iriiri Aromama kuuraga*, 37-45. Nairobi: Goodly Heritage.

8. Kenyatta, *op.cit.* 285-6.

without reservation before he accepted marriage insurance (*nuraacio*) from the in-laws to be<sup>9</sup>.

This section on the centrality of justice in traditional morality could be concluded by an observation that the Gikuyu have been described as 'highly egalitarian'<sup>10</sup>. Finding no European parallel to the Gikuyu form of government, Cagnolo suggests that it was 'best described as Government by Agreement'<sup>11</sup>. Leakey also describes their social and political organisation as a 'true example of the committee principle'<sup>12</sup>. The family was the fundamental unit of social, economic and political organization. In the home two particularly important spaces were where the principles of justice, particularly peaceful deliberation and consultation, were taught to every growing child. The one was around the hearth in the mother's hut (*riiko-ini*), the other was around the bonfire at the gateway of the homestead (*boi-ini*) where the menfolk spent evenings in fair weather (in cold, wet days the men's hut, *thingira*, became the venue). In the former space the woman talked: in the latter the men talked.

### 3. Justice and the judicial procedure

The literature on Gikuyu judicial procedure indicates that justice was primarily concerned with the maintenance of peace and goodwill in the society. Lambert recognises three principles to this end<sup>13</sup>. The first principle was that the settlement of suits and disputes was by deliberation and discussion rather than by use of force. The second principle was that the correction of imbalance was by compensation rather than by talion. The third principle was that the adjudication and the assessment was done at an impersonal level by old men (elders), because they were deemed to be 'beyond the partialities and impetuositities of self-interested youth'<sup>14</sup>.

Regarding settlement by deliberation, several writers observed that the Gikuyu loved debate, which to casual observers seemed unnecessarily long and tedious<sup>15</sup>. Lawsuits and other discussions of public importance were usually held in an open ground (*kihaaro*) where, according to Cavicchi, 'one's voice may be heard, for freedom of speech is to a Kikuyu perhaps the most essential of liberties'<sup>16</sup>. When a case was taken to the council of elders (*kiama*), they were prepared to hear both

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9. Leakey, *op.cit.* Vol 2, 750-2; Routledge, W S & K 1910. With a Pre-historic People: The Akikuyu of British East Africa, 124-5, 127. London.

10. Muriuki, G 1974. *A history of the Kikuyu, 1500-1900*, 110. Nairobi.

11. Cagnolo, *op.cit.*, 119 .

12. Leakey, *op.cit.*, 993. Vol.III.

13. Lambert, H E 1956. *Kikuyu Social and Political Institutions*, 115. London.

14. *Ibid.*

15. Routledge, *op.cit.*, 220.

16. Cavicchi, E 1977. *Problems of Change in Kikuyu Tribal Society*, 10. Bologne.

sides to the suit. The *kiama*'s function was to arbitrate between the litigating parties and for this to be possible clear evidence was necessary<sup>17</sup>.

Cagnolo and Routledge have noted the remarkable order and calm that prevailed in these deliberations. During the usually lengthy litigations only one person might speak at any time and, according to Cagnolo, 'one man after another ... may be emphatic but not angry'<sup>18</sup>. Anger and hot temper were considered hindrances to justice. It might appear as if a case could go on indefinitely but this was not the case. There were measures to safeguard against delaying settlement. Firstly, in a case involving a plaintiff and defendant each party brought along counsellors, relatives and friends. If the defendant was guilty these people did not defend him. Their role was in fact to urge him to confess if he was guilty, with the understanding that he was at liberty to deny any accusations if he was innocent. According to Lambert, the council (*muthamaki*) chosen by a plaintiff or a defendant warned his client that

... he will not twist the argument to suit his client's case, if he believed him in the wrong, but he will give him some assistance in meeting the judgement debt if the judgement goes against him<sup>19</sup>.

