

MIZIZI YA HAKI

Let the people speak

Land disputes have been a perennial problem in Kenya for quite a long time.

A Community Human Rights Initiative Newsletter

• ISSUE 6 (January - June 2006)

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JUSTICE IS OUR CREED AND LAND IS OUR HERITAGE



All these manifestations of land injustices have therefore led to abominable violations of human rights in Kenya.



“We Refuse to Die”

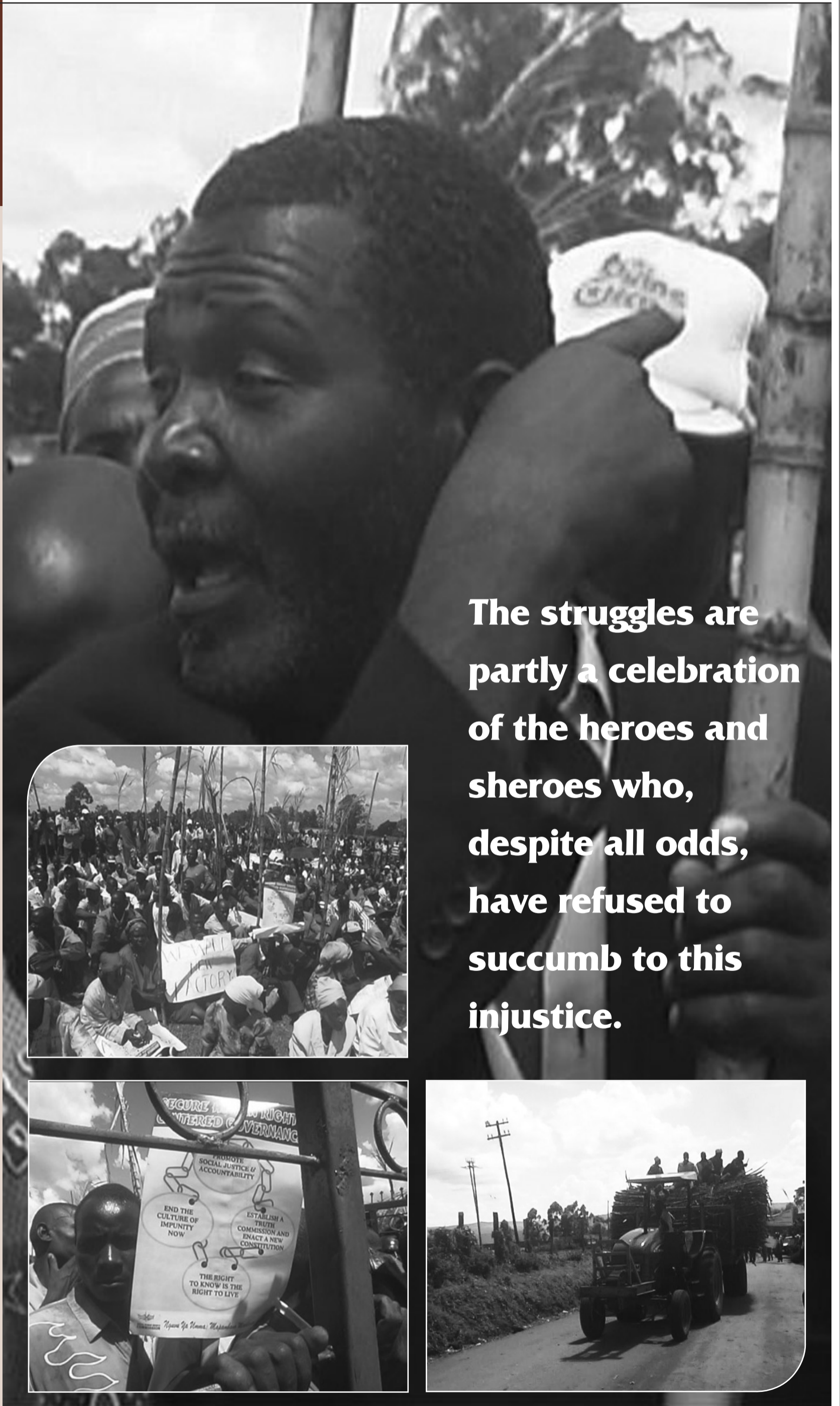
In this issue of MIZIZI, we bring you case studies of communities' struggle for their land rights from different parts of the country. These struggles are documented by the communities that have been affected by the unfair and unjust land management and tenure systems currently in place.

The struggles are partly a celebration of the heroes and sheroes who, despite all odds, have refused to succumb to this injustice. Arguments have been raised that we do not have enough land for each Kenyan to privately own; hence the poor should stop the clamour for land rights. In light of the injustices meted against the poor in this country on the issue of land, this kind of statement should be taken with the cynicism it deserves!

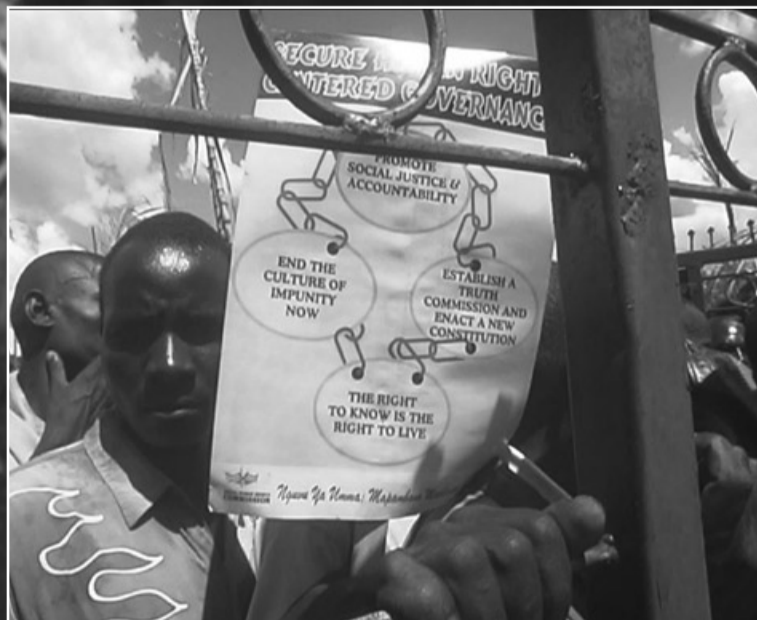
The theme: “Land and Land Related Resources”, was selected to coincide with the National Land Policy Formulation Process, with a view to publicize some of the critical issues that need attention during this process.

To enhance the rooting of MIZIZI in communities (promote community ownership of this newsletter) a workshop was held in June this year where representatives of community human rights networks from all the regions of Kenya were trained on writing and editing skills. This training led to the formation of editorial teams in: Western, Eastern, Coast, South Rift, North Rift and Northern regions. A National Editorial Committee comprising of community representatives and KHRC staff was thus set-up. This structure is meant to enhance community ownership of MIZIZI, who would take the lead role in influencing the newsletter's editorial content. We do hope that this new initiative will strengthen MIZIZI as a platform for solidarity building and sharing of knowledge.

The next issue will be dedicated to struggles for public accountability and corporate social responsibility. This focus will be geared towards sharing lessons and best practice nationally and with other networks attending the World Social Forum in Nairobi, January 2007.

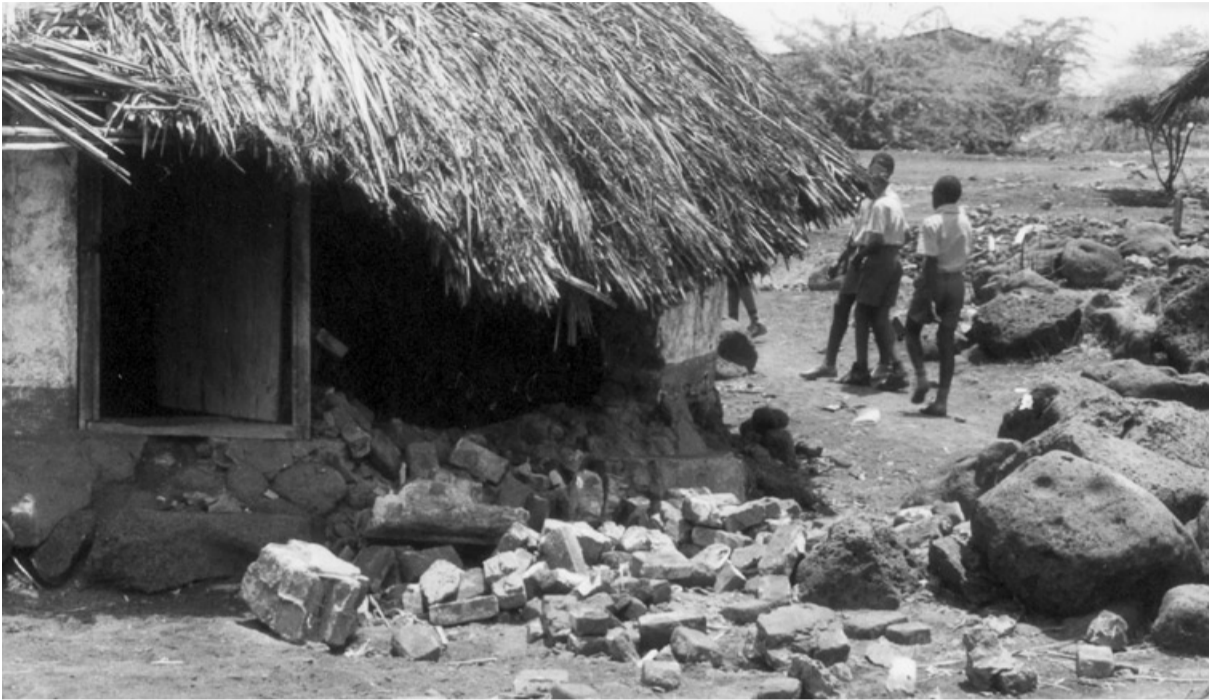


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OVERVIEW OF THE STRUGGLE FOR LAND RIGHTS AND REFORMS IN KENYA

rights in Kenya. Coast Development Lobby
By Davis Mulandi Malombe – Advocacy Programme Officer KHRC



