PROTECTION AND PROMOTION OF RIGHTS IN KENYA

The Utility of a Basic Rights framework

INTERN⋯ ⋯ CPMENT

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EXECUTIVE SUMMARY

1.0   INTRODUCTION: BACKGROUND AND CONTEXT

1.1   The Economic Context

Kenya has a population of about 30 million people and a population growth rate of about 3.0 per cent. Agriculture and livestock production is the backbone of the economy. Although the country had a relatively high economic growth rate in the 1970s compared to others in sub-Saharan Africa, the growth rate has been on a downward trend. GDP dropped from 4.3 per cent in 1990 to about 2.2 per cent in 1998. In addition, poverty has deepened over the years. Over 40 per cent people live below the poverty line. Per capita income has continually dropped: it dropped from US$ 360 in 1990 to US$ 284 in 1997. The number of poor people has also increased significantly, from 11.5 million in 1994 to 13 million in 1998 (UNDP, 1999).

The poor economic performance has reproduced, inter alia, low purchasing power, intensified food insecurity and poverty, and unemployment. This has in turn constrained access to basic needs for the majority of people: they have no access to clean water, health, education and shelter. Generally, the perception of Kenya as a success story has waned. As argued by authors such as Gibbon (1995), the country has transited from "ornament to eyesore". Although changes in the wider international economic context have had a hand in this, domestic factors have contributed too. Mismanagement of public resources, lack of good governance, and privilege of politics over economics accounts for much of what has been happening.

1.2   The Political Context

The country had a one party form of government through out the 1970s and the 1980s until 1991 when multi-party democracy was introduced. During the period, "statism" through the one party political set up dominated the social-economic and political spheres. This reproduced authoritarianism, which in turn stifled civil society thereby constraining popular participation.

At the beginning of the 1990s, external pressure by donors and intense inner struggle by civil society organizations led to the re-introduction of multi-partyism. In 1991, the government repealed the constitution provision that prohibited multi-partyism; it registered opposition political parties and conducted a multi-party national general election in December 1992. The ruling party, the Kenya African National Union (KANU) won the election.

The opening of the political space has witnessed an increase in numbers and activities of civil society organizations. Amidst these changes civil society has become increasingly fragmented owing to state intervention, ethnic, personality conflicts and religious differences. Nonetheless, political liberalisation has had one important consequence: it has led to a deepening of democratic struggles

both in urban and rural areas. These struggles have been consolidating alongside pressure and demands for broader constitutional reforms. The Constitution of Kenya Review Act was introduced in 1997 and amended in 1998. Although the question of when and how the reform will start has not been settled, it is instructive to note the need for citizens to be prepared to articulate their concerns when the exercise begins.

1.3 Social-economic struggles and the Constitutional Review

Intense struggles for better living conditions by rural farmers, pastoralist communities, women groups, urban squatters and many more groups, have accompanied the opening of the social-political space through political liberalisation. These groups have occasionally protested against the various forms of state intervention in their social-economic and political spheres. The struggles are indeed a manifestation of frustration experienced by citizens in marketing and pricing of agricultural commodities, failure of the state to provide security, increasing landlessness owing to alienation of land by the economically and politically powerful elite, and loss of earning opportunities, among others.

In most cases, the state has responded to these struggles violently: citizens have been arrested, and/or violently confronted. Avenues for articulation of their grievances have been closed and/or their issues turned into objectives of government task forces and commissions of inquiry. Significantly, the issues they articulate are not seen from a "basic rights" perspective or in the context of providing secure livelihood. The emerging situation clearly depicts a wide gap in the current Bill of Rights in the Kenyan constitution. The Bill has a limited definition of rights thereby making it difficult to link lack of access to basic needs to infringement of fundamental basic rights. Issues articulated in these struggles, therefore, clearly demonstrate the need to ensure that the constitution promotes and protects basic needs and rights of the citizens. It also demonstrates the need to ensure that the constitution promotes not only the conventional civil and political rights but also the social-economic and cultural rights of citizens.

2.0 THE PROJECT ON CITIZEN RIGHTS FOR CONSTITUTIONAL REVIEW

IDRC developed the project on *Citizen Rights for Constitutional Review in Kenya* in the context of the above background. The project was informed by the observation that, firstly, there is widespread poverty and social unrest in both urban and rural Kenya and that this unrest is a manifestation of resistance to harsh living conditions and deteriorating social infrastructure. Secondly, recent years have witnessed increased attempts by human rights and development Non-Governmental Organizations (NGOs) to address the "poverty question" from a rights perspective on the argument that constrained access to or denial of access to basic needs equals violation of basic human rights. But the connectivity between development and rights is a recent phenomenon and has not percolated to the grassroots where lack of basic needs - and therefore violation of rights - is pronounced. Thirdly, at the international level, a movement agitating for prioritisation of economic rights alongside civil and political rights has developed. A discourse on indivisibility of human rights as a development imperative has gained currency as well. Finally, IDRC found that many questions

about the basic rights framework have remained unsettled: answering them could assist and inform initiatives being established to address the poverty question.

Development of this research project, therefore, was opportune because it suits the initiatives being organised to address the poverty question from a rights perspective. Many interested groups - the government, non-governmental development organizations and advocacy groups - are grappling with the construction of appropriate strategies for eradication of poverty. The project thus is both relevant and timely because the possibility of constitutional reform in Kenya presents an opportunity for incorporating basic needs in the constitution.

This project thus developed as an appreciation of the importance and political potency of human rights and acknowledgement of enthusiasm and determination of the ongoing initiatives. The main objectives of the project were:

> 2   To develop awareness of citizen rights among rural populations and to build required capacities to utilise existing means and institutions for redress;
> 3   To promote the development of appropriate institutions for protection of social and economic rights of the ordinary people;
> 4   To facilitate utilisation of the knowledge and capacities gained in this process to enhance participation and contribution to the constitution review process.

1.3   Focus of the Study

This study was conceptualised within the context of these objectives. Specifically, the study set out to investigate the following issues:

The nature of socio-economic and cultural problems currently being experienced in Kenya; The perception of these problems by the citizenry and particularly whether citizens regard these problems as a denial of their social-economic and cultural rights;

The type of actions and activities that citizens engage in to address these problems and the outcome of their struggles;

The type and form of rights-based community organizations that citizens have established to address their problems;

The legal, administrative, institutional, political and other operational hindrances experienced that struggles to articulate social-economic and cultural problems experience;

The type of organizations from outside the local settings which are operating therein with the sole aim of addressing these problems and the extent to which they co-operate and collaborate with the local organizations;

The similarities and/or differences in approach between community initiatives and those by organizations from outside;

The citizen-government relationship in the fight against these problems and how citizens perceive the role of the government in their everyday struggles against these problems;
The general level of human rights awareness and agitation for constitutional reform;
The nature of problems or hindrances experienced in utilisation of the human rights framework by communities;

Citizens perceptions on possible solutions to these problems;
The kind of reforms and other arrangements that need to be created at both the local and national level to safeguard basic rights and needs for all groups.

3.0   METHODOLOGY

3.1   Method of Study

The research was carried out in different phases. In Phase One, IDRC developed and discussed the research proposal with the project coordinator. Suitable and experienced researchers were also identified during this phase. Phase two comprised elaborate discussion on the proposal with the researchers for purposes of developing survey instruments, identifying study districts, and identifying and reviewing the relevant literature. IDRC also held consultations with the Basic Needs Steering Committee with a view to developing an understanding on how the results of the study could be used. In phase three, the researches reviewed literature and presented draft review and check list of issues for interviews to a group of stakeholders interested in basic needs as basic rights. Phase four comprised doing field work in different districts. Data was analysed and a draft report compiled and presented to IDRC in phase five.

Interviews and focus group discussions were used in the field survey. Questions aimed at collecting information about beliefs, attitudes, norms, behaviour in relation to the study objectives and issues. Through out the period, the researchers were conscious that their aim was to discover facts and opinions and not to shape them. Researchers thus avoided leading questions in the interviews.

Interviews based on a checklist of issues and questions (Appendix 1) were held with citizens' organizations and individuals in seven districts. Interviews were held with over fifty people (men and women including the youth) as individuals and/or as representatives of organizations involved in a wide variety of activities at national and/or local level (Appendix II).

The study covered human rights organizations such as Kenya human Rights Commission, Legal Resource Foundation, International Commission of Jurists and Kituo Cha Sheria. The peasant communities studied were those in the titanium mining area of Kwale, the rice growing communities Mwea, the coffee growing communities of Nyeri, the communities living in the Limuru area along

the Nairobi-Naivasha highway, pastoralist communities in West Pokot and Isiolo, petty traders in Busia, and the sectoral issues of health and education.

3.2   Study Sites

Study sites were purposively selected: those chosen were considered to be typical or outstanding examples of the variables concerning the study. Each district represents a particular form of basic right problem: the districts were chosen on basis of the sectoral concerns endemic to the everyday experiences. Kirinyaga district was chosen because of intense struggles by rice and coffee farmers: these struggles are a good illustration of expression of basic need outrage at violations of those needs and attempts by the community to demands their rights. This reasoning was extended to the choice of Nyeri, Kwale, West Pokot, Busia, Isiolo and Limuru in Kiambu. Nairobi was selected for the purpose of studying how urban people are organising around shelter, health and education.

3.3   Methodological Notes

The research was exploratory and descriptive but an attempt has been made to compare cases and experiences. The study set out to explore a fairly new area, about which little has been done in the local context. The researchers kept an open mind, so as to look for new ideas and insights to explain what was happening. The researchers also kept an open mind recognising that bias and self-deception at this stage could render results invalid.

Time was a major constraint in this study. The districts were far from each other hence making it difficult for the researchers to complete the exercise on time. Moreover, at the district level it was not possible to travel to many places owing to time and resource constraints. Interviews thus were held at the most convenient and accessible areas in each district. To improve on the potential for generalisation, several communities were studied with the hope that if findings from these are in broad agreement, then the general findings are not an accident of findings: they are a valid and true testimony of the picture on the ground.

The results also are largely descriptive but it is hoped that they will lead to more comprehensive work in the future and as initiatives in this area continue to consolidate. Some of the results are too thin to develop analysis very far. While care has been taken so that the analysis does not outstrip the data available (reaching conclusions which owe more to values, assumptions or ideological position than to data at hand, such as generalising to all of Kenya from the data on one community) the researchers tried not to be too cautious and unwilling to generalise. They considered the fact that each study is in some sense exploratory: social science can only grow if the similarities of various situations are brought to bear.

4.0 THE FINDINGS

4.1 Literature Review

4.1.1 Historical background of struggles for basic rights in Kenya

The idea of a "right" is as old as antiquity. It is found anywhere where there is oppression (Mamdani, 1991; 1996; Shivji, 1991). The idea of rights also is an expression of resistance to oppression. It is endemic to human dignity and natural law. The concept of rights is therefore not euro-centric. Indeed, as argued by Mamdani (1991), Europe has no monopoly to oppression or resistance to oppression. Seventeenth century Europe and the enlightenment philosophy only provided a philosophical background for formulation and thinking about the idea of a right in the European context at that time. To find definitions and articulations of rights in the African context, one has to look at how people are articulating resistance to oppression. There is need thus to create a philosophical background against which to construct rights from the African or even Kenyan experiences.

In Kenya, from the colonial period, citizens have been organising against oppression using "rights" as a rallying point for their struggles. This is particularly true of the decolonisation struggle in the 1950s, in which deteriorating social and economic conditions spurred formation of peasant movements that later became the backbone of the political movements against decolonisation. Articulation of rights, however, was not similar to formal articulation of rights in the conventional sense: it was more a description of specific situations of oppression, effects and the need for change. Wearing the lenses of the conventional definition of rights, one would not recognise these struggles as struggles for basic rights.

At independence, the human rights dynamic was neutralised and rarefied into laws and national ideals. The new ruling elite, in their wisdom or lack of it, converted the social and economic aspirations of the masses into national goals of development and nationalism. This had the effect of undermining the social basis of mass organizations that sought to articulate questions of rights in the post-colonial framework. Social organizations were illegalised in the name of national unity. Resistance was illegal and so human rights as a framework of reference was illegalised. The government took over the task of providing development. The masses became victims and recipients of poverty. This approach to improvement of the standard of living was adapted and perfected by developmental and religious organizations. Dependency grew among the masses and became the norm. The quest for demanding for rights fizzled away.

Fifteen years into independence the government became unable to deliver development. Under the burden of external debt and internal mismanagement of resources, the post colonial government succumbed to the dictates of the international financial institutions and adopted Structural Adjustment Program (SAP) and attendant economic liberalisation measures. These have made the face and presence of international capital more visible. They have exacerbated poverty conditions and led to unrest among the masses. This contributed to the state's legitimacy crisis. It raises questions about the state-citizen relationship, and the relationship between citizens and the agents of international capital.

1.1.1 Human Rights Organizations

The formation of formal human rights organizations in Kenya began in the early eighties in response to increase in political oppression. This oppressive context informed the nature of the human rights organizations that emerged during this time to address civil and political rights. This was also informed by the focus of the international human rights movement on these rights.

Until the late nineties, the human rights movement in Kenya focused on civil and political rights. Middle class elite has led the movement. All these organizations operated from Nairobi and a few other urban centers. The voice of the masses was therefore not heard: they were not involved in the agenda setting for the movement. Nonetheless, human rights organizations now work more with peasant communities. This has led to their agenda being re-prioritised to reflect priority of basic needs of the communities. The views and responses of peasant communities with regard to the oppressive condition of their lives are now being heard and seen.