Routledge says that there was 'a curious child-like impulse to confess on the part of the guilty person'<sup>20</sup>. Secondly, the facts of a case were common knowledge in a local community where people knew each other well and where little went undetected<sup>21</sup>. Thirdly, both plaintiff and defendant went into a lot of expense as they both paid equal court fees and continued to provide meat feasts for the council of elders who heard their case so long as the case lasted. Only a fool would want his case to take longer than was absolutely necessary<sup>22</sup>. Fourthly, if there was not enough evidence by which to judge a case, the *kiama* elders submitted the litigants to supernatural judgement that is, to trial by ordeal. Trial by ordeal was dreaded and if a person was guilty he usually confessed before that could be resorted to.

Regarding the second principle of justice, the correction of imbalance by compensation rather than talion, the Gikuyu did not believe in retaliation. As the proverb has it, 'he who revenges himself is the bad one' (*mwirihiria niwe muuru*)<sup>23</sup>.

In other words, the ideal of justice is not to balance wrongs but rather to restore the equilibrium further. If for instance, a person killed another and a member of the

17. Kenyatta, *op.cit.*, 220; Gathigira, S K 1934. *Miikarire ya Agikuyu*, 67. Nairobi.

18. Cagnolo, *op.cit.*; Routledge, *op.cit.*, 205-6. Ross observed the same controlled temper at the memorable, 'Harry Thuku meeting'. See Ross, W M 1927. *Kenya from within*, 225. London.

19. Lambert, *op.cit.*, 117.

20. Routledge, *op.cit.*, 218, 208-9.

21. *Ibid.*, 218.

22. In this connection the Gikuyu say, 'The lawsuit of a fool keeps the court (in session) all day'. Barra, G 1939. *1000 Kikuyu Proverbs*, 6. Nyeri.

23. *Ibid.*, 78. See also Routledge, *op.cit.*, 23, 219.

deceased's family killed the murderer, no compensation was payable. The apparent balance of wrongs achieved by the second killing was disapproved. According to traditional law a death should not be paid for by another death. As the Gikuyu said, 'A hyena should not be given (a free meal) twice' (*hiti ndiheagwo Keri*)<sup>24</sup>.

When a wrong had been done the wronged party sought compensation from the offender not directly, but through the *kiama elders*<sup>25</sup>. Compensation for theft was deliberately heavy because it was meant to be a deterrent. Compensation for a stolen goat, for instance, ranged between two and ten goats. Compensation for murder or manslaughter was 100 or 30 goats if the deceased was a man or woman respectively<sup>26</sup>.

On the issue of 'correction of imbalance' and the efficacy of compensation two things can be noted. First, that the administration of justice was based on equity rather than on a codified law. Although there were recognised principles to which every judgement had to conform, each case was judged on its own merit<sup>27</sup>. Secondly, the offender or the criminal was helped to pay compensation for his offence by his own relatives or clansmen. This collective acceptance of responsibility was an effective deterrent for,

in general the wider the group which suffers as a result of an offence the stronger the public opinion against a repetition of it<sup>28</sup>.

Regarding the third principle of justice, that the adjudication and the assessment were done at an impersonal level, there was a good reason for preferring elders. Elders were believed to bring about the peace and equilibrium desired in the community. This principle was based on the belief that an elder (*muthuri*) had left 'the hot-bloodedness of the youth behind' and was able to discern, deliberate, and come to a carefully considered conclusion<sup>29</sup>. The term *muthuri* means 'one who chooses'. The quality - which we might call wisdom - is what qualified elders as leaders and respected men of authority who were readily obeyed in traditional society. This quality which can alternatively be referred to as a keen sense of justice, is one of the qualities which every individual was supposed to cultivate from

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24. Leakey, *op.cit.*, 1014-5. Vol III; Lambert, *op.cit.*, 116.

25. Kenyatta, *op.cit.*, 222.

26. Routledge, *op.cit.*, 216. Thirty goats was equivalent to the family insurance paid to a girl's father or guardian by in-laws during her marriage. For accounts of Gikuyu system of fines and compensations see, Leakey Vol III chapter 23; Tate, 'Native Law of the Southern Kikuyu'. *Journal of the African Society*, 238-241. 1940.