Introduction

Land and land based resources contribute to the livelihoods of more than 90% of Kenyans yet statistics indicate that land distribution is marred with all forms of injustices and inequities. According to the KHRC's report based on the 'International Workshop on Land and Economic, Social and Economic Rights (2004)', only a paltry 17.2% of the population occupies more than 80% of Kenyan total land, a mass of 587,900 sq. kms. At least 13% of the population is landless while less than 5% of women who comprise more than 50% of the total population have land titles in their names, the report adds.

Although some of these problems existed during the pre-colonial Kenyan society, the historical and contemporal injustices on land were (and still are) aggravated by bad governance systems of both colonial and post-independence Governments. Such land injustices are attributable to the disharmonized and feudal land laws, deep rooted corruption leading to land grabbing; discriminatory cultural practices against women, children, youth, physically and mentally challenged; politically instigated ethnic clashes and conflicts; spontaneous and forced evictions; escalating poverty levels, environmental hazards; and lack of a land policy to offer comprehensive solutions to these.

All these manifestations of land injustices have therefore led to abominable violations of human

From 1895 to date, it is quite evident that all the major struggles-ranging from the clamour for human rights, gender equality, freedom and independence, legal, constitutional, institutional and political reforms have been in one way or another related to land rights advocacy.

Key Advocacy Issues and Initiatives

It is worthy noting that the above mentioned land issues and bottlenecks are as result of political and structural problems in the land administration and management systems. For effective advocacy on this issue, KHRC in partnership with affected communities have over the last few years adopted a two-pronged approach:

i) Strengthening the capacity of community advocacy groups to effectively demand for their rights. The KHRC has been able to identify and organize different landless communities into advocacy networks. These groups target both the state and non state actors for justice and accountability over a broad range of issues such as resettlement, human rights, gender and governance concerns emanating from land related claims. The said communities have formed very resilient networks such as: The Ndula Resource Centre in Thika; Laikipia Human Rights Network;

Group; National Network for the Internally Displaced Persons; Mara River Resource Centre in Kuria; ENE Land Commission in Ukambani; Mau Mau War Veterans Association; Mwangaza Haki Group¹, Narok Human Rights Network, CHRCE Mwingi and the National Network for the Landless Communities.

ii) Addressing the legal and policy deficiencies with the aim of unravelling the structural and institutional problems bedevilling the issue of land in Kenya. In partnership with Kenya Land Alliance, Fida- Kenya, Haki Jamii, Reconcile, Shelter Forum and the Institute of Surveyors of Kenya, KHRC has actively participated in the National Land Policy formulation process to ensure, among others, that the policy addresses: historical, contemporary and future land issues in Kenya. Among the key historical and contemporary issues of focus in this initiatives are: i) Land management systems; ii) Land tenure systems, private, public, customary, etc; iii) Accountability in access to and ownership of land; iv) Gender equality in matters of access to and ownership of land; v) Reparations and compensation for past injustices; among other key issues.

In this two-pronged strategy, a lot of effort has been and is being directed to ensuring that communities strengthen their knowledge base, vertical linkages with duty bearers and others whose support is crucial.

SUCCESSES SO FAR

The National Land Policy process has so far produced a draft land policy, which is currently being discussed by various stakeholders with a view to validating whether it comprehensively deals with all the fundamental concerns about land in Kenya. Though this is just a draft, KHRC recognises that a lot of progress has been made regarding entrenchment of key provisions into the draft policy. Some of the provisions worth noting are that:

- The vision, principles and guiding values of the draft land policy incorporates some core elements of good governance-sustainability, equity, consultations, transparency, accountability among others;
- It acknowledges landlessness, gender and generational inequity, squatting and disinheritance of some groups and individuals among other factors as some of the contemporal manifestations of the land problems in Kenya,
- There are land reform principles meant to enhance restitution, redistribution, resettlement and land banking;
- There would be land tenure practices to ensure equal access and security of tenure to all men and women,
- The National Land Commission is to repossess all the illegally and irregularly acquired land hopefully for the above land reform principles,
- The Government would protect the legitimate rights and interests held or claimed by other persons over privately occupied land,
- The Government would also recognize and respond to land rights of the minorities, historical land injustices, land rights for vulnerable groups, marginalized communities, gender and generational concerns,

- Institutional frameworks such as the National Land Commission, District Land Boards and Community Land Boards would be responsible for land administration at the national, district and local levels respectively. A Trust Fund would be established to compensate and address claims of deserving aggrieved parties of the past injustices.

However, much more needs to be done to ensure that the ultimate land policy:

- Contains clearly enforceable provisions for historical injustices, including restoration, restitution and compensation.
- Ensures compliance with fundamental human rights and social justice provisions, principles and values.
- Stream resettlement programme to ensure that it grants land to the genuinely poor and landless communities,
- Protection of the vulnerable groups among them the poor, women and squatters, Internally Displaced Persons and forest dwellers.
- The land policy should address the question of absentee landowners;

As we continue with efforts to address a national land policy, we appeal to all Kenyans to remain vigilant as ever to ensure that we achieve a policy that radically deals with the fundamental bottlenecks to the achievement of a socially just land tenure and land management system in Kenya.

As the case studies below illustrate, we may have won some battles, but our war for equity land rights and land reforms in Kenya is far from won!



WE REFUSE TO DIE!

COMMUNITY STRUGGLES FOR ACCESS AND CONTROL OF LAND AND RELATED RESOURCES IN KENYA

By Rama Githinji, member Thika sub region network

LAND RIGHTS STRUGGLE IN THIKA SUB-REGION

EASTERN REGION:

Land is a central issue in Thika sub-region. Thousands of people have mobilized, and organized struggles for access to, and control over, land and related resources. In the last 40 years of independence, the Kenyan government has dismally failed to address the issues revolving around land ownership. This can be attributed to lack of an appropriate National Land Policy. A policy, which can guarantee, secure and safeguard the people's desire and fundamental right to access, own and benefit from land and related resources.

This policy would also enable restitution where land which was forcibly and illegally taken away from Kenyans, as a result of colonialism, is given back. The Policy will also set limits as to how much land an individual can legally own and would set guidelines for the limitations of leases that are granted to multi-national profit making ventures that require hundreds of thousands of acres for their operations.

The current land laws are inconsistent, haphazard and not human rights compliant. Multi-nationals own too much land in an area where thousands are squatters. Individuals own huge tracts of land that are not cultivated and hence lie idle. Land related corruption especially land grabbing has led to serious shortages of land denying landless and poor citizens the right to be settled. The preoccupation with profit at the expense of human settlement has been the norm rather than the exception. "Politically correct" politicians and well connected individuals are the perpetrators of this particular violation.

As a result of the absence of an appropriate national land policy, serious human rights violations have resulted in Thika sub-region. These violations include: evictions, dispossession and widespread poverty. Multi-nationals have accessed huge areas of land at the expense of the poor and the marginalized. Squatters and the homeless continue to increase, further complicating an already desperate situation. However all is not lost. As the following case studies illustrate, the squatters and homeless in Thika sub-region have organized into a vibrant peoples' movement for land rights.

1.1 Kakuzi Land Rights Struggle
The Kakuzi human rights struggle is comprised of four communities which include: Kituamba/Kaloleni, Milimani, Kinyangi and Ngatho. They are found in Kakuzi Location, Kakuzi Division, and Thika District. They are 'squatters' on the lands of Kakuzi Limited. Kakuzi Limited is a trans-national company that came to Kenya in the 1930's and was granted a lease of 994 years since 1st August 1962. The land under leasehold runs into hundreds of thousands of acres.

From 1962 Kakuzi has systematically displaced the local indigenous community from the fertile lowlands that border the riparian reserves of River Nginyi and River Thika. The company has also forcibly evicted locals from fertile lowlands that bordered several spots watered by natural fresh water springs. Most of the able bodied persons from the communities were recruited as lowly paid manual labourers in the company's numerous agricultural holdings.