There has always been resistance but it has been latent and invisible to mainstream organizations operating from urban areas and pushing a purely civil and political rights agenda. This has led to a re-thinking of the focus of the sector towards social and economic rights. Most of these organizations are now (albeit very slowly and reluctantly) re-examining their mission statements and strategies to incorporate this new approach. This has coincided with a global shift in discourse to adopt a more inclusive approach, an approach that links the social and economic rights to civil and political rights. In this regard, development organizations have realised that it is futile to do charity for charity's sake: they are introducing the idea of building capacities of communities to demand for their rights (Action Aid - Kenya, 1999). At the same time, human rights organizations are starting programs to provide livelihood to the communities as a framework for promoting the basic rights campaign.

4.1.3 Political Liberalisation and Basic Rights

The energy and dynamism that swept the country into multi-partyism in the early 1990 was driven by hope for better living conditions. But the leadership of this movement focused on political pluralism as the overall demand. The demand for social pluralism by the peasant masses became latent. The pluralisation of politics did not deliver better standards of living. It did not address the immediate needs of the masses. The middle class and ruling elite achieved their immediate goal (of

a chance to contest power and promotion into the political class) but social pluralism remained constrained. The masses could not freely organise to demand their rights directly from the state.

This experience led to apathy towards politics and the government. With decreasing living standards, peasant communities intensified organizations of self-help to address basic service needs. This form of organisation was non-threatening to state power and was therefore not interfered with. The political class, seeking a legitimacy platform among the masses, has interfered with some of this informal organising.

At the national state level, the government has put together a National Poverty Eradication Plan to eradicate poverty and established a commission to oversee its implementation. The government has also put in place the Social Dimensions of Development (SDD) program to cushion vulnerable groups from the harsh conditions of SAPs and economic difficulties in general.

Human rights and development organizations have come together to promote the rights framework by urging communities to express their needs in rights terms and to agitate for the incorporation of these rights into the constitution. The approach of these organizations places the state at the center of the rights equation. It tends to shut out the non-state international actors from being held accountable for the effects of their actions and policies on the conditions of the lives of citizens.

4.2   Nature of social-economic and cultural problems

The areas surveyed revealed widespread problem of poverty, unemployment and disease. The most glaring problem was lack of food, adequate clean water, medical facilities, poor infrastructure, unemployment and lack of security. These problems have afflicted people for many years in varying degrees. They also continue to intensify. The pervasive nature of these problems and the apparent lack of an enabling administrative environment to address them, have negatively impacted on the standards of living in these areas.

Respondents attributed the problems to different factors including, vagaries of weather, bad politics, corruption, impunity of government, poor governance and even fate. All the sample communities observed that these conditions are an affront to their dignity and a threat to their survival and that of their children.

4.2.1   Perception of the problem

Perception of these problems as a denial of their rights differed from one place to another. In areas where the problem revolves around land and security, citizens observed that their plight reflected a denial of their rights by the government. This was particularly pronounced in urban areas and rural areas where the problem of cattle rustling is intense. On these issues, interviewees did not need prodding to point at denial of rights. In other areas, however, the respondents did not refer to them as an affront to their rights unless when probed further. When prodded further, for instance, one respondent observed that "we do not even live like other human beings; we live like animals. This

was a pointer that the problem had increasingly eroded the basis of human existence and human dignity.

In areas where the problems revolved around lack of food, adequate clean water, education and medical facilities, those interviewed did not think that the government had a duty to provide these services. They did not perceive the problem as one involving the issue of rights at all. The respondents also did not associate their problems to a faulty constitutional order or an undemocratic state. Although some referred to corruption and bad leadership as responsible for their plight, they did not relate them to the constitution and the legal system in place. The constitution as an instrument of governance seems to have been alienated from the people with the result that few understand its meaning and functions in their lives.

Even after acknowledging that their problems were rights issues, most people were not able to explain how it is their right. The language used by the interviewees in expressing and articulating their needs/problems as rights issues is different from the formal rights language. They use words such as *haki* (Kiswahili for rights/justice). The explanations did not bring the state into the picture: it centred around history of acquisition of the right. In this regard, some in Mwea observed that *Ywe have always lived on this land, so it is our right*; others in Kwale noted that *the company deceived us, so we sold our land rights to them without knowing* while those in Nyeri observed that *>our dues from coffee is our right, so all those middle men should be removed*. Local communities had no problem in identifying entitlements but they had no basic understanding of the role of the state in the whole scenario.

Viewed from the perspective of the formal construction of the right, these may not be straight forward rights issues. One can conclude that these communities are far removed from the state, and that understanding of the relationship between them and the state is difficult. Accordingly, the claim for entitlement/right emanates from natural law and the innate recognition of right from wrong. This disjuncture seems to affect their modes and targets in activism. Most of their activism targets non state entities, or personalities within the state. In other instances they looked inward to solve the problems. The unique feature of this approach is that since the cause of the problem is outside their community, they are caught in a vicious circle where they keep solving problems as they arise but are unable to look up to see who is causing them. In those situations they seem unable to identify the role of the state: they cannot therefore make certain demands from it.

4.3   Citizens initiatives

Citizens invariably have had to resort to self help action to address their problems. Some of these self-help activities are individualised while others are group oriented. Various associational forms emerge in response to specific economic and social need. Some of these activities are spontaneous while others are well planned by the community members. The spontaneous activities seem to take on an agitational form. Such activism seems prevalent in Kenya in recent months. It is reactive and narrowly focused on issues of immediate concern.

The reactive narrow focused approach to problems does not seem to lead to a culture of proactive resistance to degrading living conditions. When confronted with this question, most interviewees said that they would not have the time or other resources to waste confronting the state and other stronger forces. For instance, in the rice growing community of Mwea, the issue under contestation between the farmers and the government was marketing of their rice. The main problems seem to be land ownership. The farmers do not own the land, they are tenants of the National Irrigation Board. They have to grow rice and they have to do it in a certain way. They cannot determine how they want to live their lives and cannot live above certain dismal standards of living. Thus they have no freedom to control their produce and the land on which their livelihood depends.

In Kwale, the community struggle focused on annual rent/compensation for the use of their land by a mining company. The government signed off their rights, by giving concessionary rights to the mining company without informing the community. There is also the issue of future environmental damage, which is not seen as an issue of concern at present. This seems to indicate that needs and problems are narrowly defined such that they may not be of long term or much benefit by way of raising the standards of living in the communities in the long run.

There is no evidence of agitation around the issues of health and education at the community level. Any organising is for self-help initiatives or is targeted at the institutions in the area. It seems that the element missing in the health and education areas is that which brings people together. These services have always been provided by the state. Although local communities make substantial contributions to these efforts, agitation for provision of education and health care as a right is generally minimal. Thus there has been no unionism, co-operatives or any other form of organising around these issues: communities have not mobilised to agitate around these issues even though they acknowledge deterioration of these services.

4.3.1 Constraints in organising

Citizens encounter financial and operational problems in seeking to tackle their problems. The provincial administration is always a formidable adversary especially where some of these groups activities are considered a challenge to the legitimacy of the government. The groups also encounter monetary and internal organisational problems: it is difficult to maintain a useful level of momentum to the end. There is also political interference in the groups activities by local leaders. The local Member of Parliament, councillor, or chief in most cases highjack community's efforts to turn them to administrative development program. Politicisation of community-based activities by the local leadership ends up detracting groups from their original mission of jointly addressing common social-economic problems. In other cases local communities are locked out of the processes meant to address these problems.

4.4 Perception of state/government and its role

Intensity and form of resistance depends on community's level of economic leverage and capacity for self-reliance as well as how the community interacts or confronts the state. It also seems that the

understanding of the citizens relationship with government is in direct correlation to increased economic leverage. The Nyeri community understood the relationship with the government, their statements of demand for rights were strong and clear. In Mwea an understanding of this relationship was not clear, although form of resistance against the intervention of the state in the marketing of their prudence was relatively strong compared to other areas. This strength in resistance and the mode of organising was the result of a long period of economic exploitation. Political liberalisation tend to have awakened the people to have created a space for articulation of grievances with regards to their livelihood.

Many of them unpack the government to individual level, and tend to see individuals as the ones responsible for their problems. That is, the problems are highly personalised. They do not see the role of institutions. This makes it difficult to assess issues through the rights framework. In their view, if these individuals are out of the government, things would change for the better. Others were of the view that the government expresses itself through the chiefs whose main duty is to harass them. They observed that they should be left alone to fend for themselves.

4.5 Understanding of human rights and the constitution

Many areas exhibited a general lack of human rights awareness. The few areas where civic education workshops have been conducted exhibited a higher level of awareness. The human rights awareness programs are carried out by organisations mainly from Nairobi through workshops and seminars. The impact of such activities on the general populace is difficult to gauge. There is an emerging trend whereby church organisations are establishing rights' centers. A few human rights organisations are also assisting communities to establish their own human rights centers, through paralegal training approaches. This awareness is recent and does not seem to inform the nature and incidence of organising around basic needs on the ground.

Some people have heard about the constitution but see no relevance of it in their lives. Others have heard about it and believe that if their needs are put there, they will become law: law is bound to be obeyed. In their view, "no one will undermine us again" if there is a good constitution in place. Additionally, some respondents viewed the constitutional reform in sectoral terms and in line with their everyday problems.

4.6 National human rights organizations

Traditional human rights organisations have focused on civil and political rights. This is changing. With increased focus on working with communities at the community level, they have found that community priorities are with issues of basic survival and not national politics. Most organisations now apply educational mechanisms such as paralegal training, seminars and lectures, theatre and dissemination of materials for reading. Others offer legal aid or advisory services to the public. Some engage in advocacy at the national level on legislative reforms and provide remedies for specific public wrongs by public officials against individual citizens or groups of citizens. This advocacy may be through non-violence means, confrontational, protests and demonstrations. Most of them are

based in Nairobi and this limits their rural community reach. Their level of organising and understanding of human rights is more superior than that of community organisations. Whereas this is not a problem per se, it could be a problem if they endeavour to teach human rights to peasant communities or if they assume that communities have experience or understanding of rights only in the formal academic sense. This will compromise the impact of many-rights based projects.

There is need to explore methods of getting national human rights organisations to work with communities to jointly develop a discourse of rights which reflects the exact way in which people are experiencing oppression. However, the national human rights organisations seem reluctant to change their agenda to incorporate a focus on social and economic rights. The constraint is not so much with the organisations but with the fact that their agenda is directly linked to donors agenda.

An interesting observation by the researchers, which could be used in long range to explain the reluctance may be that most of the founders and a good number of the workers in the human rights organisations are American trained. America has been one big stumbling block in the development of international human rights law around social and economic rights. It has not incorporated them in its local human rights jurisprudence. This thinking may be of some persuasion among these people and hence in the movement. This deduction is however just an inference not a scientific finding.

4.7   Activities of development organisations

The survey revealed an extensive presence of service delivery non-governmental organisations in a number of areas, especially where local political leadership was receptive. Most if not all organisations operating in these areas are service delivery oriented. Most of them are international non-governmental organisations operating within the framework of their mandate in the mother countries.

There is hardly any partnership between the international NGOs and their local counter parts. Broadly, the relief organisations do not approach the problems in these areas from a rights perspective. The worrying trend in all this is that it is much easier for government and bilateral and multi-lateral donors to support such initiatives led by international organisations than those led by national organisations.

5.0   MECHANISMS OF REDRESS AND DEPOLITICIZATION OF BASIC RIGHTS

The legal system is the only system of redress for violations of rights. In Kenya however it is not accessible to all. Those who can access it are not treated equally by the law. The rule of law is undermined, and this ab initio renders this system ineffective and unreliable. The traditional system of redress and dispute resolution have for all practical purposes either disintegrated or where they exist are inadequate. Communities have resulted to extra-legal mechanisms of redress. The legal redress is only available under the limited and restrictive laws within which social-economic organisation and property rights are regulated.

There is evidence evangelisation in marginalized areas with many non-mainstream Christian denominations taking center stage. The evangelisation is tinged with tangible benefits such as health clinics and schools. Most of them seem to be of American origin. This phenomenon seems to have the effect of removing the struggle for human dignity from the purview of a rights framework. It has led the affected peoples to accept their fate. This is evidence by their resignation to their situations. It also seems to intensify the dependency syndrome in the affected areas, but this time the dependency is not targeted to the government but from these religious entities. An interesting characteristic of these entities is that they have a way of extracting money and resources such as labour from the beneficiaries of their charity. This increases the dependency because most people will give so that they can receive several fold back.

6.0 ISSUES OF CONCERN

6.1 Conceptual Issues

1. If the basic rights framework is to work in the African or even the Kenyan context, then it must be constructed from a legitimate indigenous background of experiences and realities and not from a comparative analysis of the European or American experiences and realities. The question then is how can studies be re-oriented to develop an African epistemology and a philosophical background on rights so as to replace analysis by analogy?

2. How can rights be constructed in a terrain of a fast changing state, and where third parties such as the international financial institutions have become central to the state-citizen relationship?

3. How can the utility of the rights framework be brought to bear in the lives of the peasant communities of Kenya who have lost hope in the state and are looking inward for survival?

4. Given the history of constitutionalism in Kenya, how can basic rights be incorporated in the constitution to make a difference in the lives of the poor?

5. What is the effect of the evangelism to poverty on the rights framework, and peoples ability to demand for their rights?

Organisational/Logistical

6. How can international development organization now engaging in advocacy work together with local advocacy organizations without using them as rubber stamps, and without rendering them irrelevant to the government.?

7. How can the modes of organizing among peasant communities be made more effective in a restrictive legal and administrative environment?