27. Lambert, *op.cit.*, 118.

28. *Ibid.*, 114-5.

29. *Ibid.*, 117; Cavicchi, *op.cit.*, 17



childhood. Not everybody excelled in it but those who did became singled out as leaders (*athamaki*) from an early age<sup>30</sup>.

One of the qualities of a *muthamaki* was his freedom from bias. According to Lambert, the Kikuyu say a true *muthamaki* is ruled by his head and not by his heart, he looks before he leaps, and he never loses his temper<sup>31</sup>.

Lambert observes that an elder was particularly impartial and impersonal,

... if his immortality on earth has been ... arranged for satisfactorily, that is, he has several healthy, prosperous descendants in the patrilineal line<sup>32</sup>.

Within the whole scheme of the reasonable order of things such a contented elder would have cultivated all the moral values of traditional society during his younger days. As a young man he would have been courageous (brave and diligent) reliable and temperate (especially in sexual morality). A young man who lacked these qualities hardly ever acquired a wife.<sup>33</sup>

## 4. Religious beliefs and justice

### 4.1 God and justice

In his description of the place of religion in the traditional Gikuyu society Leakey observes,

Belief in God (*Ngai*) and in the ancestral and departed spirits was the fundamental basis of life as a Kikuyu. Law and order depended more upon religious beliefs than upon the police activities of the *njama* (warrior council) or the judicial authority of the *kiama* council of elders<sup>34</sup>.

Two main beliefs about God are particularly relevant. One is about God's role as creator and ruler of his creation. The other is the belief that God is a God of justice.

The Gikuyu reserved to God the role of creator of all things and personal ruler of his creation. God the Creator was also God, 'the Great Giver of things' (*Ngai*). In his creation the greatest gift he gave was life. He gave other gifts by which life was sustained and safeguarded; a domain and a means of livelihood based on agricultural pursuits. He approved certain institutions and customs which made it possible for the society to function.

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30. Leakey, *op.cit.* 993-4. Vol II.

31. Lambert, *op.cit.* 101; see also 105.

32. *Ibid.*, 117.

33. Leakey, *op.cit.* 1049. Vol III; Kenyatta *op.cit.* 285-6.

34. Leakey, *op.cit.* 16-7. Vol I.

Besides life and an agricultural way of life, God gave certain laws such as respect for parents and prohibitions against murder and stealing<sup>35</sup>. Writing in 1945 Itotia quotes his elderly informants as telling him:

God is angered by people when they behave wickedly and are self-loving and swindlers. He is also angered by people who contradict his laws which he used to communicate through prophets and seers, diviners and parents<sup>36</sup>.

God was actually believed to carry out an inspection of the Gikuyu society from time to time with a view to blessing or punishing people according to their conduct<sup>37</sup>. Epidemic diseases, adverse weather conditions which caused crop failure and famine, and battles lost decisively to the Maasai were regarded as evidence of some moral failure. It is not without significance that the Gikuyu believed God to punish them by striking at the very life he had given them. In periods of severe drought the ruling elders of a territorial unit gathered to plead with God for rain. In their prayers they reasoned with God that as it was he who had created the people and given them their land and their children, he might have mercy and give them rain, children, cattle and goats, as well as produce from the fields<sup>38</sup>.

This brings us to the second belief concerning God as a God of justice. This belief affected people's moral outlook, particularly on matters of social justice, in three main ways. Firstly, God did not condone wickedness, he surely punished offences. God's punishments were corrective and deterrent. They never arose out of malice and were in fact chastisements (*mahura*), or supernatural sanctions of morality. The ultimate objective of God's punishments was peace and harmony in the society. Leakey notes, for instance:

If the inhabitants of different villages lost touch with each other and became too independent of one another the wrath of God visited them and persisted in punishing them until they became united once more by joint acts of public worship and sacrifice<sup>39</sup>.

In fact God was interested in the equilibrium of man's total environment, physical and non-physical. He communicated his concern by punishing the offending community or the wicked individual (sometimes his kin as well). This belief acted as a restraint in private and public morality. Lambert refers to it as

... an ingrained belief that there is an automatic supernatural readjustment when the laws of natural justice have been disregarded<sup>40</sup>.