Most unfortunately, during these forceful displacements, the custodian of the rights of the people, the state, has always supported the violator. The numbers of persons that were displaced and dispossessed of their land by Kakuzi Limited with the active assistance of the provincial administration total, 2,497: Milimani (1,327) Kinyangi (300), Ngatho (450) Kituamba/Kaloleni (30) Gacago (30) Makuyu Sisal (200), Mwambo (8) and Gathungururu (152)².

As Mzee Francis Muiruri a resident squatter of Kinyangi explains, the strategy of Kakuzi Limited is to push the people to a state of dire poverty, hopelessness and perpetual dependence:

"Up to 1980 most of us could cultivate whatever good land we found in Kakuzi. However the

company denied us this right as it wanted us out so that we could work in their sisal and coffee plantations. Kakuzi ordered one of its managers a Mr. Makau to make sure that nobody planted anything in Kinyangi and surrounding areas. Mr. Makau, assisted by the Kakuzi locational chief, Mr. Njonjo-led a group of Kakuzi employees one early morning in slashing all our crops. We had no alternative but to get employed by Kakuzi otherwise we would have starved to death..."

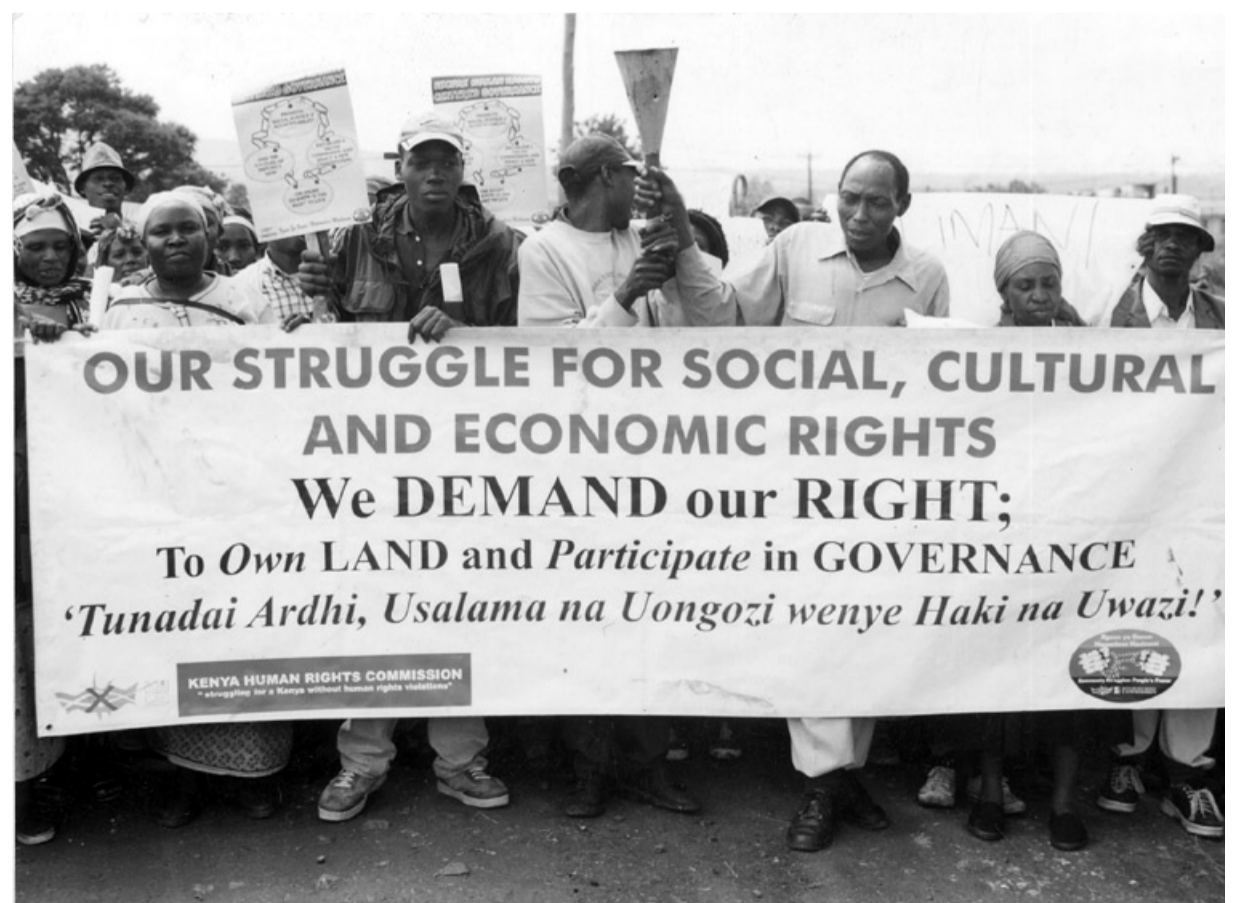
Thika River in what used to be called Kituamba/Kaloleni village. Joseph Muange, one of the Kaloleni Kituamba victims recounts their story.

"Our fore fathers had lived in the parcel of land stretching from the canal bridge at Kituamba all the way to Nginyi River. The first white settlers to arrive in the area found our families living in Kituamba and

both groups co-existed peacefully. We provided labour to these white settlers from our Kituamba homes

Later Kakuzi Fibre Land Company took over most of the surrounding parcels of land owned by white settlers and introduced the production of sisal. Some of our parents got employed by this new company. The new company continued with sisal farming up to the '70's when sisal farming was phased out to pave way for coffee, livestock, horticulture and forestry. Our problems with Kakuzi started in 1983 during the first phase of settling Kakuzi retirees in what is today known as Old Ngatho Kakuzi East Settlement. Kakuzi through its employees started grazing its huge herds of beef cattle on our shambas (farms), destroying our food crops."

According to Muange, the community reported the matter to the area councillor and police



Residents of Kakuzi and Gatuanyaga demonstrate to pressurize Kakuzi and Delmonte companies to give them land.

at Kituamba police station but nothing was done. In the same year (1983) talks of people leaving the area were rife and there was tension. Some houses were demolished by Kakuzi security personnel. The same year 5 elderly residents of Kituamba were arrested on their land by police officers from Kitumba police station. They were taken to Thika law courts and charged with, 'cultivating on Kakuzi land'. The court ruled that Kakuzi should stop harassing Kituamba residents and released them unconditionally.

After this incident our relationship with Kakuzi became lukewarm: a long time neighbour had turned against us.

In 1987 the then General Manager of Kakuzi Mr. David Munyae in the company of other senior company officials convened a meeting at Ithanga water supply site. The Approximately 250 families at Kituamba were informed by Mr. Munyae of a new settlement Scheme called Ngatho where they were to be moved and paid off Kshs. 15,000 as relocation costs. Each family was to get between 2 and 4 acres depending on the nature of the land. His word was final, and community members were given no space to express their views.

To make matters worse this process was so arbitrary that by the time the Kakuzi secret deadline was enforced; only 191 families had been paid the fee, hence locking out 59 families from the relocation process. What followed in 1989 was an order from the area Chief, Mr Ndung'u Kang'ethe to the 59 families to quit 'Kakuzi' land at Kituamba immediately.

The families defied the order, but in 1990, without warning ,Kakuzi security officials in four lorries led by one of the company's managers, a Mr. Musau, area Chief Mr. Kimotho and Administration Police ambushed and attacked the 59 families. They demolished torched their homesteads, slashed their crops and assaulted many of them.

Twenty families were ferried to Obonyo Camp in Kinyangi where to date their fate remains unknown. The rest, 30 families relocated to Ndula settlement scheme where they live as internally displaced persons.

The History of Dispossession and Oppression of the Mwambu Community?



Peter Kiama of the KHRC addressing the Kakuzi Communities at Ithanga Divisional Headquarters on 9/9/2004 just after a public demonstration to agitate for land in Kakuzi.

In 1968, 303 members of Gaicanjiru Self Help Group bought a parcel of land LR 10739/2, measuring approximately 1690 Acres, for the settlement of 303 shareholders. The land bought bordered the extensive Kakuzi Limited holdings.

The members later subdivided the land and each member issued with allotment certificate. With time the members developed the land setting up dwellings and other structures such as a permanent primary school on its own, modern cattle dips, permanent church buildings, a shopping centre and a community water project. Access roads class 'E' and 'D' linking Mwambu community to the nearby Thika-Nyeri highway and other areas were constructed, and regularly maintained by Murang'a county council.

Problems between the community and Kakuzi limited started on or around 1984 when a group of directors of Gaicanjiru self-help group entered into a secret deal involving land exchange with directors of Kakuzi Limited.

In a meeting held in Mwambu on 17th September 1984 chaired by the then Makuyu Member of Parliament (MP) Hon. Nduati Kariuki, District Officer (DO) for Makuyu Mr. K.M Lintari and a representative of Kakuzi Ltd, Mr. Thomas Makau, it was agreed that moving out or continued stay

on parcel LR107391/2 was a free decision and that no one would be forced to exchange his plot of land with Kakuzi Limited.

Those willing to move out were asked to form a committee that would negotiate with Kakuzi. The DO, Mr. Lintari stressed that the government would serve and assist Wananchi wherever they were and ruled out forceful evictions. Out of 303 members, 41 title holders refused to move out, a number that later went down to 18.

