

MIZIZI YA HAKI

“Those who expect to reap the blessings of freedom must... undergo the fatigue of supporting it.”

Thomas Paine; 1777



Let the people speak

A community human rights initiative newsletter

ISSUE NO. 12 March 2011

Land: A burning issue in Coast

By Amina Bakari

The genesis of most land ownership disputes in Coast province can be traced back to the colonial era. Gung'ombe village in Mwakirunge sub-location of Kisauni District/Constituency is a good example of this. The village is to be found on plot number MN/II/501. Residents have inhabited the village for over 8 decades having settled there in 1918. The history of Gung'ombe is that the land on which the village rests was in 1918 given to Dr. W. A. Bowen, an army doctor in the World War I. As was the case with all colonial claims on land in Kenya, the community that lived on the land before **British colonization of Kenya in 1897**, continued to live on the land, even as the first registered 'ownership' of the land was transferred to Dr. Bowen. The only change was that the community sought formal employment and thus some were employees of Dr. Bowen.

The community lived harmoniously with the then purported owner. In the 1940s however, the doctor disappeared mysteriously. There is speculation

that he returned to Britain and may have died there. Strangely, neither he nor his heirs have surfaced to claim the land since then. Naturally, this was not a problem, as in the minds of the residents of Gung'ombe, the land was always theirs. It had simply been unjustly allocated to Dr. Bowen following colonization and there was always the expectation that with independence, this injustice would be corrected. Further, since there was always the community trust and goodwill that everyone knew it was their land, there was no threat of anyone else coming to claim their land in independent Kenya.

However, lately, the unthinkable has happened. Residents of Gung'ombe are today living in fear following threats of eminent eviction. In 1992, plot number MN/II/4703 was hived from the larger plot MN/II/501. It was consequently leased for a period of 99 years running from November 1992 to a company by the name Cyrot Limited. This company is said to be associated with a Member of Parliament in Western Kenya. The company

then proceeded to use the plot as collateral or security for a bank loan with Postbank, taken in October 1993. The company failed to service the loan, which appears to be in line with a corruption strategy commonly used by politicians in the Moi era. The bank therefore foreclosed, which was of course no loss to the Cyrot Company as they had not bought the land in the first place and thus felt no pinch that the land was lost to the bank. The bank is alleged to have transferred the property to Power Group of Companies in May 2009.

All the forestated is based on narrations by the elderly and gathering of snippets of information from community members who have in the course of their work or relations come upon this information. Attempts to conduct a search to establish the status of the plot have been frustrated by the Lands Registry – Coast Province. The file for plot MN/II/501 and MN/II/4703 has been missing for months now and no explanation has been given by the Lands Registrar.

continued on page 3



Well wishers carry away Charo Menza who got a bullet graze across the chest



Used cartridges found at the scene of crime

Table of Contents

Editorial	2
Letters to the editor	3
LAND, FOOD SECURITY AND LIVELIHOODS	
Land: A burning issue in Coast	1
Re-open Miwani Sugar Company	5
Farmers from North Rift are demoralized by the maize price	5
District Commissioner's wrath on the Constitution	6
Residents tell it all at a land clinic in Kwale	6
Nyeri County cannot take off without women	7
A lady crying in silence	7
GENDER MAINSTREAMING	
Nine boys rescued from a suspected trafficker	8
New law will fight outdated cultural practices	8
Boy child in danger	8
Gladys Jepkechei Tarus case: An eye opener into corruption in our Military	9
The cut: Female Genital Mutilation (FGM)	9
Trailing the fear and tears of witchcraft	10
Kinango "Wizard of love" jailed for 20 years	11
The tribulations of a woman in Kinango	11
Stunted girl-child education in Kwale	12
EDUCATION AND CHILD RIGHTS	
Education among Pokot and other pastoralists	13
Increased subsidy to education should bear fruit	13
Torture	14
Peace a co-factor of development	14
Police and bribery	14
Sayings and proverbs on peace	14
Unreported rape cases	14
Harrasment of students	15
Bullying	15
Stop domestic violence	15
Violating human rights in the society	15
TRANSITIONAL JUSTICE	
Republic V Edward Kirui: A classic case of evidence tampering?	16
Establishing a Special Tribunal for Kenya and the role of the International Criminal Court	17
Peace football in Baringo and Laikipia	19
Wagalla massacre	19
Kaya Bombo 1997: Getting justice for survivors	20
EQUALITY AND NON DISCRIMINATION	
Systematic denial of women's rights to land in Nyeri County	21
Life saving interventions for the marginalised communities of Garbatulla District	22
Ignore stigma and move on with life : Handicapped persons urged	23
TRANSITING FROM CENTRALIZED TO DEVOLVED ORDER	
A message to the Taskforce on the Devolved Government(TDG)	24
Moving from centralized to devolved order	25
YOUTH, DRUG ADDICTION & ORGANIZED CRIME	
Save our youth	27
Lip service will not save the youth from drugs	27

Editorial Team



Nduta Kweheria
admin@khrc.or.ke



Caleb Twenya
ctwenya@yahoo.com



Mahmoud Barroh
mahmoudbarroh@yahoo.com



Loise Kimiri
loisekimiri@gmail.com



Abdirizack Noor Haji
abdirizack_noorhaji@yahoo.com



Salma Uledi
salmauledi@yahoo.com



Daniel Sutter
danesutter@yahoo.com



Clr. Paul Mero
meropaul@yahoo.com

Welcome to the 12th issue of the Mizizi ya Haki, a newsletter published by the Kenya Human Rights Commission (KHRC) in partnership with twenty one community based Human Rights Networks (HURINETs) countrywide. The HURINETs are represented on the eight-member Mizizi ya Haki's editorial team, by seven regional coordinators.

For the first time ever, readers can now write directly to the eight Mizizi ya Haki editorial coordinators as their email addresses are now provided. In addition, readers are also free to submit articles and letters to the editor via email at any time of the year. In submitting an opinion on Mizizi ya Haki, a letter to the editor or an article, we request that readers have as the subject of the email – Mizizi ya Haki: then the title of the article.

This issue of Mizizi ya Haki pays great attention to transitional justice. In the first article, Amina Bakari of the Mombasa Network for Human Rights, starts off by explaining how land problems in Coast region date as far back as the pre-independence period. To date, these problems are still manifesting themselves in the the ongoing land disputes at Gung'ombe in Likoni area, Nyumba Sita in Kwale, the Singila Majengo in Taita Taveta and in Lamu as the Boni people fear loss of their land.

Mahmoud Barrouh picks up from here to give a more recent case of the 'Vita Vya Kaya bombo' injustices that took place in Kwale in 1992 and again in 1997. To date, the victims of such injustices have seen no justice or redress. There are also several articles on injustices that relate to women's access to land and other property rights, an issue that seems to cut across all regions from Nyeri, where S. K. Wandimi questions the exclusion of women in the management of coffee cooperatives, to Kinango, where the Duruma community's traditional justice system has in at least one instance been completely unfair to a woman. This trail of thought is continued in Frank Mwangi's article on the violation of women's land rights in Kisii by alleging that the elderly, mostly women who own land and other property are witches.

Adan Abdi Hussein, a student in Wajir raises concerns about the fact that the victims and survivors of the Wagalla massacre have also not received redress twenty-eight years later. Instead, there seems to be attempts to cover up what happened. The transitional justice theme culminates in questioning Kenya's ability to locally try cases of the injustices committed in the 2007/8 post election violence. While Kenya insists that it has the capacity to try cases on the 2007/8 post election violence locally, Wagalla massacre and the case of the Kisumu shootings, where Police Constable Edward Sang was acquitted on technicality is a clear indication that even if the cases ever make it to court, doubt has been cast on Kenya's ability to deliver justice. It is against this background that Mizizi ya Haki 12 has published a question and answer brief by Human Rights Watch that explains how the International Criminal Court (ICC) has finally come to summon six persons to appear before it on April 7, 2011.

The other area of focus in this issue of Mizizi ya Haki is that of economic, social and cultural rights. Article 43 of the Constitution of Kenya identifies:- a) the right to the highest attainable standard of health, which includes right to healthcare services including reproductive healthcare and emergency treatment, b) accessible and adequate housing and to reasonable standards of sanitation, c) right to be free from hunger and to have adequate food of acceptable quality, d) access to adequate clean and safe water, e) the right to social security and f) the right to education.

In this issue, Fatuma Tabwara and George Jaramba of Kwale, write about how social audits on the access to the right to education have revealed that despite education now being a right in the Constitution, Kenya is a long way from making this a reality. Daniel Sutter and Sammy Kipchumba are equally concerned about education among the pastoralist communities of the North Rift. Their situation is unique in that the right to education is clearly shown as being interdependent with the right to food and to security. As long as parents do not have enough to feed their children, and are unable to protect them from attacks, education will remain low on their list of priorities.

Finally, Devolution is discussed in recognition of the fact that it will be the main avenue through which all these rights;- to health, education, water sanitation, will be delivered.

We hope you enjoy reading this issue and will write back to us with your feedback.

Nduta Kweheria

Designed & Printed by:



Jaliwa Printers & Stationers

P.O. Box 58748 - 00100, Nairobi-Kenya

Tel: 020 -3565594 / 0722 734 083

Email: jaliwaprinters@gmail.com

Land, food security and livelihoods

As all of these transactions on the land happened, the plot has been under the continued occupation of the over 150 families that reside on it. They were neither consulted nor informed of any of the transactions. In fact, in March 2009, the residents wrote to the Commissioner of Lands requesting for its adjudication



KHRC's Andrew Odete and the author confer with residents of Gung'ombe village.

in their favor. A follow up letter was written in October 2009 but there has been no reply to date.

However, in January 2010, some of the elders were summoned to the DCs office where they were informed that they were squatting on a private developer's land. This indicates that someone at the Lands office knew about the letters and communicated the information to other interested parties. In this era of corruption, one can only speculate that someone was paid for this information. The Power Group of Companies through the Provincial Administration (the DC, DO, Chief and Assistant Chief), the police and the political class, namely the area MP and the Mombasa Mayor have made frantic efforts to force the people out with large sums of money promised to those willing to vacate the land, but the residents have remained strong and firm in resisting attempts to evict them.

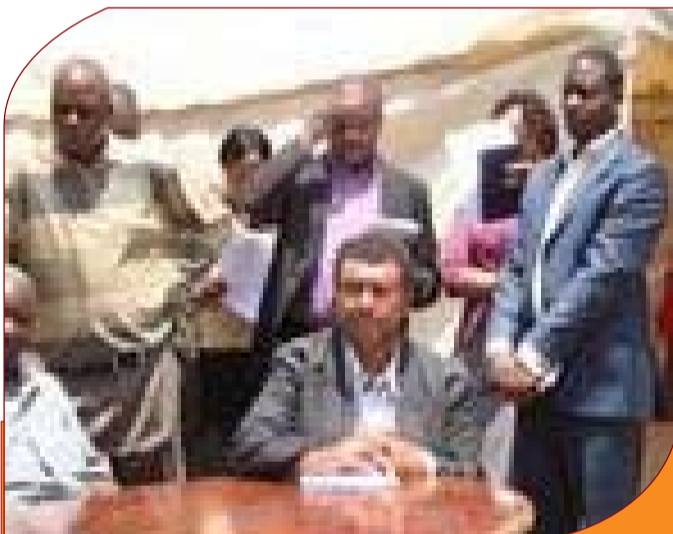
It was recently established that the plot had not been officially surveyed to demarcate the hived plot MN/II/4703 from MN/II/501. The company employed private surveyors to survey the plot earlier in October 2010. On October 13, 2010, residents demanded to be shown documents authorizing or supporting the survey but since they had none, the chief ordered the police officers accompanying the surveyors to open fire. Five residents were shot and sustained serious injuries. These are; Benjamin Masha, who was shot on his



Land Rights press conference at KHRC offices in Nairobi.

right hand, Furaha Sirya, shot in the palm of his right hand and Kazungu Ndolo, who was shot on his left leg. Saidi Bimba was shot on the thigh and the bullet exited from the right side of the abdomen, while Charo Menza was grazed by bullet across the chest.

The Mombasa Network for Human Rights (MONEHURI) has partnered with Kenya Human Rights Commission (KHRC) and Action Aid International - Kenya to support the peoples' claim to this land while emphasizing the need to use active, yet non-violent means. Both legal (litigation or going to court) and non-violent extra-legal solutions such as research and documentation of the land's history are being used. It is clear however, that communities in Kenya must rush to safeguard their land from such greedy individuals by registering their land individually or communally under County governments as stipulated in the Constitution, as soon as the law on devolution and community land comes into effect. It is also very important that communities in all the 47 Counties give their views to the Taskforce on the Devolved Government on exactly how they would like laws on Devolution to address important issues such as land, water, education, and even how the National and County government will co-operate to ensure rights to security and education are well coordinated and delivered.



Land Rights press conference at KHRC offices in Nairobi.

A press statement was put out at Kenya Human Rights Commission (KHRC) compound in partnership with Actionid and the 11 bullet cartridges were collected and forwarded to the Kenya National Commission on Human Rights (KNCHR) on the 21st of October 2010. The KNCHR promised to conduct investigations. Nothing has been heard from them ever since.

The shooting incident was reported at the Bamburi police station (OB 70/13/10/2010) but statements were not taken and the police have continued to refuse to take statements. Infact, some of the residents were arrested and charged with incitement. The matter is now in court.

Meanwhile, a larger contingent of police officers escorted the private surveyors back to the plot and completed the survey, placing beacons to officially identify plot MN/II/4703. The DO, 1 - Kisauni, summoned the resident of the new plot MN/II/4703 on 29th of November and again on 13th December 2010. He has



Saidi Bimba – Hit on the thigh and the bullet exited from the right side of the abdomen.

been attempting to influence them into accepting a small token to vacate the land or face eviction.

- Residents are looking for answers with regard to the transactions involving the plot. Was the right procedure followed?
- Where is the file at the land registry? Why is the file missing?
- Why are the police refusing to take statements from the victims of the shooting, thereby denying them access to justice?
- What are the police and provincial administration interests in the whole matter? Why have they allowed themselves to be used by tycoons to cause untold misery to peaceful Kenyans?
- Why is a beach plot, so close to one of Kenya's Maximum Security Prisons being recklessly sold to non citizens, at a time when the Kenyan Coast has experienced pirates' attacks?

Based on the experience in this case, CSO's in Coast formed a Land Coalition which meets every Friday afternoon at AAIK (Coast Region) board room from 2.00 p.m to follow up land related issues. Among the members are KHRC, AAIK, KLA, COWERIGHT, HAKI YETU ORGANIZATION, KISAUNI LAND LOBBY GROUP, KWACHA AFRICA YOUTH ORGANIZATION, COAST LAND LOBBY GROUP, LICODEP AND KITUO CHA SHERIA.

Engaging the community in participatory capacity assessment gives the real picture of the society's life, general socio-economic and the challenges facing them. Land clinics methodology uses participatory tools to ensure that the community becomes the agent of change in relation to land and land use. It provokes them to take action. The so mentioned clinics were conducted by Nagib Shamsan (Board Member Kenya Lands Alliance) and Amina Bakari Hamisi (Coordinator Mombasa Network for Human Rights (MONEHURI) under the supervision of Manza Beja (Bamburi Development Initiative, field coordinator) Action Aid International Kenya (AAIK). The methodology recognizes that community development sustainability lies in their hands.

BY Amina Bakari Hamisi. (MONEHURI)

Letters to the Editor

Keep up the good work on Mizizi

"Mizizi ya Haki" is truly a newsletter that deserves to be read by many, especially the upcountry folk who live in situations devoid of any form of human rights or social justice education and where human rights violations are rampant: from poor access to health facilities or medicare; lack of water, land problems, no civic education on the Constitution, corruption and misuse of public funds and very low understanding of how devolution will change this, to youth unemployment and people not knowing how they can participate in human rights or social justice work.

I was introduced to the newsletter by a member of the Mt. Kenya Human Rights Network and do not regret the encounter. I pray that more readers will be introduced to the readership of this newsletter which I am convinced will change the thinking of our people and empower them to claim their rights and take up their responsibilities as citizens of this country, on the issues listed above.

Keep up the good work; persevere the hardships and setbacks and you will eventually triumph in making our people aware of their rights.

Stephen Mwangi Kamaitha
Nyeri

Congratulations Mizizi

Congratulations for your Newsletter, Mizizi ya Haki. I have highly appreciated your work in enlightening Kenyans on what is happening in our country. I have no doubt that your Newsletter is educative, informative and looks forward to making our country a place we can be proud of.

I would also like to encourage you to continue with the same spirit and don't be lured by influential people since they have really contributed in blocking justice in Kenya. It's sad that we are still hearing the cry of IDPs after three years of suffering in camps. My question is, "How long does it take for justice to be done in Kenya?" In fact the government has the responsibility to ensure that the dignity of IDPs is restored.

Dan Chomba
Mwea

Thank you for your letter, Chomba. It is only through the concern and action of citizens like you that things will begin to happen in Kenya, as "The price of liberty is eternal vigilance". The National IDP Network is an organization that has been established through the support of the Kenya Human Rights Commission (KHRC). The network brings together IDPs from different parts of the country all displaced by conflicts that date as far back as 1992, as well as concerned citizens who care about getting justice for IDPs. The IDP Network can be reached through telephone on: 0721 939 432. KHRC will continue to partner with the IDP Network to pursue justice for all IDPs.

I have benefitted from Mizizi

The Mizizi newspaper has been so good to me. It educates and it encourages in many ways and it has also been so informative. I encourage the people working with the Mizizi newsletter to go on with the good work. We readers kindly request it to be produced more than twice a year or even monthly as it is a good forum for people to exchange views on things that we all care about.

Esther Kimathi
Nyeri

Esther, the Kenya Human Rights Commission (KHRC) hopes in the near future to raise enough funds to produce Mizizi ya Haki once every three months or quarterly. For now this is not yet possible but we do appreciate the support that readers have given through letters to the editor, the contribution of articles and even by telling others about Mizizi ya Haki and sharing copies with them.

Taita Taveta Human Rights Network bereaved

We at the Kenya Human Rights Commission are shocked and deeply saddened to learn of the passing on of our brother from Taita Taveta Human Rights Network, Mr. Said Kilelu. Said passed on after a sudden illness.

I remember Said as an energetic and committed young man who had a lot to offer to the cause. We will fondly remember his gentlemanly mien and soft-spoken manner. We only hope that the rest of us can work together to ensure that Said's contribution to humanity was not in vain. Our thoughts and prayers are with Said's family and Taita Taveta Human Rights Network. May God rest his soul in peace.

Andrew Odete,
Kenya Human Rights Commission

Kwale Human Rights Network bereaved

Kwale Human Rights Network (Kwale HURINET) has been bereaved following the demise of Amina Carle Mwabata, patron and co-founder of Lamukani Human Rights Organization. After long battle with cancer, Amina, a Kenyan of German origin passed on at her home in Mwabungo, Msambweni. It was in 2001 when Amina alongside her husband Ali Mwabata, Mahmoud Barroh, and Mwavumbani formed Lamukani, one of the most active human rights organization in Kwale.

Amina Carle Mwabata used her resources to put up operation bases for the organization and sponsored its activities. She fully participated in all activities and sponsored many needy members of the community. She was instrumental in campaigning for her husband, Mwabata who is Kinondo ward councilor and a renowned human rights activist. She has motivated him and instilled spirit of activism in those around him including Barroh, the current chair of Kwale



The late Amina (left) Cllr. Mwabata and Barroh (far right)

HURINET, and others. Amina chose to live like a village woman, fitted in with the locals and made rapport with all who visited the organization.

Lamukani, which now has a membership of over 600 people in South Coast has suffered an irreparable blow. It has built a reputation for agitating for the rights of the down trodden, thanks to the initial effort and commitment of its founder member Amina.

The Kwale HURINET family will keep Amina's spirit alive by continuing with what she started and taking Lamukani to heights that she would be proud of. Further, Lamukani will continue to reach out to down trodden women and men in the hope of bringing forth men and women of substance within each one of us. She was a true heroine. May God rest her soul in eternal peace! Amina we salute you!

The price control debate; Send your views

Price controls not fair

I take this chance to comment on the Bill that was recently passed in Parliament on price control on basic items like food and paraffin. I think most of the MPs passed it just to show that they are concerned about the lives of Kenyans but that is not really the case. How can the government control food prices yet producing food takes a lot of efforts and resources which are not controlled? Prices need to be controlled by the forces of demand and supply and to make these forces favourable, government should create a favourable environment for production such as improving infrastructure and security in the country whose effect will be to stabilize the market.

Ndanu Judy
Kagumo Teachers College

In this issue, Judy Ndanu starts a debate on price controls. Mizizi ya Haki newsletter invites readers to contribute articles giving their opinion on whether or not there should be price controls. Are price controls ever fair and if so when and to whom? When are price controls unfair and why? What position should Kenya take on price controls?

Send your views via email to your regional editor whose email address is on Page 2. The title of the article should start with "Mizizi ya Haki - The Price Control Debate".