8. How can national organizations and community initiative work together to make the rights framework more useful as a tool for social transformation in Kenya?

9. How can the legal system be rendered more supportive of the rights framework as a tool of social transformation?

RECOMMENDATIONS

10. Discourse around issues of basic rights must be gauged from the people who experience "basic want" on a daily basis and who struggle to survive by organizing resistance to oppressive circumstances.

11. There is need to look for ways to pluralise the basic rights framework so that it accommodates others referents alongside the state whose activities and/or actions are oppressive and a threat to peoples lives. In order to do this, national organizations should adopt a global perspective to their rights advocacy even as they work locally. This is important because many of the causes of the oppressive conditions are increasingly caused by policies and laws made thousands of miles away. Local organizations could have effect if they were focused internationally.

12. Constitutionalisation of basic rights must be accompanied by reforms in the legal system so as to legalize social pluralism and allow for people and communities to freely organize and demand for their rights. The constitution should also not be presented as an instant panacea to social-economic problems. The utility of the constitution must be properly explained to the peasant masses. They must also be helped to understand the importance of the legal system being supportive of the constitution. The reform must therefore be comprehensive enough to include requisite reforms throughout the entire legal system.

13.National and community organizations should develop mechanism of working together under the human rights framework. This will assist in the development of a language of rights that is easily understood by all and mechanism of enforcement, which are accessible to all.

14. It is important to include peasant communities in the discussions on basic needs and basic rights that are now a taking place at the national level and organized by national organizations. Discussions on the findings of this project should involve these communities. This would be one way to develop a discourse around the rights question in our present and changing context. It may also be the site for the development of the mechanism through which communities and mainstream human rights organizations should work together.

CONCLUSION

The many years of authoritarian one party dictatorship have negatively impacted on the human rights

environment in Kenya. Neither the inclusion of civil and political rights aspects of human rights in the constitution nor the reintroduction of multiparty politics have generated a human rights culture. The constitution has never served as an instrument of democratic governance in the country or as a defender of justice. It has been alienated from the people to the extent that the majority of the citizens are note aware of its content. Instead, the people continue to experience the administrative power of the state through instrumentality of the provincial administration, which institution derives its existence directly from the president and not the constitution.

The constitution itself being a compromise package between contending elites at independence peripherilised the people hence their alienation. The result was undefined nationalism fired by the attainment of independence which ushered in a type of governance largely based on hope and enthusiasm but not law and accountability to the people. The retention of colonial institutions and laws has meant that the citizens have been all along relegated to mere recipients of policy. The state-citizen dichotomy has never been on a rights duty continuum. It has been based on an order directive compliance continuum. This phenomenon has characterised both regimes of President Kenyatta and Moi. The retention and consistent application of antihuman rights laws to the citizens over the years has further whittled down the already weak human rights regime as currently embodied in the constitution. Thus, the basic rights of assembly, association, expression, movement and conscience have been stifled by an overbearing and heavy handed regime. The net effect of this situation has been a complete obliteration of social, economic and cultural rights from Kenya's human rights parlance. The situation has further been exacerbated by a hostile judiciary which has negated the development of a human rights jurisprudence.

It is not only desirable but imperative that a new constitution be inclusive of a comprehensive Bill of Rights comprising the civil and political and economic, social and cultural aspects. The latter component should not be some kind of wish list of obviously unattainable goals. It should be a programme of undertakings by successive governments reflective of ideals to which every Kenyan aspires. Embodying such rights in the constitution will have the added advantage of introducing the imperative of responsibility on the part of governments in the manner in which they manage the economy of the nation. Corrupt governments will hardly survive the litigation that is sure to follow. Perhaps great challenges for human rights practitioners will arise from the need to socialise the contents of the new constitution to the public in manner that makes it a living reality in their day to day lives. This will inculcate a spirit of vigilance in the psyche of the citizens. It is through such vigilance that the government can be periodically called upon to account in the even of human rights violations. In this regard, human rights should be socialised to the public as a complete package because they are inter dependent. It is only through courts of law and agitation through democratic institutions that the government can attain the requisite sensitivity necessary to guarantee the peoples rights.

Any constitutional reform must not only entail the change of relevant principles of governance; but also a comprehensive institutional reform. Such reform will guarantee the formalisation of peoples agitation. As matters now stand, the realisation and enjoyment of human rights by ordinary Kenyans is as yet a dream to be achieved.

1.0 GENERAL INTRODUCTION

1.1   Summary of the Problem

The study deals with three major interrelated problems. The first one is the lack of clarity of the viability and utility of basic rights as tools for social transformation. The idea of basic rights has been challenged mainly from economic and legal perspectives. Economists are uncomfortable with the rights talk and are troubled by the power of rights to make uncompromising claims on resources, to set priorities for social expenditures and the redistribution of goods, regardless of the economic reality of scarcity.[1] They advocate for the search of other more effective modes of arguments to advance the welfare cause than rights. Lawyers grapple with the questions as to whether these rights are legal or moral in character and therefore whether they are justiciable or not. They find that the language of the International Covenant on Social and Economic Rights, is not legal and obligatory. It is programmatic rather than declaratory as opposed to its counterpart i.e. the International Covenant on Civil and Political Rights. They consider issues such as whether traditional legal approaches, including justiciability, are important; whether constitutional or legislative entrenchment is indispensable or even desirable; what the implications are of the limitation of a state party's obligations to use the maximum of its resources; and whether a programmatic approach is viable, and from both legal and practical points of view, sufficient. Recent debate goes further, to the philosophical bases for the international ideal of the right in the context of fast changing structures of the distribution and ownership of means of production, and the effects of these changes on social organisation and distribution of power. All these concerns go to the heart of the question of the viability of the concept of basic rights and their ability to achieve social goals.

The second problem is the lack of clarity on the extent of appreciation and application of the basic rights framework in Kenya. Literature review reveals that there has not been any effort to establish the extent of application of basic rights in Kenya if at all. General observation however indicates that basic rights are under-developed if not non-existent as compared to civil and political rights. This has in general discourse, been attributed to the ambivalence of the government; the demonstrated reluctance of non-governmental organisations to approach the economic, social and cultural needs of the people from a rights perspective rather than developmental perspective and the lack of innovative legal and other approaches of implementation by those that clearly support the concept. This study explores these observations and seeks to establish the extent to which these rights are understood and applied in Kenya.

The third problematic stems from the lack of clarity as to the context within which basic rights may be realisable given the Kenyan situation. The scant literature on basic rights available, appears to indicate a flirtation with wholesale extrapolation of the International legal regime into the Kenyan situation without any need for contextualization .

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1 Micheal Mandler, commenting in an interdisciplinary Discussion held at Harvard Law School in September, 1993 on Economic and Social Rights and the Right to Health, recorded in Economic and Social Rights and the Right to Health, a publication of the Harvard Law School Human rights Program, 1995, at p7.

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1.1 Statements of the objectives of the study

The study attempts to map the nature and extent of promotion and protection of basic rights in Kenya. The major focus is on the nature of articulation of these rights by rural communities and disadvantaged groupings within the Kenyan society; the mechanisms and approaches adopted by human rights organisations at the national and community levels in the use of the human rights framework; and the challenges facing them all. The following major questions formed the essence of the study:

1. What is the meaning, origin and content of human rights?

2. What are basic rights, and how are they articulated in the Kenyan constitutional legal and political discourse?

3. Are Kenyans articulating their social and economic issues, needs and problems as rights issues?

4. How are they organising themselves to fulfil their needs and address their economic problems?

5. Do they understand the formal idea of a right, and its basis?

6. Do they see the rights framework as a viable tool or platform for the realisation of their needs?

7. What are some of the approaches and mechanisms used by peasant communities and organisations in addressing human rights issues in general and basic rights in particular?

8. What have been the challenges of using the basic rights framework in the Kenyan context?

9. What are the gaps and weaknesses in approaches by peasant communities and national human rights organisations? What are the gaps between the approaches by the two broad groups?

10. What should be done to bridge the gaps and minimise the challenges?

1.1 Methodology and Scope of study

This research is both exploratory and descriptive, with an element of comparison between case and sectoral experiences. We set out to explore a fairly new area, about which little is known in our local context. We began with few assumptions as possible to examine the phenomenon of basic rights in Kenya from many points of views, looking for new ideas and insights to explain what is happening. Though we started with a general hypothesis as a guide to the questions to ask, it was important to keep an open mind, because bias at this stage may render all follow up work invalid.

This research was limited in scope, and it is hoped that it will lead to more comprehensive work. The results are largely descriptive, but most of the description leads to some analysis. Some of the results are too thin to concretise the analysis. While care was taken so that the analysis does not outstrip the

data available (reaching conclusions which owe more to values, assumptions or ideological position than to the data at hand, such as generalising to all of Kenya from the data on one community), we tried not to be too cautious and unwilling to generalise. We think that each study is in some sense unique and exploratory, but social science can only grow if the similarities of various situations are brought to bear.

Some official statistics were used to illustrate the extent and nature of certain basic needs. While the likelihood of error in official statistics was appreciated, we found it expedient to ignore the uncertainties of this data, so long as we felt that it presented a fair picture of the reality.
We used interviews and focus group discussions in our field work. Our questions were aimed at collecting information about experiences, beliefs, attitudes, norms, behaviour, and reasons for these, in relation to our main study issues. In these interviews, we were conscious that our aim was to discover facts and opinions, and not to shape them, so we avoided asking leading questions.

In sampling for fieldwork, we used both probability and non-probability sampling. In non-probability sampling, we used purposive sampling and identified certain case study sites because they satisfied certain criteria, and because we considered them either typical or outstanding examples of the variables with which this research is concerned. For example, the Mwea Rice Farmers was chosen as a case study, because we thought it was a good illustration of expression of basic needs, outrage at violations of those needs, and attempts by the community to demand their rights. It was also typical of this kind of phenomenon in the agricultural sector in Kenya in recent months. The same reasoning was applied to the Nyeri, Kwale, West Pokot, Turkana, Busia and Kirinyaga case studies. One danger of this method of sampling is that it leaves us with the problem of assessing how representative the data is. It is never the less cheaper and more convenient, and given the limited financial resources and time, for fieldwork, which constrained the development of a comprehensive probability sampling frame we opted for non-probability sampling broadly. However to improve the generalizability of the data, we studied more than one community, with the hope that if the data from several places were in broad agreement, then it should be likely that the relationships demonstrated a more than an accident of sampling.

We applied probability sampling in our random sampling for the basic needs of health and education. In these cases we interviewed all the respondents in all of our case studies on the issues of education and health. We also interviewed other communities on these issues. However we did not develop any sampling framework. The aim was to establish a general trend in the beliefs, attitudes, behaviour and experiences across an unstructured random samples of the Kenyan society.

1.1   Nature and Order of Presentation

The study report is organised in such a way that the purpose and the questions mentioned in Part 1 are answered progressively through all the chapters.
Part one lays out the research questions, objectives, methodology, scope and nature of presentation. Terminologies, and concepts are defined in Part 2. Part 3 is a review of literature on basic rights in Kenya. The fundamental aim is to establish the state of intellectual discourse on basic rights within

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a Kenyan and regional context. It is concluded in this part that the available literature dwells heavily on the question of constitutional history and political history, constitutional practice; the legal framework, and therefore the legal context on which these rights are predicated in the general African context. Such studies were done mostly by political scientists. This critique helps to show the difference between this study and what has already been done.

Part 4 presents specific case studies of citizens experiences with basic needs, and the extent of their application of the basic rights framework in their coping strategies. Each case study is presented so as to highlight the problems, challenges and experiences of the people with regard to the basic rights situation in each area. Further this part discerns and analyses the mechanisms and strategies used in the protection and promotion of human rights generally by national and community human rights organisations, and the attitudes towards the application of the basic rights approach to social transformation.

Part 5 is an analysis of the findings of Part 4. Part 6 draws specific and general conclusions of the study. Part 7 makes recommendations for further research, and for ways to make the basic rights framework more effectively applied as a tool of social transformation in Kenya.

1.   TERMINOLOGIES AND CONCEPTS

1.1   The concept of human rights

1.3   This study proceeds from the premise that the whole rights improvement is predicated upon the need to resist oppression. This approach recognises that without the fact of oppression, there can be no practice of resistance and no notion of rights. By taking this approach we aim to contextualize the experiences of Kenyans with rights, as an authentic case for analysis, and not a constant of analogy to a euro-centric concept of rights. This approach refutes the broad assumption that human rights are a western notion, an invention of 17th century enlightenment philosophers, and an ideological production of the French and American Revolutions.[2] The study however recognises the contribution of the 17th century enlightenment philosophy and the French and American revolutions to the question of human rights, as being, not one of conception of human rights, but one of discussing them in the context of a formally articulated philosophical system. It thus produced not a thing, but discourse about the thing, not the idea of natural law or human dignity, but the work of expression concerning the project of its formulation, explanation, analysis of its presuppositions and consequences- in short the philosophy of human rights[3].

This approach therefore situates the discourse within the paradigm of power and power relations. It assumes that power can be used by the more powerful to compromise the dignity and the potential

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[2] Mahmood Mamdani, *Social movements and Constitutionalism in Africa*, in Shivji S.G, State and Constitutionaloims in Africa: African Debate on Democracy, Sapes, 1991, p 237.

[3] Paulin J. Hountondji, The Masters Voice:Remarks on the problem of human rights in Africa; *reprint*, National university of Benin, p.323.

for the ultimate human fulfilment of the less powerful. The formal concept of rights is therefore a safeguard against such eventualities. Power is used here in a relative sense to include any situations where any person or institution, by virtue of strength, political or economic position, age, size, intellect, and any other quality which may put him/her in a position of ability to undermine the dignity, growth, survival, and or well being of another. There is evidence that even in ancient African civilisations, kingdoms and empires, there was the concept of rights. [4] Such rights were relative along class stratification and were not necessarily uniform or universal across social classes.