It is alleged that Kakuzi having failed to persuade all of them to move out of this land resorted to harassment in order to force the issue. They demolished Thangira Primary School, forcing many school going children to miss school. The community water pump was forcefully taken away and all access roads were blocked, hence cutting off the community from the rest of the country. Houses were either demolished or razed down by a combined contingent of company security guards, reinforced by Administration Police.

When all the above failed to intimidate the 18 families into submission, Kakuzi Ltd forcibly seized, detained and later auctioned 475 head of cattle and 568 goats and sheep belonging to community members. In addition the company demolished 12 permanent staff quarters belonging to Thangira community

primary school and Milimani Community.

Theirs is a sad tale of misery and gross mistreatment in the hands of this monolithic trans-national. Well over 2000 locals were forcibly evicted from the more fertile and arable lowlands and forced to live on top of the rocky barren and very steep Kakuzi Hills. They had to dig from tiny spaces of flat land to erect their mud walled huts in between huge and shaly boulders.

The rocky terrain cannot support food crops. Livestock keeping is banned as this would destroy the precious blue gum trees that the company has planted on whatever patches of land that would support vegetation. In addition all access roads to the Milimani Community have been blocked by the company. Expectant mothers, the sickly and the dead have to be ferried on wheelbarrows. School children have to trek over 10 kilometres to go to school in Kinyangi village.

THE PEOPLE'S STRUGGLES

Despite being faced with the state monopoly of violence and the financial might of this monolithic multinational, the people in their desperation, have not taken it silently. They have decided to die on their feet rather than on their knees.

On one hand, all the communities that are affected have formed

a very powerful advocacy network. They have elected a steering committee that provides leadership. In addition the communities have developed a strategic partnership with the Ndula Resource centre on one hand, and the Kenya Human Rights Commission (KHRC) on the other hand.

Ndula Resource Centre provides on immediate, on-spot strategic platform that links the communities with other Civil Society Organisations such as the Kenya National Commission on Human Rights (KNCHR), Kituo cha Sheria and Legal Resources Foundation among others. The NDULA Resource Centre provides information and basic capacity building through its Human Rights Clinic Project and provides a strategic link with the KHRC which provides technical and logistical support. Through this partnership a lot of advocacy work has been done.

On 13th December 2003 a meeting was held between the Managing Director of Kakuzi, the Deputy Executive Director of KHRC, the Makuyu DO, an official of Ndula Resource Centre and community representatives, to discuss the land rights issues of the Kakuzi communities. Among the outputs of the meeting were that the government through the DO promised to respond to the issues raised by the community representatives through the petition that they presented to the DO and the Managing Director.

The communities became more resilient and vibrant in their struggles after this ground breaking meeting.

Continued next page >>



Hon Peter Kenneth MP for Gatanga being accosted by his Kakuzi squatters constituents during the public demonstration for land rights in Kinyangi held on the 22nd Jan 2005

EASTERN REGION CONTINUED:

On 4th March 2004 community representatives through the assistance of the KHRC the Ndula Resource Centre, Thika, Maragua District Security Intelligence committees and Departmental Heads conducted a fact finding mission throughout the Kakuzi lands, especially in areas that the communities had been evicted from. The Maragua District Commissioner promised to respond on the tour, to date the DC is yet to respond.

On March 24th 2004 the KHRC and the communities organized a joint international press conference at Chester House attended by local and international media. A press release highlighting the plight of the Kakuzi communities was read out.

A major output of the press conference was that Kakuzi was put in the limelight and they softened the hard stance they had all along assumed of rebutting any efforts of listening to community grievances.

In early January, 2005 a consultative meeting was held between officials of the KHRC, Ndula Resource Centre and Kakuzi Ltd, in Thika Town. The agenda was to discuss and develop a common position on the governance and land rights advocacy within the communities affected by Kakuzi and the state. This meeting energised the resolve of the communities to hold more public advocacy events.

On January 22 2005 a community public rally was held at Kinyangi community grounds. The purpose of the rally was to address community issues: land, development, devolved public funds and governance. The meeting was unique in that all communities in eastern region stretching from Kibwezi, Nairobi, Mwingi, Machakos, Makuyu and Thika were in attendance. The rally was not licensed but through the intervention of honourables Kalembe Ndile and Koigi wa Wamwere the rally proceeded, though under very charged circumstances.

The area MP, Peter Kenneth sped by the venue and snubbed the meeting claiming he had not been invited.

It was a landmark rally in that it brought about all these communities and secured the

support of the two Members of Parliament.

On 9th September 2005 a major demonstration bringing together all the land rights communities was held in the Kakuzi lands. The aim of the demonstration was to highlight the insensitiveness of Kakuzi Ltd towards the thousands of squatters who live under great misery in its neighbourhood. The demonstration achieved several things:

First, it brought together the various stakeholders albeit under hostile conditions. Second it was a powerful statement of fact; that the Kakuzi communities will no longer tolerate the injustices and were ready for a showdown. Third, it focused attention on Kakuzi and its infamies. Lastly the demonstration proved that the power of the marginalized lies in their great numbers, this muscle can achieve a lot for the marginalized, if put to proper use

All this has been done against a hostile background. In the absence of a fall back position such as National Land Policy, it has been a challenging and up hill task, that has nevertheless had its rewarding moments. More important, we still believe that the vision of the day when all shall access and enjoy their right to land ownership is not after all an empty dream.

In the absence of a fall back position such as National Land Policy, it has been a challenging and up hill task,...

SUGAR CANE FARMERS' STRUGGLE TO SAFEGUARD THE FRUITS OF THEIR LABOUR

By Tom Mwanja Coordinator-Kakamega Human Rights Network

WESTERN REGION:

Introduction

Land is a resource and is the most important factor of production in Kenya, and more so Western Kenya. It is also a medium, which defines and binds together social and spiritual relations within and across generations. It is a home of creatures on earth, and also a national source of economic well being of our country.

Our economy is primarily dependant on agriculture as the most important factor of production, and the source of livelihood for the majority of the population. Three quarters of the population live in rural areas and depend on agriculture to sustain their families. Most of our industrial sector is agro-based and hence dependant on agricultural raw materials. Policy decisions affecting the sector have therefore vast implication for millions of Kenyan farmers, workers, processing industries and the economy at large.

Structural Adjustment Programs (SAPs) enforced by the World Bank (WB) and the International Monetary Funds (IMF) made our country liberalize its agricultural markets from mid 1980s. This led to a significant increase in imports of all major food crops, including the importation of sugar. This trend has been a serious threat to local sugar producers.

In addition, the trade agreements which Kenya and other Eastern and Southern African countries are negotiating, poses a threat to our agricultural sector. While we are opening up our markets for all, we may not have the ability to compete with European countries who are currently subsidizing their farmers to the tune of 43 million euro per year.

It is within this background that the farmers of Western Kenya have been waging their struggle for maximum benefits from growing sugar cane.. The Sugar Cane-Growing Industry in Western Kenya The entire Western Kenya region is mainly dependant on



A sugar cane farmer enjoying the fruits of his labour

sugarcane farming, with few other alternatives available. The high land under sugar cannot be compared with other food crops in the region. Approximately 160,000 farmers depend on sugarcane farming as a major contribution of government revenue. Sugar is also a strategic product because of its many linkages with other industrial activities such as beverage, confectionary and power alcohol industries.

In the early 1980s Kenya was able to meet its domestic demand for sugar through local production. But since then, the country has experienced drastic fluctuations, which over the years have run to a deficit of approximately a third of its domestic requirements. This has paved way for the sugar imports, and in many cases dumping of cheap sugar.

In addition, the cost of producing sugar in Kenya is among the highest in the world, and is therefore threatened by stiff competition from cheaper

imports, from other low cost COMESA and EU countries. Currently the Kenya sugar cane industry is operating under COMESA safeguard measures which expire in February 2008. The other point affecting or that may affect the industry is the SDL (Sugar Development Levy) that the Minister for Finance has shifted from the consumer to the grower, in the 2006 budget.

Kenya being forced to open up markets for European COMESA, agricultural products would threaten the still vulnerable local producers, and with these negotiated agreements in place, then that would mean trading away the livelihood of thousands of our small scale farmers.

ORGANISING FOR ACTION

Together with the Kenya Human Rights Commission, the farmers in Kakamega have formed a network-the Kakamega Human Rights Network. This network is

mainly composed of farmers and other human rights activists in the District. Through social analysis, the network realised that despite growing a very profitable crop, the farmers remained among the poorest citizens in Kenya.

They therefore resolved to organise and mobilise themselves to demand that the government and other duty bearers address this situation. The network leaders used public civic education forums to educate the farmers on laws and policies and other institutions that govern the sugar sub-sector and how they affect sugar cane growing.

During these forums the farmers identified many fundamental legal, policy and administrative bottlenecks negatively affecting sugar cane production. This led to the development of a strategy to enhance the capacity of duty bearers (out grower companies, sugar milling companies, sugar board) to respond effectively and promptly to the demands of farmers.

This strategy involves developing constructive engagement between farmers as right-holders and the duty bearers. This process started at the International Human Rights Day 2005, with a national conference on agriculture, in Kakamega. In July 2006, the network in conjunction with Kenya Human Rights Commission organized an interactive forum with all stakeholders and policy makers in the sugar industry, to identify possible solutions to the problems bedeviling the sugar sub-sector.