Land, Food Security and Livelihoods

Re-open Miwani Sugar Company

By Fredrick Munyum

Having read your article 'Mizizi ya Haki', I am really interested to air my thoughts clearly to you and I hope for positive feedback. There is a certain issue that bothers my mind every time I think about it. This is about the Miwani Sugar Company which is an old sugar producer in the Nyanza area. The factory used to provide the Kenyan population with not only brown sugar but also white refined sugar and employment as well.

The factory collapsed in the year 2000 following the departure of its shareholders who just vanished without notice and left workers just like that. In the year 2002 when the aspirants in the Rainbow Coalition were campaigning, they gave empty promises that they would revive the sugar company if elected into power.

Miwani is a prominent place for agriculture that has enough land for expansion and growing sugarcane in Kano plains. Moreover, the factory has a lot of facilities which are technologically of good quality. The two principals concentrated on Constitution campaigns and forgot the people of Miwani. Who will remove these people from this ditch?

Many families have lost their livelihoods after the closure of the factory. For that matter, it is the cry of all the people who are affected directly or indirectly that the government should do something to rescue the situation.

I would be happy if the KHRC would investigate the issue and see how people on the ground are suffering after their economy booster collapsed. I hope this matter will be taken with the seriousness it deserves.

Fredrick Munyum

Lugotse Mission, Kakamega Central District



Sugar cane, a most important crop in Muhoroni, Nyando

Munyum, in Nyando, the KHRC works in partnership with the Nyando Human Rights Network. In 2007, the Nyando HURINET whose Muhoroni branch is under the leadership of Mr. Martin Billy Naam (email: billynaam@gmail.com) conducted the Peoples' Manifesto and Scorecard Initiative which recorded the various issues that the people of Muhoroni wanted those aspiring for the seats of MP and councilor to address if elected. The refurbishment and re-opening of the Miwani Sugar Company was one of the key issues that the MP and all the councilors in the area were very clearly asked to address during their term in office.

The five year term in office is almost over and thus this would be a good time to hold these leaders accountable to explain to the community what efforts they have made to deliver on the promises they made as well as the demands that the community made of them. Things

will only change in Kenya if citizens remain alert and hold their leaders accountable to do what they were mandated by the people to do.

The challenge is thus to you, Fredrick to partner with Billy Naam and the rest of the Nyando Human Rights Network to develop a scorecard that establishes how many of the issues the MP and councilors were to address, have they actually addressed? For example, while it is clear that the MP and councilors by themselves cannot revive a company, it would be useful to get their feedback on how many times in the over four years tenure, the MP has raised the matter in Parliament? Has the MP or any of the councilors sought to find out, from the Trade or other relevant Ministry why the factory closed down, what is needed to revive it, whether or not there is a plan to revive it and if so how far the plan has progressed.

I encourage you to work together with the Nyando Human Rights Network to write a letter inviting your MP to a community meeting to get him to explain what has been done about this issue. It is the MP who is in a position to ask Parliament and if need be the two principals why this sugar cane company, which is a key livelihood in Nyando is not delivering the poverty reduction and employment benefits with this one great company shut down. KHRC has been supporting community based Human rights Networks to hold such meetings that hold leaders accountable and will support Nyando in the same way. However, some of the citizens on Muhoroni must be willing to lead this initiative as it is you that knows exactly where the shoe pinches. Finally, in 2011, KHRC plans to undertake a study on how benefits are shared in the sugar cane industry between all actors on the production chain.
Editor

Farmers from North Rift are demoralized by the maize price

By Sharon Jepkemoi.

Trans-Nzoia County in Kenya is believed by many Kenyans as the granary of the nation. This County is made up of three constituencies, namely Kwanza, Saboti, and Cherang'any. In all these three constituencies, the main food crop is maize due to favorable climate conditions which encourage large maize plantations.



Maize production will continue to decline due to climate change, even with good rains, according to scientists

If you take Cherang'any constituency, for example farmers in this region start preparing their land as early as January or February, harrowing/digging is done by brokers who demand that farmers pay large amount of money for the tractors citing that the fuel prices are high in the market. During the March /April rains,

farmers start planting their crops with fertilizer with one sack costing Ksh3,000 before including transport charges. Farmers far away from the distributor could end up paying double for the same sack if they buy from shopkeepers nearer to them who will add a mark-up in the name of transport. In 2010, fertilizer cost Ksh 4,000 per 50 kg bag and the planting seeds were Ksh. 1,800. Before these farmers harvest their crops towards the end of the year, the amount of labour and all inputs is actually very high. Sometimes, the maize may rot if it rains at harvest time.

Right now the world has come crumbling down on the farmers because the National Cereals and Produce Board (NCPB) declared that they will buy the maize at Ksh 1,200 per sack. This means that a 2Kg tin (gorogoro) is Ksh 20 yet 1Kg of insecticide costs almost Ksh 200. These farmers rely solely on maize for all daily needs such as buying food, educating their children, paying medical bills and even entertainment. Sometimes the farmers are unable to safely store maize because they cannot afford the amount of insecticide needed. For example, for a farmer to put insecticide on 1,000Kgs of maize, how much of her/his maize does s/he need to sell in order to buy insecticide?

The farmers feel the government has let them down as they had been promised that the price of maize will be increased to satisfy farmers' expectations and give them morale. North Rift HURINET is championing the

"The best way to put money in people's pockets is to leave it there in the first place."

Edwin Feulner

rights of farmers through meetings to organize farmers into one advocacy voice against the fluctuating maize prices, sensitizing the farmers to plant high quality seeds, advice on storage methods and to diversify by setting aside some land to plant other crops and to keep livestock as an alternative to maize farming.

The government must lower the price of insecticides and other farm inputs so that farmers are not forced to sell their maize when the price is low. More silos should also be constructed, in the North Rift area to save on transport costs. The (NCPB) should also send their own lorries and persons from the silos to buy maize from farmers instead of cartels who exploit the farmers. Farmers too must form their own associations/ umbrella bodies to advocate their rights.

The author is a member of the North Rift Human Rights Network

Land, food security and livelihoods

District Commissioner's wrath on the Constitution

By Rama Lukindo

Residents of Mata, location Taveta had their share of punishment for voting "Yes" in the Constitutional referendum. The District Commissioner Mr. T.H. Nkaduda convened a public baraza on 14th October 2010 and announced that all farms along Lumi River had been deregistered and anyone with his/her property or crops in that area should remove them within less than 24 hours as they were in a water catchment area.

When members of the public asked him to elaborate he said there was no need to discuss as he was implementing the Constitution which they passed and celebrated. He waved to them the Constitution asking them, "Is this not the Constitution you passed? Read Article 63 and understand that you have no choice but to abide with what is contained here. Remember

this is not the proposed Constitution anymore, it is the current Constitution," he said. The following morning, the DC instructed the area chief, assistant and some youth to go and break River Lumi banks to flood all the surrounding farms. Crops worth millions of shillings were destroyed in an area of around one thousand acres.

Efforts by Taita Taveta Human Rights Network to intervene before the damage by engaging the DC were fruitless. Mata elders tried to seek redress through the area MP, Hon. Naomi Shaban who is also a cabinet minister but she retorted saying, she has no tears to shed as she had warned them not to vote "Yes" for the Constitution.

Having read Article 63 of the Constitution on community land, one can only assume that the land was flooded so that the communities that were farming on it cannot claim it and proceed to register it under the Taita Taveta County as community land. The one million dollar question is, who is going to stop impunity? Who is going to implement the Constitution if people sitting in high offices are against the Constitution and are perpetrators of human rights violations even after the new law is in force? The community still requires from the DC and the MP an explanation of just why this was done, as nothing in article 63 requires it.

The writer is a member of Taita Taveta HURINET

Residents tell it all at a land clinic in Kwale

By Bibi Mwachoyo and Kibwana Kilalo

Residents of Msambweni Constituency in Kwale County turned up in large numbers to participate in a land clinic at Vingujini Primary School in Tumbe location. Organized by Kwale Human Rights Network in partnership with Kenya Human Rights Commission, the event brought together officials of other like-minded civil society organizations including Kenya Land Alliance, Muslims for Human Rights, Mombasa Human Rights Network and several rights activists from Coast region.

Shortly before the meeting began, Msambweni Deputy OCS drove to the venue in the company of the local chief. The duo had a talk with Mr. Peter Ahenda, Bege Mashobo and George Jaramba, all officials of Kwale HURINET before driving away. Ahenda praised the Deputy OCS for displaying diplomacy and assured them that the meeting would remain peaceful. "I'm encouraged by your diplomatic approach, which should be the new face of the Police Service" said Ahenda to the OCS. This is the first time a police officer has treated human rights workers with respect. It seems reforms are taking place." said Ahenda.

The officer said he was new in Msambweni and was ensuring that law and order would be maintained at the meeting. HURINET officials assured him that everything the gathering would do at the venue would be done legally and peacefully. "Even if we decide to stage a demonstration, rest assured that we will do it peacefully," said Ahenda.

The meeting proceeded and was characterized with high emotions as residents recalled how their land was taken away from them by their own leaders. A former chief recounted how he and his assistant were hounded out of office when they resisted illegal acquisition of public land by powerful individuals. The former administrator narrated how a former area Member of Parliament colluded with Ministry of Land officials to grab a public land at Tumbe which he later sold to a private company at an exorbitant rate.

Residents pointed accusing fingers at some of their leaders as having taken advantage of their lack of knowledge in land matters to grab their plot. "Getting titles for our plots is a nightmare but some people are able to very quickly get title deeds for plots acquired

through dubious means. How is it that one citizen can get a title deed so fast and another in the exact same area cannot?" posed a resident.

Spokesperson of Msambweni Movement for Development Mr. Ayub Chembea challenged his kin to deviate from the lone ranger tactic and start giving the land issue in the constituency a collective approach. "When Nyumba Sita farmers were evicted early this year some of you didn't care. But they are our brothers and sisters who need our support at such hard and trying moments," said Chembea. Aziz Vumbi, also of Kwale HURINET assured the residents that the issues they had raised would be looked into by the HURINET through engagements with relevant duty bearers in the County.

An official of Kenya Land Alliance, Nagib Shamsan took the residents through what the current Constitution says about land ownership. He informed the meeting that in the near future courts of law would come down to the grassroots to hear land cases under the trees and at barazas.

Kwale HURINET Chairperson Mahmoud Barroh told the meeting that it was never too late to correct historical injustices that have been visited upon the residents. Noting that a member of the Kwale HURINET is one of the Truth, Justice and Reconciliation Commission (TJRC) statement takers, Barroh challenged those who have not recorded their statements to immediately do so.

Others who addressed the meeting were John Kazungu of Muhuri, Peter Kazungu, a legal expert and KLA official, Dr. Mohammed Swazuri who is also the Kwale HURINET Coordinator and the Ms. Amina Bakari, the coordinator of Mombasa network for Human Rights. Ms. Bakari challenged the women to stand up and fight for their rights as they were the backbone of the community.

Ms Mwachoyo is the Assistant Coordinator-Kwale HURINET while Kilalo is a Youth leader

Constitution of Kenya Article 63

Community Land

1. Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest.
2. Community land consists of :
 - a) Land lawfully registered in the name of group representatives under the provisions of any law
 - b) Land lawfully transferred to a specific community by any [process of law.
 - c) Any other land declared to be community land by an Act of Parliament; and
 - d) Land that is –
 - i. Lawfully held, managed or used by specific communities as community forests, grazing areas or shrines
 - ii. Ancestral lands and lands traditionally occupied by hunter-gather communities; or
 - iii. Lawfully held as trust land by the county government but not including any public land held in trust by the county government under article 62 (2).
3. Any unregistered community land shall be held in trust by county government on behalf of the communities for which it is held.
4. Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.
5. Parliament shall enact legislation to give effect to this Article

Land, Food Security and Livelihoods

Nyeri County cannot take off without women

By S. K Wandimi



A woman in Nyeri picks coffee

A quick glance at coffee sector and women participation in Nyeri County leaves one wondering if the Nyeri County will take off economically without real participation of women in the coffee sector, which is the engine of the county. Coffee was introduced by white settlers after 1897 and later grown by the locals from the late 1950s.

Today in Nyeri County, over 75% of land is registered solely under men. It's also interesting to note that 75% of the work - weeding, pruning, picking coffee cherries, selecting different grades, taking cherries to the factory etc is done by women. Upon delivery to the factories, more work is done, again, almost exclusively by women. It includes manning the fermentation tanks, spreading the drying seeds and packing them in sacks for storage. 75% of employees in coffee factories are women.

Yet, women are disregarded in Tetu constituency which once boasted of 18,000 coffee farmers with 18 factories. Coffee farming has collapsed thanks to poor management, low prices, wrangles, delayed and poor payments. Though the entire 18 factories still operate, no single woman is in the management at the factory or society level. Any women in leadership position are merely committee members and are holding these positions at the whims of men or are ceremoniously appointed with the expectation that they will fill up the numbers for political correctness on gender, but continue to espouse the views of the men that put them in those positions.

A coffee farmers' conflict resolution meeting at Giakanja Coffee Factory highlighted the above concerns on women's poor participation, where the women resolved to redirect their energy to other more rewarding activities like dairy farming, goat keeping and rabbit rearing. The women's anger was sparked at the last factory management committee election in 2008, where despite women voting as proxies to their husbands, toiling and soiling, it was announced that women cannot vote for management committee positions since they did not have membership numbers thus only their husbands can vote. This new rule is aimed at locking women out of decision making at the top as their choice of candidates is often much more informed as women interact with the factories on a day to day basis. It appears, there is a deliberate push to have men, who know little about the day to day performance of coffee factories vote for the people at the top. This can only be driven by a desire to steal from farmers; otherwise why would anyone want people who are aware of the day to day politics not involved in the voting?

This decision did not go down well with the women, and it's effects are now beginning to show in the mismanagement of the coffee factory. In 1999-2007 Giakanja Factory was producing between 600,000 Kgs to 1.3 tonnes per crop season. That's an average of 900,000 Kgs per crop season. This has dropped to 400,000 Kg. In the year 2008-2009 the coffee factory was not able to sustain its operation and it's expected to produce below 300,000Kgs. There are real fears among farmers that they have resorted to taking their coffee cherries to other factories. This is the reason why women are gradually opting to invest their energies in activities that are more beneficial to them. Giakanja Factory is thus a case study that illustrates the power of women in driving the economy. Unfortunately, this scenario is happening across Tetu, Nyeri and Othaya, but men have refused to accept that the major contributing factor is non participation of women in the leadership of the coffee industry. It is time Nyeri County realizes the impact of women on the economy. Women deserve positions even in the coffee factory management offices.

The author is the coordinator of Mt. Kenya Human Rights Network

"The test of whether or not you can hold a job should not be the arrangement of your chromosomes"

Bella Abzug

A lady crying in silence

By Okumu P.A.

The international legal instruments on the rights of women are motivated by the desire to redress oppression people undergo. Kenya has signed several treaties which make the international legal instruments the Constitution and local laws. Yet, one woman, Faith Mbithe Kiluni has gone through hell on earth. Faith was employed as a waitress in Southern Palm Hotel where she worked for six years.

Her tribulations began when a new Food and Beverage manager was employed in the hotel. The new manager began by ordering her to be the only one serving him food and drinks. He would invite Faith to join him in eating but the lady declined, citing norms and ethics of her work. The manager however, did not give up. He began making advances to Faith and changed her working station so that she could work closer to where he could see her often. "He told me to address him as sweetheart and not sir," says Faith. The manager changed Faith's day off to coincide with his after which he asked her to have sex with him. She did not budge.

After sensing that his schemes were not bearing fruit, he began making inquiries from junior staff whether Faith had a boyfriend. The boss was however, given damning information. Faith was engaged! It is then that the manager's attitude towards her changed drastically.

"He began despising me and swore he would never want to see me again," she says. He then began shifting her from one section to another. "He took every opportunity to rebuke and reprimand me during staff meetings, accusing me of being rude," recalls Faith. It did not take long before he disclosed to her that he would do everything within his means to make sure she was sacked. She suffered in silence hoping that things would change, but all was in vain. "I reported the matter to the General Manager and the Food and Beverage Work Committee representative but no action was taken," says Faith. Instead her action triggered the manager's wrath.

One day when she was back to work from her day off, she was asked to go back home for five more days. "I reported the matter to the Operations manager but no action was taken," recalls Faith. When she reported the matter to the Hotel Shop Steward, she was instead asked to apologize to the F & B manager as he was a senior employee of the hotel. She however declined. She was then suspended and her services terminated thereafter.

All that was done contrary to the existing labour laws and the Collective Bargaining Agreement. But Faith is not alone. There have been allegations of numerous

cases of sexual harassment at places of work in the hotel industry. Many ladies suffer silently in the hands of their male bosses who demand sex either before they are employed or promoted. Those who resist the move have either opted out on their own volition or are forced out by their bosses. In the same hotel, a married woman was forced out after she resisted sexual advances by the Executive House Keeper. The lady who requested not to be named for purposes of privacy worked as a laundry attendant for two weeks before being asked to quit by her boss. She says the boss made a lot of inquiries through other employees whether the woman was married but when he found out that she was, he went out on a fault finding mission.

Kwale Human Rights Network has however, vowed to have justice done to the affected ladies after they separately reported the cases. The network has previously successfully intervened in similar issues in Diani Reef and Kaskazi Beach Hotels, where foreign managers violated the rights of the staff. Kwale Human Rights Network has launched investigations and will soon engage the relevant duty bearers with a view to having the culprits brought to book.

The writer is a Programme Officer, Advocacy and Governance-Kwale Human Rights Network

Gender mainstreaming

Nine boys rescued from a suspected trafficker

By Kibibi Mwaka

Nine boys were last November rescued by members of Kwale Human Rights Network (Kwale HURINET) in Waa location in Kwale County. Shafiki, 13, Arakat Kibaki, 12, Abdul Fatah, 7, Badir Mohamed, 12, were believed to have been trafficked from Uganda into Kenya for reasons which remain obscure to date.

Others were Abdul Basti Mohamed, 11, Osama Wanjo Katoto, 11, Abdulatif Mohamed, 8, Abazi Musa, 9 and Abdulrahman, 9. After a tip off by suspicious members of the public, Kwale HURINET independently investigated the allegations before reporting the matter to law

enforcement authorities.

The cooperation between the HURINET, local community police chief, Mr. Juma Mwasifa, Kwale Children's office, Kombani Administration Police Post, Kwale and Diani police resulted in the arrest of the man who hosted the children. The man has since been charged with the offence of trafficking while six of the children were taken back to Uganda after their parents came for them. However, at the time of going to press, three boys were still being held at the Likoni Juvenile Remand as their parents had not shown up.

In the recent past, there have been multiple cases of violation of children rights in Kwale. Several girls, for instance, have dropped out of school after conceiving. Incidents of defilement and child labour are also on the rise. In an effort to curb this trend, the Kwale HURINET has formed a thematic group that deals specifically with cases involving abused children.

The group works closely with the community policing team, the provincial administration, police and other community based organizations in the area.

The author is a member of Kwale HURINET

New law will fight outdated cultural practices

By Joyce Komen

Female genital mutilation is a cultural practice that has been in existence in Africa for more than 2000 years. It is primarily a cultural practice, not a religious one. But some religions do include FGM as part of their practices, for example in countries where Muslims practice FGM. They justify the practice to be found in the words of the Prophet Mohammed, in the controversial sayings in the Sunnah (words and actions of Mohammed). This practice is so well ingrained in these cultures;- it defines members of these cultures. In order to eliminate the practice one must eliminate the cultural belief that a girl will not become a woman without this procedure.

Kenyans are eagerly waiting for the full implementation of the Constitution, which is progressive and advances equality for all. It is high time the marginalized groups such as women and young girls who have been undermined for a long time by retrogressive cultural beliefs and forced to undergo outdated rituals such as FGM to stand up and recognize this Constitution as an eye opener to lead the revolution of cultural issues affecting the lives women and young girls today and in future. Girls and women are forced to undergo these painful and demeaning rituals for baseless reasons such as: reducing a woman's sexual desires, enhancing femininity of a girl or a woman, and maintaining the tightness of a woman's vagina for her man;- virginity preservation. Much as the Constitution recognizes communities and their cultures it also provides adequate protection for those whose cultural practices might force them to act, engage in, observe or undergo

“Parental consent for a procedure that damages rather than preserves a child's health is ethically and legally unacceptable..... The practice is damaging to the physical and psychological health of girls, and is performed without true consent. In many societies, health professionals have successfully opposed tribal ritual and other customary bodily mutilations. Female genital mutilation should not be exempt from such opposition.”

Nahid Toubia

any cultural practice or rite.