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35. Routledge, *op.cit.*, 245.

36. Itotia, *op.cit.*, 77.

37. Kenyatta, *op.cit.*, 234.

38. Leakey *op.cit.* Vol. I, 17; Vol II, 90-2.

39. *Ibid.*

40. Lambert, *op.cit.*, 121.

'Natural justice' required, for instance, that a man acquired property by lawful means. God did not allow anybody to prosper on property acquired through any form of theft. Hence the proverb, 'A stolen necklace causes the loss of one's own' (*mugathi wa kuoya uteaga wa mwene*).

'Natural justice' required also that people consciously restrain themselves from malice or envy towards those better endowed with property or personality. Malice could lead to calculated anti-social activities such as theft, destruction of property, murder, and witchcraft. Besides disrupting peace, such activities were seen as criticism against God for rewarding people who had initiative and diligence <sup>41</sup>.

God's justice was also understood in terms of righteousness, fairness and equity. Significantly, God was conceived of as the Great Elder (*Githuuri*). As such he was the example of every genuine elder (*muthuuri*). Elders were the custodians of morality in the various roles they played as heads of families, councillors, adjudicators, arbitrators and legislators. They had to be people of integrity. As adjudicators and arbitrators they sought God's aid so that they might uphold justice and thus maintain peace and harmony <sup>42</sup>. Hence the reason for conducting lawsuits with great thoroughness. The elders insisted on the litigants' honesty and any suspicion of perjury was submitted to the judgement of God, through trial by ordeal. God's judgement was also appealed to if the elders could not arrive at a definite decision due to lack of conclusive evidence. A litigant was also at liberty to request trial by ordeal.

Secondly, their conception of God as a God of justice meant that God was always on the side of justice. That being so, justice was bound to win no matter what obstacles stood in its way. This belief gave the people the courage and determination to see that justice triumphed. This was the reason behind the wronged party often insisting on redress. But perhaps the clearest illustration of this belief is the relatively recent struggle for self-determination during the colonial rule. Evidence from political speeches, prayers and some of the Mau Mau songs indicate that the Gikuyu believe that God was bound to restore freedom and land to the Africans precisely because he was just. In his justice he could not fail to see that the people's grievances were genuine <sup>43</sup>. Mathu summarizes Gikuyu sentiments when he says that land was the only social security the African had and therefore;

... the land stolen (through alienation by Europeans) must be restored, because without land the future of the African people is doomed. God will hear us, because that is the thing he gave us <sup>44</sup>.

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41. Itotia, *op.cit.*, 60.

42. Kenyatta, *op.cit.*, 219.

43. There is evidence that the Mau Mau government made recourse to traditional Gikuyu belief in God's justice. See Barnett and Njama, 1966. *Mau Mau from within*, 198-203. New York.

44. Cornfield, 'The Origins and Growth of Mau Mau, An Historical Survey'. *Sessional Paper No 5 1959/60*, 11. Colony and Protectorate of Kenya.

In the same vein Kenyatta says,

... God said this is our land in which we are to flourish as a people ... we want cattle to get fat on our land so that our children grow up in prosperity; we do not want that fat to be removed to feed others ...<sup>45</sup>

A popular Mau Mau song had the following refrain:

Pray in earnest	<i>Hoyai ma</i>
Besech in earnest	<i>Thaithai ma</i>
For God is the same	<i>Ni amu Ngai no uri wa</i>
as of old	<i>tene</i> <sup>46</sup>

Thirdly, people believe that God rewarded honest effort. A popular proverb says, 'God helps him who helps himself' (*Ngai ateithaigia witeithitie*). The most common gifts God had given people were soil and time. How much more blessed one individual was than another depended to a very large extent on how well he managed his time and his piece of land. Diligence in tilling the land and discipline in observing the regularity of time, in terms of daily and seasonal activities, were vital. For success in agricultural pursuits there was no alternative to discipline and diligence. With two rainy seasons in the year, the agricultural activities varied between planting, weeding, scaring off animals and birds from crops, harvesting and preparing the ground for the next planting. The day was divided into fifteen periods regulating the daily routine with varied tempo. Hence Lugards remark that cultivation in Gikuyu country was 'prodigiously extensive'<sup>47</sup>.