Key stakeholders were invited to the forum (Members of Parliament from the region, Kenya Sugar Research Foundation, Kenya Sugar Board, Out-grower Institutions, Millers, Farmers, civic leaders and the Provincial Administration) due to their strategic link to the sugar sub-sector. Those who turned up included a representative of West Kenya Sugar Company, West Kenya Out Growers Company Board Chair, the Mumias Out growers Company board member, Kenya Sugar Growers Association Chief Executive Officer and one Director, farmers and a representative of KENFAP³.

Unfortunately the Members of Parliament neither came nor sent apologies. It was revealed that the Parliament had already endorsed the provision to charge the sugar development levy to the farmers

instead of consumers. Participants wondered whether that was the reason why the MPs did not attend the forum.

Despite this, the forum was historic in its own way. For the first time:

- The duty bearers owned up to their lack of capacity to address the farmers' woes. The Kenya Sugar Growers Association revealed despite their public posturing, that they did not have the resources to mediate for the interests of the farmers. On their part, the out-grower representatives present indicated that the Sugar Act of 2001 had provisions that were difficult to implement, hence making it difficult for them to serve the farmers appropriately. The latter also conceded that political interference affected their service to farmers.
- A consensus was developed between the duty bearers, the farmers and the network members in attendance, on how to address the woes affecting the farmers.
- The forum resolved to hold a demonstration in the region to put pressure on all the duty bearers to pay attention to their woes. In addition it was resolved that there was need to organise a meeting with the Minister for Agriculture and the Sugar Parliamentary Association to pressurise them to speed up the amendment of the Sugar Act 2001 and the Agricultural Policy, to enhance farmers' benefits from sugar cane production.
- Participants requested for such forums in future. They felt such forums were not only educative but good for experience sharing. Such forums resulted in accommodative acceptance of all and would in future erase unhealthy suspicions in the industry, for the benefit of farmers.

For the first time in the history of sugar cane growing in Western Kenya, farmers and institutions resolved to work as a team to enhance the industry. As we continue to prepare to take the battle to the policy makers who boycotted the forum, we are aware that our struggle is just beginning, but we are determined to win.

EXPANSION OF CANELAND CAUSES SEVERE FOOD INSECURITY IN SOUTH NYANZA

By Caleb Twenya - Migori Human Rights Network

WESTERN REGION

When sugarcane farming was first introduced in South Nyanza in the late nineteen seventies it was regarded as 'white gold' that would act as a catalyst to boost the economic status of the people, create more job opportunities and also help in the infrastructural development within the Sony Sugar Belt. It is now about twenty-seven years since the establishment of the South Nyanza Sugar Factory (SONY). During this time, and especially in the last few years, one of the key issues that have emerged in the entire Sony Sugar belt and South Nyanza as a whole is massive food insecurity.

South Nyanza, especially Migori which used to be referred to as the 'granary of Nyanza' is today among the areas that rely on relief food.

The area under sugarcane has been expanded to hundreds of thousands of hectares of land while the crushing capacity of the sole sugar factory, SONY Sugar Company, has not been expanded. Currently the mill can only crush three thousand tones of canes per day. This imbalance between high cane production and the low crushing capacity has led to the overstay of sugarcane

in the farms for so many years that even go beyond the agreed contract period of five years.

South Nyanza, especially Migori which used to be referred to as the 'granary of Nyanza' is today among the areas that rely on relief food. In spite of the fertile land and enough rainfall received in the region, food crop cultivation and production is still very low. Most of the land is occupied by sugarcane and the desperate farmers around there have no option but to sit back and wait, until an unknown time when their cane may be harvested.

As if there is some sort of addiction in cane growing; thousands of farmers in the region keep planting and growing more sugarcane in their farms every year. With all these activities, the degree of food insecurity has gone up to an extent that Migori and South Nyanza as a whole is in a big danger, as far as, food security is concerned. Among the most productive areas that nowadays rely on relief food are Rongo, Awendo and Uriri divisions all in Migori District.

The Migori Human rights Network comprising of Community Based Organizations (CBOs) and farmers groups, has been in the forefront in the struggle to ensure that justice is done to farmers. The network has carried out several farmers' sensitization forums to enlighten the farmers on their rights, legal framework governing the sub-sector, especially the

Sugar Act of 2001, and cane growing agreements, which are legally binding documents in the development and control of the sugar sub-sector.

The network has also been conducting forums that bring together all stakeholders i.e. the millers, the farmers and the Out Growers Institutions, to ensure that all of them are involved in key decision making.

Among the challenges facing our struggle are political interference, lack of government goodwill towards the sugar sector, corruption and mismanagement in the sugar factories and the out grower institutions.

In spite of all these challenges the network has sensitized more farmers and majority of them can now understand the contents of the Sugar Act and the cane growing agreements, also the farmers with small acres of land have resorted to growing food crops instead of sugarcane to increase food production.

For all these problems to be solved, all the stakeholders in the sugar sector, the government and the local leaders must come together and save the sugar sub sector. Secondly, the land for food production must be enlarged and also new modern farming methods should be used to improve the food production in the area to cope up with the high rate of population increase.



THE STRUGGLE FOR GOOD GOVERNANCE AT MAJI MOTO GROUP RANCH

By Ole Supeyo - Narok Human Rights Network

SOUTH RIFT REGION :



An opinion leader addresses a Bonanza at Maji Moto.

Overview

For most Kenyans, land is the only means of subsistence, and thus an economic necessity. Ultimately land may be a question of life or death for individuals (Murungi, 1950). Nationally, Kenya's economy is based primarily on land exploitation for agriculture, which contributed an average of 27% of Kenya's Gross Domestic Product (GDP) between 1988 and 1994. Tourism, also based on land and ecological conservation, contributed 11% within the same period (Republic of Kenya, 1995).

Unfortunately, land ownership and utilisation is one of the most contentious issues affecting Kenya today.

Government departments and other institutions have indeed been established over the years to handle land-related issues, but they have evolved different and often conflicting approaches to their spheres of interest. Thus interconnected land activities – such as human settlements, agricultural production, tourism, industrialization, and pastoralism – are regulated by different agencies with different mandates. The result is a disjointed system in which similar goals are pursued in a mutually exclusive manner.

There is persistent conflict between customary rights (tenure) to land and individual title acquired pursuant to registration under the Registered Land ACT (Cap.300). This has generated numerous land disputes, which consume work time and material resources that could be used more productively. It is hoped here that the current National Land Policy draft will see the light of day, hence streamline most of the legal concerns.

Emergence of Group Ranches

In 1968, the Kenya government established group ranches in Kenya's semi-arid areas to control environmental degradation and to increase herd productivity. Group ranches are land that has been demarcated and legally allocated to a group such as a tribe, a clan, section, or family (Kenya 1968). The members jointly own legal title to the land and elect a management committee to coordinate and implement development projects on the ranch. Individuals retain certain rights, such as residency rights, and the group as a corporate body retains some rights, such as control over grazing rights, tillage, and water resources. Most of land tenure system in Narok district started as either group ranches or trust lands which

were thereafter subdivided into individual/private tenure system.

Currently, the policy around the pastoral areas, which encompasses the arid and semi-arid lands, is not very clear. Official political rhetoric has tended to encourage individualization of tenure, while certain policies implicitly aim to discourage a nomadic way of life. Given the fact that nomadic pastoralists comprise 20% of the national population, the prevailing official ambivalence with regard to questions of tenure and land use is untenable. The group ranch representative officials have tended to take advantage of this ambivalence.

Maji moto's Struggle for Accountable Governance

Introduction

Administratively, Maji - Moto is a location within Osupuko division of Narok South, along the Narok – Maasai Mara road. The location is further divided into two sub-locations, namely Maji Moto and Enkiu.

Maji Moto was registered as an adjudication section (group

ranch) in 1978. Sub – division commenced in 1996. The group ranch spurns a total acreage of 11,208.5 Hectares. The total registered members in the group ranch are 2293. The individual member's parcels are 53 acres each. Illiteracy levels are very high among the 7 000 inhabitants of Maji Moto location (1998 census).

Problems affecting Maji Moto Group Ranch

Maji Moto group ranch has been going through a land and human rights struggle for the last five years.

This struggle was occasioned by the flouting of legal land management and administration procedures, high levels of corruption and muzzling of the voice of the majority of ranch members in key decisions regarding management and access to their common resource.

Decision making processes became a preserve of the Group Ranch committee, the Councillor, Chiefs and the Directors. No annual general meeting (s) was held for a period of eight years contravening the Group Representative Act CAP 287, which makes it mandatory for group members to participate in decision- making.

The group ranch officials also entered into dubious, exploitative and oppressive agreements with a private developer (Olarro Limited), binding the community for over 25 years under the said exploitative arrangement. The private developer has established a Tourist Lodge within the group ranch and he remits leasehold fees far below the prevailing market rates.