So the Constitution supports Nahid Toubia, MD, a Sudanese surgeon, an associate professor at Columbia University, USA - Center for Population and Family Health who said that “Female circumcision is the physical marking of the marriage ability of women, because it symbolizes social control of their sexual pleasure through clitoridectomy, and their reproduction through infibulation,” and therefore, “No ethical defense can be made for preserving a cultural practice that damages women's health and interferes with their sexuality.” She further says that, “It is only a matter of time before all forms of female circumcision in children will be made illegal in Western countries and, eventually, in Africa.” Article 44, (3) of Kenya's Constitution has done this as it now states; “A person shall not compel another person to perform, observe or undergo any cultural practice or rite”.

Female circumcision violates numerous human rights, including reproductive rights, the protection from violence, women's rights and especially children's rights since most circumcisions are performed on girls who are four to ten years of age. Even though there is no theological basis for the practice of FGM, it will be hard to eradicate, until we have a better understanding of the cultural beliefs, the effectiveness of the past measures used in the fight against FGM.

The author is a member of North Rift HURINET

Boy child in danger

By Wanyonyi K. Alex

As the saying goes, ‘A stitch in time saves nine’, we need to confront issues as soon as they arise before they erupt out of control.

A certain issue has become worrying and if action is not taken immediately it is going to be worse. This concerns the risks of a Kenyan boy child.

Over a period of time there have been many child concerns to protect and educate the girl child forgetting that boys also need to be cared for. There have been campaigns on the mass media, women associations like ‘Maendeleo ya Wanawake’ and the government in particular to promote the welfare of women and it seems

to have made achievements. Congrats! But all eyes have turned on one side forgetting the other one that is the boy child. Nowadays young boys have turned into illegal activities like car jacking, robbery, theft amongst other inhumane activities due to lack of motivation from parents, teachers and the government which have been focusing too much on the issues concerning the girl child.

In many rural areas boys have dropped out of schools due to frustration within the school, society or home in favour of a girl child. These boys are given a mandate to look after cattle, win the daily bread for the family, some are employed as houseboys to generate income for their sisters education while others are recruited as

community warriors among some communities at times of war or militias to serve politicians' interests.

As a man, it saddens to hear this but it is the reality. Therefore I would urge the church, society, school, government and any other organization concerned to address this issue before it gets worse.

I conclude by quoting that ‘The world is a dangerous place to live in, because its inhabitants are not taking measures to improve it’.

The writer is a student at Kagumo TTC.

Gender Mainstreaming

Gladys Jepkechei Tarus case: An eye opener into corruption in our Military By Kipruto Kimosop

On 8th October 2010 Gladys Chepkechei Tarus turned up at the Kabarnet stadium, where the military recruitment drive was taking place just like many other young men and women who held the aspiration and ambition to serve in our forces. At first, there was a standoff between the military officials and the locals, when the officials insisted that the men from Kabarnet division would not participate since they only required a lady. Questions, doubts and suspicions arose as to how a specific division was handpicked for a lady in advance and assuming a lady never turned up or none qualified then who would be picked? But after some altercation and protests the process went on and the public keenly followed.

During the marathon race test, Gladys beat the other recruits finishing almost twenty minutes ahead of the second person which impressed everybody. After all the tests, including a pregnancy test, she was selected. The community and their leaders left satisfied that the right and deserving person had been selected based on fairness and merit.

Therefore it was a shock on 27th October 2010 when news broke out that she had been dropped on grounds of pregnancy. Several other independent tests including



Military chiefs are adamant they will not readmit Ms Gladys Jepkechei Tarus for training because politicians have joined into the controversy surrounding termination of her recruitment. [PHOTO: Peter Ochieng/STANDARD]

at government's Moi Teaching and Referral and Kenyatta National Hospital, confirmed that Gladys was not pregnant. This is a matter that generated a lot of heat, debate and outrage across the country with civil society organizations teaming up in condemning this matter and the national assembly debating it and eventually referring

it to its departmental committee whose findings are being eagerly awaited for.

This case served as an eye – opener to the corruption in our military which for a long time has operated in a lot of secrecy and strictly outside public scrutiny. The justification for this secrecy has been national security and the common good. But what now is emerging, is that this secrecy has most likely for a long time been a fertile ground for injustices, human rights violations and corruption.

The armed forces officials just like other public officers are governed by the laws of the land especially the chapter on integrity and they must be subject to transparency and accountability scrutiny and they are answerable to the people.

The departmental committee on defence and foreign relations is urged to speed up and resolve this matter and ensure that Gladys Jepkechei Tarus gets justice. After all in fighting for her rights she has demonstrated that she has what it takes to be a soldier and defend her rights.

The author is a member of Baringo HURINET

The Cut: Female Genital Mutilation (FGM)

By Sharon Jepkemoi

The practice of female genital mutilation (FGM) or "the cut" is very scaring. This process of cutting some parts of women's genitalia in the pretext that it will be smarter and appealing other than the way it was created. It is practiced among some communities in Kenya who have their own reasons why they cut their women and girls.

According to research from focus group discussions and in-depth interviews, this barbaric practice dates back to the 17th century. From several surveys in certain communities to identify factors influencing the practice of FGM among some communities, it is said that it grew as a result of women envying men when they underwent the rite of circumcision. Back then, men who were circumcised stayed in seclusion for period of almost one year and it was women who would provide for them. This meant that men relaxed and enjoyed themselves while women were subjected to hard labor of providing for them. At the end of that period the men would come out strong and very healthy.

As years elapsed the "intelligent women" thought that they too should also enjoy themselves. Through much lobbying by female folk in the community, they were able to start the practice and so 'they became equal to men'. They were also able to get the services men got when they were in seclusion.

Thus, we can say that FGM started as a result of power struggle between men and women in a patriarchal society where men dominated everything making women feel inferior and subjects. Little did these women know its consequence and effects, which are affecting them up to date.

Asked why they practice FGM, women argue that it is their culture; Female genital mutilation served the purpose of reducing

libido in women, because men went for hunting and gathering in far distance for several months. It is also alleged that FGM makes men and women equal because they've both been circumcised. This however is a misconception because the biology of men and women is different and in the long run, FGM serves to subjugate not to make women equal to men.

FGM was also an initiation process for girls. Today however, we know it is possible to teach girls and women about sexuality and responsible citizenship in adulthood and even create ages sets through which women can bond for life without subjecting them to FGM. This way, the rites of passage in life; birth, initiation, marriage, and death will still be complete even without the physical mutilation.

Today, many girls undergo FGM due to peer pressure which makes them feel like outsiders or less than others if not circumcised. However, with the growing number of girls who today are not being circumcised, there is now a reverse in this trend. Where in the past the uncircumcised girls were ostracised, today it is the circumcised girl who appears backward, traditional and disempowered to her peers. The circumcised girl is also more likely to be poor in her adulthood as she's more likely to drop out of school after circumcision and therefore not complete secondary or university education. She's also more likely to marry early and into a polygamous marriage where each woman is expected to fend for her children and even provide for the man.

Finally, it is also argued that men refuse to marry women who are not circumcised, due to the long history of female circumcision. This too has been proved wrong in the modern society through prominent, educated, successful yet uncircumcised women such as the Hon. Jebii Kilimo, who's even a leader in her community.

Appropriate interventions for accelerating the abandonment of FGM include:-

1. FGM is outlawed therefore there should be stiff penalties for those who practice this vice. They should be taken to court and prosecuted, to serve as an example to others practically, with a jail term of not less than five years for the culprits.
2. The Government through the provincial administration ranging from village elders all the way to the Provincial Commissioners should work together with FGM secretariat and make sure offenders are brought to book.
3. FGM and its effects to be included in school curriculum so that young girls understand its effects at an early age and are empowered to refuse to get the cut.
4. Youth groups living in the communities that practice FGM should sensitize young girls on effects of FGM and its effects using various community education strategies.
5. The Government should declare FGM a national disaster just like HIV and AIDS and drug abuse.

We are disappointed in leaders in Marakwet District, where more than 1000 girls allegedly underwent the cut during the 2010 Christmas season. We expect in 2011 to see our leaders speaking out and taking other appropriate measures to rescue our children from undergoing this vice. Marakwet district must in future be known for raising strong, educated and successful women and not for this outdated practice. We do not expect to see aspirants in the 2012 general elections using FGM ceremonies to campaign. Condemn FGM instead and we will vote for you.

The author is a member of the North Rift Human Rights Network.

Gender mainstreaming

Trailing the fear and tears of witchcraft

By Frank Mwangi

It is a topic they would rather not talk about and the more you engage them, a sense of withdrawal greets you, the general feeling falls short of don't ask don't tell attitude. It is the ever so controversial practice of witchcraft traditionally associated with the vast Kisii region. What is alarming though is not witchcraft in the real sense of the word but the rising incidences of killings and other forms of human rights abuse by civilians in the name of eliminating suspected witches infamously known as witch-lynching in the region.

In an effort to unravel witchcraft beliefs, the writer in the company of the Kenya Human Rights Commission (KHRC) team sets a rather ambitious mission, to talk, listen and understand the roots of this mystery subject - witchcraft. For those who are bold enough to tell their experience, the stories come in twists and turns. Meet Elmelda Moraa*, a mother of six, unlike other witnesses who narrated their experiences with witchcraft, the memories of losing her son Christopher Mombire* who was allegedly bewitched are rife and fresh in her mind.

The death of Christopher Mombire* a student at Nyanko Mixed Secondary triggered waves of attacks and destruction of properties of those suspected to have bewitched him. Flanked by her relatives and a group of empathetic Seventh Day Adventist (SDA) church elders, Elmelda dejectedly narrates how Christopher met his death. According to her, Christopher a form four candidate, developed eye and chest complications while seating for his mock exam and indeed sought medical treatment in a local hospital.

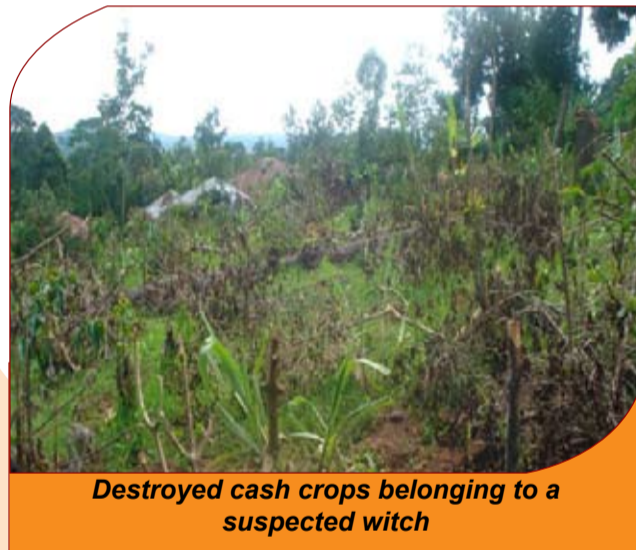
In the month of October 2010, just when Christopher's health started improving, he fell ill and was admitted at the Kisii level five district hospital where doctors diagnosed him with pneumonia but unfortunately for the mother of six, Christopher passed on. For Elmelda and family members, the death of Christopher was never a surprise. "There were ants all over in the house the night before my son died and we knew something bad was going to happen" she laments. According to the Kisii culture ants symbolize a bad omen.

An earlier visit to Nyanko Mixed Secondary where Christopher was a student revealed that the school was providing accommodation to Christopher and two other students from poor families, a move that irked some relatives notably his uncle who was alleged to be jealous of Christopher's bright performance academically. The principal of the School Mr. Henry Machana confirmed this. "It is true that some of the relatives were not happy when they realized that the boy was more stable here at school". It is for this reason that the uncle was suspected to have bewitched Christopher.

Rumors and suspicions that Christopher was indeed bewitched spread in Keyogera village and amongst Christopher's schoolmates. The enraged students went to Christopher's home in the guise of consoling the family but upon reaching there, they ganged up with the villagers, attacked the uncle who in the confusion managed to escape with injuries. It is a strong belief that the burial of a bewitched person cannot take place before the 'witch spirits' are 'removed'. What is so ironic is that 'witch doctors' conduct witch spirit healing rituals and they are highly revered by the

locals. The witchdoctors exploit the desperate and vulnerable citizens by charging them exorbitantly for their services. Christopher's family for instance had to sell their only cow to raise Kshs. 7,000 to pay the witchdoctor. In his healing mission at the homestead, the witchdoctor recovered suspicious paraphernalia from the hut of Christopher's grandmother. The raged crowd which witnessed the 'revelation' turned against the old woman, chased her away and torched her hut too.

Though the local administration police officers responded to the melee and dispersed the crowd, it was too little too late and no arrests were made. When the Kisii Central DC Benjamin Njoroge, was put to task as to why there was slow or no response to the escalating attacks on suspected witches by his administration, he observed that policemen too are reluctant to get involved for fear of reprisal by the witches. "Some police officers died after arresting suspected witches, the officers were courageous to make arrests because they did not believe in witchcraft but they did not live long after that, so these fear and beliefs are affecting the police as well", he told the writer. In several cases where arrests and prosecution have been reported,



Destroyed cash crops belonging to a suspected witch

the DC laments that lack of witnesses in court has hampered suits against perpetrators of witch lynching. "Police need the support of the public to present a concrete case. Unfortunately people here fear testifying in courts."

Another witness Samuel Ongeru narrated how his brother was bewitched to a mute. "My brother just stopped speaking. We went to sleep normally only to find him at the door step the following morning." said Samuel. According to him the incident shocked and angered the entire Bomatara village and people gathered to conduct a spitting ritual to heal Samuel's brother. The Abagusii community believes that spitting on the victim can heal them and possibly identify the witch. The victim finally managed to speak again after one person spat on him and identified him as the one who had walked him around the previous night. "This person has bewitched my brother." People were very angry. They descended on him, beat him to death, burnt his body and the houses of his families. From then on my brother's mental condition has never been the same and I personally know that witchcraft is real" Samuel concluded.

Notably on the witchcraft killings is the fact that there are similar characteristics of those suspected of witchcraft practice. Elderly women who run a solitary life, illiterate and poor people who are not exposed, can't dress well are mostly targeted for lynching. They are isolated in public and children are made to understand such people are dangerous and should be burnt to eliminate the witchcraft powers. Analysts believe incidents of witch lynching are co-related to land issues. "If you look at the pattern of these killings, you will notice that there is an element of land tussle. The aged are killed with a motive of grabbing their land by relatives. Land is a big issue here" an official from the Center for Community Dialogue (CODE) noted.

Way forward

Upon being posted to Kisii Central as a district commissioner, Benjamin Njoroge remembers a fatal attack in Nyamataro village where six people were burnt for suspicion of witchcraft. The DC vowed to fight the practice and convened a stakeholder's consultative meeting to sensitize the people to follow the rule of law and stop the killings. He met resistance even from unlikely quarters and pointed out that "To my surprise, a section of the clergy who are supposed to educate the people, told me to my face that they will pray for me to understand why witches should be burnt" pointed out the DC. He observes that such attitudes have to change if the war against such practices is to be won. Mr. Henry Machana, a principal at Nyanko Mixed Secondary bemoans that the country's education curriculum has neglected the aspect of social and cultural values. "Something needs to be done to our education system, the system should dispel some negative cultural beliefs. School syllabus should incorporate good cultural practice and for this to be achieved and sustained it should be informed by baseline studies and research in the affected areas like Kisii" Mr. Machana proposed.

Religious leaders in this region castigate the inheritance of beliefs as a major obstacle preaching against witchcraft. "Some members of the flock open up to us about this subject (witchcraft) but when we ask them to narrate their personal encounter with witches, the common phrase we get is - 'I did not see it but some people saw it.' So there is an element of mischief. People must be courageous to testify against these beliefs; tell the people that some of these things don't make sense" a pastor with SDA church who sought anonymity told the writer. Similar sentiments were echoed by the Catholic Justice and Peace Commission team which reckoned that majority of witchcraft talk is largely rumours. "For instance, it's a belief that upon burying the dead, acid should be spilled to prevent exhumation of the dead by the witches, try and ask around whether there has ever been a verified case of exhumed body, you will be told it is dangerous to dig up the grave to verify because the dreaded witch spirits will claim more lives. Instead you will be convinced how a coffin was recovered down the river and stories like that. Its all in the mind" concluded a CJPC official.

Kenya Human Rights Commission is particularly concerned by the spate of killings directed at people suspected to be witches.

The writer is a freelance journalist and member of KHRC interns Alumni Association

Gender Mainstreaming

Kinango “Wizard of love” jailed for 20 years

By Saumu Juma

Mangale Magegenya, a well known traditional medicineman from Manyu village in Kasemeni Division, Kinango Constituency was sent jail for twenty years after being found guilty of defiling a minor.



Paraphernalia for witchdoctor's ritual

A class six girl at Fulugani Primary School, aged 13 years was staying with her grandmother when she was taken ill.

With her strong traditional belief, the ageing woman took her grand-daughter to the medicine man who is a close relative of the family.

On the third visit to the witch doctor, the girl went alone as her grandmother had other commitments. The ruthless medicine man had been eagerly waiting for this opportunity. As the girl had already submitted to his authority, believing, like her grandmother that he is a doctor who is able to heal her, she obeyed when he asked her to remove her clothes and lie on a mat. The man proceeded to defile her.

Kinango Human Rights Network (Kinango HURINET) got wind of what had happened and visited the child's home to gather more information. We also took the girl to Mariakani District Hospital for a medical examination and eventually to Samburu Police Post to record a statement.

After learning that the HURINET had developed interest in the case and was assisting the girl to access justice, the wizard went underground. In a calculated move, a Kinango HURINET member laid a trap after police efforts to arrest him failed. Posing as a patient, this writer got telephone contacts of the witchdoctor from his wife. His wizardry wisdom was handsomely scuttled when he was

apprehended following a tip off and was remanded at Voi police station. Eventually, the criminal case was heard and determined and the child molester sentenced to 20years imprisonment by the Voi Resident Magistrate.

Kinango HURINET is proud to have contributed to ridding the society of this child molester and hopes the 20year sentence will rehabilitate him. It is disheartening to see that our community still believes in such people, and even trusts them enough to send children to them unattended. This one act though should serve as a lesson to other witchdoctors and other people who enjoy a position of power, be it spiritual, religious or even political, who may be harbouring such barbaric thoughts.

This is a big achievement by Kinango HURINET. However, there is still need to do more. We plan a series of activities including civic education intended to sensitize the community on their basic rights and in particular with regard to child protection. We further intend to engage duty bearers such as the police, children officers, chiefs, village elders and even religious and cultural elders with a view to ensuring that similar incidents do not happen. We have embarked on an intensive media campaign through local language radio stations that will expose the culprits and advocate for justice for the victims.

Tribulations of a woman in Kinango

By Iddi Ibrahim

A mother of three has put up a makeshift hut next to her estranged husband's home following a domestic dispute. Fatuma Masudi, 30, was thrown out of her matrimonial home in Miyani village, Kasemeni location Kinango, by her in-laws.

Ms. Masudi, is a casual worker who makes a living by cultivating neighbours' farms where she is paid as little as a hundred shillings a day. When she is not working in the farms, she sells brooms in the local market, a trade that has enabled her to put up the shelter and also take care of her three children.

Ms. Masudi's woes began in February 2008 when her husband, Baraza Mgaza, divorced her in a customary arrangement presided over by the village chairman, Ndegwa Munga. She was asked to pack and leave for her parents' home in Ndzovuni, about twelve miles away. According to Duruma customs, Fatuma's father has to pay back the dowry paid to him by Mgaza.

When the ruling was made in the traditional court, the elders neither stated what would become of the couple's children nor what would happen to the property the couple acquired together during their hey days. This is not surprising considering that these traditional justice systems are often male-oriented or patriarchal, with most of the panel of 'judges' having been socialized to believe that all property belongs to men and are not in the habit of hearing women's point of view in such matters.

Despite having robbed her of her years of work during the time that she was married, the estranged husband has continued to be cruel and inhumane to Ms. Masudi even after the marriage ended. One day, a year after the marriage was dissolved by the elders, Ms. Masudi was seated under a palm tree relaxing after a hard day's

work when suddenly, someone approached from behind, assaulted and raped her. It was her ex-husband. No action was taken against him even after reporting the matter at Minyenzeni Administration Police (AP) camp, as the elders' view, which seems to be the majority view in the community, is that no crime had taken place since in the traditional justice system, a divorce is a divorce when the man says it is. Should he still occasionally want to assert his authority over a woman that he once divorced, the traditional system seems to give the man permission to temporarily suspend the divorce, such that no crime is seen to have happened when a man rapes his ex-wife.

The officers at the AP camp referred Ms. Masudi to Kinango Police Station, where the police advised her to go to the district hospital. She was treated and issued with a P3 Form. The culprit was however not arrested as it was said that the matter had been referred to the Samburu Police Post, which is closer to where the incident occurred. Finally, officers at the Samburu Police Post and Minyenzeni AP officers arrested the suspect but released him two days later following the intervention of the village chairman, Ndegwa Munga. This raises questions as to whether such elders or village chairmen are driven by justice or by who has money and power in any dispute, as such a case ought to be so clear. If a man divorces his wife and throws her and her children out before a panel of elders and without any maintenance or child support, then it should be very clear that he has no conjugal rights over her.