Another common belief was that God ratified the blessings and curses which a person received from other people, especially parents, the aged, the poor and the disabled<sup>48</sup>. People who obeyed their parents and were kind and considerate to the disadvantaged were continually being blessed. People's goodwill towards them were like channels of God's blessings.

## 4.2 Spirits and justice

Regarding traditional Gikuyu beliefs about the spirits of the deceased it can be said that on the whole the concerns of the spirits were the concerns of the living. The corporate body of the departed, representing different generations and age-groups, was concerned that the ideals which promoted peace, harmony and prosperity of the living body politic should be upheld right from the grassroots of the immediate kin<sup>49</sup>. The family ancestral spirits were concerned about the proper care of widows and

45. *Ibid*, 302

46. Gakaara, 1927. *Nyimbo cia Gukunguira wiathi*, (Freedom songs), 41. London.

47. Ross, 1927. *Kenya From Within*, 41. London.

48. Itotia, J 1937. *Mwendwo ni Iri na Iriiri* (Goodly Heritage), 81. Nairobi.

49. Kenyatta, *op.cit*, 266-7.

orphans<sup>50</sup>. Spirits of departed professional diviners were concerned about the continued integrity and wisdom of the living diviners, who often sought their aid<sup>51</sup>.

Belief in the active participation of the spirits of the dead in the life on earth influenced the conduct of the people not only towards each other, but also towards foreigners. In this regard Leakey says that the Gikuyu bought land from the Ndorobo's instead of acquiring it by 'right of conquest' because they believed that the spirits of any Ndorobo killed while defending their land would make such land useless to the invaders. The invaders' herds and flocks would die, their crops would fail and the land would be destroyed by drought<sup>52</sup>.

### 4.3 Reward and Punishment

As already noted above, the traditional Gikuyu society believed that retribution was an integral part of justice. Good was rewarded and in so doing was promoted: evil was punished and in so doing was discouraged. Good (*wega*) is defined as all that promotes peace, goodwill, harmony and well-being in the society as well as the individual's welfare. Evil (*uuru*) is in turn defined as all that disrupts the peace and goodwill which should exist in the society as well as personal conduct, which results ultimately in his own distress. According to my informants in field enquiries, justice functions to ensure social harmony and the individual's welfare in the society. For this reason wrong or evil deeds must somehow be redressed so that social harmony and personal welfare can prevail.

#### 4.3.1 Reward

The old people interviewed during this study conceived of reward as the returns of moral rectitude. They distinguished three agents of reward: the individual, other people and the supernatural.

The morally upright individual was the source of his own reward, for the kind of life he led generated its own benefits. For example, the courageous people, those who were diligent in seeking their wherewithal could expect the rewards of 'cow, wife and land', and the personal welfare these rewards provided. Those who lacked courage, the cowardly and the lazy denied themselves these rewards and had mostly themselves to blame for their poverty and lack of respectability. A song aimed at encouraging people to be brave and diligent has the following words:

A cowardly young warrior *Mwanake um guoya*  
And his father is cowardly *Na itheni ari guoya*

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50. Itotia, *op.cit.*, 78. 1945.

51. Leakey, *op.cit.*, 1122, 1147. Vol III.

52. *Ibid.*, 90. Vol P.

They ask, where shall we    *Mekuria, iria*  
 ever drink milk?            *tukarinyua naku?*<sup>53</sup>

Virtuous life was a real source of its reward.

Regarding human agency, reward came to the deserving individual in the form of gratitude (*ngatho*). People showed gratitude to others for two main reasons. Firstly, in appreciation of some good one had done and even more so for the kind of character one showed. Secondly, in anticipation that the same character would continue more or less unchanged. This second made reward a kind of inducement for good conduct.