2.2 The contemporary construction of the concept of a right

The present construct of human rights has a long evolutionary history[5]. However, it was formally consolidated at the international level in the contemporary international human rights laws beginning with the Universal Declaration of Human Rights. The discourse leading to the formulation of this instrument and all others, was cast against a social-political background where the individual is sovereign, and the state gains its sovereignty from the individual. With this granted sovereignty, the state would have the ability and leverage to make policies within its borders, maintain order, and to provide ontological security[6] for its individual citizens. The notion of territory defined internal security and delimitation of risk and contingencies. The paramount relationship was the state-citizen relationship, and paramount in it was the welfare of the individual. It was on this supremacy of the human person over social organisation of power, that the concept of contemporary human rights was premised. In exchange for political power, the state would guarantee the human dignity and welfare of the citizen. It had the free hand to utilise public resources to this end. This controlled territorial capsule however has been opened up by the forces of globalisation. The state is no longer able to hold constant certain variables that affect the lives of its citizens. The economic interests of a few entities seem to supersede the interests of the individual human being, hence turning the very basis of the concept of human rights on its head. This raises the question of the viability of the formal concept of human rights as presently constructed. It is hoped that this study will among other things illustrate how these changes are affecting the rights framework in Kenya.

2.3   The concept of basic rights

Simply put, basic rights are rights based on those needs of the human person without which they would not survive, or would not be expected to live a life of dignity, or to pursue the fulfilment of their potential. The biological and social condition of the human being is such that certain conditions must subsist in order for him/her to develop fully in the tripartite dimensions of their existence- the physical, spiritual and psychological and to therefore have the chance to pursue their ultimate potential hence the term basic.

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[4] This is an area of study which should be pursued in order to root further the concept of rights for African people in their historical experiences.

[5] See Asbjorn Eide et al. Eds., Economic, Social and Cultural Rights, Kluwer Academic publishers, 1995.

[6] That is the continuity of their identity, and the constancy of their sorrounding social and material environm6ents of action.

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In international law parlance, basic rights are referred to as economic, social and cultural rights. These find foundation in the Universal Declaration of Human Rights (UDHR), and detailed elaboration in the Convention on Economic, Social and Cultural Rights (CESCR) and other instruments adopted by the UN General Assembly, specialised agencies, and by regional organisations. At the core of these rights are certain major closely interrelated and interconnected needs of the human person- the need for an adequate standard of living; the need to ensure an adequate standard of living; the need [7]for independence and freedom; and the need to benefit and participate in advancements which would facilitate an adequate standard of living. An adequate standard of living means the minimum conditions necessary for the subsistence of a human being; these are adequate food and nutrition, adequate and clean water, clothing, housing and health care. These are referred to as social rights. In order to enjoy these social rights, certain other rights need to obtain.

These are the economic rights. They have a dual function, most clearly demonstrated in regard to the right to property. On the one hand, the right to property serves as a basis for entitlements which can ensure an adequate standard of living, while on the other hand, it is a basis of independence and therefore of freedom. Because the right to property in its traditional understanding cannot be enjoyed on an equal basis by all, it is supplemented by two other rights - the right to work and the right to social security. The right to work provides an income ensuring an adequate standard of living, and the right to social security which can supplement, and where necessary fully substitute, insufficient income derived from property or from work in regard to the enjoyment of an adequate standard of living. Cross-lying both economic and social rights is the right to education. Education is increasingly important in order to make optimal use of property to secure an adequate standard of living, in order to obtain satisfactory work and to perform well in work, as well as to be able to use income derived from property, work, social security in an optimal way for an adequate standard of living.

Cultural rights are more complex and not directly relate to the subsistence of the human being. They are however essential for the psychological and spiritual and physical capacity of the person which would contribute directly to the achievement of an adequate standard of living. These are rights such as: the right to take part in cultural life, the right to enjoy the benefits of scientific progress and its applications, the right to benefit from the protection of moral and material interests, resulting from any scientific, literary or artistic production of which the beneficiary is the author, and the freedom indispensable for scientific research and creative activity. One important aspect of cultural rights is the right to preserve the cultural identity of minority groups, which has implications for civil and political as well as economic and social rights.[8]

In international human rights jurisprudence and practice, the Civil and Political rights have been simply recognised to such an extent that what remains debatable about them is not their content but the extent of their implementation and degree of violation by state parties to the relevant covenants.

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[7] Ibid., p 31.

[8] For the relation between the preservation of cultural identity and the enjoyment of economic and social rights for minorities and indigenous peoples, see A-C. Bloch, Minorities and Indigenous Peoples , in Supra note 6.

The Universal Declaration of Human Rights in 1948, was the first solemn statement to recognise economic, social, cultural rights as basic human rights norms together with civil and political rights. In the fifty years since the adoption of the Universal Declaration, there has been a tendency to dichotomise the nature of rights. The adoption of two different covenants in 1966 fuelled the notion that civil and political rights and economic, social and cultural rights were two different sets of rights. The argument in the past has always been that civil and political rights are capable of immediate implementation in the sense that they do not require material resources for their implementation. Also they are negative in that they prohibit certain forms of conduct, which renders them open to judicial determination. In other words they are justiciable.7[b]

The reinforcement of economic and social rights on the other hand depends on the availability of resources. The relevant Covenant provides that each state party undertakes to take steps to the maximum of its available resources, with a view to achieving the full realisation of the rights recognised in the present covenant by all appropriate means. Economic and social rights are therefore less capable of judicial determination.

Any doubt as to whether economic and social rights are human rights strictly speaking was settled in 1993 at the World Conference on Human Rights in Vienna. The Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights in 1993 states:

> "Economic, social and cultural rights and civil and political rights
> are universal, indivisible, interdependent and interrelated".

With the acceptability of social, and economic rights in legal documents attained at the Conference, there is now a clear platform to launch arguments that favour the inclusion of social and economic rights in national constitutions as well as more effective monitoring and enforcement of these rights. There is need therefore to find appropriate methods, approaches and interpretations to make them enforceable.

The Conference in Vienna was important, firstly because it reaffirmed the universality of all human rights. Secondly, the conference emphasised the inclusive character of human rights, in particular affirming the rights of women. Thirdly, the Conference emphasised the indivisibility and interdependence of all human rights, both civil and political rights and economic social and cultural rights.

This study focuses on the very elementary social and economic rights such as food, water, shelter, health care and education. However it is expected that the study will illustrate the interconnected-ness and interdependence of these rights with the others named above and with civil and political rights.

2.3   Peasant communities

The concept of peasant communities is used centrally in this study especially to refer to the Rogate

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Mshana in his study of peasant communities in Tanzania.[9] The term peasant communities as a unit of analysis is differentiated from the term peasant. It is a term which encompasses the various characteristics, diversity, distinct features of groups with all their alliances, conflicts and differences conditioned in time and space by changing internal; and external conditions of a society. We call them peasant communities because they are involved in activities not only limited to agriculture as their means of livelihood; They can also not be classified rigidly by using economic or sociological criteria derived from outside because they are dynamic and changing. They have their own world view and a framework in which problems are analysed. They are composed of sub units which are sometimes in conflict. Some of these conflicts are caused by external factors while others are internally instigated. They sometimes form themselves into organised movements or simply sporadic revolts of a short time span. Some members of the communities have sons and daughters as members of the governing elites. Because loyalty to the groups of origin in Africa is greater than to the nation state, a strict demarcation line between ruling classes and the oppressed is hardly realistic.

2.3 Social transformation[10]

The term "Social transformation" is used because it not only underlines not only change in society but a transformed state. It encompasses questions, such as who are involved in the process of change, what should be changed, who benefits from this change and why is change necessary. The term social transformation is deliberately used instead of the term "development" which is understood to mean "economic growth". This concept of development was coined in the west during the formation of the International bank of Reconstruction and Development (World Bank) in 1945. This concept was dogmatically used in training institutions and organisations world wide. It became a field of its own with so called development consultants. Development is a derived category emerging from capitalist theories of how societies should move in stages from their "primitive stages", to higher levels of "civilisation" It is necessary to analyse its history and its mounting on the world view. This type of development is referred to in this study as "developmentalism". It is contended in this study that developmentalism continues to dis-empower communities, and suppress their abilities to understand and demand their rights.

Social transformation is a process which enables human beings to realise their potential, build self confidence, and lead a life of dignity and fulfilment. It is a process that frees people from the deprivation of want and exploitation. It is a movement away from political, economic or social oppression. And it is a process of growth, a movement essentially from within society that is transforming itself. Since a nation is its people, this transformation should be an effort of, by and for the people. Real transformation is people centred. It is a process of self-reliant growth achieved through the participation of the people acting in their own interests as they see them, and which is under their own control. The peoples interests and desires can only be known when they are free and

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7[b] Wessels, Leon "Preliminary Remarks on the Various Aspects of Economic and Social Rights". In Africa Legal Aid Quarterly. Litigating Economic and Social Rights in Africa April – June 1999 Pp 9-11

[9] Mshana, R R,. Insisting upon Peoples Knowledge to resist Developmentalism: Peasant Communities as producers of knowledge for social transformation in Tanzania, Franfurt Univ., Diss., 1992, p 13.

[10] Adapted from Mshana R R., ibid.

have the channels to express them. In other words, power sharing is essential in social transformation.

This study seeks to establish the extent to which peasant communities are contributors to social transformation through the incorporation of the human rights framework in their frameworks of analysis and activities.

3.0 LITERATURE REVIEW ON BASIC RIGHTS IN KENYA

3.1 The history of basic rights in Kenya

Since rights are supposed to be checks or shields against abuse and mis-use of social-political power, and the effects of these on the human person, then the study of human rights must entail the study of socio-political power structures. Since socio-political power is a product of the forces of production- their ownership and control, then any analysis of socio-political power structures, must entail an understanding of the structures and modes of ownership and control of the means of production. The study of human rights therefore is incomplete without the analysis of economic power structures, and the kinds of social organisation they produce. A history of rights in any context must therefore be about the evolution of these inter-relationships. It is therefore not surprising that the literature available in the African context on rights is mostly by and historians and political scientists. Rights cannot be discussed in abstract, but as products of social processes and inter-relationships.

This part of the report attempts to discern manifestations of expression and practices of basic rights from the colonial time to date.[11]

Due to the dearth of literature specific to basic rights generally in Kenya until one year ago, we have relied on historical, sociological and political science materials with content relevant to our investigation.

3.2 Basic rights in the colonial period and the independence struggles.[12]

The struggle for basic rights is clearly manifest throughout Kenya's colonial history. A keen look behind the political struggles and organisation among the Africans in the colonial time reveals ongoing activity in demand of these. Some commentators on these periods observe that indeed the struggles for basic rights were the driving force of the political struggles and organisation throughout the colonial period and especially towards independence.

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[11] There is need to take this investigation to the pre-colonial times. This however is without the ambit of our present task.

[12] This part of the report analyses and relies significantly on the work of Firoze Manji, *The Depoliticisation of Poverty*, in Development and Rights, an Oxfam publication 1998; and the work of D.N. Sifuna, Nationalism and *Decolonisation*, in W.R. Ochieng, Ed., Themes in Kenyan History, East African Educational Publishers, 1990.

a) Social and Economic needs as a driving force for political independence struggles

One such commentator, argues that the struggle for Kenya's independence has been erroneously presented as a purely political struggle for self-determination, and as having been the result of the initiative and ingenuity of a small politically conscious nationalist leadership. Such a portrayal omits the story of what was happening on the ground, in the forests, villages, urban ghettos, classrooms, and workplaces, in spite of -- not because of these leaders.[13]There is evidence that the struggle for independence in Kenya, and the rest of Africa was informed, at the base, by the experience of struggles against oppression and brutal exploitation experienced in everyday life. For this study, these experiences are the sites for manifestations of basic rights during those times.

Firoze Manji argues that the unprecedented level of popular mobilisations and the formation of numerous popular organisations throughout Kenya and the continent after the second World War were informed at the grassroots not so much (at least not initially) by desires for abstract concepts of self-determination, but more by the struggles for basic rights, that were part of the everyday experience of the majority. The initial spark for most people, he argues, was provided by the desire to organise so as to claim rights to food, shelter, water, land, education and health care, and the rights to freedom of association, freedom of speech, freedom of movement, freedom from harassment and other forms of human rights abuses. In his analysis, Manji finds that it was these civil agitations (urban and rural) which provided the impetus to the liberation movements. He concludes that political independence was achieved through the ability of the leadership of nationalist movements to capture the imagination of these formations, uniting them in the promise that only through self-determination and independence could their aspirations be achieved.

b) Social and Economic Needs B the forms of oppression

Manji's contention finds support in D.N Sifuna's[14] historical account of the formations of the anti-colonial movements. Sifuna argues that the first world war had a considerable impact on the development on anti-colonial protest movements. The close interaction with European soldiers showed the African soldiers their vulnerabilities. They had before then thought them invincible. When they came back home, they spread the word and levels of confidence in the Africans rose in their demands from the colonial administration. These demands were especially fuelled by social economic factors. From Kenya alone, over 10,000 soldiers and about 195,000 military labourers (carrier corps) were involved in the war. The Africans also provided slaughter cattle and other forms of food. In 1916, the hut and Poll Tax was increased in order to meet the high cost of fighting an essentially 'foreign' war to Africans foreign war. With the soldiers scheme opening up in parts of the Nandi reserve for European settlement in 1919, the insecurity of land tenure became an increasingly intense issue. Then there was the grievance of the frequent use of forced labour in the reserves for construction of roads, working on European farms and other communal tasks. An additional grievance was the kipande system which the government instituted in 1919 as a means

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[13] Firoze Manji ibid at p 13.
[14] Supra, note 12.