In late 2010, one of the couple's daughters got married, while in the custody of her mother. The marriage has now sparked a fresh dispute as once again. The patriarchal culture demands that the father should receive dowry, despite the fact that he has not supported these children for a while and at the divorce said he would have nothing

at all to do with them. Based on this understanding, Ms. Masudi was of the view that it is she, who should receive the dowry, which once again, she is sad to learn that the traditional view is not so. While the mother rightfully claims that she is the one who brought up the children on her own, the father argues that according to Duruma customs, children belong to the father.

Fatuma is now calling on Kinango Human Rights Network to come to her rescue as she has failed to find justice on the assault and rape from the law enforcement officers. It is not clear on what grounds her husband was released, and the assault and rape charges never made it to a criminal court. Ms. Masudi is also not in a position to afford to go to court to have the matter of who should receive dowry on their daughter's marriage. It is also very difficult for her to seek justice from the traditional justice system or the village chairman considering this system has been unfair to her before, and seems to be driven by money and power, both of which she currently she lacks.

Kinango HURINET invites readers of Mizizi ya Haki to help through letters to the editor and articles to advise on how they can claim justice in such a case.

The writer is the chairperson, Kinango HURINET

“The only thing necessary for evil to triumph is for good people to do nothing”

Edmund Burke

Education and Child Rights

Stunted girl-child education in Kwale

By Jaramba George and Fatuma Tabwara

In 2007, the Kwale Human Rights Network (HURINET) with the support of the Kenya Human Rights Commission (KHRC) started the Peoples' Manifesto & Scorecard Initiative. This is a five-year project, which began by mobilizing communities in each village in the Matuga and Msambweni constituencies in Kwale, to discuss and jointly write down a list of things that the community expected the MPs and councilors to take lead in ensuring they are addressed. Having first collected the list of community demands in 2007, Kwale HURINET has been monitoring what progress has been made on delivering these demands. In April – August 2010, Kwale HURINET conducted a social audit in Matuga Constituency to establish the level of access to education in the area.

One of the questions we asked parents and residents generally during the social audit was about the state of school dropout in the constituency. The response was guarded as no one came out openly to tell the



Mbuguni Pri. School head teacher, Juma Mwavitu addressing the gathering on the school's prize giving day

truth. "In the past, such cases were common, but not nowadays," said a middle-aged woman who introduced herself only as Zainab. However, a few months later, stories began emerging that a big number of girls were dropping out of primary schools after getting pregnant. The administration of Mbuguni Primary School defied the odds and went public when eight of its pupils became pregnant. When officials of Kwale HURINET visited the school on a fact-finding mission, perplexing discoveries emerged, thanks to the cooperation of the school management.

For example, it emerged that there are only two primary schools in Mbuguni location namely Mbuguni and Mteza Primary Schools. Galana Nursery School was elevated to the primary level in 2010, but is currently only upto class one. Some pupils of Mbuguni primary walk for as long as five kilometers to get to school.

With a population of 646 pupils (368 boys and 278 girls), the school currently boasts of eleven teachers. Eight of the teachers are employees of the Teachers Service Commission (TSC) while three are employed by Parents Teachers Association (PTA). This means a teacher to pupil ratio of 1:80 if one counts just the TSC teachers or 1: 59 if one includes the PTA teachers. Both



Fatuma Tabwara consoles one of the former pupils of Mbuguni School. The girl is holding her two week old baby

ratios are far below the 1: 45 ratio that would be fair in a country of Kenya's development, and to facilitate acceptable standards of learning.

The social audit also revealed that there are several child-headed households where children are the sole breadwinners and have either dropped out of school or attend when they are not too busy earning a living. An example of this Riziki Juma (not her real name), the sole breadwinner of her family at the age of 14years. Her family consists of two; Riziki and her maternal grandmother. Riziki assumed the role of a breadwinner after her mother passed away several years ago leaving her with her visually impaired grandmother. Despite her condition, she encouraged the young Riziki to go to Mbuguni Primary School.

Riziki walks to and from school daily, covering a distance of about six kilometers. When she gets back home in the evening, she fetches water and fire wood before settling down to prepare food for the two of them. When she is not in school, Riziki does menial jobs in the neighbourhood to enable her get money to buy food and take care of other needs.

Sadly, another tragedy has recently struck Riziki. The girl conceived a few months ago and may have given birth by the time you will be reading this story. Riziki is going to give birth to a fellow child who will call her mother. Her grandmother is soon going to have a great



Kwale Hurinet Secretary Fatuma Tabwara addresses parents, teachers and pupils of Mbuguni Pri. School

grandchild who she will not not be able to take care of and who will force her 14-year-old mother to totally abandon school as she will now need to provide for the family of 3 and so soon after giving birth.

This, to me, is the height of barbarism, because somebody out there, took advantage of Riziki's vulnerability to put her in the situation she is in now. The father of Riziki's baby is likely to be someone who knows her very well and thus understands pretty clearly that pregnancy and motherhood can only make her already sorry situation worse. Yet instead of using his power to uplift her, he instead took advantage and made her situation of poverty and vulnerability worse. Sadly, this person is most likely to be someone she knows very well, trusted and sought help from because he is her family friend, neighbor, relative or even teacher.

There are several Rizikis in Kwale whose stories have not been told. These cases transcend Mbuguni to Mwaluphamba to Lukore to Mwaluganje to Ngombeni to Waa. They suffer silently because no one cares.



Mbuguni pri. Sch. Pupils entertain guests at school during the prize giving day last October

Kwale HURINET is the voice of the voiceless and calling out to those who care to come out and save this situation. Even if one does not care to help the girls, as there are many who still hold the view that the girls who to me are the victims, are to blame; then let us unite and save Kwale District from poverty. This is because the more school dropouts and underage parents we have in Kwale, the poorer the County will be as there will be few people to lead or even embrace its growth into a self-sustaining County. It may also lead to an increase in crime, as it is highly unlikely that the children of such teenage poor mothers will themselves complete school, which means in the next 15-20years, they too will be uneducated, unemployed teenagers, who will be desperate to take on any job including that of being militias.

Tabwara is the Secretary - Kwale Hurinet and Jaramba is her assistant

Education and Child Rights

Education among Pokot and other pastoralists

By Daniel Sutter and Sammy Kipchumba

Education is a basic human right and has been recognized as such since the 1948 adoption of the Universal Declaration of Human Rights. Several human rights treaties have re-affirmed this right and have supported entitlement to free, compulsory primary education for all children. All children either in urban or rural areas have equal rights to education. Some of these rights include:

- (a) The right of access to education. This must be available for, accessible to, and inclusive of all children.
- (b) The right to quality education. Education needs to be child-centered, relevant and embrace a broad curriculum and be appropriately resourced and monitored.
- (c) The right to respect within the learning environment. Education must be provided in a way that is consistent with the human rights, equal respect for culture, religion and language and free from all forms of violence.

Some of the challenges facing child development in the Pokot pastoralists community:

The Pokot people live in a region frequented by severe drought throughout the year except for a few days that they receive a small amount of rainfall that cannot sustain a crop to maturity; hence they depend on livestock keeping for their livelihood.

Though the children here have equal rights as those in other areas like the urban areas, they barely enjoy the rights. The children's development here through education is far behind and is faced with many challenges.

As a matter of fact, education in Pokot community is not developing and all the stakeholders, that is, the Ministry of Education and the government in general need to do something to salvage the situation.

Among this nomadic and pastoralist community, attaining the Millennium Development Goals (MDGs) of a world fit for children is still a far-fetched wish. The

children have very limited opportunities to education and the girls are more vulnerable to the effects of the outdated cultural practices. The effects of retrogressive cultural practices exercised in the area over the years—among them female genital mutilation and early forced marriages have had a very negative effects on the development of children in this community.



Turkana dance; picture by Ekai Ekaale, Catholic Diocese of Lodwar

While the international community has pledged to strive for a world of peace, equality, tolerance, security, freedom, respect for the environment and shared responsibility in which special care and attention is given to the most vulnerable; especially the children and their survival, the children in Pokot have not enjoyed any of these. This has been so due to the government neglect of this arid region. The government has failed greatly to honor the rights of the vulnerable children.

Access to food, health care, protection and other necessary opportunities is still a mirage in this community. This has actually led to a high rate of school drop outs despite the free education introduced in 2003, as the greatest motivation for parents to send children to school was food and water, which are now not available even in the schools.

Due to high illiteracy levels of parents and the attachment to cultural practices (some aspects of which are retrogressive), the idea of global child rights,

Universal Primary Education (UPE) and issues to do with children cannot be explained to their satisfaction. To them, education is the art of teaching a child the traditional norms that must be observed at all stages of growth for an individual's and the community's survival.

The girl will know that she must at all times feed the family, fetch water and firewood and go through what every woman is said to cherish – female genital mutilation. On the other hand, the boy child has to take care of the cattle in the arid area with limited pasture and water. These therefore have become what matters most as without them the community, including the children will have nothing to eat.

Security in this part of the country is just but a wish. For most of the years I have lived I have never experienced a whole year of peace. A child is brought up with a culture to defend the community against other communities who are themselves struggling to stay alive and keep their cattle alive too. To such people who have never known a year of security, or freedom from hunger and thirst, education is not a priority; it is better to teach children how to protect themselves from immediate threats than to send them to school, not knowing if they will return safely or have food and water to drink.

The nomadic pastoralist life contributes greatly to the poor state of education. As the community moves from place to place, in search of water, the children hardly find enough time to attend school. This is coupled by the parents' conservative nature who find it hard to accept change.

Poverty is another factor, which prevents children from attending school especially the girl child. The parents marry off their children in order to receive the dowry.

It is therefore necessary for all the stakeholders - the government, parents and the professionals to join hands and find the appropriate solutions to these challenges, lest we forget that education is now a right under the new constitution.

The authors are members of the North Rift Human Rights Network.

Increased subsidy to education should bear fruit

By Jonah Kipkeu

Adequate funding is critical for attaining quality education in the nation.

The rising enrollment figures witnessed in the country since the introduction of Free Primary Education (FPE) in the year 2003 is threatening to undermine gains made in the education sector if the number of teachers is not increased to match the large number of pupils in schools.

The enrolment figures at the primary school level had risen to over eight (8) million up from about 7.5 million

in 2005. But the number of primary school teachers remained static with a paltry 300 teachers being hired over the last five years. Currently the pupil teacher ratio has increased from 44.4 to 51.6 and the figure is likely to go up if the government fails to bridge the discrepancy by employing more teachers.

Despite increased funding to the education sector, there is a glaring gap between the number of teachers and the pupils. Government recurrent expenditure on pre-primary, primary, secondary, teacher training and adult education has increased with a total of Kshs.

116.9 billion being channeled for the same during the 2009/2010 financial year up from Kshs. 42.7 billion during the 2005/2006 financial year.

There is also need to increase enrolment in technical teaching institutions to supplement the annual university and college enrolment. Student enrolment in technical institutions has also dropped. There is need for urgent measures to encourage enrolment in these institutions to improve the country's technical capacity.

The author is a member of the North Rift HURINET.

Education and Child Rights

Torture

By Ismail Ahmed Abdow

Torture is the exposure of children to conditions that do not allow for their healthy growth and development. Children should not be assigned the responsibilities of adults. Doing this is misuse of children mainly due to their inability to protect or defend themselves. This torture practice appears in different forms in the society. It takes the form of child labor, sexual molestation, child battering or even marrying of underage girls to men old enough to be their parents or grandparents.

Children continue being used for economic production both at home and in industries. The use of children as house helps is quite rampant in Wajir County. Many children are subjected to this particular form of abuse in the County. They are exposed to 15-hour working days and very little pay in many households. In rural areas especially in cash crop growing areas children are forced to pick tea, coffee and pyrethrum even during schooling hours. They are treated harshly and are not allowed to bargain on their own terms.

Sexual molestation is also another widespread form of abuse experienced by children in Wajir County. More often than not we get to witness or read about the sexual defilement of children even younger than 2 years old. The girl child is the most common target for introduction to immoral practices such as prostitution.

Physical abuse is another form of abuse that runs wild in the county. Employers and cruel parents continue to abuse children in ways that are unimaginable. For example, scalding children with hot water or oil for a chore not done or being accused falsely of wrong doing.

Some communities in Kenya marry off their girls at a very tender age in return for wealth in the form of livestock or even prestige. These unfortunate incidents have been known to cause serious repercussions on the general well being of the child. They include absenteeism from school or school dropout and thus making children unable to make a good living and be responsible family women or men when they grow up.

This issue of torture should be discussed in churches, mosques, villages, barazas and any other social gathering. The law should also put heavy penalties to those who abuse the rights of children.

People should know that this act is equivalent to a man cutting a branch that he is sitting on. Let us say no to torture.

Peace a co-factor of development

By Ismail Ahmed Abdow

Peace is the state of being in harmony and it is important for the development of any society. Peace has always been a building factor for the growth and realization of dreams. As the Somali society we may appear to know the importance of peace mentally but this is rarely seen in our our daily actions.

It is quite important to note that without peace, all other development is put into halt. We are capable of developing our long neglected Province if only we can put more effort in promoting peaceful co-existence in the region.

It is quite an embarrassment to find communities fighting each other for reasons well known to them and possibly which if they can agree on, then the different clans would talk to each other. I hereby register my sympathy to my own society for having not been co-operative in the region's development and success. We have always been busy creating differences and enemies between ourselves and up to now nothing appreciable has been achieved.

It is only through peace that development be visible. Clans must stop hating each other. There will be many schools, Madrassas, hospitals and factories put in place so it is my appeal to all Kenyans to maintain peace and develop the nation.

Sayings and Proverbs on peace

By Hussein Adan Mohamed

- **The roots of peace are more bitter than the Neem tree but its fruits are sweeter than honey**
- **Peace is like the rain that makes the grass grow; but war is like the fire that dries the grass.**
- **It is better to fall and break your legs than to fall and break your heart.**
- **Never move an old boundary mark that your ancestors established.**
- **The best way to destroy an enemy is to make him a friend.**
- **Strive for peace before striving for land to own.**

Police and bribery

By Khadija Abdullahi

Kenya police is the most corrupt institution. Along the Nairobi-Garissa road, traffic police officers are accused of this vice. The drivers and the conductors operating on these roads will make sure they have almost 3000 shillings in Ksh50 or Ksh100 notes when they come close to a police barrier.

I am pleading with the Kenya Anti-Corruption Unit to board these buses coming to Garissa, Wajir or Mandera and you will find a lot of information. I have heard many people say that the barriers are supposed to prevent guns and people from Ethiopia and somali coming into Kenya illegally in what is called human trafficking. However, I have seen on the news that t is actually the police who are bribed to let this happen. It means the barriers have not stopped crime, because police are involved in the crime. The government should remove these barriers as we too are Kenyans, and should not be treated like suspects when everyone has seen on television that it is the police who let crime happen.

In the outskirts of Wajir County people fear these officers because most are very brutal and unfriendly. School going children ran away from them when they see them on their way to school. The irony is that these are the people who are supposed to make children feel safe and secure. But here in North Eastern Province it is vice versa. So a note to police officers is that we are in a the new Kenya. We are not the primitive and barbaric people you think we are. Take care, tumechanuka!

Unreported rape cases

By Rahma Abdinasir

Several rape cases go unreported in Wajir County. These cases are usually resolved by the village elders and a little amount of money paid to the girl's family by the rapist and things are forgotten. The affected party knows that she must keep silent and should not let others know what has happened since she knows everyone will blame her and treat her as an outcast. Sometimes the woman's family receives nothing since the amount paid is divided among her sub-clan.

Thanks to the Wajir HURINET, we are able to communicate to the public conducting civic education and also through the local community meetings.

The author is in Ajir Happy Kids Academy

Education and Child Rights

Harrasment of students

By Rahman Adin

Harassment is the act of mistreating others in a wrong way. Harassment is one of the qualities that has taken us the backward and awkward step ever made by a normal being. Schools have my students. If a student is bullied in school no one cares because there are too many students and the bully knows it will not be reported until it becomes too much. Teachers can stop bullying if each took care of 20-30 students and met them once a week to find out if they have problems. But most teachers will not do this. The result is that many cases of harassment of students happen. Students are denied their rights in many ways e.g. right to sleep/rest and eat.

"**Monolising**" is the autocratic behavior where human wrongs are considered right.

This harassment may come in many ways due to issues of age, race, gender, nationality, welfare and the state of someone. When one is harassed he/she feels isolated and unaccepted. This contributes to loss of morale.

Harassment, including monolizing is a form of human rights abuse. Many school administrators also violate the human rights of students especially by denying the students rest and eat.

Stop domestic violence

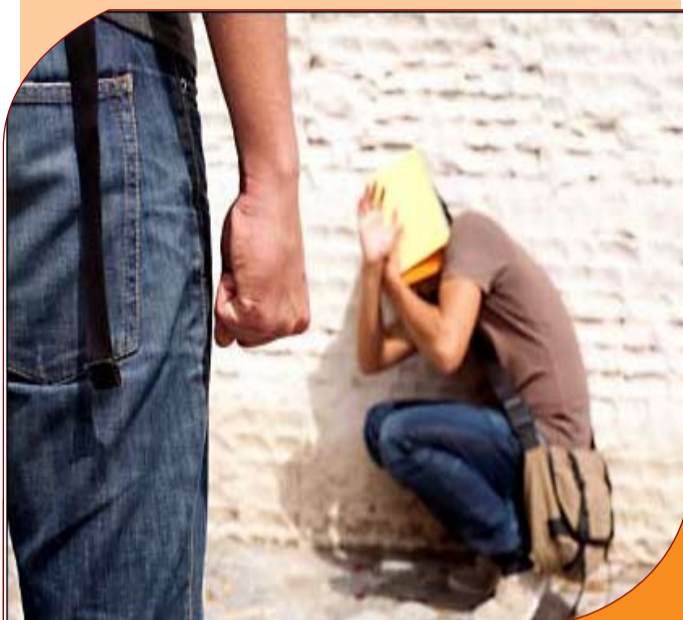
By Halima Darura

Women are brutally being beaten up to date especially in North Eastern Province, in Wajir County. In the past, when it was said that if a woman is not beaten then she is not loved, are long gone. Islam is against domestic violence. I believe the Somalis should stop following the myths and face the facts. We should be thinking far and beyond. Women should be respected and given the chance to develop in the society. Women are turning out to be the bread winners of their families. In any case I suggest that if there is conflict between the wife and husband, they should talk to each other. If they are unable to reach a consensus then a third party should be involved, but beatings and abuses should be stopped and condemned. Men should stop this behaviour.

Bullying

By Youth for Human Rights International

What happens when people don't know their human rights?



Bullying is a violation of human rights

Violence:

- More than 50% of high schoolers have been bullied or have bullied, according to a 2010 study in Los Angeles.¹
- Bullying is now an epidemic that causes 160,000 children a day to stay home from school because they are afraid of being bullied.²
- Bullying culminated in at least 14 suicides in the US last year.²
- Every 7 minutes a child is bullied. Adult intervention - 4%. Peer intervention - 11%. No intervention - 85%.³

Youth and adults who are aware of their human rights are more able to report and take effective measures to eradicate bullying.

"We have a duty to other people, and we should protect their rights and freedoms."

Human Right #29 "Responsibility"

Help others become aware of their Universal

Every 7 minutes a child is bullied. Adult intervention - 4%. Peer intervention - 11%. No intervention - 85%.³

Violating human rights in the society

By Adan Abdow

Societies nationwide are dynamic and not static but I wonder how the society of Ilchamus is. For sure we as Ilchamus society have faced sporadic tribal clashes from our neighboring communities. This was a result of the neglect and failure to face and settle past several cases of cattle rustling. Now the metrological department has advised that there will be drought and government has declared that it will ensure that no one will starve to death.

We believe that we must focus and act on justice and reconciliation issues, but this cannot be done effectively when we still have conflict amongst ourselves within tribal lines.

We believe that we must focus and act on justice and reconciliation issues but this cannot be done effectively when we still have conflict amongst ourselves within tribal lines. Instantaneously we have witnessed several cases of rustling cattle. Rustlers come to Ilchamus residents because of the plenty herds of cattle we own. They are always well armed whenever they decide to raid and as a result raids are associated with loss of life.

Repeatedly we have lost our herds and even the lives of our beloved brothers and sisters due to cattle rustling. I wish to draw government attention to intervene and build several police posts in order to maintain law and order in the society. As we have a right to live and own property based on our abilities and capabilities. Our country is a democratic society and so we should not allow others to violate our rights. It is the mandate of the government to rid of the country such insecurity.

In addition, it is important that the law enforcement officers also engage with the community to ensure that police officers treat our people with respect.

Transitional Justice

Republic V Edward Kirui: Evidence tampering?

By ICJ Kenya Section

The case of Republic versus Kirui is in our view an indication of the highest professional misconduct by the Police Force, the Criminal Investigations Department and the State Law Office in terms of investigations and supporting the prosecution of a case. It exemplifies the incompetence that runs within the police force and casts a huge shadow of doubt on their ability to carry out simple investigations let alone serious crimes such as that of international crime or terrorism.