The principle behind reward is explained in the proverb, 'Good is repaid with good' (*wega urihagwo na wega*). What good was returned was not only gratitude but also respect. These two were expressed in a number of ways. One way was the ready and warm hospitality accorded to the individual who had a reputation for trustworthiness and mature conduct. Another way was through tokens of appreciation. For example, in traditional society an elder sometimes gave another a special gift of a goat, described as 'a goat of companionship' (*mburi yo wathiomo*). This token was given in appreciation of mutual trust and respect that existed between the two elders. Young men of the warrior class were often acknowledged for their 'good deeds' of defence and police duties. An elder who did not have sons of his own could entrust the security of his home and livestock to the local warriors. For these reasons, every elder who slaughtered a bull reserved the right rib and a hornful of oil for the warrior. He would invite them to come and eat and oil their bodies. In short, people were constantly giving each other tokens of appreciation apart from the ordinary hospitality they practised.

Regarding reward through supernatural agency, the most dominating belief held by traditional society was that long life was God's reward for virtue. When an acknowledged bad person died early in life that was taken as deserved punishment. When a good person died untimely, people said that was fate (*ndiru*), for after all God's ways are also mysterious.

As a general rule then the righteous were blessed with long life. Two relevant proverbs summarized Gikuyu belief in the supernatural reward of a virtuous life: 'The only true appointment is the staff' (*Giathi no muthigi*), and 'The only good appointment is that which is determined by God' (*Giathi kiega no kia Ngai*).

Both concern death, and blessed is the person who graces the final appointment leaning upon the staff. In the words of an informant:

A good man has nine legs. He has crawled on four, walked on two and spent ripe old age on three - the third being the staff upon which he supports his weakened limbs. Hoary hair and the staff are the terminal reward of the man, and of the woman, who has produced children and who is variously called the hospitable (*mutugi or nyatuga for a woman*) the one loved by sustenance

53. Kinoti, H W 1983. 'Aspects of Gikuyu Traditional Morality', 277. Ph.D Thesis, University of Nairobi.

(*mwendwo ni iri*) the generous (*muuma andu*) and the righteous one (*muthingu*). So are they the reward of a leader (*muthamaki*)<sup>54</sup>.

Significantly, the Gikuyu have traditionally given the staff two levels of meaning. On the explicit overt level it was a handy tool for physical support and for purposes of grazing animals. On the spiritual or transcendental level it was a symbol of virtue. Whether the young individual actually realized it or not, the staff was handled in anticipation that eventually it would be used in old age. A small child was given a small wand (*gathanju*) to hold when taking animals to graze. Girls and relatively young married women did not normally hold sticks when walking unless they were grazing animals. But a girl must hold a wand (*ruthanju*) when on a mission to invite her relatives to her initiation ceremony which marked her entry into adulthood. A bride was presented with a special staff (*muithuiya*), upon entering her new home as a married woman. She held this staff when she made the ceremonial visit to her mother (*gucokia makinya*), soon after marriage. This staff became her precious possession. Upon it she would lean in her old age when she had become a grandmother.

Symbolically then, the individual handled the staff in normal life and throughout the ritual path of life. This life was normal because it was dedicated to obedience of the norms of the society, ordained by God and proven by generations of experience to be the reasonable order of things (*kihooto*). On the moral and explicit level the individual was required to cultivate the character that guaranteed hoary hair and the staff. The Gikuyu believed that virtue could not be picked up in later years, and traditional education was therefore devoted to aiding the growing child to acquire virtue for, 'A good club is got from its source' (*Njuguma njega yumaga ikuriro*). Although leading a virtuous life was the normative 'reasonable order of things', it was not regarded as necessarily easy or materially lucrative. However, it was a fulfilled life and therefore worthwhile. Hence the proverbs, 'Better long thin days than short fat days' (*Kaba matuku mathondu maraya gukira matuku manoru makuhi*) and, 'The long but sure way that conveys one to one's destination' (*Njira ndaya ikinyia*).