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of regulating the flow of African labour to the white highlands. Then the increase of the Poll Tax in 1920 from ten to sixteen shillings placed a heavy financial burden on the African population. In the same year, the change of status from the East African Protectorate to the Kenya Colony signified to the more politically aware Africans that their interests were certain to be even more disregarded. With European employers slashing African wages by one-third and an economic slump in 1921 which led to lower prices, conditions became unbearable.

c) Modes of organisation to counter socio-economic oppression

Sifuna argues that the Africans reacted sharply to these increased socio-economic hardships, and the total disregard of their basic needs, caused by these discriminatory and oppressive policies. They formed political organisations in order to protect their interests. The objectives of most of these organizations was to demand the fulfilment of specific social or economic needs. This depended on the particularities of the experiences of each group. In Central Kenya in the mid 1920, the **Kikuyu Association** was founded. Its main objective was to protest to the government over land alienation in the area and to gain title deeds for Africans. In 1921, Harry Thuku founded **the Young Kikuyu Association**, demanding the abolition of the *kipande* system, lower taxes, use of forest land, an increase in education and title deeds for land owners. In 1924, **the Central Kikuyu Association** was started in Muranga. It was later renamed **the Kikuyu Central Association** to give it a much broader appeal. It requested the revision of the 1915 Crown Lands Ordinance and the creation of the post of a Kikuyu paramount chief with judicial powers and representation on the Native Council.

In Nyanza, the **Young Kavirondo Association** was formed during the second half of 1921. It questioned the increased taxation and the *kipande* system. Significantly, the association also demanded a government school in Nyanza, and the general improvement of educational facilities for Africans. In early 1930s, the Kakamega gold rush and the corresponding threat of land alienation in North Nyanza led to the establishment of the **North Kavirondo Central Association.** It opposed land alienation and asked for a paramount chief. Other protest movements with similar objectives included **the Ukamba Members Association, Coast Arab Association, The Afro-Asian Association** among others.

It is important to note that these movements were not demanding changes in the power and administrative structure which was the source of their suffering, but for rectification of socio-economic injustices within the system. To grant these demands would have meant a compromise in many areas which would have cost the Europeans a lot in economic and social advantage. Therefore, to quell down the mounting pressure. The colonial administration conceded to some minor demands, such as the establishment of the Local Native Council in 1924 as legitimate and alternative bodies through which African opinion could be voiced; and the founding of Alliance High School to create an African leadership independent of Asian control.

d) Increased exposure and education: The beginning of the evolution of organizations to adopt deeper and longer term goals and more sophisticated modes of organising to change the power structures once and for all.

According to Sifuna, the second World War precipitated a more advanced political crises in the country. With the outbreak of the war, political organizations were proscribed and their leaders detained at Kapenguria. Forced labour for Africans was introduced on European farms as well as conscription into the Kings African Rifles. In march 1943, some 16,000 Africans were conscripted and were forced to work on private farms and other undertakings. It is important to note that the second world war not only disrupted African development but also intensified African sensitivity and aspirations. This led to better articulation and contextualised demands for socio-economic and political needs of Africans. First, there was the return of the African ex-servicemen who had a high economic and political awareness especially as they faced the serious problems of unemployment and overcrowding. Then, towards the end of the war, Kenya witnessed a steady growth in secondary and high school education. At the same time there was increase in the number of Africans with both secondary and college education. Output from higher educational institutions mainly from outside increased to such an extent that, in the context of the framework of socio-political changes of the period, an educated elite emerged at the national level. With the emergence of this frustrated elite, the nationalist movement took a new turn with the aim of not only rectifying socio-economic and political injustices that Africans were experiencing, but to overthrow the colonial system. They then began organising nationally and this led to independence and the Independence Constitution.

These struggles, Manji argues, constituted the emergence of a tradition of struggles for rights which was organic to and informed by the specific histories and expectations of those involved. Just as the bourgeois revolution which brought the capitalist class into ascendancy in Europe led to the emergence of a particular construct of rights proclaimed against the *ancien regime,* so Africa's struggle against the colonial yoke gave birth to its own traditions of struggle and a construct of rights. The construct of rights in the African context, according to Manji, was therefore not something which was God-given in its universality, but forged in the fires of anti-imperialist struggles. It was informed by the need to overthrow all forms (not just colonial) of oppression and exploitation. It was not informed by constructs which had either been embodied in the Universal Declaration of Human Rights or imported into Africa by those nationalist leaders who had spent periods in exile or study in the imperial homeland. Manji therefore departs from the conventional generalisation and universalisation of the construct of rights, and casts rights in the historical processes and the experiences of people with oppression and their fight against it.

Manji's analysis of the context in which we should study and understand rights in Africa is a reflection of Mamdani's[15] argument that the concept of human rights is not a specifically western notion, nor is it an invention of the 17th Century enlightenment philosophers. Oppression, wherever it occurs, always engenders a human rights movement. Therefore in order to gauge the African conception of human rights, we need to have concrete conceptualizations of the wrongs on the continent. We need to discern the struggles against oppression throughout its history and the socio-political contexts which informed the struggles and created a defining discourse around them. Mamdani argues that we need to understand how state power has been organised in relation to different social groups. We need to struggle towards a definition of the agenda for human rights and

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[15] Mahmood Mamdani, *Social Movements and Constitutionalism in the African Context* , in Issa G. Shivji Ed., State and Constitutionalism: An African Debate on Democracy, Sapes Harare, 1991.

the rule of law which will not displace the discourse of power and popular sovereignty but will in fact lead to it.

3.3   Independence constitution and the betrayal of basic rights

The negotiation of the independence constitution should have been the platform for the overhaul of the power structures to ensure that the system and the dynamics which precipitated the inequality and oppression which are the rallying points of the independence struggles were changed to serve the interests of the masses. Instead, the independence constitution was negotiated thousands of miles away by an African nationalist elite whose immediate needs were not basic survival but political power. According to Manji, It was a document of political self-determination from colonial authority, which delimited freedom to the abstraction of political guarantees and lost all else that was the underlying force for the demand for political freedom. The needs that propelled the independence struggles were accorded no priority value or utility in the transition process.

3.3.1   Legality versus legitimacy of the constitution: accessibility of constitutional guarantees by peasant masses

This raises fundamental questions touching on the issue of the legitimacy, ownership and utility of the constitution. Looking back at the process of the making of the constitution, it is clear that it did not involve the masses, nor were the interests of the masses incorporated there in, and that it was therefore not a legitimate document for the majority. There is however no doubt that it was a legal document. This raises the question whether the legality of the document makes it legitimate. If it is perceived - as it is, as not being legitimate, it also means that it is not accessible to the majority, and serves the interests of a few.

For purposes of this study, it begs the question as to whether disputes between the state and citizens have been negotiated within or without this legal realm? Has everyone been able to access this legal realm? Can we expect that rights can be negotiated and enforced in this terrain under the existing circumstances? The indications are that the constitution did not and does not consolidate the aspirations of the peasant masses and cannot therefore be expected to be the terrain for the construction of their rights as it is.

3.3.1   Nationalism and the undermining of the human rights framework

After independence, the nationalist leaders saw their role as that of sole developer and sole unifier of society. They sought to displace the popular sovereignty in the peasant masses with the notion of nationalism. By so doing, they deflated the political dynamism which drove the masses through the independence struggles. The popular associations which had projected the nationalist leadership into power began to be seen as an obstacle to development. Social pluralism was frowned upon and illegalised. It was argued that there was no longer any need for popular participation in determining the future. The new government would bring development to the people. Social pluralism could only be practised within certain truncated legal spaces such as co-operatives, and unions. This

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development had a far reaching effect on the evolution of human rights culture. In some countries, the Bill of Rights was either expunged or omitted from the constitution altogether. Since it was viewed as introducing an unnecessary fetter upon the government in the latter's efforts to "bring development". This was the argument adopted by officialdom in Tanzania for example, in Kenya, the more elaborate Bill of Rights which had occupied chapter one of the independence constitution was soon to be relegated to chapter five in a more restricted form and where it has remained to this day.

The masses were overnight turned from dynamic, organised agitators for their rights, to people without any pro-active agenda and recipients of charity from the government and others such as the church. The human rights framework was undermined and rarefied into aspirations of national unity and into the amorphous notion of development which the government would deliver sometime in the future when it was able to. Civil and political rights were rarefied and codified in laws and the constitution whose relevance or application was determined by the self-proclaimed and increasingly unaccountable guardians of the state. The language of rights was lost. The masses became passive and docile.

Manji argues that the discourse on development was not about development in the sense of developing the productive forces. It was about creating an infrastructure which advanced the capacity of the new ruling class to accumulate, and smoothing away inefficiencies that hampered the capacity of international capital to continue its exploitation. It would seem then that the promise for development was a function of outside interests, and not a resolved concern of the new ruling elite.

He further observes that the structures of accountability and democracy which were inherent in the movements centred on rights were gradually marginalized and replaced by the ascendancy of the

expert, supported by the bureaucratic and centralised decision-making under the guise of national planning.

Up to and around the mid-seventies, there was a marked improvement in the social provisioning especially in health and education. This served to lure the masses into further complacency, in the now illustrated belief that the government knew what was best and would indeed deliver. All was well for the majority.

3.3.1 The failure of developmentalism, increase in poverty and the re-emergence of rights activism among the masses

From around the mid-to-late seventies, due to mismanagement of the economy by the ruling elite and the increasing inability to service external debt caused by changes in the global economy, the

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state became increasingly unable to deliver on social services and infrastructure at the speed and level they had achieved earlier. Standards of living began to steadily decrease especially among the peasant masses, and the economy quickly approached the crisis of a collapse. International monetary institutions stepped in with strategies to save the economy from collapse. One such strategy was the Structural Adjustment Programs (SAPs). This program has been one of the boldest signs of the attrition against state sovereignty especially for countries of the south, and of the increased albeit imposed role, of international financial concerns in the power equations in these countries. It is however appropriate to observe at the outset that the mismanagement of the economy in the early 1980's by most African countries (Kenya included) was a direct result of the relegation of a human rights regime to the backwaters of constitutional governance. With a complete de-emphasis on the economic, social and cultural rights, governments were left to "manage" their economies without any reference to the people. This lack of people centred accountability meant that the political elite could plunder the economy almost at will, hence the near collapse leading to the intervention of the Bretton Woods institutions.

The SAPs may have saved the economy from imminent collapse, but on the other hand have exacerbated the poverty conditions of most Kenyans. The transparency and accountability yardsticks upon which SAPs are predicated are couched in bilateralism and multilateralism with only incidental reference to human rights; and even then to civil and political rights only. This has increased tension between the haves and the have-nots. This popular dissatisfaction with the government for failure to deliver in the eighties to date has led to spontaneous demonstrations and general unrest targeting the government. Here was evidence of the re-emergence of rights organising and activism in the new dispensation. As a result, popular organisations became targets of repressive legislation, and administrative action. Even though funds were established for mitigating the social dimensions of adjustment, this did not help much to improve the living conditions of the majority of Kenyans in any meaningful way.

SAPs , through programmes such as privatisation continue to increase the levels of poverty and the promised trickle- down is yet to be seen. Mismanagement of resources by the government of the day works to undermine the economy, and equal distribution of resources, and hence increased poverty and inequality. This has led to further fall-out of the state with the masses. Increased reactions is manifested in increased unrest and demonstrations against the government and its agencies in both rural and urban areas. Most of these demonstrations are agitations for certain social or economic needs. It is in these manifestations of resistance that we can look to for a construct of basic rights.

3.3.4 Emergence of national Human rights NGOs: The parallel agenda between civil and political rights; and social and economic rights activism

From about early eighties, a number of non-governmental initiatives were formed mainly among lawyers with the broad objectives of protecting and promoting the rule of law, human rights and democracy. These were such as the Public Law Institute (PLI), and the revitalisation of the Kenya section of the International Commission of Jurists (ICJ(K)), which was until then an association of lawyers which was predominantly white in its membership and not willing to be heard to speak

against the administration. Increased numbers of African lawyers in its membership created the space for it to become a platform for expression on issues of concern of the rule of law, human rights and democracy.

At this time in the political history of Kenya, there was widespread repression of dissent, with the objective of centralising and entrenching the single party rule. It was also in the first years of the Moi regime, which was determined to gain acceptance and reverence at any cost. There was widespread fear of expressing dissent in any circles, because of the impunity with which the administration effected detentions without trial, torture and even mysterious deaths of dissenting voices. The ruthless suppression of dissent was complemented by the systematic emasculation of institutions such as parliament, judiciary and public Universities.

These initiatives then were set up to respond to the need for a platform for the expression of dissent. Naturally, due to the apparent state of violations of fundamental freedoms and civil and political rights generally, these became the focus of the emerging organizations. Furthermore, this approach was in tandem with the international human rights movement, which strongly advocated the civil and political rights as first generation rights, and as the rights which must be realised before any other rights were possible.