The case of The Republic versus Kirui shows an astonishing inability to bring to justice a rogue police officer captured on national television shooting 2 unarmed people, Wallace Onyango and Ismail Chacha, during post-election protests in Kisumu. The television footage captures the two unarmed men being felled by a police officer in contravention of the law. What is horrific is the callousness with which the officer conducts himself after shooting - he boots and stomps one of his victims even as they breathe their last.

Thereafter the Police, during prosecution, knowingly or unknowingly, fail to produce the firearm that killed the victims resulting in an acquittal of the suspect. The gun that shot the two young men was said to be an AK 47 rifle, Serial Number 3008378. However the firearm produced in Court was the AK 47 rifle Serial Number 23008378 issued to the accused person PC Edward Kirui and thus not the one used to kill the victims. The questions then are: Who was issued with AK 47 rifle, Serial Number 3008378 that killed Wallace Onyango and Isaiah Chacha? How was it that the police officer shown on video footage positively identified as PC Edward Kirui found not guilty?

Facts of the Case & Evidence submitted before the Court

The undisputed facts of the case are that on the 16th of January 2008, the accused, Police Constable Edward Kirui, was deployed at Kondele market in Kisumu, where there was a large crowd protesting against the election results declared by the Electoral Commission of Kenya. There was then a shooting by one of the police officers that pursued a group of protestors resulting in the death of George William Onyango and Ismail Chacha. The shooting was captured on video, leading to the arrest of the accused. Thereafter, the accused was charged with committing the murder of George William Onyango and Ismail Chacha.

The trial began before Justice Onesmus Mutungi who heard the evidence of 19 witnesses before retiring from judicial service. It was then taken up by Justice Fred Ochieng, who continued hearing the case from the stage it had reached as requested by the accused and the prosecution. At the end of the trial, the prosecution had called 22 witnesses, while the defence called only 2 witnesses including the accused. In reaching his verdict, Judge Ochieng considered the witness testimonies (including 2 identifying witnesses), the video caption of the shooting and a firearms examiner's report.

Overview of the Judge's determination

In deciding whether the shooting that resulted in the death of the two deceased persons occurred in Kondele, the Judge ruled that in light of the testimony of two prosecution witnesses and the video caption made by KTN no doubt remained that the shooting had occurred in Kondele.

The Judge found that the first witness called by the prosecution team had positively identified the accused as the person who was at the scene of the shooting. That being the case, the Judge reasoned that the bullet which was retrieved from the body of George William Onyango, had to be traced back to the gun, which the accused had at the time the shooting occurred.

Sergeant Isack Serem, who was in charge of the armoury at Kondele Police Station at the material time,



Police Constable Edward Kirui in Court

testified that the firearm issued to the accused was an AK47, serial number 23008378 of body parts number 08378. He proved his evidence by the Arms Movement Register, which he maintained at the Kondele Police Station. However, the Firearms Examiner, Acting Senior Superintendent Johnstone Musyoki Mwongera testified that the firearm which he was asked to examine was one which bore the serial number 3008378. The Judge made verifications to determine whether there was a typographical error, and established that there was none. Further validating this evidence was an exhibit produced in Court of a firearm of serial number, 3008378. The Firearm Expert's report reiterated the same serial number. Furthermore, the microscopic examination of the bullet head recovered from George William Onyango, in conjunction with the six bullets test-fired from AK47, serial number, 3008378, proved that the bullet head was fired from that firearm, not the one assigned to the accused on the day of the shooting.

The prosecution did not produce before the court the AK47 serial number 23008378, which was assigned to the accused on the day in question. Further they did not even attempt to link firearm serial number 3008378

(the killer gun) to the accused. The court therefore held that the bullet that killed George William Onyango was discharged from a different gun than the one which the accused had been assigned. This is notwithstanding the fact that the accused was positively identified as being at the crime scene and on video footage.

Concluding remarks

Endeavoring to deal with the above issue, the Judge raised several questions: "Did Inspector Gikunda or any other police officer replace the gun which had been recovered from the accused, with another one? If not, where did the rifle serial number 3008378 come from? And if there was a change of guns, who did it, at what stage, and for what reason? But if there was no change of guns, why are there two different serial numbers?" One critical question omitted by the judge is whether the prosecution was negligent. Why did they fail to see the obvious 'mistake'? In any case, the prosecution's case was based on the firearm!

If this matter is to be put to rest and justice is to be served, these questions ought to be answered. Past experiences, and in particular this case, has proved that the police cannot be left to investigate themselves. It is only fair that an independent inquiry ought to be instituted, with a clear objective of answering the above questions. The aim would be to prosecute those responsible for any foul play if it is established that there was one.

This case demonstrates once more that the police in Kenya needs urgent and radical reform to become a service to the new Republic. Their murderous campaign against Kenyans must cease immediately and those who commit violations against the people of this Republic brought to book forthwith. They should remember the Kenyan State has a myriad of options. The Judiciary well knows this.

Finally the conduct of the investigations and prosecutions team in this case including the State Law Office and Criminal Investigations Department is unsatisfactory. It is reasonable to suspect that evidence might have been tampered with in the Republic vs. Kirui case resulting in an acquittal.

"Our government ...teaches the people by its example. If the government becomes the law breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy ."

Louis Brandeis

Transitional Justice

Establishing a Special Tribunal for Kenya and role of the International Criminal Court (ICC)

By Human Rights Watch (HRW)

On December 15, 2010, the International Criminal Court (ICC) prosecutor announced that he is seeking summonses for six people in the court's Kenya investigation.

The investigation, the ICC's fifth, was opened in March 2010 after the prosecutor received authorization from a majority of three judges sitting as an ICC pre-trial chamber. Kenya ratified the Rome Statute, which created the court, in 2005. The prosecutor's investigations have focused on the violence that followed what was widely perceived as a rigged presidential election in favor of the incumbent president, Mwai Kibaki, in December 2007.

Human Rights Watch has consistently emphasized the importance of accountability for crimes committed during the violence that followed the election. Documented evidence show several patterns of violence, including extrajudicial killings and excessive use of force by the police, and ethnic-based attacks and reprisals by militia groups on both sides of the political divide. The post-election violence claimed over 1,100 lives and forced nearly 400,000 people from their homes.

The ICC investigation is the first serious effort to bring to account those responsible for the post-election violence. Perpetrators of past episodes of post-election violence—in 1992 and 1997—went unpunished, and Kenya's leaders have not made good on promises to bring those responsible for the 2007-2008 violence to account in national trials.

1. What are the cases about? What crimes is the prosecutor alleging these individuals committed?

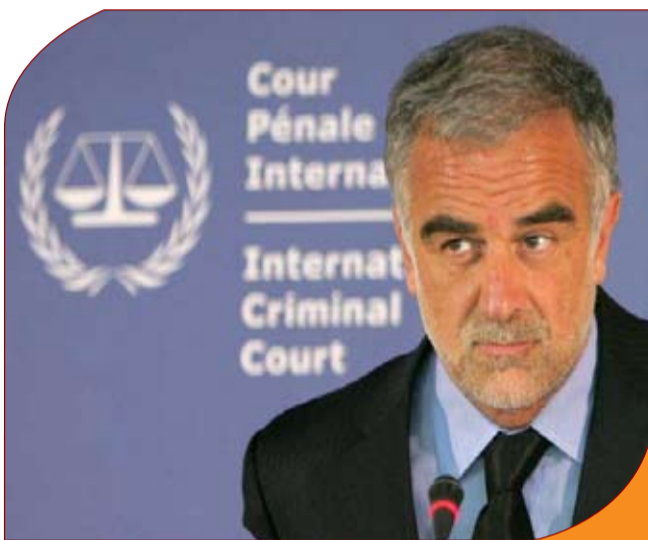
The prosecutor is seeking to bring charges of crimes against humanity against the six people, in two separate cases. In one case, the prosecutor alleges that William Samoei Ruto, Henry Kiprono Kosgey, and Joshua arap Sang committed the crimes against humanity of murder, deportation or forcible transfer, torture, and persecution on the basis of political affiliation when they carried out a plan to attack perceived supporters of Kibaki's Party of National Unity (PNU). The goals of the plan, the prosecutor alleges, were to gain power in the Rift Valley, one of Kenya's eight provinces—and, in turn, in Kenya, and to punish and expel from the Rift Valley those perceived to support the PNU.

Ruto and Kosgey are senior members of the Orange Democratic Movement (ODM), then the opposition party. Ruto and Kosgey are Members of Parliament (MPs) from Rift Valley, both of whom recently stepped aside from their ministerial posts in connection with corruption charges.

The prosecutor's application alleges that these men worked for up to a year before the election to create a network to carry out the plan, and this network was activated when the election results in favor of President Kibaki were announced. The prosecutor alleges that Sang—at the time, a radio host on the Eldoret-based KASS FM—helped coordinate attacks by disseminating coded messages through his broadcasts. According to the prosecutor's application, the attacks that form its basis occurred primarily between December 30, 2007

and the first week of January 2008 and within a 25 kilometer radius of a house owned by Ruto in Sugoi, Uasin Gishu district.

In the other case, the prosecutor alleges that Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, and Mohammed Hussein Ali committed the crimes against humanity of murder, deportation or forcible transfer, rape and other forms of sexual violence, other inhumane



Luis-MorenoOcampo

acts causing serious injury, and persecution based on political affiliation when they carried out a plan to attack perceived ODM supporters in order to keep the PNU in power. According to the prosecutor's application, this plan was formed in response to the planned attacks on PNU supporters in the Rift Valley and to deal with ODM-organized protests.

The prosecutor alleges that there were essentially two components of the plan.

First, the prosecutor alleges that Muthaura, then and now the head of the public service and secretary to the cabinet, and Ali—then the Kenyan police commissioner instructed the police to target perceived ODM supporters and to suppress their protests in Kisumu, a city in Nyanza province and a traditional stronghold of Raila Odinga, the ODM presidential candidate, and Kibera, an informal settlement in Nairobi, in between the end of December 2007 and the middle of January 2008.

Second, the prosecutor alleges that Muthaura and Kenyatta—now the deputy prime minister and minister for finance—directed leaders of the Mungiki, a Kenyan criminal organization, to attack perceived opposition supporters. Attacks by Mungiki members and other pro-PNU youth were then carried out in Nakuru and Naivasha—two cities in the Southern Rift Valley—in late January 2008. Muthaura and Ali instructed the police not to interfere with these attacks.

2. Following the prosecutor's request for summonses, President Kibaki announced in his New Year's speech that the government would seek to establish a local judicial process to prosecute perpetrators of the post-election violence. But didn't the Kenyan government already promise to establish a special tribunal?

In December 2008, Kibaki and Odinga, who became

prime minister in the coalition government, agreed to establish a so-called "special tribunal" to prosecute perpetrators of the post-election violence. The Commission of Inquiry on Post-Election Violence (CIPEV), headed by Justice Philip Waki, had recommended establishment of a special tribunal, with a mix of national and international judges and other legal professionals to ensure its independence. As an alternative, the CIPEV recommended that the matter should be referred to the ICC and that former UN Secretary-General Kofi Annan, the chair of the African Union-appointed mediation team that led to the current coalition government, should hand over a sealed list of the chief perpetrators to the ICC prosecutor.

But Kibaki and Odinga failed to exercise sufficient leadership to marshal support for the tribunal, and a bill that would have paved the way to establish it was defeated in parliament in February 2009. In early July 2009, a Kenyan delegation to The Hague promised the ICC prosecutor that either Kenya would hold national trials or that it would trigger the ICC's jurisdiction by referring the situation to the prosecutor for investigation and prosecution. The government has not really taken any substantial steps to ensure the prosecution of serious offenses committed during the post-election violence. Few cases have been brought by the government; at least two ended in acquittals. A case against a prominent Eldoret leader, Jackson Kibor, for inciting violence was ended by a decision not to proceed (known as a "nolle prosequi") entered by the attorney general.

Annan had meanwhile handed over the sealed list to the ICC prosecutor in July 2009.

It was on the basis of this inaction that the ICC prosecutor announced in November 2009 that he would seek authorization from the pre-trial chamber to open an investigation. In authorizing the prosecutor's investigation, the pre-trial chamber found that there were no relevant national proceedings regarding the types of offenses and high-level individuals likely to be targeted in the ICC investigation. The chamber also noted that the information it had before it demonstrated "inadequacies or reluctance" on the part of the Kenyan government to address the post-election violence as a general matter.

3. Some government officials are lobbying the African Union to support a United Nations Security Council deferral of the Kenya investigation under article 16 of the Rome Statute, citing plans to try the cases in Kenya. What is article 16?

Article 16 allows the UN Security Council (UNSC) to pass a resolution under its Chapter VII authority to defer an ICC investigation or prosecution for a renewable period of 12 months.

Article 16 states in full: "No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the UNSC, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the court to that effect; that request

Transitional Justice

may be renewed by the Council under the same conditions.”

Chapter VII of the UN Charter empowers the UNSC to take measures to “maintain or restore international peace and security” if it has determined “the existence of any threat to the peace, breach of peace or act of aggression.” Article 16 was not intended for use other than in exceptional circumstances, and, to date, the Security Council has never deferred an ICC investigation or prosecution.

There is no indication that the ICC investigation in Kenya is detrimental to international peace and security. Indeed, impunity for past episodes of post-election violence is widely believed to have contributed to the violence that followed the 2007 election.

4. Are national trials a basis for an article 16 deferral?

Some Kenya government officials arguing for an article 16 deferral are citing the need for time to carry out national prosecutions. Kenya’s record of broken promises to bring those responsible to account casts some doubt, though, on whether new promises of national trials are genuine or an effort to derail the ICC process.

Even if the Kenyan government did take steps to prosecute those named in the prosecutor’s request for summonses, this would not be a basis for an article 16 deferral. Kenya could challenge the admissibility of a case before the ICC under article 19 of the Rome Statute on the grounds that it is genuinely willing and able to prosecute cases domestically. However, an admissibility challenge under article 19 is distinct from deferral under article 16 and is made to the court, not to the UNSC.

Under article 19, the ICC judges may decide that a case is inadmissible because of national prosecutions. The ICC is a court of last resort, and the Rome Statute clearly recognizes that the ICC may only act where national authorities are unable or unwilling to do so.

It could be difficult to win an admissibility challenge. It is not enough to establish a special tribunal in Kenya or to undertake other reforms that would make it more likely for prosecutions to be brought in the future. For a case to be found inadmissible on this ground, under the ICC’s existing case law, there must be genuine national proceedings encompassing both the person and the conduct that is the subject of the case before the ICC.

5. After the prosecutor’s announcement, the Kenyan parliament passed a motion calling on the government to withdraw from the ICC’s founding treaty, the Rome Statute. Does this mean the Kenyan government has decided to leave the ICC?

On December 22, 2010, the Kenyan parliament passed a motion calling on the Kenyan government to withdraw from the Rome Statute and to repeal the International Crimes Act, the Kenyan legislation implementing the Rome Statute into national law. The motion is not binding and the Kenyan government has not made any decision with regard to withdrawal. Media reports indicate that some members of parliament may be preparing to introduce a new bill that would seek to compel the government to withdraw.

Kenya’s proposed withdrawal from the Rome Statute has been greeted with wide disapproval by Kenyan civil society with demonstrations against withdrawal and

collection of a million signatures on a petition calling on the Kenyan government to remain in the ICC.

6. If Kenya does withdraw from the Rome Statute, what will be the impact on the ICC’s Kenya investigation?

Under article 127 of the Rome Statute, withdrawal from the treaty would not suspend ongoing ICC investigations or judicial proceedings that began before the date of withdrawal. Kenya would also be required to cooperate with the ICC on obligations that arose while Kenya was an ICC state party.



7. What sets the Kenya investigation apart from the ICC’s other investigations

The Kenya investigation is the first by the ICC that deals with post-election violence. The ICC’s other investigations—in Uganda, Democratic Republic of Congo (DRC), Central African Republic, and Darfur, Sudan—deal with genocide, war crimes and/or crimes against humanity committed in the context of international or internal armed conflict. In light of the violence that has followed other disputed elections, including most recently in Cote d’Ivoire, and just concluded elections in Uganda, the ICC’s Kenya investigation should serve as a warning to politicians that they can be held to account for turning elections into bloodbaths.

It is also the first proprio motu ICC investigation—the first investigation opened on the prosecutor’s own initiative. Three of the four other ICC situations—Uganda, DRC, and Central African Republic—were referred to the ICC prosecutor by the governments of those countries (so-called “self-referrals”), while the fourth situation—Darfur—was referred by the UNSC. Before opening the Kenya investigation, the prosecutor had to seek authorization from an ICC pre-trial chamber. The pre-trial chamber in a 2-1 opinion, gave the prosecutor permission to proceed in March 2010.

8. Is it significant that the prosecutor has brought two cases at the same time?

This is the first time the ICC prosecutor has brought two cases against rival groups simultaneously. He is seeking charges against individuals alleged to be responsible for crimes committed against both opposition and government supporters.

In other ICC situations, the prosecutor has “sequenced” investigations, investigating those responsible for crimes allegedly committed by one party or group at a time.

Sequencing, though, has led to a perception of bias in the prosecutor’s selection of cases, particularly where there has been a time lag between charges brought against leaders of one group and leaders of the rival group. In polarized societies, perceptions of bias can also fuel ethnic tensions. Human Rights Watch noted both effects in the ICC’s sequenced investigations in the Ituri district of DRC.

Bringing cases against both parties at the same time demonstrates an effort by the ICC prosecutor to avoid these effects in Kenya and could help convey the ICC’s independence and impartiality. The prosecutor has asked the pre-trial chamber to consider both cases and issue decisions at the same time.

9. What did Human Rights Watch’s research show about the Kenyan post-election violence?

In January and February 2008, Human Rights Watch researchers were on the ground documenting the post-election violence as it unfolded. Researchers conducted over 200 interviews with victims, witnesses, perpetrators, police, magistrates, diplomats, Kenyan and international nongovernmental organization staff, journalists, lawyers, businesspeople, local council members, and members of parliament across the country, from all major ethnic groups. Our findings are documented in our March 2008 report, *Ballots to Bullets: Organized Political Violence and Kenya’s Crisis of Governance*.

We documented essentially three patterns of violence.

First, members of the Kenyan police forces responded to demonstrations and riots with excessive force in some areas. They fired on unarmed demonstrators and bystanders to break up riots, and to keep people away from demonstrations. In other areas, the police did nothing as mobs committed acts of brutality.

Second, mobilized opposition supporters, especially in the Rift Valley and the informal settlements of Nairobi—attacked those they assumed had voted for Kibaki and his PNU, mostly the Kikuyu, Kenya’s largest ethnic group. This assigned an ethnic dimension to the violence. Around Eldoret local ODM mobilizers and other prominent individuals called meetings during the election campaign to urge violence in the event of a Kibaki victory, arguing that if Kibaki was announced as the winner it must mean the election had been rigged and the reaction should be “war” against local Kikuyu residents. In the days that followed, attacks were often meticulously organized by local leaders.

Third, Kikuyu militia then attacked opposition supporters. In Naivasha and Nakuru in the Southern Rift Valley, PNU mobilizers and local businesspeople called meetings, raised funds, and directed youth in attacking non-Kikuyus and their homes.

Human Rights Watch has consistently called for accountability for those behind the attacks and for investigations to determine the extent of links between the national leaderships of the opposition and ruling parties and those who carried out the violence. The research circumstantially suggests leaders may well have been at least aware of what was happening and did little to stop it. Some may have been more directly involved. Human Rights Watch had also called for further investigation of what appeared to be the selective or partial police response to the violence.

Excerpts from Kenya: Q&A on Kenya and the International Criminal Court posted on JANUARY 25, 2011 http://www.hrw.org/en/news/2011/01/25/kenya-qa-kenya-and-international-criminal-court#_Toc283713780

Transitional Justice

Peace football in Baringo and Laikipia

By Paul Chepsoi

Baringo and Laikipia have for years been associated with conflict. The conflict in the two counties takes many forms. The most common is where the animals of the nomadic pastoralist communities who must in the dry season move their cattle in search of pasture, trample into and eat the crops of the sedentary crop farmers. To the pastoralist livestock farmer, the survival of their cattle at this critical time is a matter of life and death. Cattle are their only source of livelihood – food, employment and are even used to pay for their children's education.

On the other hand, the crops planted by the sedentary farmers are also a matter of life and death. These crops are their only source of livelihood – food, employment and are even used to pay for their children's education. To get the crops to the level where the cattle would find them attractive to eat, the crop farmer has spent money to pay for land preparation, planting, weeding and even fertilizer. The crop farmer has also spent time waiting for this crop to grow and has great expectations of the harvest.

At a first glance, the issues appear straight forward, with practical quick solutions. Why don't the sedentary farmers fence their crops? Why hasn't the government in conjunction with elders of the various communities designated specific cattle paths? If there are specific paths for migrating wildebeast, why not for cattle especially when over 50% of Kenya's citizens are pastoralists, who frequently must migrate from one place to the other?