#### 4.3.2 Punishment

The traditional Gikuyu regarded punishment in two main senses. Firstly, the wrongdoer earned his punishment. He had to agree that his punishment was deserved. A person could deny responsibility for some offence or crime. When he could no longer deny it because he had been proven guilty, he became resigned and accepted punishment. Before a notoriously mischievous character was given one of the serious punishments reserved for his kind, it was made clear to him that he had brought it to himself. Hence the proverb, 'People mortify him who mortifies himself' (*Kuheragio wiheretie*).

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54. *Ibid*, 281-2.

Secondly, as already noted, punishment served to encourage good and discourage evil. Accordingly, traditional punishment fell into two categories. There was reformatory punishment aimed at the offender and there was terminal punishment aimed at purging society of notoriously unreformable criminals. Since punishment had a definite end, it was considered a mistake to ignore any wrongdoing, however small. An offence would have to be very trivial to be overlooked, as 'There is no wrong and a small wrong' (*Gutiri uuru na kauru*). The reason was that once an offence was overlooked the cause of justice was weakened because an offender could make a habit of it. Sometimes an offender was simply admonished and forgiven, but usually at some cost (*thinja*). It was difficult for the society to maintain absolute vigilance against offenders, as much of the crime was done in secret. But the belief in supernatural intervention deterred many a would-be criminal. This belief in supernatural intervention also served to encourage the society to see its role in punishing offenders as a kind of consortium with the supernatural in maintaining the social equilibrium.

Some examples can now be given of the punishments meted out to offenders by human agencies of justice. It can be noted that in principle what people were punished for was not so much the deed or misdeed as the disregard for some moral principle. Accordingly, neglect of duty was punished. A husband could justifiably beat his wife for failure to feed him. It was unfair to expect other women to fulfil that duty as this could lead to extra-marital affairs. A child who allowed goats to feed on people's crops was whipped by his father and sometimes by the owner of the crop as well. The child had to learn to respect other people's property.

Disobedience was punished. It was punished because of the implied defiance of authority vested in the parent, the husband, the clan and the age-group over the individual, as the case may be. It was also punished because there were good reasons why certain things were forbidden and others demanded. As a rule a son did not start drinking beer until his father gave him permission to. If a son contravened this rule his father stopped drinking to express his displeasure. A father's anger was enough punishment to a son. Sooner or later he had to seek his father's forgiveness. Many family socio-religious ceremonies involved ritual drinking and if the father stopped drinking the ceremonies could not be held.

Behaviour that resulted in pre-marital pregnancy was punished. The man had to pay compensation to the girl's father and both parties suffered disrepute and the girl suffered a lot of humiliation. This was done in a bid to discourage birth of children outside legally constituted family circles. A child's proper welfare in terms of rights and privileges was only guaranteed in a home when both parents were legally married.

Traditional society also punished ungenerous tendencies such as stinginess, selfishness and self-isolation. These tendencies undermined the unity which should ideally exist between clansmen and age-mates. Sometimes the offending individual was ostracised and sooner or later he found he could not exist alone. While encouraging the development of individual personality, traditional society made every effort to discourage individualism.



All crimes were punished. A thief was punished heavily because he took 'without being given'. Arson was a serious crime because it took time to replace whatever property was destroyed when a house was set on fire. Murder was a most serious crime because it deprived a person his or her life in an irreversible manner. Genocide was particularly serious because it destroyed man's whole seed (*mbeu*) of species (*kiruka*). However, since punishment was not administered as revenge, murder was compensated in terms of goats rather than the death of the killer.

Persistent malefactors such as habitual thieves and murderers, and dealers in witchcraft were altogether removed from society through direct ritual killing or through ritual disowning (*guite/guikia na kiano*). The individual thus disowned died sooner than later, due to the combined effect of loneliness and the ill-will focused on him by an aggrieved society.

#### 4.4 Forgiveness: atonement and restoration

The preceding sections of this paper have demonstrated from various aspects that traditional Gikuyu justice functioned to promote peace, unity and goodwill in the society. It remains to show that forgiveness and atonement were also regarded as integral parts of the reasonable order of things.