The management of the group ranch was characterized by misappropriation of community funds. Members contributed an amount not less than fifteen million shillings towards the sub-division exercise. Despite

numerous demands by group members for accountability of the said funds, nothing was forthcoming, nor was the exercise completed.

The group ranch officials' response to the demands for corrective actions was the use of threats and intimidation of those agitating for change. Threats of no parcel allocation, freezing of the Touch of Love Integral Development Program (TOLIDP's)⁴ account and writing of accusation letters to government ministries, among others abounded. Those of us championing the said community rights have been intimidated and harassed by the provincial administration with one of us locked up in cells on trumped up murder charges.

Fraudulent land sub-division process where rampant. For example a huge chunk of 5,000 acres is still shrouded in mystery with strong indications that it could have been sold to non – members.

At the beginning of the struggle, over fifty rightful members were deliberately excluded from the group ranch members' register, while others (those in the good books of the committee) were granted double portions of land. The group ranch demarcation records (the register of members, demarcation maps, books of accounts etc), were all kept in secrecy contrary to the group representative act. This law demands that all records be presented annually in AGMs and upon request by bona fide members of the group.

Maji Moto is a pastoralist habitat, where livestock keeping is the main economic activity. The demarcation committee allocated common community utilities e.g. water points and salt licks (all of which are scarce and critical to their survival) to individuals. Women too (even though some registered as direct beneficiaries) were equally excluded in the decision making processes.

Other obstacles in the struggle include the ignorance of the demarcation committee of their role and that of members in the demarcation process; corruption and sheer abuse of office enhanced by a government that abets and perpetuates corruption; absence of community based institutional frameworks to ensure free flow of information and resources; the community ignorance of their rights; land laws emphasizing private land ownership at the expense of pastoralist life; previous trends in which the leadership have corrupted and abused their office (s) to the detriment of majority of group members with high levels of impurity; and alarming poverty, which makes the members highly susceptible and vulnerable to corruption.

Actions taken is Seeking for Solution

The Touch of Love Integral Development Program (TOLIDP), a community based organization operating within the said group ranch took the initiative of mobilizing the Maasai pastoralist community resident in this locality to seek for solutions.

Lobbying, Advocacy & Negotiation

Several community baraza's (meetings) were organized at the grassroots level to educate the community of its rights and obligations. Although few members had the courage to attend the said barazas in the initial stages,

this changed drastically after each successive meeting. Training and capacity building on general human rights and Land rights specifically were also undertaken. The Kenya Human Rights Commission facilitated a training of community members on government monitoring, while Mainyoto Pastoralist Integrated Development Organization (MPIDO) facilitated training on Land rights.

Direct Action

A peaceful demonstration to the District Commissioner's office and to the said private lodge to protest against dubious allocations was carried out. This compelled the Narok district commissioner to visit Maji Moto. The DC also helped put pressure on the District Lands and Adjudication Officer to dispense fairness. A vote of no confidence was passed on the local leadership, which led to the voting out of office of a significant portion of the corrupt regime.

Lobbying the District

Commissioners office to get involved to oversee peaceful election of new management was done. The DC initially sent his deputy, but thereafter came in person. The DC also added voice to our demands, by asking the government group ranches registrar to visit Maji Moto, and the registrar of lands to officiate and legalize the election of the new management. The Group ranches registrar finally bowed to pressure and came to the ground to attend a special members meeting.

Networking and collaboration

The Kenya Human Rights Commission provided technical, moral and financial support. KHRC especially contributed in the education of the community members on their fundamental and democratic human rights in managing their own resources. KHRC also assisted in the provision of legal advice.

Mainyoto Pastoralist Integrated Development Organization (MPIDO) equally provided technical and financial support in endeavours to liberate the Community from the shackles of oppression and human rights violations. The Provincial Administration was also engaged in the struggle to ensure the provision of security of all group members as the situation became tense and threatened to go out hand. The mass media was equally involved in covering the activities such as the peaceful.

Petitions

Petition letters were written to Kenya Anti – Corruption Commission (KACC) to investigate the matter. The Commission responded through letters to the accused reminding them to come clean on the allegation. The Commission also wrote to the Commissioner of lands requesting the office to get involved in seeking for solutions to this case.

Petition letters were written to the Registrar of Group Ranches and Director of lands, Commissioner of lands and the Lands Minister's office. The director of lands instructed the registrar to visit the

Maji Moto ranch and resolve the conflict.

Public litigation

As indicated earlier the entire local leadership had ganged – up to defeat the course of justice. It became necessary then to develop strategies aimed at scuttling this challenge. The directors of the 19% commission from the Maasai Mara collection were taken to court on corruption and abuse of office charges. The move produced the desired goal.

Achievements

The Maji Moto struggle has produced very encouraging results. Among the key ones are the removal of most of the corrupt directors, and the group ranch demarcation committee from office, equitable and fair allocation of land including allocation to the group that had been earlier excluded, the removal of office of district land officials who were abetting the violations at the ranch, and improved awareness of rights among the membership of the ranch.

We do however recognise that this is just one phase in our struggle. A lot however remains to be done to safeguard the gains and take the struggle to new heights. Among the key areas that will inform the struggle in future include more awareness among group members on their rights, vigilance on the institutions concerned to ensure they respect the rights of the people, establishment of institutional frameworks that will enhance accountability through control by and participation by

Its success will be a point of reference and a precedent for the rest of the group ranches to follow. The Maji Moto struggle has to be sustained in order to facilitate the realization of the related social, cultural and economic rights.

the community. There will also be need to initiate a paralegal training program for the community to build up a pool of enlightened human rights activities..

In addition the Maji Moto struggle needs to be replicated in the other group ranches in Narok facing the same predicament. These include, i) Olkinyie Group Ranch in Narok south; ii) Koyiaki Group ranch; iii) Suswa/Kitet Group ranch; iv) Limanet group ranch. Some of the interventions needed in these ranches include community advocacy and awareness meetings; training and empowerment workshops for stakeholders; building the capacity of CBOs/FBOs currently involved in the struggle in research, documentation and community mobilisation, influence the national land legal and policy processes, among other measures.

The Maji Moto struggle is a continuing process. The outcome besides the full realization of lands rights for resident should envisage full participation of the community in governance issues.

Its success will be a point of reference and a precedent for the rest of the group ranches to follow. The Maji Moto struggle has to be sustained in order to facilitate the realization of the related social, cultural and economic rights.

The people have decided; Maji Moto belongs to them! They will pursue the struggle relentlessly.

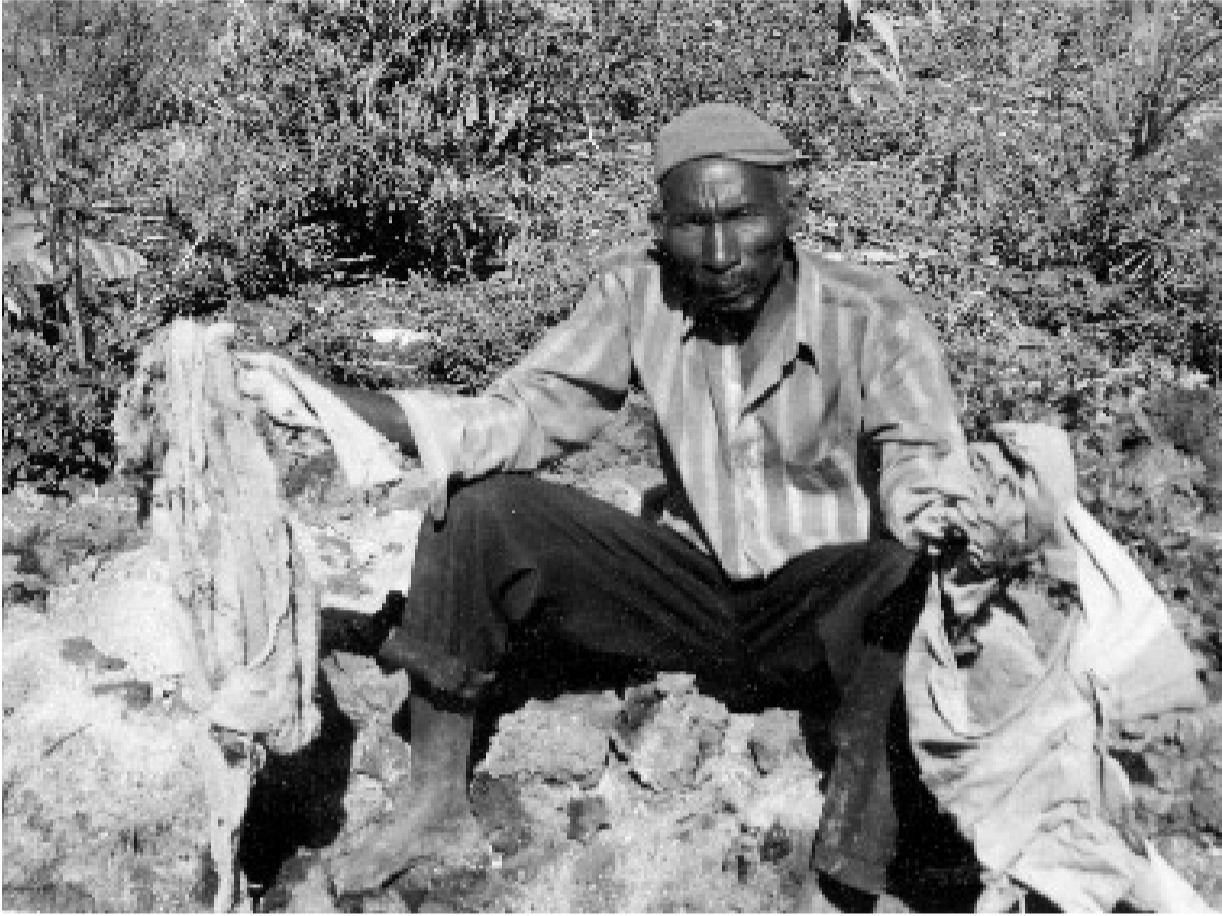


Mr Stanley Riamit, one of the KHRC Narok Network member address a Bonanza at Maji- Moto