However, at community level, the solutions are not so simple. The only thing that is straightforward about this conflict is that it is a matter of life and death to both communities, so each is willing to do all it takes to defend their livelihood. There are various reasons why fencing off all crop farms is not an immediate option. These range from land ownership issues such as lack of title deeds to some of the land been leased to the crop farmers among other reasons. There are also several reasons why there are no specifically demarcated paths for the migration of livestock during drought. These include the fact that while communal land ownership is now in the National Land Policy and the Constitution, not all pastoralists have at the

moment organized themselves into systematic group ranches with clear mechanisms of how to preserve fodder in the form of hay which can be used in the dry season, or designate clear migration paths and specific watering points etc. There is also no clear environmental protection plan in place which can for example include the planting of drought resistant trees that can serve as both firewood and livestock fodder. The truth is, these solutions will take a while to put in place, so such day to day conflicts will keep arising.

The question though is whether or not there exists a good foundation of respect and good neighbourliness to ensure that when minor conflicts arise, they do not



Leaders at the forum

each time escalate into ethnic hatred and bloodshed. Yet, the only way to respect someone is to first get to know the person. In the past, despite living within the same area, it is rare to see youth from different communities engaging in joint activities that could with time, provide a forum to know each other, understand what each community holds dear and why. As with all cases of discrimination based conflict, not knowing each other well enough means that each community is ignorant of the other, which breeds suspicion and fear, which then make people over-react to small conflicts.

It is for this reason that the Community Development and Empowerment Forum (CODEF), one of the civil society organizations which make up the Baringo

Human Rights Consortium (BHRC), started a cross-cultural football tournament that brings together youth in Mochongoi (Baringo) and Ng'arua (Laikipia). The tournament began scouting for youth football clubs in January 2010, encouraged them to put up teams and train all the way till May, 2010 when the first tournament was held.

With support from different partners including Kenya Human Rights Commission (KHRC) the football teams with memberships drawn from various communities were encouraged to train together. Training together gives each youth an opportunity to interact with someone from a different community, forces them to play in the same team and in the process get to appreciate that they are equal human beings. At the end of each competition there were peaceful forums that elders, women, other youth and even government officers were invited to participate in post match discussions on peaceful co-existence and its relevance to development for all.

The finals were held on May 29, 2010, at Ol-N'garua Secondary School and graced by Commissioner Lawrence Bomet of the National Cohesion and Integration Commission (NCIC), Hon. Kabando wa Kabando, Assistant Minister for Sports, Hon. Mureithi, MP, Laikipia West and Hon Maisha Leshomo (Nominated MP). The competition drew the youth from both divisions and also the population across the counties attended.

The sheer numbers of people that were in one way or another involved in the tournament in the five months it took to organize, as well as the very positive comments they made on the tournament are indicators that peace football is a strategy that can be used to conduct civic education on Equality / non-Discrimination, commonly referred to as 'Úkabila'. CODEF intends to organize the same tournament later this year, with the finals culminating on the second Tuesday of September (2011) which is globally commemorated as the World Peace Day. Each year, CODEF will invite human rights or civil society organizations from different areas to either critique and add value to the idea or with a view of supporting them to replicate the strategy in other conflict prone areas.

Wagalla massacre

By Adam Abdi Hussein

Wagalla Massacre was the most bizarre incident that happened in Kenya's history. It was the most cruel of all violations because it was an incident in which government forces deliberately surrounded a particular ethnic community with intention of killing every male. I was not born at that time, but my elder brother who is 15 years older than I was there when the massacre happened. He told me and I quote, "I saw a man's body being dragged along the road tied to the rear end of military vehicle and the rope was tied along his private parts. At first they beat him until his bones could be heard breaking as he begged for mercy"

They then took the people to the Wagalla airstrip and made them lie down on the ground under the scorching sun. Every hour the beatings would start again and for 3 days they were kicked, slapped and their bodies slashed with bayonets and left for dead. Thousands of children were orphaned. Thousands of wives were widowed.

Since 1984, a lot has happened but the memory of the people who died will never go away. However many of those children left behind are now educated despite the harshest of conditions. The current government now seems to respect the human rights of people but it is sad that this government too does not want to reveal the truth, apologize to the people or even take action against those who committed these acts by taking them to court. While many do not want this to be talked about, the children in Wajir are told this story by those older than them and so it will never go away until their voices are heard.

Transitional Justice

Kaya Bombo 1997: Getting justice for survivors

By Mahmoud Barroh

Sadly, many have forgotten August 1997, when armed militia raided the Likoni Police Station, stole ammunition and went on a killing spree, which left several people dead and displaced hundreds from what is now Kwale County. The violence was aimed at kicking out 'upcountry' or non-Digo people apparently because they had businesses within Kwale county, which is seen as being at the expense of the 'indigenous' Digo community. Contingencies of regular and General Service Unit (GSU) police descended into South Coast in a wave which shocked the world.



One of the survivors of the Kaya Bombo tragedy

First and foremost, referring to some people as 'indigenous' and others as 'outsiders' or 'upcountry' folk has been the source of most violence that has occurred in Kenya over the past two decades, including the 2007/8 post election violence. This has to stop. The Archeologist tell us that 'Zinjanthropus' the earliest form of humankind was found in Olduvai Gorge in the Lake Turkana area of Lodwar. They note too, that having been found there, mankind has since migrated to all parts of Africa and the world. So there is no dispute that the descendants of Zinjanthropus are the first nationals of Kenya and the ones who can rightly claim to be indigenous to Kenya.

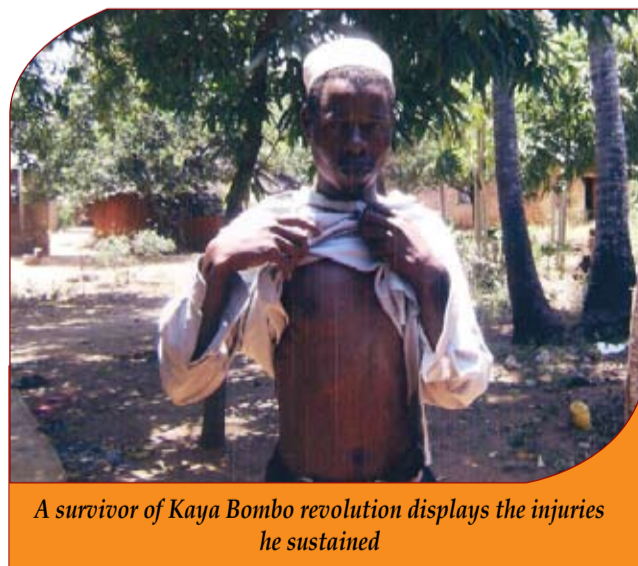
The descendants of Zinjanthropus migrated all over the world. We are further told that white or Caucasian people, Arabs, Indians, people who currently live in the Orient and all Africans are all descendants of Zinjanthropus, who migrated from Lodwar to the rest of the world. The differences in their physical attributes, language and culture such as being white, yellow, red or black in race is a result of changes that happened to them to help them cope or adapt to the environment where their migration took them to. Further, it is not known where in Kenya the few descendants of Zinjanthropus who were left behind migrated to. Therefore no one knows with certainty which ethnic group is the real descendants of Zinjanthropus. Was it the Turkana or Pokot, that live near Olduvai Gorge or did they move further and with time become the Digo, Somali, Luo or Kikuyu; which ethnic group are they?

So it is not in dispute, all people who live in Kenya, and the world for that matter migrated from somewhere else into the land or area they now occupy. The

difference is in timeframes - when they migrated there. For example, history tells us that all Bantu peoples' came into Kenya from Central Africa, while the Nilotes came from Sudan. It is therefore not in dispute, most communities moved into Kenya from somewhere. The very nature of people is that they will continue to move. It is therefore imperative that Kenyans find a way to accept migration as part of life and to co-exist with those that migrate into what they perceive as their space.

The constitution provides for the registration of communal land to be held in trust by the county. Communal land is that land which people who share a common culture and history have come together to jointly own and register as land from which they jointly derive a livelihood. It is important to note that even after registering the land communally, some Digo people and particularly the youth will continue to migrate to other parts of the country and the world and also to intermarry with other communities. They will also buy land and make permanent settlement elsewhere. On the other hand, people from other ethnic groups will continue to move into, settle in and even intermarry with the Digo and other people of Kwale. Even where people must be moved out of an area, there are internationally accepted Eviction Guidelines which must be adhered to. Such guidelines exist because Kenya is not the first country to experience such conflicts. The guidelines have been put in place to prevent incidences of people resorting to violence to claim what they believe to be their right.

It is particularly important now to focus on human and non-violent means of dispute resolutions because Kenya is already in the 2012 elections mode. The very fact that violence rears its head in election years is an indication that it is politically motivated. It aims at inciting hatred in the poor who have development expectations for better schools, clinics, roads to forget the common development problems and instead divert their attention towards not seeing



A survivor of Kaya Bombo revolution displays the injuries he sustained

their problems or blaming others, who are equally struggling to make a living.

The second key issue that the 1997 Vita Vya Kaya

Bombo raises is that of justice for the survivors of both the violence inflicted on law abiding citizens by the police, as well as those who were forced to leave and lost their property.



A man displays a scar on his head-Kayabombo left many dead while many others are still living with the scars

In a way, State security agents tortured, killed, raped and abducted innocent people in the guise of looking for weapons. I held a session with 25 victims of Kaya Bombo led by their Chairman Ali Ngare a former 82 Air Force officer and Chairman of N'gombeni Community Development Forum who was severely tortured and jailed just because he was a former military officer .

"It was a double tragedy for me. I was jailed for 5 years after August 82 coup and after Kaya Bombo clashes. I have health complications and have lost my business empire worth 7 million shillings" he moaned.

Athman Tondo is half paralyzed after being severely beaten and trampled on by trigger happy officers. Mwanakombo Mwarewa an elderly woman was beaten brutally and this trauma has caused her mental illness. Athman Moyo cannot effectively pass urine after he was brutally tortured. Hamisi Pagawa has bullet wounds and is now impotent. "My wife abandoned me following this beating" he cried. Abdallah Mwavama developed mental illness as an aftermath of this beating. These are just tidbits of what happened during the period. Some have given up and thought the meeting was a setup to re-arrest them.

We call upon the government to speed up the process and take action against the perpetrators. The Truth, Justice and Reconciliation Commission statement takers should visit the victims and get their side of the story.

The Kwale Human rights Network (Kwale HURINET) will work closely with the victims to support them to pursue justice and see perpetrators brought to book. We call upon other victims to come out and be heard.

The writer is the chairperson-Kwale Hurinet

Equaility and Non Discrimination

Systematic denial of women's rights to land in Nyeri County

By SK Wandimi

The Agikuyu community known for their attachment to land predominantly inhabit Mt. Kenya region. The Mau Mau independence war is one of the best indicators of that attachment. During the 1952-1957, the Agikuyu took several oaths declaring their allegiance to land, climate and resources to the extent of scooping a handful of soil, putting it in their mouth once they were shot at during the Mau Mau war. This attachment to land has worked to the detriment of the well-being and economic development of women in the region, especially the Nyeri County.

The Wangu wa Makeri legend has over the years been revised to justify the denial of women's rights to own property or take up leadership positions.

There are many Agikuyu cultural practices that deny women their rightful place of participation in all spheres of life and currently can be termed as historical injustices. For example, women who did not have children or never got married did not have a right to inherit land. No land was set aside for women as it was expected that they would get married. As such, if they were to get divorced, there was no land for them to inherit. The first-born son was also the main heir to his father's land. The argument at the time was that this oldest son would hold the land in trust on behalf of all the other sons that his father would have. This was mainly because at the time, most men were polygamous, and thus a man could have a grown up son with his first wife, while his last wife was still of child bearing age, and thus could still be giving birth to other sons 20-40years younger than the first-born son.

To date in many families, land is still sub-divided amongst sons, at the demise of their father, and regardless of whether their mother is alive. Women who did not give birth to sons had no right to land. This was in total disregard of modern education from which we now know that it is men who determine the sex of their children and thus not having a son, if it is a fault, is thus the fault of the father and not the mother. Land disputes and all dispute resolution mechanisms and decision making are also the preserve of men. Women had no role to play in any decision making but were only expected to take instruction or implement men's decisions.

Later with the advent of colonization and modern day education, education opportunities were set aside for boys, the argument being that girls were expected to grow into women who would get married and stay at home looking after homes built and owned by their husbands.

These factors contributed highly to women disempowerment and to date account for the disparity in property ownership between women and men. Although times have changed for the better alot remains to be done to mitigate this outdated notion that marginalizes women to the peripheries of economic participation and empowerment. Some of the measures that can be taken to address this include the use of strong advocacy tools on women and property ownership rights.

There is also need to ensure that laws and particularly laws on devolution and land laws are responsive to women's issues and serve to address the historical imbalance. There must be affirmative action and mainstreaming of women land rights in all matters relating succession. The Mt. Kenya Human rights

Network intends to undertake civic action on women's land rights and their rights to matrimonial property during marriage and its division at the dissolution of a marriage. There is also a need for civic education on the various laws that will be formulated this year to implement the new constitution, key among them being the laws on devolution which will have direct impact on rights or the issues that women care most about such as water and sanitation, education, food, security, healthcare services, and land. There is also need for civic education on modern and alternative uses of land, which will ensure that the same piece of land produces more. This includes alternative ways of owning property besides inheriting land for farming. This will reduce the overdependence and possessiveness of land by men.

“Women will not simply be mainstreamed in to the polluted stream. Women are changing the stream, making it clean and green and safe for all..... every gender, race, creed, sexual orientation, age and ability.”

Bella Abzug

Current Situation

The Mt. Kenya HURINET has on average been receiving three cases per month of women being disinherited or in other ways denied their property rights. Given the land ownership patterns in the Nyeri County, where they are mainly smallholder's farmers under individual titles, it is expected that such cases of competition for land resources will be on the increase and the means of elbowing women and the vulnerable out of this will become more acrimonious.

All cases that the HURINET has received have also been reported to the Provincial Administration through the local Chief and the District Officer. Most of these cases relate to court cases that have taken too long to be resolved, cases of assault or original boundaries being changed. In carrying out the disinheritances, the perpetrators follow an elaborate pattern that has been so perfected that one would think they read from same script. This pattern used by those who want to deny women land and property rights follows the same trend.

Where it is the elderly parents whose land is not yet adjudicated, the men take over all the land denying their sisters any share of it. This is done in two way. One involves sending their sons to live in their grandmothers house and aunts, and gradually the women are elbowed out. The other is by constructing

a shed/ house in their mothers' compound. The grand finale in this is to start a disagreement with a sister then become violent, beating her up and chasing her away. During her absence, they change all the boundaries marks, demolish the parents' house and convert the compound to a kitchen garden or plant food crops.

The second type of women disinheritance which is very prevalent is done by brothers in-law, mothers in-law, fathers in – law and shockingly even sisters in-law. Women whose husbands have died are told to step aside and let the brothers of the man take charge. Widows are expected to be too distraught to participate in the meeting and any woman who is able to stop crying long enough to attend the meetings is immediately suspected of having killed her husband. In her supposedly delicate state, the wife is asked to hand over all the necessary documents for the preparation of the burial particularly the deceased's national identity card. The burial permit is prepared using the identity card and mostly is done by the brother in-law or father in-law. Once they take charge of these two processes – reporting to the police or chief and getting the burial permit and organizing the burial arrangements, then have the legitimacy to manage all the affairs of the deceased and the widow loses the power to lead process.

A case in point is that of Jane*. Jane was married to Peter* in the year 2004 but Peter's father never acknowledged, accepted or respected their marriage. After one year the father in-law assaulted Jane. Peter decided to relocate from his father's land and rented a house in the nearby shopping centre and started a business. Before long they bought a piece of land and built a small house.

Unfortunately, Peter later died while still processing the title deed and before they could formalize their marriage, what is commonly done is that women swear affidavits to add their husband's names on the woman's identity card. Even before Jane had finalized the burial preparations her father in-law went to court to deny Jane the right to bury her husband. The reason cited was that she was not legally married; later Jane contested and an injunction was granted. A court case ensued and the clan went to court to support the fact that Jane was married customarily by Peter and the clansmen even participated in the marriage ceremony.

However the court ruled in favor of Peter's father. Jane appealed on the grounds of presumption of marriage and also enjoining the children as next of kin. She spent over Kshs. 90,000.00 during this process, money that came from the savings from the small business she had started with her late husband. The father in-law threatened to burn the house they had built and deny Jane access and use of her business.

Jane is 27 years old and having gone through the disinheritance process was left broke and not sure where and how to pick up her life. She represents millions of women who are being disinherited daily but their cases will never be heard nor get justice for its being denied by the very people who should accord it. Human rights workers must stand with such widows and their children to defend their rights.

The author is the coordinator of the Mt. Kenya HURINET

Equaility and Non Discrimination

Life saving interventions for the marginalised of Garbatulla

By Adan Turo Arifata

Kenya Red Cross (KRC) started its operation in Garbatulla in 2008. This decision was guided by a Baseline Survey carried out in the greater district of Isiolo in 2005 which revealed a number of Human rights issues of urgent concern to the vulnerable groups especially in health, water and sanitation sectors. According to the study, women and children were the most at risk, with Sericho division recording the highest number of infant mortality rate due to lack of basic health care services. Most of the local dispensaries across the district either lack the essential drugs or suffered from low staff shortage to run and manage the health care points coupled with poor management. Some settlements do not even have dispensaries and many patients walk for as far as 50km to 100km to seek basic health care services. This problem is further complicated by the low level of health education among the pastoralist communities spread across the vast district.

The only health referral point is the Isiolo District hospital situated within Isiolo town over 400km away from most of the rural communities. For those in Hawaye area within Sericho location, the nearest District hospital is the Garbatulla District hospital in Isiolo South Constituency but with no capacity to handle any serious emergency or referral cases.

Other issues of great concern is the persistent lack of safe drinking water for the pastoralist population thereby exposing them to serious health problems such as diarrhoea, typhoid, cholera outbreaks and other water borne diseases and malaria. Often such cases results in massive loss of human lives due to the delayed response from the District based actors who often are either ill prepared to handle the situation or provide untimely interventions. This scenario is due to factors such as poor roads and even telephone services.

In order to mitigate against the above problems, the



Isiolo District Hospital

Kenya Red Cross Society established an operational base in Garbatulla town and embarked on a life saving

program targeting the pastoralist communities in the health, water and sanitation sectors as well as disaster preparedness and response strategies. The health interventions anchored on a 5 year strategic plan through a program the Kenya Red Cross officials call the Integrated Health Outreach Project. (IHOP). The objective of the program is to reduce infant mortality and morbidity rate.

The Kenya Red Cross society set up a number of interventions aimed at achieving this objective. For example, they have recruited 87 community volunteers from the local school leavers spread across the district. The volunteers were trained on Participatory Hygiene and Sanitation Training (PHAST), Community Health Strategy and Community Based First Aid as the first step toward providing the basic skills aimed at building their capacity.

The role of the community volunteers is to provide support to the immunization coverage outreach program supported by the Kenya Red Cross society for the rural communities.

The community volunteers were assigned responsibilities based on household clusters to be made by each volunteer across the pastoral villages. Through this strategy the volunteers conduct public sensitization to their respective household clusters to encourage antenatal clinics for expectant mothers. They also mobilize communities to avail themselves at the designated venues during the mobile clinics offered by the Kenya Red Cross society. The mobile outreach services include immunization for the under fives, antenatal clinics for expectant mothers as well as other treatment services to the local population.

The Kenya Red Cross society provides adequate technical personnel who comprises a laboratory technician, clinical officers, nutritional officers as well as other necessary facilities and essential drugs to provide basic health care services to the pastoralist population in their informal settlements. The areas targeted in the mobile clinic outreach program in the district include Escort, Belgesh, Tana, Qurara, Muchuro, Biliki, Badana and Kombola villages with an estimated population of 10,000 people who would otherwise have not accessed health care services. This has increased the immunization coverage from 65-89%. This has motivated the local communities to demand for the setting up of dispensaries to boost this initiative. Through this, the Constituency Development Fund (CDF) has set up dispensaries in both Muchuro and Badana trading centres and the government through the Ministry of Health has posted nurses to the two dispensaries.

The Kenya Red Cross Society in its attempt to boost the difficult referral systems, donated high frequency (HF) radio calls for rapid response. These

Every person has the right

- a) **the highest attainable of standard health, which includes right to healthcare services including reproductive healthcare and emergency treatment,**
- b) **accessible and adequate housing and to reasonable standards of sanitation,**
- c) **be free from hunger and to have adequate food of acceptable quality,**
- d) **access to adequate clean and safe water,**
- e) **social security and**
- f) **education.**

Article 43, Constitution of Kenya

were set up in Sericho, Iresaboru, Malkadaka and Barambarata trading centres so as to improve the communication link to the HF radio control centre installed in the Garba Tulla District Hospital. Other 5 VHF radios have been distributed through the community volunteers based in Tana, Boji, Belgesh Muchuro and Gafarsa settlements. This initiative has gone a long way in the improvement of the referral system for rapid and timely response thereby saving the lives of hundreds of mothers and infants from deaths arising from delivery complications and other related health ailments. The community volunteers in collaboration with the available government nurses have often maintained vigilance in recommending for timely referral advice.