This approach then informed the growth and development of the human rights sector in the civil society in Kenya. Social and economic concerns were not an issue of priority for rights in our context. People needed to be able to associate, to speak out in dissent, to check governmental power . But then of course, no one asked the masses what they thought, or what their priority issues were. The learned urban elite purported to know on their behalf. They therefore developed a discourse, which in effect articulated only their priority concerns and interests (contestation for political power), and could not articulate the interests of the masses because they did not find out how they were experiencing the oppression, and therefore what they thought could be of more use to them. Since social pluralism was restricted just as much as was political pluralism, the masses were paralysed by fear and the stringent constraints of the law. They were not heard in the forums that mattered, and they were not able to freely associate to articulate their interests and develop their discourse.

The human rights culture in Kenya therefore continued to underdeveloped within that restrictive paradigm of the priority nature of civil and political rights over social and economic rights and others. This paradigm informed the development of the sector and nature of organisation around human rights in Kenya until the very recent past.

3.3 Constitutionalism and basic rights in Kenya

Constitutional practice in most of Africa has until recently focused on the administration and distribution of political power. In the area of rights, it has focused on fundamental freedoms. As such, constitutional reform to facilitate transition to democratic pluralistic politics focuses on the

political issues of political power. As observed above, the constitutions of Africa are more the consolidation of the interest of the ruling class and a small portion of the middle class, than they are the consolidation of a unitary national ethos that is representative of the interests of all citizens.

Be that as it may, the constitution has not been the torch of governance in Kenya and other African countries. Many elements of governance and negotiation between the ruling class and the masses takes place outside the realm of the constitution. Even those rights that are clearly spelt out therein are therefore not available even to the middle class. Very few constitutional cases have been litigated in Kenya. They have all been on issues of contestations of power between the members of the ruling class and or outspoken middle class. Most of these guarantees are whittled down by exceptions within the same document hence raising questions of inconsistency in the constitution, and questions of its supremacy. This contradiction within the text is further reinforced by the rest of the legal system through administrative laws which are clearly contradictory and unsupportive of the constitutional provisions.

The laws constrain organisation and association and hence disabling citizens in their efforts to realise constitutional guarantees. This raises questions of the utility of the present constitutional culture in Kenya as a tool for social transformation. Are constitutional rights in Kenya of any utility to the masses in the situation where the constitution itself and the legal system are not supportive of social pluralism? It seems apparent that constitutional rights must be accompanied by the legality to organise both socially and politically. The mere provisioning of rights in the constitution will not make a difference in the conditions of the lives of the masses.[16]

3.3   The legal and policy framework for basic rights in Kenya

The challenge for governments is to translate the formal human rights from their international level of abstraction to practical, realisable opportunities for dignified living. The first step is usually the signification of consent to be bound by the treaty obligations through ratification. The second step is to domesticate the content of these rights in a respective legal system through specific legislative efforts. The third step is to ensure the implementation and enforcement of these rights. It is important to determine the extent to which treaty obligations are placed on particular states. It is important to agree on the best interpretations that maximise state obligation so that the protection and enforcement of rights find optimum application. In their adoption of human rights instruments states are not limited to the standards set therein. In their municipal or national legislation, they can go much further. 15B

Transformation, whether into constitutional or into statutory law can be fully achieved only when it goes hand in hand with the evolution of a human rights culture. Politicians, administrators and

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[16] For further reading on this argument and on pluralism and the right of association, see Mahmood Mamdani, Pluralism and the Right of Association

15b See the Address of Justice Yvonne Mokgoro in "Lighting Economic and Social Rights in Africa" Africa Legal Aid Quarterly April – June 1999 Pp 8

citizens must know their rights but also accept their duties flowing from these rights. Duties to respect the rights of other persons and duties to contribute to the common welfare, make it possible for the state to assist in ways which enable everyone to enjoy their economic, social and cultural rights.

Development from a human rights perspective means the improvement of the quality of life and the enhancement of equality and justice. Governments must be concerned with this kind of development. First and foremost development embraces a human rights culture which affords people not only the right to benefit from activities of the state, but also to take an active part in improving their lives. This removes the dependency syndrome whereby the state presents itself as the benefactor of rights. This also requires a culture of openness in the operations of structures of government and the machinery of state. It obliges the state to ensure that citizens are informed of policies and activities of government and that they themselves take part in their formulation and implementation. It also requires political and civil society organisations and institutions that are accountable and in touch with the citizens.

It is against this background that the Kenyan situation may be analysed with regard to economic, social and cultural rights

3.5.1 International obligations

Kenya is a party to both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It is also a party to the African Charter on Human and Peoples Rights. The Charter guarantees the right to work under equitable and satisfactory conditions (Article 15), The right to physical and mental health (Article 16), the rights to education and cultural life (Article 17), and the right to economic, social and cultural development with due regard to freedom and identity and in the equal enjoyment of the common heritage of mankind. To this extent, Kenya is bound to implement her obligations under the two instruments with regard to civil and political rights. The Kenya constitution embraces a number of fundamental principles and freedoms in its Chapter five which reflect the degree of her commitment to human rights. The constitution however does not recognise economic, social and cultural rights which are embodied in the relevant international instruments.

The net effect of this situation is that economic, social and cultural rights are not justiciable at the constitutional and international law level. One therefore has to look at the ordinary legislation to be able to determine the extent to which the state is obliged to ensure that the citizens enjoy their basic rights.

3.5.2 Domestic obligations

From the point of view of ordinary statutory law, three categories of law are discernible. These are:
    _ Laws that define the state/citizen relationship.
    _ Laws that regulate associational and institutional forms.

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    _   Laws that define and regulate the process of production

The first category comprises of laws through which the state exercises control over social and public life generally such as the Chiefs Act, the Public Order Act etc. The second category comprises of laws through which the state regulates and controls the citizens efforts to associate so as to address their economic, social and cultural needs. Such laws are for example the Cooperatives Ac; The Non Governmental Organizations (Coordination) Act and many others. The third category comprises of laws which define the context and the ownership and control of resources (means of production). To this extent, these laws determine the terms and conditions of access to the means of production. Many laws in this category establish institutional and regulatory mechanisms for the production and marketing process and the delivery of social goods and services.

The basic rights situation in Kenya is determined by this legal regime. The salient features of this regime are as follows:

i)   The laws that regulate access to natural resources whose exploitation is necessary for a dignified living. (e.g. land and water) vest the ultimate ownership of these resources in the government. The citizen s ownership of and access to these resources is derivative and secondary in nature. Such ownership can be extinguished at any time in the public interest. (Examples in this category are the various land laws such as the Government Lands Act, the Registered Land Act and the Trust Lands Act, the water Act and the Forests Act)

ii)   These laws do not embody any declaratory principles guaranteeing every citizen access to the means of production and survival. As such, there is no legally declared right to shelter, food, clean water, or a healthy environment. All these entitlements are couched outside the framework of law and confined to official policy documents such as the sessional papers, Policy frame work papers and development plans instead, the law defines the content of the citizens rights and regulates those rights. The citizen is legally alienated from the main resources of survival. The language of the law is therefore exclusive and supervisory.

iii)   The said laws do not place a duty on the government to ensure the protection and efficient management of the resources for the benefit of all. Instead the government is empowered to police the manner in which the citizen uses those resources. The underlying assumption is that the government is an all time benevolent manager of resources. While the citizen is inherently a dangerous predator who must be kept in check at all times. This explains why the laws in question do not give any right to the citizen to challenge governmental action relating to these resources in a court of law. Any litigant wishing to challenge the government in court must first surmount formidable technical hurdles in the name of *locus standi*.

iv)   The laws that establish institutional and regulatory mechanisms for the production and marketing processes and the delivery of basic social, economic services (such as the Agriculture Act, the Public Health Act, the Education Act etc.) do not place a positive duty on the government to ensure the delivery of these services to the citizen.

The government is portrayed as the citizens benefactor and not an organ that must deliver these services or at least create an enabling environment within which the citizen can enjoy these rights. This situation has had the net effect of removing these social economic and cultural needs from the purview of rights and relegating them to the arena of relief developmentalism.

3.1 EXPERIENCES WITH BASIC NEEDS, AND THE USE OF THE BASIC RIGHTS FRAMEWORK AMONG PEASANT COMMUNITIES

3.1 The Rice growing community in Mwea

Mwea is a division of the Kirinyaga District in the Central Province of Kenya. It is here that the Mwea Rice Irrigation Scheme is situated. The Scheme was built by some of the detainees of the Mau Mau war of independence, who following their release, were settled on the land to begin the experimentation of rice production.[17] Those settled here were mainly the Kikuyu who, while in detention, were rendered landless by the dispossession of their land by the British settlers. Since 1957, when the scheme was begun, farmers have lived there under a very oppressive tenancy regime regulated by the Irrigation Act. This regulatory framework is enforced through the National Irrigation Board (NIB). Under this framework, the NIB is the owner of the land, and the farmers are licensees All these years, the farmers have engaged in what would be latent resistance to their imposed status and the inhuman and threatening conditions of life obtaining from this situation.

Under the regulations, farmers cannot grow any other crops, or keep livestock without express permission of the manager of the scheme. All the rice crop is property of the NIB, and the scheme manager determines what amounts the farmer can retain for food after each harvest. Rice in this area is a one season crop per year. Farmers are usually given twelve sacks for food for the entire year. Food inadequacy is therefore a major recurrent problem.

All the costs of the process are borne by the farmers. The NIB determines the costs. This has meant that many times the farmers have not earned any income from the crop at all. This means that the twelve sacks of rice per household become the source of income as well. Some of it is sold for school fees, for health costs and for diet supplementation. As a result many children have not been able to attend school and where they have, their performance is low because of hunger and poor health.

Rice growing is a labour intensive process. Everyone is therefore involved in the activities. Many children are therefore manual labourers on their parents farms, for others to earn some income, or else mind the young ones while their parents work in the fields. This, and the low income from the crop, has led to poor enrolment in schools and therefore a general level of illiteracy or very low literacy.

Rice growing also takes place under wet conditions. These conditions lead to a high incidence of

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[17] For a detailed account of the re-settlement of Mau Mau ex-detainees in this area, see the report by Kenya Human Rights Commission entitled   Dying to be free: The struggle for Rights by Mwea Farmers, 1999 (To be Published).

disease. The main diseases are malaria, diarrhoea diseases such as typhoid fever, amoebic fever, bilharzias and hookworms. Malaria is the leading problem. About 65-70% of those visiting the local clinic are are malaria infected and 20% have either of the diarrhoea diseases.[18] Poor health is attributed to the wet conditions but also to poverty. Treatment of some of these diseases such as malaria is expensive. Illness means that one is unproductive for at least two weeks and this affects the farming and therefore the crop yield. Several people from the same family may be ill at the same time especially at certain times of the year.

There is no facility for clean water. Farmers have to draw their drinking water from the canals (contaminated water). There are also no appropriate sanitation facilities on the scheme. This exacerbates the contamination of the water.

Farmers cannot plant trees on the scheme, so domestic fuel is a major problem. They improvise or have to buy wood or other means.

For a long time until the 1997 general elections, the community has lived under political oppression with political leaders being imposed upon them through irregular means by the ruling party. This has meant that any voices of dissent against the government were quickly hushed through termination of tenancy on the scheme, and other illegal means. The farmers were purported to speak in unanimity through the imposed political leader (member of parliament). Representation on the NIB was manoeuvred, and the voice of the farmers was not heard in the decision making of the board.

The farmers have not altogether resigned themselves to these conditions. Over the forty two years of the scheme, there has been many instances of resistance to the oppressive laws, to unfair prices and costs, to insensitive NIB decisions, to political oppression, to intimidation through unfair termination of tenancies, and to the general conditions of poverty and slavery. These resistances were latent and often not noticed at the national level, but they have sustained the farmers, and in some instances they have been successful. There were strikes, protests and physical confrontations.

It is clear that the farmers recognise affront to their dignity and a continued threat to their livelihoods. They feel removed from the rest of citizens and from the state. They acknowledge that their entire situation is a violation of their rights as supposed free Kenyans.

> *Kai tutari ota andu aria aangi a Kenya? Kai tutari uhuru? Kai Mwea twatigiririirwo? Tutuuraga ta nyamu na ngombo niki, Kenya yothe magituuraga ta andu? Ni kuuga tutiri haki ona iriku? Twakuaga tukihuranira ki? Waiathi wa gutunina? Njiira.* (Are we not free? Was Mwea left out at independence? Why do we live like animals and slaves while the rest of Kenyans live like human beings? Does it mean we have no rights at all? What were we
>
> sacrificing our lives for in the freedom struggles? Independence that would finish us? Tell me.)

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[18] Ibid at page 14.

Paul Njoroge Kamau(Old ex-detainee and farmer from Murubara village)

The farmers are bitter and resolved to fight for their freedom. They know that at the base of all their freedom is the land ownership question. This is their long term goal. They are bitter with the government because it does not listen to them, and it in fact directly intimidates them through the provincial administration. They have tried to address the ownership problem through seeking audience with key government officials. They say that the problem lies not so much in the laws as they are often told, because laws can be changed. Rather, it is one of corruption, selfishness and greed. They say there must be people in government benefiting from their miserable situation.

At the moment however their agitation has been for relief from immediate and visible problems. In one such issue they have successfully realised their goal after a lot of struggle. This is the instance which has brought the plight of these farmers to national public attention, and has led to human rights organizations seeking to work with them. Due to the oppressive regime of the NIB, the farmers fought to market their produce and to run the whole of the production process independently. To this end they formed the Mwea Rice Growers Multi-purpose society. This would ensure better seeds, better maintenance of machinery and other facilities, better prices, lower production costs, greater portions of food per year, greater incomes, and better overall standards of living. Through violent skirmishes with the administration, and difficult tussles with the NIB officials, court battles, deaths of farmers at the hands of riot police, they have managed to market their own rice and control most of the production process, and the benefits can now be seen. One middle aged woman from *Murubara* village fainted after being paid KShs. 100,000 (Approx. US$ 1300) by the Sacco for her paddy. She and others had never seen so much money in their lives. But their battle is not over because they are still tenants of the NIB. It has refused to let go of some critical facilities such as the Rice Mills and stores.