30 YEARS OF PAIN AND SUFFERING IN LAIKIPIA

By **Gichuki wa Githogori** - Laikipia Human Rights Network

SOUTH RIFT REGION



A victim of landlessness

Introduction to the Murengai Farm Dispute

This land dispute pitting poor rural citizenry against rich, powerful and well connected property owners, is typical of the plight of poor Kenyans who relentlessly wage their struggles, determined 'not to die' from poverty, disease, dispossession, and lack of access to the legal system. It is a case that reminds one of the famous calls of Field Marshal Dedan Kimathi, who urged the freedom fighters on with the words, 'it is better to die on our feet than to live on our knees!'

The Murengai land dispute involves land parcel, L.R Number 6875/2 and 6875/3, in Daiga location, Central division, Laikipia district of Rift Valley Province. This land was rightfully acquired by the members of a company known as Uiguano wa Mumbi (K) Ltd. The company comprised of women who had lost their husbands during the struggle for Kenya's independence. This land has been subject of dispute for the past 30 years, resulting in the displacement of the Murengai Farm residents, who had a legitimate claim to this land, but have now been reduced to homeless squatters, living by the roadside.

Peasant farmers registered as members of Uiguano wa Mumbi (K) Ltd and in 1978 agreed to buy the piece of land in question from the late Paulo Bindi, a Kenyan resident of Italian origin. The group was called to do so by officials of the Lands Ministry in Nanyuki, through Laikipia land registrar after Paulo Bindi expressed his intentions to sell the land. They paid him Kshs. 717,600 as deposit to purchase one section of this land, of about 160 acres. Little did they know that Mr Guleid, the original owner of the farm, had not yet transferred the title deed to Mr Bindi. The sale agreement was still awaiting the decision of the Laikipia Land Control Board when Mr Bindi sold the land to Uiguano wa Mumbi.

On learning that Mr. Bindi had sold part of the land to the women, Mr. Guleid convinced them that he was the rightful owner of the farm and that they should buy it directly from him. He offered to sell the entire farm (the two parcels of land comprising of about 290 acres) at a wholesome price of Kshs 800,000/=. Mr Guleid, knowing that he had a legal sale agreement with Paulo Bindi, and still intent to purchase the land from Mwireri Estates Ltd, prevailed the women

not to bother with a written sale agreement, but seal the deal through the traditional ways of buying the land.

The naive and honest mothers trusted him, seeking to take advantage of the better deal. They paid him all the money, Kshs. 800,000/= in cash, and the deal was sealed using the Agikuyu rituals of land buying, which included, taking an oath (Muma). Even as they bought the land from Mr Guleid, members of Uiguano wa Mumbi (K) Ltd, were already settled on the section of land they had previously bought from Mr Paulo Bindi in 1978.

Court Battles

Greedily seeking to take back possession of the entire land, Mr Guleid filed a court case against Mr Paulo Bindi in 1979 (Case No 235/79 in the Nyeri High Court). On the other hand, Guleid also asked mothers of Uiguano wa Mumbi to help him push Bindi out of the farm arguing that only when Bindi was kicked out of the farm would he be able to hand over the entire farm and the Title Deed to them. The women agreed and filed a case against Mr. Paulo Bindi seeking refund of the money of Ksh. 717,600, they had paid him. (Case No. 287/79 in the High Court of Nyeri).

Both cases dragged in the Nyeri High Court until 1993, when a judgment was entered in favour of Uiguano wa Mumbi in their case (Case no 287/79) against Bindi. Bindi was ordered to pay back their money. Later, the High Court also ruled in favour of Guleid in his case against Bindi, and an eviction order issued. Even after Bindi lost the case and left the farm. Mr. Guleid continued to promise the members of Uiguano wa Mumbi (K) LTD that he would honour his deal with them. Thus members of Uiguano remained on the farm peacefully and undisturbed.

On 19th May 1994 Bindi filed a notice of appeal in civil suit 235 of 1979. On 20th May 1994, he filed a notice of motion in the high court of Kenya, Nyeri, seeking orders for stay of execution of the judgement of 13th May 1994, and for the states quo to be maintained, till the determination of the intended appeal at the court of appeal. On 1st July 1994 in the high court at Nyeri the Hon. Justice Mary A Ang'awa declined to grant orders for the stay of execution.

The family and friends of Paulo Bindi and Angelica Wairimu Bindi were subjected to harassment and threats by the Guleids. Fearing for their lives, the Bindis fled Nanyuki and went to live in Malindi. This is where, On 25th December 1999, Bindi died of heart failure; a lonely man, evaded by justice and forsaken by his adopted country. He did not refund Kshs. 717, 600, to Uiguano wa Mumbi. He desired to honour their sale agreement and hoped to win the civil case 235/79.

Without the refund from Bindi, Uiguano members continued occupying the parcel of land allocated to them by Bindi in 1979. On the other hand, Mr Guleid continued assuring the members of Uiguano that they would not be evicted, until he died in 1979, without transferring the land to the women.

In 1998, Hawa Hassan Ali, the widow of the deceased (Guleid), visited the farm occupied by

the members of Uiguano wa Mumbi, accompanied by the area Chief Benjamin Rono. She was introduced to them as the new owner of the farm, having inherited it from her late husband, Mr. Guleid. She ignored the past transactions and told the members of Uiguano that she would sell the land afresh. She also added that she was willing to give them the first priority to purchase the land. Subsequent the women paid another Kshs. 250,000 to her.

Having been cheated before, the women this time demanded a written agreement, and even sought the help of the Laikipia to DC to have this demand enforced. Hawa, declined to enter into a written agreement, and unfortunately died that same month of July 1999. In the year 2000, completely out of blues, members of Uiguano wa Mumbi were served with a quit notice by Halima Mohamood Ali, daughter to the late Mohamood Ali Guleid and Hawa Hassan Ali. She claimed that they were illegal squatters who had encroached on her late father's property. She denied knowledge of the earlier agreements between Uiguano wa Mumbi members who she now referred to as 'illegal squatters', and her parents.

On December 2001, Halima presumably obtained fresh eviction orders from the high court sitting in Nyeri – by resurrecting orders issued to Guleid, her father, in 1994 against Bindi, and on the morning of December 13th 2001, she brutally evicted members of Uiguano wa Mumbi from the farm, using hired thugs who burned the huts and flattened the entire villages, leaving the villagers homeless paupers.

Since the eviction, the people of Murengai farm formerly members of Uiguano wa Mumbi farm, (K) Ltd, have seen untold suffering including being subjected to: absolute poverty, 171 homesteads were brought down turning over 500 people into beggars with nowhere else to go; loss of property and vital documents; constant harassment; disruption of life, including education for their children; arbitrary arrest and imprisonment, 20 members of Uiguano wa Mumbi were arrested and arraigned in court charged with trespass. 11 were acquitted and 9 committed to 18 months of community service; loss of ancestral ties after losing land,

where 17 families had buried their loved ones.

Actions Taken

In the year 2004, members of Uiguano wa Mumbi approached Laikipia Human Rights Forum. The Forum comprises of various groups and community based organisations and is based in Nanyuki town. Together with Uiguano members, the Forum carried out an extensive research over the issue. A report was compiled and petitions drawn. The report and the petitions were later delivered to the Minister of Lands and Housing to act. Similarly, the same were delivered to different government agencies including the Kenya National Commission on Human Rights (KNCHR) and the Ministry of Justice and Constitutional affairs. Through the Forum the Uiguano wa Mumbi members managed to take their struggles from the District level to the National level.

CHALLENGES IN THE STRUGGLE

Our struggle faces serious lack of political will as the local leaders have now turned against Uiguano members, claiming that they (leaders) cannot challenge the same government they are working for. Ironically, these politicians were elected by the people of Murengai after promising them that if a new government comes into power, their problem will be looked into and solution sought. Secondly, after delivering the petitions to the land ministry, the petition was later removed in a very suspicious manner forcing them to take another copy back there.

ACHIEVEMENTS

The struggle however received a major boost this year. After mounting more pressure at all levels of government, the area M.P. Mr Mwangi Kiunjuri, forwarded their problems to the President during his visit to Nanyuki town on 27th January 2006. The President ordered their immediate return to the land. However to date the Presidential order has not been implemented since Murengai residents are yet to be settled.