The Kenya Red Cross Society has further installed solar power panels in Sericho Health Centre, Iresaboru, Malkadaka, and Barambata dispensaries as well as the Garbatulla District Hospital for assisting in the provision of health care service delivery. This support has provided the much-needed power for effective operations of health centres especially in regard to improving the health care service delivery at night. The District has over the years experienced high number of maternal deaths which occur at the hands of the traditional midwives especially arising from delivery complications during the night.

Equaility and Non Discrimination

This initiative will no doubt be a reprieve to the expectant mothers as they are guaranteed to safe deliveries in these centres regardless of whether such deliveries occur during the day or even past midnight.

The other benefit of this initiative is that it has provided psychological comfort to the expectant mothers who are usually stressed throughout their pregnancy cycle thereby reducing the high cases of delivery complications arising from stress related problems like high blood pressure. The Kenya Red Cross Society further invested additional resource where equipment worth Ksh 5M was donated to Garbatulla District Hospital and Sericho Health Centre for maternity and pediatric wards with a view to build the capacity of health institutions to effectively support their health care systems and manage other emergency referrals in the related fields.

The Garbatulla District Hospital which is the only referral point in the district is currently undergoing a major facelift. The Kenya Red Cross society in partnership with the Ministry of Health and the Constituency Development Fund (CDF) office has planned to support the construction of a modern theatre for the District Hospital. Through this partnership the Kenya Red Cross Society will donate Ksh 6M while the Ministry of Health through the Government of Kenya and the local CDF office will contribute Kshs 3M and Kshs 4M respectively.

This initiative began after a construction company was awarded the tender through a competitive bidding process done by a consultancy firm hired

by the Kenya Red Cross Society memorandum of understanding (MOU) was signed between the Kenya Red Cross Society, Secretary-General, and the Isiolo South Member of Parliament, on behalf of the CDF office stipulating the role of each actor on how Ksh13M would be utilized. The strategy outlined in the Memorandum of Understanding (MoU) entails an agreement where

the CDF office will undertake phase one while the Kenya Red Cross Society and the Ministry of Health will undertake the Phase II & Phase III respectively, the construction of the theatre, furnishing and equipping the recommended standard and finally commissioning the facility to open its doors to members of the public.

Other initiatives supported by the Kenya Red Cross society include, donation of 2 motorbikes to Garbatulla District Hospital, the repair of the District Ambulance after it was grounded for 3 months, spraying the households in a bid to get rid of mosquitoes as well as supporting a livestock de-worming campaign mainly targeting the shoats (sheep & goat). In order to alleviate the chronic water problem in the area, the Kenya Red Cross Society has supported construction of three (3) sand dams in Tana, Kuroftu Molu and Quri settlements and the construction of surface dam in Iresaboru.

In view of the above worthy initiatives aimed at eliminating the suffering of our people, the Isiolo Human Rights Network commends these efforts by the Kenya Red Cross Society. In our commitment to advocate for the rights of the pastoralists and other marginalized groups the Isiolo HURINET has been in constant engagement with the various stakeholders at the District, Regional and National

levels by organizing for appropriate community engagement forums guided by the demands put forward in the Peoples Manifesto and Scorecard Initiative by the residents of Isiolo South & Isiolo North constituencies. Such forums often bring together the duty bearers and the claim holders with the core objective of ensuring that the social economic rights of our communities are fulfilled.

During our recent visit to the Isiolo South Constituency while on a social audit mission of the projects in the District to assess if the peoples demands in the Manifesto have received any attention, we are pleased to acknowledge that we have found a partner and a friend through the Kenya Red Cross society whose appropriate and timely interventions was evident during our social audit in the constituency. On a similar note, we say Kudus to all the other actors involved.

The author is the secretary of Isiolo Human Rights Network

The Kenya Red cross society in its attempt to boost up the difficult referral systems, donated high frequency (HF) radio calls for rapid response set up in sericho, Iresaboru, Malkadaka & Barambarata trading centres so as to improve the communication link to HF radio control centre installed in the Garba Tulla District hospital.

Ignore stigma and move on with life - Handicapped persons urged

By George Njaramba

People living with various disabilities have been advised to ignore those who look down upon them and move on to realize their ambitions in life. Disability, they were reminded, does not have a medicine as it is not a disease but a condition of life.

Addressing a training workshop of persons with disability in Kidimu Primary School in Msambweni, Kwale County, Mr. Ernest Ndwiga of National Council for People with Disability (NCPD) told the participants to ignore the foul language that certain people without disability use while referring to them.

Msambweni District Social and Gender Services Officer, Mr. Omar Waziri told participants to appreciate the existence of the NCPD by registering as groups or individuals to access funding from the Parastatal.

The Council provides funds for business and education to persons with disabilities. Other services include helping its members to secure employment in various government departments. "We have formulated a policy that proposes that five percent



*Blind Samburu man with traditional jewelry and body piercings .
Picture courtesy of Corbis Images*

of the staff in each government department should comprise people with disabilities," said Ndwiga.

Even though the council caters for the education of its members up to college level, Ndwiga explained that University education is not part of the programme as

it is already taken care of by the Higher Education Loans Board (HELB). The council officials added that the fees would only be paid after getting communication from the school one was enrolled in to avoid cases of cheating. For one to qualify for such funds there must be proof that they have paid the first term fee.

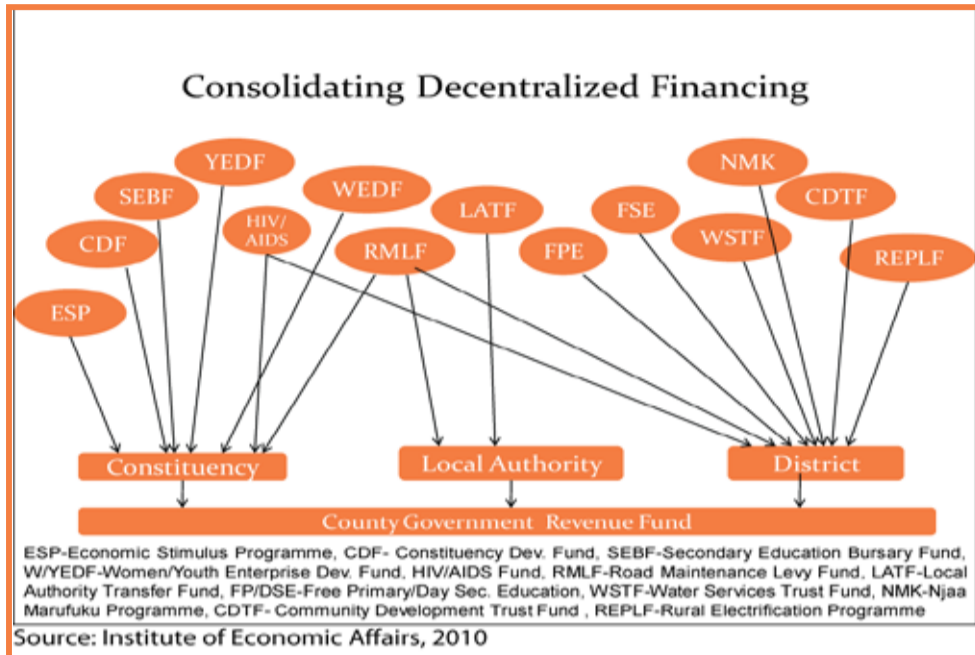
The requirements are equally stringent on those intending to engage in business. One has to write a proposal detailing the type of business one wants to do. If the business entails purchase of certain equipments or facilities, the council may decide to purchase for them or give them cash to purchase on their own.

The workshop brought together more than fifty participants, majority of whom were physically challenged, visually impaired person and another person with difficulties in speech and hearing. Others were representatives of Kwale Human Rights Network and other local community based organizations. Both genders were well represented.

Transiting from Centralized to Devolved Order

A Message to the Taskforce on the Devolved Government

By Non- State Actors(NSAs)



Kenyans see in devolution largely two things: Opportunity to participate in governance and improvement in service delivery at the most local level. This is further reinforced by the theory that devolution only succeeds when the dual criteria of Subsidiarity and Consensus is observed. Subsidiarity has to do with assignment of functions to the lowest level of government that is practical and efficient to do, while Consensus ensures that the persons targeted for the various services are in agreement with the type or service and the manner in which it is delivered.

Process Issues

1. There is need to facilitate participation of citizens in the process of developing the policy and legislation on devolution. Only a participatory process can yield the stamina required to effect devolution. This participation needs to be informed and thus the **Taskforce on Devolved Government** (TDG) may need to conduct civic education aimed at clarifying what devolution and particularly as enacted in the Constitution of Kenya is all about. The misconceptions and unrealistic expectations of what county governments will deliver need to be addressed in such civic education. This would form a strong foundation for any collection of views from the public. Otherwise, the political elites' interested in the various positions would steal the show resulting in skewed views.
2. Openness and downward accountability needs to be built into the process. Non State Actors are concerned that the TDG needs to open up channels of communication to create an avenue for effective participation by the Kenyan

public.

3. Building on what is already there: Non State Actors have lots of information in terms of research papers, policy proposals and other reports that can inform the work of the TDG. There might be no need to commission some of the studies that are already well done and this could save on the precious time that the TDG has to complete its work. However this engagement needs to be on level playing field. We are concerned that the Ministry of Local Government, being one of the interested parties, has a higher hand in this process and that the Non State Actors role is a bit silent.

Content Issues

1. Starting with the big Picture: The current situation is one of a total lack of coordination (see the figure below), duplication and ultimately wastage of resources. This is because there is no overarching framework that has guided decentralization in the past. While the Constitution envisages laws on the various aspects of devolution, it is important to first develop one organic policy and law that provides for the broad aspects of devolution before specifics on governance of urban areas and cities, per urban areas and rural areas, elections, service delivery among others.
2. Following closely on the above, there is need to first rationalize all functions of the county governments before any resource (physical infrastructure, human, technical or financial) are assigned. This is to ensure that resources follow functions to avoid wastage. This would have to do with exclusive functions, residual functions and concurrent functions. Further, this needs to be done in a harmonized way as opposed to the current scenario where laws on county governance, county public finance and county civil service are being generated separately.
3. Lastly, is ensuring that we create a simple government so that citizen participation and service delivery is not choked by a complex bureaucracy as is the case now. The figure below shows the current scenario of sending funds to the local areas and it leaves the scene confusing. Does Kenya really need to have 290 Constituencies with CDF, 175 Local Authorities with LATF, over 260 Districts getting allocations through the current 42 line ministries, 6 Regional Development Authorities, a Myriad of semi autonomous Government agencies and now 47 Counties? An administrative heavy devolved bureaucracy will only lead to weak service and development delivery as all the available resources (particularly the financial) are eaten by the recurrent expenditures.
4. In conclusion, we need focus on consolidating the gains and harmonizing the efforts (both State and Non State) in developing the county governments. The road ahead is going to be tough but we must make the tough choices with legacy in mind. When future generations read history let them indeed remark as Winston Churchill stated "This was their finest moment".

By Abraham Rugo Muriu, Institute of Economic Affairs
Remarks at meeting between TDG and Non State Actors

Moving from Centralized to Devolved Order

By Nduta Kweheria

After 20 years of attempting to replace the 1963 Constitution left behind by the British, and later amended to suit the dictatorial needs of the first and second presidents of Kenya Jomo Kenyatta and Daniel Moi, Kenyans on August 4, 2010 voted at a referendum to adopt a new Constitution. The new Constitution promulgated on August 27, 2010 is a decisive step towards democracy, accountability and prosperity.

The vibrant 1990s citizen agitation for a new Constitution was based on the realization that the many amendments to the former Constitution had resulted in curtailing, restricting or claw backs on citizens' ability to use the Constitution as a tool with which they could claim human rights. For this reason, most of the human rights advocacy in the 1990s was based more on the Universal Declaration of Human Rights (UDHR), 1948 and other international human rights instruments. This was in recognition of the fact that Kenya's Constitution at the time was weak in this regard and the judiciary has had instances when its independence and ability to progressively interpret

the Constitution was in question.

Civil and political rights

Today, however, this has changed. The Constitution has a Bill of Rights that recognizes and upholds civil and political rights. This refers to rights that make it possible for people to meet and organize activities that enhance their civic and political participation in the affairs of their country. Civil and political rights include the right to life, the right not to be arbitrarily arrested, detained or tortured, the right to security and rights to freedom of association and assembly and the right to freedom of movement. Most Kenyans are familiar with the 1980-90s violations of civil and political rights when people could not meet to discuss how to form a new political party without the meeting being interrupted by police and the organizers, arrested, detained, tortured and sometimes killed.

Economic, social and cultural rights

The Constitution now recognizes economic, social and cultural rights. This refers to rights that enable citizens to live in dignity, work to meet their basic

needs and improve their standard of living. Article 43 of the Constitution of Kenya identifies these as

- a) the right to the highest attainable standard of health, which includes the right to healthcare services including reproductive healthcare and emergency treatment,
- b) the right to accessible and adequate housing and to reasonable standards of sanitation,
- c) the right to be free from hunger and to have adequate food of acceptable quality,
- d) the right to access adequate clean and safe water,
- e) the right to social security and
- f) the right to education.

One of the reasons why Kenyans insisted that the Constitution must provide for devolution is that citizens were concerned that the economic, social and cultural rights described in Article 43, were not easily accessible under the heavily centralized government.

Currently, there are over fourteen distinct decentralized public funds that go to community level through three parallel channels or units of decentralization namely;

Transiting from Centralized to Devolved Order

– the constituency, district and Local Authorities (LAs). This is the very first challenge posed by decentralization of services; multiple funds to address the same needs in the same area, and without necessarily talking to each other as the public funds laws do not compel implementers under one fund to talk to and plan jointly with implementers under another fund. While there is a District Development Plan, a Constituency Strategic Plan and a Local Authority Service Delivery Action Plan (LASDAP), these plans are rarely developed by all the implementers of the 14 different funds through a joint meeting. The result is that citizens are not able to effectively access economic, social and cultural rights for various reasons such as waste of funds through duplication, white elephant projects – when a project is started by one fund, but not supported by other public funds doing similar work and the initiating fund is unable to secure funds to complete the project the next year. There is also the possibility of corruption created by use of many uncoordinated funds in the same area.

Distribution of functions between the national and County governments

A devolved structure implies decentralization of functions of government and decision making to devolved governance units. This however does not preclude the existence of a national government. Clearly there are services that are best provided for nationally. Such services include defence and security, as it would be impractical to expect each County to maintain its own armed forces, and defend from say government attacks by foreign nations. The Constitution is clear that there are only two levels of Government - the National and 47 County Governments. Indeed, the Fourth Schedule distributes functions of governments only between the two, and no other.

The national government is responsible mainly for policy formulation (health policy, education policy and curriculum etc), foreign affairs, security (armed forces), the administration of justice i.e. internal security and policing, the judicial system including courts countrywide and the prisons service. This means that a crime in one County is still a crime in any other County and those found guilty and sentenced can be imprisoned in any prison Countrywide.

The Constitution places the greatest burden in the delivery of economic, social and cultural rights on County governments. County governments will have functions on agriculture, health, controlling air, noise pollution and other public nuisances; County transport including County roads, street lighting, traffics and parking, public road transport, ferries and harbours, fire fighting; animal control and welfare, trade development and regulation, County planning and development including statistics, land survey and mapping, boundaries and fencing, housing, electricity, gas and energy regulation. County governments will also be responsible for pre-primary education, village polytechniques, homecraft centres and childcare facilities. Therefore, devolution if well structured should improve citizens' access to economic social and cultural rights because it is expected to put the various public funds into one not three or more systems of planning. Further this one system will be managed by people at County not national level, which should ideally make it easier to monitor the funds and spot corruption as the funds are closer to the people and thus should be easier to monitor.

Critical questions on devolution

In a Kenya Human Rights Commission (KHRC) position paper on devolution, Gideon Ochanda, raises and attempts to answer critical questions on devolution that are on almost every citizen's mind. One may ask why citizens have not begun to see big changes in the way that services are delivered in their County.

There continues to be a local authority, although most know there will be no ballot paper for councillors in the next general elections. The reason for this is that it was deliberately planned that the changes will come progressively and in stages in the five years between August 27, 2010 and August 2015.

Section 18 of the Sixth Schedule on "Transitional and Consequential Provisions" states, "All local authorities established under the Local Government Act (Cap. 265) existing immediately before the effective date shall continue to exist subject to any law that might be enacted". It has also further provided transitional arrangements up to 2015 within which the delineated functions are to be transferred to the County governments replete with resource transfers and tax measures. Thus devolution is no longer a theoretical term, but a reality on which action has already begun. In October, 2010 the Ministry of Local Government, through Gazette notice No 12875 established the Taskforce on the Devolved Government (TDG). The Taskforce, which is administrative and advisory, is expected to draft laws to implement the devolved system envisaged in the Constitution. The TDG has between February and March 2011 collected views or proposals from citizens on how the laws and administrative structure of the County government should be formulated to improve citizen participation and service delivery that is relevant, timely and of appropriate quality.

However, it appears duplication is still possible because as the TDG does this, there is a different Taskforce considering and making proposals on how the provincial administration should 'restructure' itself to be in line with the Constitution, as Article 17 in the Sixth Schedule states that "Within five years after the effective date, the national government shall restructure the system of administration commonly known as the provincial administration to accord with and respect the system of devolved government established under this Constitution". In addition, the Fiscal Decentralization Committee at the Ministry of Finance & Planning is considering and expected to propose the specifics of how to financially prepare for devolution. There is also before Parliament the Commission on Revenue Allocation Bill which will determine how revenue will be equitably allocated to all Counties and the Salaries and Remuneration Commission Bill, which focuses on how government officers in both the national government and County governments will be paid in a manner that ensures all Counties get and retain qualified and progressive officers able to creatively make devolution work to improve citizens' access to rights through service delivery. This fear can only be allayed if the Commission for the Implementation of the Constitution (CIC) is able to bring together work that is independently being done by different teams to ensure that all the laws that deal with any aspect of devolution are all guided by the same values of improved access to rights, equity and participation and are working towards actualizing the objectives and principles of devolution outlined in Articles 174 and 175 of the Constitution.

Be that as it may, numerous fundamental questions arise. For example, everyone knows where the DC's or Mayors, or even MP's office is right now. But where will the offices of the County governments be once they are elected in 2012? What happens to services in the immediate periods upon their establishment? The Constitution is clear that County governments have taken over all the functions of the Local Authorities (LAs), and most of the functions of the the Local Authorities (LAs), and most of the functions of the provincial administration. Yet, there is debate on whether or not the provincial administration will continue to exist after 2015. In case the two are not folded, how do the County work with Local Authorities (L.A's) and provincial administration (P.A) whose

functions County governments have now taken? How does the County government deliver services below the County level when there are no structures prescribed? How about the cost, the human capacity and the attendant population disparity?

The Seat of County governments

While the new Constitution does not give detail about where County governments will be headquartered or based, clearly the Constitution does not anticipate parallel or different governments within the Counties carrying out functions that are now assigned to County governments. If this value is respected, it is clear that County governments will be based at the district commissioners' offices/buildings as at 1992.

The year 1992 is critical. Under the 1992 Districts and Provinces Act, Kenya was divided into eight provinces and 46 districts. This is the legal basis for the Provincial administration, which is a way of decentralising national services through administrative units at five levels - province, district, division, location and sub-location. Article 176 (2) provides for the County government to decentralize the provision of its services. This implies that the County government will have its presence up to the village/estate level. A similar provision does not exist for the national government. The closest that the Constitution envisages decentralization of national functions is by stating in Article 6 (3) that a national state organ ensures reasonable access to its services in all parts of the Republic. However, Article 174 (h) says that devolved governments will facilitate the decentralization of the state organs.

Further, in 1992, County councils were established with full fledged offices. It is therefore most logical that County assemblies take over the premises of the County councils as at 1992. This proposal is based on the fact that all the functions currently under Local Authorities, provincial administration, line government departments (apart from Education and Police), some state authorities i.e. regional development, rural roads authority etc. will from 2012 become the functions of County governments.

Local Authorities, Provincial administration Vs Counties:

There is already a raging debate in the Counties as to what happens to the provincial administration when County governments come into force. Already, there is a debate on how the councillors numbering thousands will be accommodated in the new Constitution. By looking at the functions of Local Authorities (LA) and Provincial administration (PA) and comparing these with the functions of County governments set out in the Fourth Schedule, it should become clear whether or not the LAs and PA should continue to exist.