Their resistance has however gone back to the latent mode, and is no longer visible in the eyes of the public. It seems that their struggles have been focused on specific issues and the very concerted organising fizzles after realisation of goal or after realising the futility. Sometimes the organising has been completely undermined by political forces and provincial administration.

They have heard about the constitution and while some think it will solve their problems, others think that no law could make a difference so long as the present government is in place. Many see their problems as being a direct result of the greed of certain individuals in government such as the President his family and political associates.

4.2 The coffee growing community of Nyeri

Nyeri is a district in the central province of Kenya on the eastern slopes of Mt. Kenya. It is occupied predominantly by Kikuyus. It is a fertile red soil area, very conducive for coffee growing, and the growth of many food crops. Most of the people in this area own the land they cultivate. Whereas there are pockets of poverty regions in the district, most people live decent lives with enough food,

and some form of income. School enrolment is high and therefore literacy rates are relatively high. The levels of education could be better but for the interference from the coffee farming especially during the picking periods. Health conditions are relatively better than most areas and there are a number of good health facilities. These are however privately owned and therefore not accessible to people of low income.

Some of the major problems cited by interviewees were the collapse of the infrastructure such as roads, and the marketing systems due to liberalisation. These factors have contributed to the apparent decrease in people s standards of living. Children no longer attend secondary school to the end because the coffee money does not come on time and when it does, it is insignificant as too many deductions would already have been made. The poor state of both access and main roads have interfered with the marketing of coffee, and general public transportation. This has decreased the volume of trade and commercial exchanges in the area hence many people are unemployed, and the traders are doing poorly.

The Nyeri people have always been confronted with the problem of marketing of coffee. Before liberalisation, all coffee had to be milled by the Kenya Planters Cooperative Union (KPCU), and marketed by the coffee board. These are government bodies. The farmers have been ignorant of the whole process from the point where their coffee is taken to KPCU to the point of receiving payments. They did not understand the international going rates of coffee, and therefore what their coffee actually fetched. They did not understand the currency rates used in payments at that level and the rates used in payment to them. They were not clear who the middle men were, and why there seemed to be so many deductions on their pay slips.

With liberalisation, and the establishment of alternative private and marketing facilities, farmers saw the opportunity to demystify the process. Some wanted to take advantage of the new developments and explore the use of other mills and marketers for their coffee with the hope that since the new ones were private, the farmers might be able to enforce some level of transparency and accountability and therefore earn more form their coffee. Some however felt safer to remain with government millers and marketers. These differences created tussles and divisions among the farmers. The new players on the scene were Thika Coffee Mills (TCM). These differences affected cooperative societies and even factories. Local politicians attempted to force the farmers to take their produce to TCM, and this led to protest and skirmishes between the supporters of KPCU and those of TCM.

The farmers consider that they are fighting for their rights. Even those still milling and marketing with KPCU are not happy. They want more transparency and better marketing and therefore better money. They say they are tired of being exploited. They say KPCU should be handed over to the farmers to run so that they can mind their interests. They say the exploitation, delayed payments and farm inputs and poor roads is a violation of their rights.

"Unajua, ni kudharau haki zetu sababu kwanza tumefanyia hii kahawa kazi sana. Kahawa yetu ni grade moja. Halafu mtu anatuchezea tu. Malipo ikija ni kama ya mbuni, na tena

inakuja wakati watoto washatolewa mashule kitambo. Mtu akiwa mgonjwa hakuna pesa za kwenda hospitali muhimu, ni hizi za serikali, na huko ntu anaenda tu kufa. Unoana. Tena hata kahawa yenyewe inaendelea kuharibika, kwa sababu hakuna pesa ya kununua madawa na mafatalaisa, na haya mafactori hawaleti tena. Sisi tunaipigania jasho letu, sababu ni haki yetu. Hatuombi mtu. Kama kuna serikali inayofaa kuitwa serikali, kwa nini hawaangalii

mambo ya wakulima. Mabarabara huku yaliisha kitambo. Hawawezi! Sababu wenyewe ndio wanatunyanyaza".

("You know, this is playing with our rights, because we have tendered the coffee well. Our coffee is grade one. And then someone just undermines us. When the pay comes, it is like for reject coffee, and then it comes late when our children have been long chased from school for lack of fees. When one is sick, there is no money to go to a good hospital. They just go to the government ones, where people just go to die. You see. Then even the coffee itself is deteriorating because there is no money to buy insecticides and fertilisers, and the factories do not provide enough of these any more. Us we are fighting for our sweat, because it is our right. We are not begging from anyone. If there is a government worth being called a government, why doesn't it address the concerns of farmers. Our roads got finished along time ago. They cannot! Because they themselves are the one exploiting us.")

"Pauline Wanjiru (Farmer and chairlady of the Democratic Party in Gachuiro sub- location"

The organising and agitation in this area has been constrained by provincial administration. This is widely attributed to the fact that this is an opposition party stronghold. Further, the neglect of the transport infrastructure has been increasingly seen as sabotage of development of this area by the government of the day.
These problems continue. The visible organising has fizzled but the struggle continues at the local level.

Most of those interviewed had heard about the constitution. Majority wondered whether indeed it can change anything. "Will Moi go? Because if those reforms are not going to get rid of Moi and his people then nothing will change". Those who aired these sentiments said that the problem was not with the constitution but with people in government and the way they were governing. Many spoke of corruption and nepotism, and greed.

About the law, many felt that the legal system was compromised. They spoke of corruption and impartial treatment of those in political office and the people with money. They spoke of high lawyers fees and delays in cases. They are not confident that their current problems could be impartially determined in a court of law.

ANjiguaga ati ona majaji othe mathuragwo ni Moi. Riu urakinjira uhoro wa watho uriku, ungi uteri wa Moi? Kuu githii ti gute mbeca?"
(I hear that even all the judges are chosen by Moi. So of what law are you telling me except the law of Moi. Isn't that wasting money?)

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About the conditions of the health infrastructure, many said that the government support had almost stopped. The government hospitals, and dispensaries had deteriorated and many people were afraid to go there because of the rate of deaths. They said there are many private clinics and hospitals coming up which are alternatives. They are expensive for the majority. Some people said they are afraid to go there as well because they are not sure of the qualification of the personnel there. Many cal themselves doctors but they are just retired nurses and officers. There have been many rumours of fake drugs. So many people travel to Nairobi to their relatives there when they fall ill. They said they think the hospitals in Nairobi still maintain some standards. The effect however is over burdening the urban population and infrastructure.

4.3 The subsistence agricultural communities of Busia

Busia is in western Kenya at the border with Uganda. For the people of Busia, the main socio, economic and cultural problems highlighted in the interviews are poverty, lack of clean water, poor health facilities, lack of employment among the youth, inadequate education facilities and poor or non-existent infrastructure.

The respondents identified several indicators of poverty at both the family level and the community level.

Poverty at the family level was given the following indicators:
(i)   A family with little or no food, always exposed to conditions of starvation, irregular and unbalanced diet, eating food which under normal circumstances they could rather avoid.
(ii)   A family with malnourished children suffering from preventable illness or maladjustment such as kwashiorkor, malaria and anaemia.
(iii)   Lack of shelter or poorly constructed shelter made of materials such as grass, wood and mud. A family with a licking house or roof was viewed as a poor one.
(iv)   Lack of livestock such as cattle, sheep, goats and chicken is an indicator of poverty.
(v)   A family with naked, unclothed children, children in tatters or dirty clothing and without bedding and shoes, cannot afford soap and the like.
(vi)   Having many children who are not schooling or in college due to lack of school fees.
(vii)   Presence of many unemployed children at home who are hopeless, helpless and depend on the parents for their livelihood.
(viii) Lack of property or income generating activities at the family level.
(ix)   Unhappy children due to lack of basic needs like food, clothing, school fees and the like.
(x)   A family that lacks basic households such as cooking utensils, having plastic cups and plates, lack of chairs.
(xi)   A family with children employed as maids, house helpers or farm labourers in other people's homesteads.
(xii)   A family that can only afford to eat meat and/or bread once in a year, especially during Christmas, after selling part of their essential possessions like chicken or maize.

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(xiii) A family that is not able to live but survive.

Poverty at the community level was given the following indicators:
(i)   A community with the majority of its population not being able to meet the basic needs such as food, clothing, shelter, education and health services.
(ii)   A community with many unemployed youth and many school dropouts as a result of lack of school fees.
(iii)   A community with little or no incomes per annum.
(iv)   Poor transport and communication network in the District e.g. there was only one vehicle on the Ruambwa-Funyula-Busia route.
(v)   A community that is not accessible to appropriate and relevant information to improve their economic livelihood.
(vi)   A community with poor education and medical facilities. Thus the schools have inadequate equipment such as libraries, laboratories, while the health facilities are not only inadequate, but also most of them lack essential drugs.
(vii)   Presence of poor housing or shelter in the community. For instance most of the members of the community can not afford to construct decent houses.
(viii) Hostile physical environment is a sign of poverty. Thus prolonged droughts as a result of unreliable rainfall and perennial floods were also cited as indicators of poverty at the community level.
(ix)   Lack of light and heavy industries in the two divisions was viewed as an indicator of poverty.
(x)   Lack of capital and investment opportunities in the community.
(xi)   High level of illiteracy and ignorance of the existing potential and economic opportunities.
(xii)   Poor living conditions of the majority of the population in the community.

The causes of poverty that were repeatedly cited by the opinion leaders and the women respondents in the focus group discussions, include among others the following;
(i)   High level of dependants. Most of the adults in the community had large families which in turn causes serious constraints on access to basic needs like food, clothing, educational, housing and health services.
(ii)   Poor or no access to credit facilities.
(iii)   Whereas Budalang'i often has perennial floods as a result of heavy rains in the Cherangany Hills which are about 200 km away, Funyula on the other hand experiences prolonged droughts and unreliable rainfalls which cannot support arable farming. This in turn has led to repeated crop failure. The floods have often led to displacement and food insecurity in Budalang'i.
(iv)   Wildlife menaces especially monkeys and foxes have endangered maize, millet and chicken's survival respectively.
(v)   Livestock diseases and poultry diseases have often limited the expansion of livestock and poultry farming in the survey areas.
(vi)   Lack of basic needs like food, decent shelter, education and health facilities has accelerated poverty in the two divisions.

(vii)   Under-utilisation and mismanagement of the resources such as cotton ginnery has also contributed to poverty in these areas.

(viii) Over reliance on fishing, which is itself vulnerable to market fluctuations has made the problem of poverty become a complex phenomenon.

(ix)   Poor agricultural extension services and lack of access to appropriate and relevant information are yet another cause of poverty.

(x)   Limited employment opportunities in the two divisions.

(xi)   Impact of the HIV/AIDS related disease, killing energetic members of the community.

(xii)   Increased levels of insecurity especially in Funyula.

(xiii) Persistence of some outdated cultural beliefs and practices such as witchcraft, large extended families has also led to poverty.

Women compared to men were more vulnerable to poverty and often feel it directly, mainly because of gender related aspects of development. In poor families, women perform most domestic as well as commercial duties, whereas some men often idle around in local market places while others have resorted to drinking local brews at the expense of fending for the livelihoods of their families. It is sad to observe that even in sickness, women were still expected to provide food and basic necessities for the family. Ironically most women do not have control over family incomes from cash crops or from other economic ventures. Most women have no access to credit facilities because of lack of security in terms of property. The Luhya customs and traditions do not allow women to inherit land or any other form of property from their parents. Women have adopted the following coping strategies towards poverty:

(i)   Farming for other families to get food or money to buy basic necessities.

(ii)   Seeking food and other needs from relatives, friends and neighbours.

(iii)   Consuming foodstuffs, which under normal circumstances they would rather avoid.

(iv)   Relying on food handouts by humanitarian agents

(v)   Making long distance walks to get transport or fetch water

(vi)   Using bicycle taxis to move from one place to another.

(vii)   Resorting to vending small farm products like vegetables, tomatoes, etc.

The following were identified as major obstacles towards economic empowerment of women groups in the two divisions.

1.   The increasing inability of women groups to respond to the persistent burden of poverty which has far reaching consequences on women especially with regard to meeting basic needs.

2.   The women groups described poor access to basic needs as a major problem coupled with the high level of dependants

3.   The high cost of education, health and water were also cited as other major problems about which the communities could do very little. That while education and health care were essential services, most of the families could not afford thus only a few well to do families would fully access them.

4.   Adverse natural conditions such as floods of river Nzoia, low unreliable rainfall and

prolonged droughts were mentioned as major concerns affecting communities in Budalang'i and Funyula divisions. These problems were heightened by persistent food insecurity and diseases such as malaria and more recently HIV/AIDS epidemic.

5. Landlessness or the possession of inadequate pieces of land was also cited as a problem affecting women economic empowerment. This was coupled with the poor access to credit facilities or soft loans due to lack of property that could act as a guarantee for the lender i.e. financial institutions especially Banks.

6. Many of the women group members were not employed and most of them lacked alternative opportunities to generate income.

7. Poor infrastructure, especially poor roads and limited markets were also identified as major bottle necks to economic empowerment of women in the two divisions.

8. Some women groups suffered from poor leadership and poor management of the existing resources.

9. Lack of access to appropriate and relevant information and knowledge on the existing economic resources, potential and income generating opportunities in their community and Busia District as a whole.