My informants believed that justice allows room for forgiveness even when punishment is deserved. Furthermore, the traditional belief was that social peace and community welfare could never be disturbed beyond repair because there was a remedy for every ill and wrong. The traditional practice of eliminating habitual criminals was part of the remedy.

Forgiveness and reconciliation were necessary for one main reason - to save life. In the closely knit society, the bonds that tied people together were strong. People were mostly either close relatives or age-mates. An individual's offence affected vital relationships. In many cases the fact that a relationship had been injured was of greater significance than the offence itself and the punishment prescribed. It was therefore reasonable that forgiveness and reconciliation should be available.

When a mature son or daughter offended a parent, that parent's anger was greater punishment than anything else. The strained relationship was difficult to endure. The son or daughter would most certainly produce a token of repentance and plead with the parent for forgiveness. Forgiveness would almost certainly be granted as the parent argued 'I did not bear you to cause your death'.

If a young man of the warrior class became a habitual offender, his age-mates ostracised him because his conduct gave them a bad reputation. Ostracism involved cursing the victim (*kuroga*) as well as completely isolating him. Such a young man became a pitiable recluse and could easily die from solitude. However, that was usually not allowed to happen, because his father or another close relative pleaded with the warriors for his redemption. The warriors were reasoned with, agreeing that in his death they were the losers. They would normally agree 'not to spill our own honey' but to remove the curse they had put on him and resume relationship with him.

A person destined to be ritually outlawed (*guteo*) by his community could also be redeemed before that actually happened. A relative or an age-mate could decide to act on his behalf and rescue him. He would offer to pay whatever the community demanded in order to avert the dreaded ritual. Again his argument would be that there was more to be gained in the man's life than in his death. A man thus rescued was likely to feel indebted to his rescuer and so to mend his ways for the rescuer's sake.

Nevertheless, traditional Gikuyu society did not believe in forgiving 'just like that' (*oro uguo*), without some cost to the offender. Cost might be interpreted in different ways, but cost there must be. Forgiveness was dependent on acceptance of responsibility or guilt. If a person was known to be responsible for some misdeed but he denied it, he was 'pursued' until he accepted it. Having accepted, he was at least admonished (*gukaanio*). Also, a person who wronged another and realized he had done so did not simply ask for forgiveness. He gave something to the person he had offended as a token of his repentance. He must at least show there was no disrespect meant in the offence.

In view of the traditional concern to spare life, there were 'good reasons' (*kihooto*) why a habitual criminal was executed. Such a criminal was given up as incorrigible. If there was no gain in his death, there certainly was no loss. The decision to eliminate a habitual criminal was made by his family, but with the full agreement of his age-mates. The necessary concern of family and age-group (*riika*) was a guarantee against injustice in such an extreme punishment. The criminal's execution was indeed the final resort after many attempts to reform him. His family and clansmen would have pleaded with him (*guthitha*). They would have admonished him (*gukaania*). They would have reasoned with him (*Kuhe ihooto*). In spite of these efforts he would have persisted in committing crimes, thus causing a lot of nuisance. Having grown tired of paying compensation to various people who claimed loss or injury from his crimes, they disowned him (*gute*). They decided that after all 'we do not cultivate our fields for him alone'. They turned him over to the country for public execution. His family participated in his execution and did not stand to blame either for his evil ways or for his death. The following song sang by the public council (*njama ya king'ore*) which was responsible for the ritual executions, makes this clear:-

The incorrigible	<i>Wanema - i</i>
Who defied father,	<i>Waremire ithe</i>
And defied mother,	<i>Na akirema nyina</i>
And defied the clan;	<i>Na akirema muhiriga;</i>
Cannot defy the populace	<i>Ndangirema bururi</i>
The incorrigible	<i>Warema - i</i>
Direct me to	<i>Ni nyonererio</i>
The home of the obstinate	<i>Mucii wa kiremeku - i</i> <sup>55</sup>

55. *Ibid*, 298.

The public execution took the form of one of the three recognised methods - burning alive, rolling down a precipice in a beehive, or drowning. This public purge served to reform many a would-be habitual criminal.