The core functions of local Authorities are to; "Establish and maintain hospitals, maternity services, health centres and dispensaries; Enforce and regulate fencing of plots; Obtain statistical information on inhabitants in the area and on any matters concerning the functions of the local authority; Establish, maintain, let and manage public markets and market buildings, control public sales held, any places used for selling cattle, horses, sheep, goats, pigs and poultry; License and promote art galleries, museums, botanical gardens, zoological gardens and public libraries; and, Promote legislation in the interest of the local community;" As councillors hold elective positions, their time in office expires when their term comes to an end. It is clear to most citizens that there will be no ballot paper for councillors in the next general election, so this position will smoothly and naturally be faced out.

The core functions of provincial administration are:

Transiting from Centralized to Devolved Order

"To maintain order in their administrative locations; Employ any person to carry out their orders; Intervene for the purpose of preventing the occurrence of any offense within the limits of location; Where there is a known intention to commit an offense which cannot be prevented, the chief is at liberty to arrest, or order the arrest of the person, who has to be taken to the police station without delay; Deal with livestock or property theft; Prevent planning of an offense; Arrest or direct an arrest of any person designing an offense; Prohibiting and restricting the consumption and possession of intoxicating liquor and its supply to young people; Prohibit or restrict drinking sprees, cultivation of poisonous or harmful plants, the manufacture, transfer, sale and possession of harmful drugs or poisons; Prohibit or restrict the carrying of arms or weapons; Prohibit/restrict any action or behaviour which in the chief's opinion can cause riot, disturbance or a breach of peace; Prevent water pollution in streams, water course or water hole and their obstruction; Regulate the cutting of timber and prohibit wasteful destruction of trees; Prevent the spread of human or animal disease; Restrict anything that may cause damage to any public road, or any work constructed for the benefit of the community; Destroy locusts in any stage of development; Controlling grass fires and Regulating the use of artificial water supplies constructed from public funds."

All the above listed functions of LAs and PA now fall within the mandate of County governments as listed under the Fourth schedule in the Constitution. Any attempt by the National government to do County functions within the Counties' jurisdiction will be against the Constitution. It may only work within the facilitation period (3 years) after which even the Senate should stop such attempts. What will provincial administration do when the bulk of their functions have been given away in the Constitution? The functions of the County government are clearly stated in the Fourth Schedule. Currently, the provincial administration is playing the coordination role of the functions of County governments. This means no provinces or administration at provincial level. It means national administrators at County level - not DCs, maybe County commissioners - and at ward level (not DOs, chiefs and sub-chiefs any more, but maybe ward commissioners). From a strong administrative presence of Central Government, we will move to a weak one. And a big chunk of the finances needed to make this administration work will have been redeployed under the 15 per cent rule to County governments. Thus, without functions to perform, they are redundant.

What this means is that the National Government has no choice other than to fuse the current local authorities and provincial administration into the County government framework as soon as possible, but not later than 2015. This way, County governments will be able to use public amenities and infrastructure that is currently being used by local authorities and the provincial administration; otherwise the County governments will have no offices, meaning that Treasury would have to set aside funds over the next five years to build new offices and would also be paying out salaries and benefits to staff in three parallel structures - LAs, PA and County governments, which would be an unsustainable burden on the taxpayer not only in the 2010 to 2015 transition period, but even thereafter.

The phasing out of provincial administration by 2015 must be done in a fair way that adheres to the principles of human rights and labour laws (Employment Act 2007). Those serving under the provincial administration as chiefs, DO, DC and PCs should be absorbed into County governments but on the basis of merit. Provincial administration is only

one aspect of the broader public administration and Counties too will require public administrators. If the officers within the current provincial administration meet the requisite qualifications, and most of them in the position of District Officers (DO) and above are university graduates, some with more than one degree and vast work experience, then they will on the basis of merit be absorbed into other aspects of public administration. They will however require a re-orientation as will all other civil servants in order to effectively deliver services of either National or County governments. Those that are not absorbed will be rendered redundant and as human rights and the Employment Act 2007 dictate, be paid severance which includes service pay, payment in lieu of notice and leave days pay and probably given a gratuity or golden handshake depending on years of service. This too is not new, as it has happened before even among civil servants and parastatals with a recent example being the former Kenya Posts and Telecommunications Corporation (Telcom), now Orange, where most staff were declared redundant and given the option to re-apply for jobs based on merit or qualifications or opt out and get the severance and gratuity or handshake.

Relationship between National & County Governments

While the Fourth Schedule outlines distinct functions of national and County governments, it is clear that the two governments must cooperate or have some form of relationship through which they can co-exist. The first and most important principle to consider in determining how the two governments should relate is that none is sub-ordinate to the other; each County government is as important as the National Government. Secondly, each government must respect the very distinct roles placed on it by Schedule. Thirdly, National Government functions that are to be done within the County need to be divided into two: Non Regimented Services and Regimented Services

Non Regimented Services include registration of persons, registration of births and deaths, sports, protection of environment, gambling, primary and secondary education, etc. Such functions should be done by the County Governments but on behalf of the National Government. This means that the functions would be on a contracted basis based on the standards or national policies developed and applied nationally but with the cost of such services being met by the National Government. Such functions should be not be run by parallel structures alongside the County governments as parallel structures will bring confusion and difficulties in participation of the people which is fundamental principle in the Constitution.

Regimented Services such as armed regiments of regular and administration police, etc should remain strictly a National preserve in terms of reporting lines and should have an element of horizontal action accountability mutually developed between the two governments. The administration police for example, are familiar with how this works because currently they are informally under the command of provincial administration officers i.e. at sub national levels which will from now on mean County and not province; yet administration police also maintain a vertical command within the force.

Functions of National Government

Article 176 provides that "every County government shall decentralize its functions and the provision of its services to the extent that it is efficient and practicable to do so". In other words the functions of County Governments specified in the Fourth Schedule will be cascaded downwards into these other structures of

local governance once the law is clearly formulated streamlining the present local governance set up in line with the Constitution. Article 184 recognizes the existence of urban areas and cities, and empowers Parliament to legislate on governance and management of urban areas and cities.

The new Constitution does not anticipate a vacuum. The transition anticipated in the Constitution is such that at no time, during this transition period will services to the people stop, restructuring challenges notwithstanding. The Constitution provides for piecemeal transfer of functions within the three year period. The functions are to be transferred by the national government, (meaning the current central government), in batches based on the competency levels of each County government. Chances are that only basic functions that have simple and clear cut bearing will be transferred in the first year while the most challenging ones will be transferred later.

The most practical way this can be done is to change reporting lines of all the current district heads of departments so that they stop reporting to the district, province and then to Nairobi but instead begin to report from the districts to the County. The same would most likely also apply to the Local Authority staff. In other words, the current civil servants operating and offering services in the current districts and local authorities will continue rendering the same services. However, instead of reporting to the provinces and to Nairobi, they would now be answerable to the County Governor and Counties Executive Committee (Counties cabinet).

Service Delivery within the County:

The other questions that devolution must grapple with are how to decentralize National Government functions to viable entities, which are not too big such that services do not reach community level and yet, not too small, such that they will be too many and lack independence. The other question is how to avoid a clash between County and National Government and execute organized decentralization of government functions. Efforts must also be made to avoid proliferation of the vices of the Central Government such as corruption, while at the same time ensuring that the process does not trigger ethnic rivalries through an unequal access to services.

In the transitional period, the County governments might not be able to establish below Counties structures in the understanding that the National Government may still have a presence in the Counties. However, the Constitution is categorical that the County Governments are to decentralize their functions downwards based on efficiency and practicality.

The County should be conceptualized as different from local authorities. This is because the Constitution has set out separate treatment for urban areas and cities in Chapter 11 Article 184. In this sense, where a town and (note a possibility towns) might be single wards in the County. Municipal Councils may continue to exist. The Constitution is silent on County councils. In addition, if the County assembly were to be populated by representatives (the current councillors) from all local authorities in the Counties, the Assembly would not be manageable.

Continued on page 28

Youth, Drug Addiction & Organized Crime

Save our youth

By Ukhevi Ali



Recent news depicting youth wasting away in illicit liquor dens is disheartening. Some have even lost their lives and those who haven't live a vegetative life.

I believe that many of these youth are indulging in this destructive past time not merely due to delinquency, but due to the idleness caused by unemployment. Youth and particularly young men also drink to escape feeling that they are worthless as young men in most cultures are brought up see the role of a man as that of not only taking care of their own day to day needs but also to provide for others (their children, spouses and parents). When they are jobless and unable to do this, they do not feel proud of whom they are, have no dreams for the future and cannot provide for or protect their families from hunger and other ways in which

poverty humiliates them and their families. While there is an element of peer pressure, the alcoholism we see in many villages is really a sign of depression – young people who feel they have no future and who want to escape from a current reality that they do not like and feel unable to change. Unemployment, loss of hope and alcoholism among the youth are real concerns that need to be addressed urgently

Another angle to this is that this idleness is not always the direct result of unemployment in the sense that some of those idling are actually not youth (18 to 35 years old) but are children (below 18 years). The reasons why teenage children below 18 years easily get classified with idle youth are many. One is that in many communities, boys are initiated into adulthood through circumcision. The initiation while good in many ways, also sometimes make them feel like adults able to make decisions for example on whether to remain in school or drop out. Some choose to drop out and parents, and particularly mothers who are more with them are unable to get them back into school because some of what they learn at initiation is not to listen to women. Others are idle because they lack creative and engaging ways to spend their time especially during school and college holidays. In the past, such children helped with domestic chores such as digging, planting weeding etc during weekends and school holidays. Today however, many feel they are mature and thus cannot be forced by parents especially mothers to help with work at home.

While children must help with domestic chores, they should also have some time for leisure. I am appealing to those of us that have any skills in mentoring children and young people to rise up to the challenge of mentoring them to establish youth groups that get involved in constructive yet entertaining, educative and social activities such as ball games, retreats, camps and involvement of youth in social initiatives like community clean ups. Young people can get together and request from the community small kitchen gardens or even make greenhouses where they can learn, use new technology and even generate some income through small scale horticulture. It is time we embraced changes by taking positive and long term action.

Closing down these drug and liquor dens, or even the video dens are short term solutions because before long, others will just mushroom elsewhere. I appeal to all the youth to shun these death traps and engage in meaningful activities that empower rather than destroy. Let us encourage our children and youth and support them to engage in other activities or else we will have a generation, who instead of investing their energy in nation building or self-empowerment, lose their lives in brewers dens.

The author is a student at Kagumo Teachers Training College, Nyeri

Lip service will not save the youth from drugs

By Jaramba George and Aziz Vumbi

When the Wikileaks disclosed that the American Ambassador Michael Rannebarger was concerned that some prominent Kenyans are suspected to be dealing in drugs, politicians went on the rampage with others condemning the ambassador and repeat of the same information in Parliament. The President and the Prime Minister added their voices in the condemnation circus and the Police Commissioner dispatched anti-narcotic detectives to track down the drug barons in the Coastal part of the country. Coast General Hospital even agreed to treat the poor drug addicts as they suffered from severe withdrawal symptoms when for a short time they could not access the drugs because police were finally looking into and shutting down drug trafficking channels. These 2-3 weeks are proof that if police wanted and if there was political will, Kenya can shut down or drastically reduce the availability of drugs in Kenya.

That drugs have destroyed and continues to deform the society needs not be gainsaid. What is not known about drug trafficking in Kenya and particularly at the Coast? Is it the users, the peddlers, the barons or the powerful people protecting them? The answers to these questions are in the public domain; the police know, the community knows and even the leaders in prominent positions know. No talks for the obvious reasons, the first being that most people believe that the some members of the police force and other duty bearers are profiting from the drug trade and because when the ordinary citizen talks, her or his life is in danger of attacks by gangs and militias that are involved in the trade. Communities are living in fear, watching their youth get destroyed for a profit.

But are Kenyans really that powerless? Are we going

to sit back and wait for generation after generation to collapse because of fear of being eliminated by drug lords? Kenyans can do better than that. The fight against the drug menace is one of the most halfheartedly coordinated in the country. In Kwale County for example, how many anti-narcotic police detectives are there in Kwale County? And where does one report narcotic cases in Kwale County? The answers to both questions are less than ten and Diani Police station respectively.

Unfortunately, Diani station which is considered, (rightly or wrongly) a modern police facility does not have an anti-narcotics office. The officer in-charge of anti-narcotics at the station sits in the general office used by officers from the Criminal Investigation Department (CID). Some of the officers in this department have been stationed in Kwale for more than three years, giving them ample time to know all the drug peddlers and barons, and probably work with and not against them. Some of those officers have stayed for more than five years while others have gone on transfer only to come back a couple of years later. This and many others are the reasons the fight against drug in Kwale for example will never bear fruit.

The first step to address the drug issue in Kwale is to establish a separate office for anti-narcotic officers. That office should be equipped with modern facilities including unmarked motor vehicles and adequate trained human resource. The government should also establish enough centers to rehabilitate people with drug problems. When arrested, mostly for petty theft aimed at providing them with money to feed their drug addiction with the next fix, drug users should be kept separate from other offenders. If sentenced, they

should be held in rehabilitation centres not prisons where they undergo mandatory detox and counseling for at least four months. Once they have been through the detox, the police should find ways to re-locate them and find ways to compensate them through a witness protection programme and for compensate them for disclosing who introduced them to drugs, who they buy from and at what price.

There are currently very many trained counselors and the government should take advantage of that and employ them to handle the ever increasing drug cases. The government should also construct and encourage the private sector and civil society to construct vocational training institutions to absorb former-addicts who have been rehabilitated.

Such rehabs must be fitted with modern social amenities including football pitches and other facilities to cater for other sports and physical health, as well as classrooms to teach basic entrepreneurial and trade-skills. If these steps are followed carefully, the demand side of the drug trade will have been addressed in part leaving peddlers and barons with fewer clients. This though can only work if schools and other places where children and youth can be reached are completely protected from drug peddlers.

For the effective implementation of this process, the anti-narcotic act should be amended to make it a capital offence; so that it ceases to be a bailable offence. This way, if found guilty, the culprit should be sentenced to at least fifty years in jail. This may not be the best option but it can bear a fruit or two.

Vumbi is the immediate former chairperson of Kwale HURINET

Continued from page 26

Cost of Administering County Governments

In the initial years the cost of administering the County governments will be heavy particularly as the National government re-routes all the current civil servants at the districts to the County Treasury. There are on average 43 heads of department in every established district. Each district head also has staff below her/him. Considering that there are currently over 200 fully established districts, it follows that each County currently has about 4 districts. However, with time County governments will cut personnel according to the needs of the County.

The Constitution creates numerous new offices for the political class to be paid from public coffers. The new Constitution gives the yet to be set up Remuneration Commission the mandate of setting new salary scales for political offices. Those to be considered for the new salaries will include MPs, Governors, Senators, Counties representatives and Chief Officers in the National and County Assemblies. Besides the salaries, the County will have to pay for the maintenance, staff and operational costs of all political offices created the new Constitution.

County Sizes and Service Delivery

How then will the County governments decentralize their functions and provision of services envisaged in Article 176? They may use the present districts as sub-Counties for purposes of administration and provision of services. The sub-county officials may have to be accountable to their residents through some form of "people's assembly" at the sub-County level. Parliament may have to legislate on a properly designed local Peoples' Assembly at this level, which will form an effective oversight body on the County and national civil servants providing services at the grassroots level.

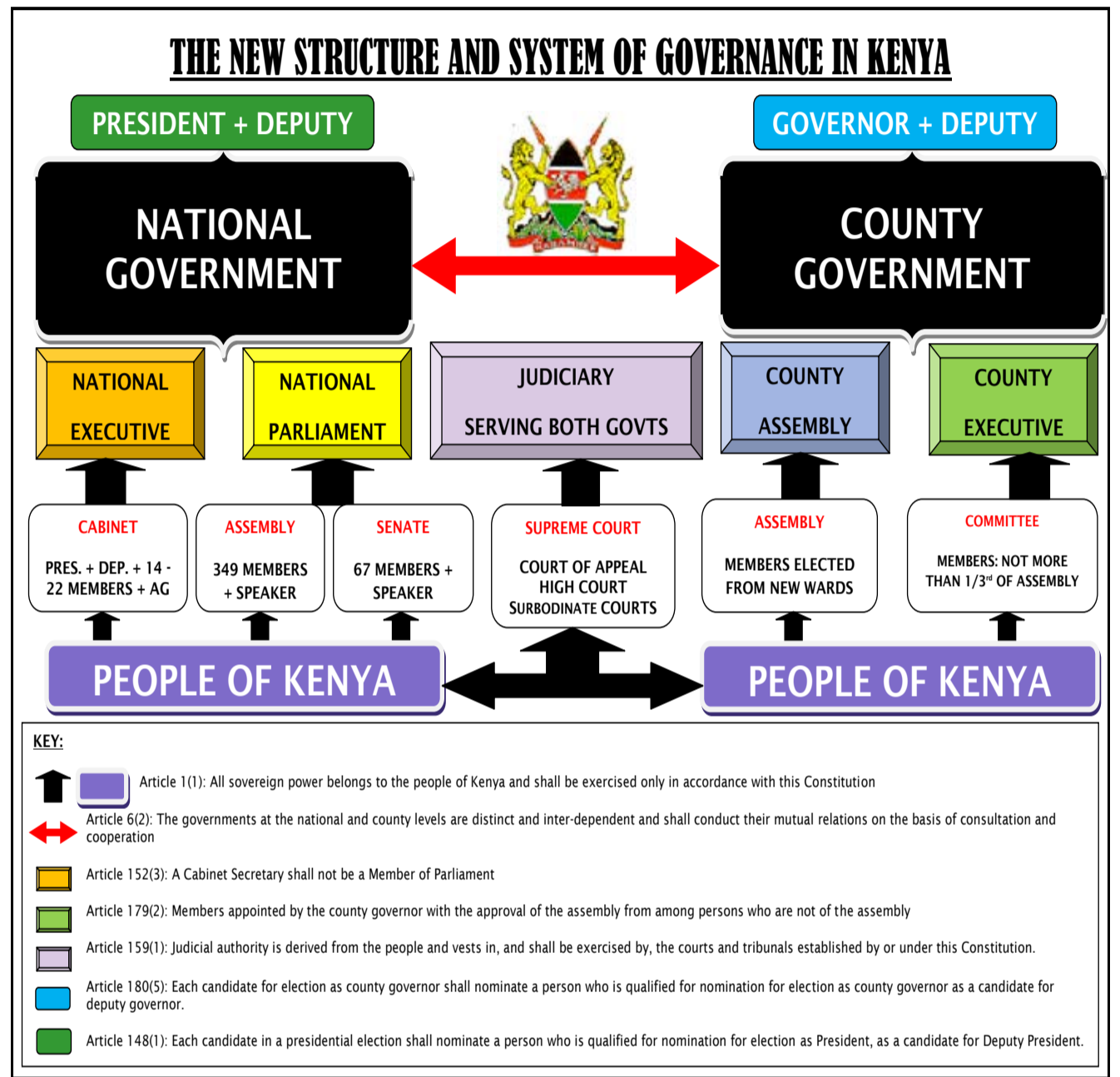
The Constitution is clear that Counties are not equal in population, geography and economic endowment. Therefore, the Constitution has created two different distinct funds: 15% of National income and Equalization fund. The 15% of the National income is to be shared among all the 47 Counties equitably and not equally. The procedure of sharing the fund is left to the Revenue Allocation Commission and the Senate. The more populous Counties will definitely

get more resources than the less populated ones. The equalization fund on the other hand is established to help Counties that are less economically endowed or economically marginalized. The fund is 0.5% of the National income.

The capacity of the County governments to meet their financial obligations must be built, by focussing more on generation of functions as the Constitution has already set out the distribution of functions. The Constitution is clear on revenue sharing but says little on how Counties shall generate revenue and how the same will be shared with other Counties and nationally.

These are some of the areas where citizens should focus and build proposals on, taking care however to ensure that Counties' ability to levy taxes does not impose a double taxation on the private sector thereby raising the cost of doing business. It is time for each County to accelerate growth both at the local and the national level, by creating wealth using their already available natural and man-made resources.

Excerpts from "Transiting from centralized to devolved order" A Kenya Human Rights Commission (KHRC) position paper on devolution by Gideon Ochanda.



Structure developed by Tom Kagwe, Kenya Human Rights Commission

MIZIZI YA HAKI

"Mizizi ya Haki" is a bi-annual community Newsletter published by the Kenya Human Rights Commission (KHRC) on behalf of Community based Human Rights Networks (HURINETS)

Contributions and comments on the editorial content, design and layout are welcome. However, the editor reserves the right to edit any comments and articles submitted for clarity.



Please send your contributions to:

The Editor, Mizizi ya Haki
 P.o. Box 41079-00100 GPO Nairobi - Kenya.
 Tel: +254 0203874998 / 9 / 3005673
 Mobile: 0733 629034 / 0722264497
 Fax: +254 0202 387499
 Website: www.khrc.or.ke
 Email: admin@khrc.or.ke