The Murengai farm tussle is no longer merely a land issue. It has taken a social, economic, environmental and political dimension. It is a major human rights issue. The right of destitute members of Uiguano, who still camp by the road side, depending on well wishes to give them hand outs, is a blatant contravention of all treaties and conventions, internationally and locally, which this country is a signatory to, not to mention the Bill of Rights enshrined in the current Kenyan Constitution.

The Murengai farm tussle is full of trickery and sheer fraud, manipulation of the law, the courts of justice and other forces of law and order. The tussle also involves ignorance of law and procedure on agreements, the dishonest nature of the original owners of the farm and the political interference of the previous regime, which deliberately abetted this evil.

Despite the odds against us, the poor and dispossessed women of Uiguano wa Mumbi and the members of Laikipia Human Rights Forum are not giving up yet, though!

PRAGMATIC SOLIDARITY: THE CASE STUDY OF LAND RIGHTS STRUGGLE IN KWALE

By Josephine **Waithera Gikuyu**-Programme Officer, Coast Region (KHRC)

COAST REGION

The Kenya Human Rights Commission's solidarity with the communities in the Coast region dates back to the 1990s. However due to the new strategic direction of rooting human rights in communities, the KHRC started community engagements at the Coast in 2004. The first communities to engage with under this new strategy were communities in Kwale district.

What was the Situation Before?

Upon entry into the region in 2004, KHRC's first assignment in the region was to work towards safeguarding the rights of communities living in Kwale's Nguluku-Maumba titanium mining areas. Within no time, we realised that the community had not been organised into an advocacy group or any sort of defined structure. What existed on the ground were a few individual community members who made efforts to confront both the state and non-state actors on emerging concerns. The same people also acted as liaison persons to civil society organisations that made occasional interventions in the area.

What the Kenya Human Rights Commission Did

With support from groups such as the Coast Rights Forum (CRF) and Coast Land Rights Lobby Group (CLRLG), KHRC visited the area with the aim of identifying any structures that may have been on the ground and that would suitably act as leverage upon which to house and jumpstart the titanium mining campaign.

The Catholic Church and other scattered civil society organisations had made one-off and inconsistent interventions within the decade the mining project had loomed. None of them had invested time in setting up a people's organisation that would enhance the capacity of the locals to spearhead their struggles. It was evident that some sort of organisation was needed.

In December 2004 as part of the Coast region's International Human Rights Day (IHRD) celebrations, the KHRC brought together 40 community representatives from Nguluku, Maumba and Vumbu areas to deliberate on how best to defend their rights. Apart from the 'Shimba Hills Declaration', which formed the community's plan of action, the Mwangaza Haki Group was formed in order to provide leadership and some coordination to the community endeavours and activities.

What changed?

In 2005 the KHRC invested in strengthening the community's ability to provide effective lead in the community struggle. An experts analysis of the two Environmental Impact Assessment reports⁵ was carried out which pointed out the issues of concern, as well as, the divergent perspectives of the investor/government on one hand, Civil Society Organisations and communities, on the other.

The analysis identified five core human rights concerns that formed the joint KHRC and community agenda on this issue. These concerns are: inadequate compensation; resettlement; information flow; lack of community involvement in decision making processes; and environmental issues.

In January 2005, Mwangaza Haki Group through the KHRC forwarded a letter of demands to the Commissioner of Mines and Geology who responded. On one hand he downplayed most of the allegations stated in the community letter, though promised to conduct an investigation. The community alerted the KHRC of a low-profile visit to the area conducted by the Commissioner. He met community members on issues raised in the letter.

Thereafter, the KHRC and community representatives met with the then District

Commissioner-Kwale⁶, Mr. Fred Mutsami who reassured the communities of support from his office but made it clear that the decision to mine titanium was irreversible and could not be stopped as it was beneficial to the people of Kwale.

In July 2005, Tiomin Inc. was granted a 21 yr mining lease. There was no turning back by the government. But the agitation and failure to relent by the communities contributed to the delay in commencement of mining. Mwangaza Haki Group provided lead in organising community forums aimed at unifying the community and defining its demands.

In December 2005, they joined other groups from the region in Mombasa and presented a Memorandum on their issues to Commissioner Khelef Khalifa of Kenya National Commission on Human Rights (KNCHR).

In April 2006, following pressure from the group and the community, an election was called to replace community representatives to the District Rehabilitation and Compensation Committee (DRCC), who had been compromised and become ineffective.

In 2006, civil society organisations in Coast organised in support communities in the area as they had done in the late 90's when the titanium mining campaign begun. In March 2006, a public forum organised by Mwangaza Haki Group and civil society organisations from Mombasa was held in the area. Government and Tiomin representatives turned up but only to intimidate and insult both the civil society and the community.

Realising that the state and non-state actors were not ready to protect the interests of the community at a moment when resettlement was no longer a rumour, CSOs resolved to educate the communities on the legal



Our shelter by the roadside. Jakubu, A veteran Mau Mau fighter and a victim of eviction

MIZIZI YA HAKI

Let the people speak

implications of contracts that they had been issued with. Lawyers from Mombasa volunteered to analyse the contracts that the communities had promised to acquire. Copies were also made for circulation as not all community members had received these contracts.

On April 29th 2006 the planned Legal Aid Day aborted due to

heavy security presence by the police. Nevertheless, information that had been prepared was disseminated to the communities at a later date.

On 12th May 2006, Mwangaza Haki Group drew a petition to the government and collected 89 signatures from the community members.

Following the petition, surveillance by the government in the area was increased and community/public meetings were prohibited except those called by the D.C/government or the investor/Tiomin. The first lot to be resettled of 22 farmers was expected to return their signed contracts on 22nd May 2006. This did not happen as 5 families out of the 22 who are residents in the area had failed to sign the contracts. Furthermore the government had failed to respond to the petition in which the communities had requested to meet DRCC before the 22nd May.

On 26th July 2006, DRCC accepted to meet community representatives and the CSOs. Coincidentally, the Minister for Environment was in town and the D.C/Chair of DRCC had to host him, once again our meeting with the most influential organ aborted. A meeting with the communities however established that they had been given fresh eviction notices in a letter dated 21st July 2006. Discussions held concluded that it was wise to seek legal protection. A few community representatives have engaged a private lawyer to assist them in acquiring a court injunction meanwhile we're working towards identifying pro bono lawyers and the possibility of filing a suit with international courts such as the African Court of Human and People's Rights to seek redress for the violations.

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Mwaumba primary school which will be demolished

Following our engagement with communities in Nguluku and Maumba, KHRC was keen to ensure that the kind of human rights violations experienced in Kwale would never recur in Kenya.

In addition, part of strategy work is to use on-going work at the local level to influence and inform developments at the national level. In 2004, the Department of Mines and Geology embarked on a process of reviewing the archaic Mining Act and developing a policy for the sector. Following the experience gathered from the local level (Kwale) and on realizing the importance of having the right policies/laws for the protection of human rights, KHRC saw it important to contribute to the legal reform process. We wanted a law/policy that would promote people's right to development and self determination and a policy/law-making process that was human rights-centered/compliant.

In early 2006, the KHRC approached the Mines and Geology Department (MGD)-Ministry for Environment and Natural Resources to partner with us in promoting human rights in the sector. In March 23rd-25th 2006, we jointly organized a National Conference on Ethical and Accountable Mining which

brought together stakeholders (from the government, private sector, CSOs and communities some from Nguluku-Maumba and other areas affected by Mining) from all over Kenya to deliberate on enhancing governance and accountability within the sector.

During this forum, the draft National Mining Policy and the Mining and Minerals code were scrutinized and recommendations on enhancing both the process and the content were provided. A Multi-sectoral Working Group/committee was formed. On April 19th-20th 2006, the committee met to refine the conference proposals and make additional proposals to the draft documents, to analyze human rights implications of the policy/law, as well as ensure integration of a rights-based approach in the policy/law.

In July 2006, KHRC participated in a national stake holder's forum organized by the Mines and Geology Department. The forum aimed at seeking more views on the documents. We are working closely with the department and other CSO such as Action Aid Kenya, Kenya Land Alliance to take this process to the grassroots, where it's needed the most, for more views.



Pupils from Maumba primary school which will be demolished and relocated to pave way for Tiomiri

Upcoming events

NAIROBI:

- 1. INAUGURAL ANNUAL HUMAN RIGHTS LECTURE**
10TH DECEMBER 2006
THEME: POVERTY AS A HUMAN RIGHTS VIOLATION
KEY SPEAKERS EXPECTED
- 2. WORLD SOCIAL FORUM, 20TH -25TH JANUARY 2007**
VENUE: MOI SPORTS COMPLEX KASARANI

- 3. ANNUAL KHRC/COMMUNITIES' EVALUATION AND PLANNING MEETING, JANUARY 2007**

- 4. ANNUAL KHRC OPERATIONAL PLANNING RETREAT**
FEBRUARY 2007

NORTHERN REGION

LAUNCH OF RESEARCH REPORT ON DISCRIMINATION AND CITIZENSHIP

VENUE: WAJIR BARAZA PARK

DATE: 6TH DECEMBER 2006



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