The people of Busia did not firmly perceive their problems as emanating from a denial of their rights by the government. The respondents pointed at past and present political leadership failures as the main cause of their problems. They cited corruption and greed. They do not see what relevance the constitution has or may have with their miserable situations. Most of them did not care whether it is reformed or not. They just want relief from their conditions. They have no faith in the law. They say the courts are too far from them and transport is expensive. They do not understand the law very well except in some areas where some national organisations have conducted civic education and paralegal training. Even then, their pre-occupation is with survival.

There is a distinct phenomenon of evangelism in Busia, especially of American origin. These organisations have a development element. They build schools and health centres. Some observers commented that this seems to have given people new hope and taken their attention from the government. In effect the dependency has been shifted from government. There is therefore no agitation, but resignation to fate and destiny.

4.4   Pastoralist communities in Turkana

For the people of Turkana, the main socio, economic and cultural problems highlighted in the interviews and focused group discussions were, insecurity occasioned by cattle rustling and gun running; poverty as characterised by lack of food, clean water, unemployment and poor infrastructure; inadequate health facilities as characterised by disease, high infant mortality rates, lack of primary health care facilities and well equipped hospitals. These problems have afflicted the Turkana, as far as they can remember. The problems continue to worsen with the passage of time.This year particularly has recorded a tragic decline in standards of living resulting in the erosion of human dignity and loss of life across the ages. Insecurity in the district is occasioned by cattle rustling between the Turkana, and the neighbouring Marakwet and West Pokot districts and some

pastoralist tribes in Ethiopia. The most sustained and dangerous rustling activities against the Turkana are perceived to come from the West Pokot warriors who are said to enjoy government or official protection. The seemingly endless spectre of cattle rustling has led to loss of thousands of head of cattle, human life, and a general sense of insecurity in the area. The Turkana's themselves launch sporadic rustling raids and counter raids in a bid to "steal" and recover "stolen" cattle against their neighbouring Marakwets and Pokots.

The problem is further exacerbated by the fact that Turkana is surrounded by at least five countries , which are highly militarised. These neighbouring countries are either experiencing high intensity guerrilla activity or virtually in a state of war. These are Ethiopia, Eritrea, Somalia, Uganda and Sudan. The geographical location of Turkana therefore means that the acquisition of lethal weapons is almost unstoppable. This is one district where insecurity rages uncontrollably, a problem that must be addressed at the highest level of government apparati.

Poverty in Turkana is part and parcel of the peoples' lives and psyche. The district is largely arid with hostile weather a combination of which is hardly supportive of agricultural activity. There has never been any long term plans for poverty alleviation or eradication by the government. The people of Turkana have known hunger as far as they can remember. The situation deteriorates into widespread famine in periodic cycles. This year, the famine is killing hundreds despite the government's prevarication on the issue. The only means of survival for the Turkana is their livestock (Goats and Cattle) but even these are threatened by the dry spells as they have to trek hundreds of kilometres to the scarce watering points. The impact of famine and poverty has had devastating consequences on the children in Turkana. The children in Turkana have to face thirst, hunger and starvation on a daily basis. Images of a lone child with a plastic water container desperately gesturing towards a passing vehicle as he or she pleads for a drop of water are heartrending.

LODWAR town, given its size, can be said to have the largest concentration of "street children" whose real main problem is hunger. But perhaps the problem of the child in Turkana is more pronounced in the field of education. Most children across the sexual divide are retained at home by their parents to tend to livestock. Such children have no hope of ever going to school.

Women are not spared either, given the fact that the Turkana culture demands an inordinate amount of sacrifice from women. The women's life is therefore more torrid in these harsh conditions.

The Turkana mainly rely on their own stoicism and humanitarian relief by international or non-governmental organizations the government, and the church. The non-governmental organizations provide the much-needed food and water but merely for survival purposes. The provisions are not enough for long term sustained existence. But this is now changing. The organisations operating in the area are now providing things like boreholes, solar systems to primary schools, classrooms, and motor boats for fishermen. The Catholic Church is particularly active in this regard. There is also an increasing trend of evangelisation of the Turkana people. There are tens of non-mainstream

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Christian churches operating in the area which are vigorously evangelising the people.

The Turkana do not clearly perceive of their problems as a denial or neglect of their basic rights by the government. They appear to have resigned to their fate. They are however very bitter against what they say is Pokot aggression through cattle rustling activities.

The people have formed organizations in an attempt to address these problems. These organizations are however ad hoc and unregistered. They are not supported by the administration and run parallel to the agenda of the administration. Many do not know about the constitution and clearly do not care much for it. They just care about their immediate problems. Some say it is a good thing if it will address their problems, but do not want to be involved. They say they have no time. They feel very removed from the government. They do not understand the law well or its role. They say there are no courts there and no lawyers. They resolve their own disputes mostly.

4.5. The pastoralist communities of Isiolo

Isiolo is a district in South eastern Kenya within the Eastern Province. It is inhabited by Kenyans of Somali, Borana and Samburu origins. Their main socio, economic and cultural problems are insecurity occasioned by banditry and cattle rustling, poverty, lack of clean water and unemployment among the youth. They also have to deal with inter-clan rivalry which is exacerbated by political divisions. This rivalry compromises the extent to which they could organise themselves around some common purpose.

Isiolo is also awash with guns in circumstances similar to Turkana and Pokot. The situation in Isiolo in terms of the type and intensity of the problem, coping strategies and organisational forms is similar to that of Turkana. The main difference is the perception of the problem. The Somali/Borana people of Isiolo are acutely aware of the fact that their plight is occasioned by the denial of their rights by the government. In fact the Somali/Borana people have long felt discriminated against by the government of Kenya. They are organising themselves to resist the alienation and to seek government intervention with regard to their problems. Their voice is usually heard in national fora seeking representation, and affirmative action as a disadvantaged group. The exposure they have received through intervening organizations in the area has sharpened their awareness as to the causes of their conditions.

4.6 The pastoralist communities of West Pokot

For the people of West Pokot, the main socio, economic and cultural problems highlighted in the interviews were insecurity occasioned by cattle rustling, poverty, unemployment and to a certain extent in-adequate health facilities.

The problem of insecurity is said to come mainly from the Karamoja of Uganda and to a certain extent the Turkana and Marakwet of Kenya. The Pokots interviewed were very defensive about the way they are portrayed as aggressors in the cattle rustling jigsaw puzzle. The interviewees argued

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that the government was not doing enough to address the insecurity problem in the northern rift. They claim they are the "barbed wire" of Kenya in that when the Karamoja of Uganda strike, they are the immediate victims. Kenya's security forces are said to respond when it is too late and in fact target the Pokot instead. The West Pokot district is awash with firearms and one senses a determined reluctance among the people to surrender them. A gun is a valuable possession in that it is both an investment and a guarantor of security.

Poverty in the area is caused by lack of employment opportunities. This exposes the youth to the vagaries of cattle rustling. The main economic resource in the area apart from livestock and the agricultural land in the highlands, is the assortment of minerals. But mining activities are not benefiting the local community because the mining licenses are said to be awarded to "outside" business syndicates and cartels from Nairobi and abroad. The Pokots are deeply aggrieved by this factor which they see as "a grabbing" of their rights by the government.

Another lingering grievance by the Pokots is the "land problem". The Pokots feel that land rightfully belonging to them in the Uasin Gishu and Trans Nzoia districts has been taken from them first by the colonial authorities and then by the government. This land issue appears to have been heavily politicised by the local political elite and is frequently used to justify the rustling forays by the Pokots into the neighbouring areas.

In terms of perceiving their problems, the Pokots are acutely aware that their plight has been occasioned by a denial of their rights by the government. This may be due to the overbearing and volatile political leadership coupled by the ingratiating attitude by the government towards the people in the area. They are bitter about the up-down approach the government is taking to addressing the insecurity problems. Majority think that the constitution will not solve their problems. The rest of Kenya needs to understand the issues in the area, and then the solutions to their problems will begin to be understood. This will not change and West Pokot will continue to be the barbed wire for Kenya, many of them quipped. Some however welcomed constitutional change if it was going to change their situation. They however showed no signs of wanting to be involved except the few groups that had been reached by civic education and paralegal training NGOs.

Most of the non-governmental organizations, which had been operating in the area, have discontinued their activities due to a hostile local political attitude.

4.7 The Women of Kangemi slum area in Nairobi

Kangemi is a peri-urban centre situated 15 Km outside the city centre on the Nairobi - Naivasha Highway. It borders the Loresho and Mt. View residential estates which are some of the affluent neighbourhoods in Nairobi. The residents are from different cultural backgrounds with most coming from western and central province. Most of them are low income earners. The indigenous owners of the land are Kikuyus who have put up cheap housing structures which they rent out to incomers. The non-indigenous people eke out a living through petty businesses involving vegetables, secondhand clothes and alcohol among other things, employment as watchmen and house-helps.

From the perspective of the women of Kangemi the social and economic problems in their community are many and complex. The first is inadequate and in-appropriate housing. They say there is not enough housing, the shelters are not properly done, no ventilation, not warm enough in the cold season, too close together, no privacy, no sanitation facilities, and not secure. Second is the problem of drugs and alcohol. They say this problem has compounded all their other problems because it results in violence against women at home and elsewhere, decreased productivity among the men and youth who are the main consumers of the products, insecurity especially at night, drop outs from schools, and a general decay of morals and morale in the community. This means that the burden of caring for the family, is left to the women and it is made worse because of the violence. Third they identified the problems of low incomes, poor health, unemployment, and overpopulation. Because of the idleness and alcohol, the incidence of Aids has risen up. Because of the congestion, and lack of sanitation, poor health is a persistent problem. Because of the alcohol, drugs and the unemployment, the incidence of crime is constantly increasing. They said that all these things affect women in different and greater ways than men because of their gender and their place in the family and community.

They said that the major hindrances of progress for women is men and the government. For example, one said that she is a businesswoman dealing in grains, and she knows she would have made good money enough to pay school fees for her two children in secondary school in January, if she had been able to take her grain to Turkana where there is famine, like her unmarried friends, her husband would not let her go. Then she said it is very difficult anyway because of restrictions on movement of grain. They used a lot of money bribing police on the way.

The women of Kangemi are not resigned to their conditions. They have organised themselves to address some of the problems confronting them. They have benefited greatly from the intervention of the Kangemi Women s Resource Centre (KWRC). Recently, they organised themselves to confront the alcohol problem through demonstrations and demolition of illegal brewing structures. Under the auspices of KWRC, they have formed committees to address most of the problems listed above.

They seem to view their problems as rights issues except those of water, education and health. They cited corruption for the lack of infrastructure in their community. They understand about the constitution and have in fact prepared a memorandum of what they think should go into the constitution. Their view of it is more sober than that of others. They seem to understand that constitutionalisation of their rights and other things will not change their situations overnight, but will facilitate the evolvement of a culture of better governance and respect for rights. They say the law is for the rich and it is easily compromised. They have no confidence in the law. However they do resort to it to try and address criminal problems such as robberies, rape and others. This does not eliminate the problem, but prevents impunity.

Their efforts to organise have been frustrated by some of the men, and the Administration. They

have been threatened and their meetings dispersed.

4.7   The Gitaru community along the Nairobi-Naivasha highway.

Gitaru is a sub-location of Kiambu District in the central province of Kenya. Land in this area is segmented into small pieces and people live in family clusters. Houses are semi-permanent and many look old and dilapidated. Common crops grown there are maize, beans, potatoes for domestic consumption. During the rainy season, vegetables such as sukuma wiki, spinach and tomatoes do well. The soil is however depleted from repeated planting of the same crops over the years.

A dual carriageway road (Nairobi- Naivasha highway) was constructed across, the Gitaru area (Westlands-St. Austins and Kabete BLimuru sections of it). It was part of the Northern Corridor Transport Project whose basic objective was to improve access to and from Nairobi by reducing congestion for both domestic and cross-border traffic. The road construction commenced in early 1990 and was completed in February, 1993. However, work on the quarries which had been dug continued until September, 1994. The road passes at the heart of Gitaru, and the community was adversely affected during the construction of the sections that pass through the area.

A huge quarry was dug in the area. In addition, a crushing plant and asphalt plant was installed to crush the rock. These plants were located a kilometre away from Gitaru and Rungiri. The resulting damage to the community was environmental, social, and economic. The damage caused is associated with blasting which caused direct damage to property and livestock. Dust and fumes caused by the crushing caused damage to the health of Gitaru residents and the immediate surrounding, livestock and agricultural productivity. Local water supplies were disrupted because the quarry, which was dug more than 90 feet deep, altered the natural water table level causing the natural springs to drain into it. This significantly hurt the agricultural production in the area. Further consequences are associated with the danger posed by the quarry which was left open and without a permanent perimeter fence.

Water is a major problem in the area as a result of the disruption of the drainage system during the extraction of the quarry. The safety levels of the water that is available is questionable owing to the chemical pollutants left in the quarry.

Health problems also resulted from the construction. The residents suffered breathing problems caused by the dust during the crushing and the quarrying. People especially around the crushing sites detailed cases of these difficulties that created allergies. Residents also mentioned recent cases of malaria brought about by the stagnant water at the quarry.

The road also interfered with education. Gitaru residents are served by Rungiri School and within a radius of 4km are other schools. However those schools across the carriageway are today inaccessible due to the danger posed to children crossing the highway. The school drop out rate is high due to low income of parents. Many youths therefore idle around and remain unproductive.

The quarries which have been left unfenced are a constant danger. A number of children have drowned there especially because there are paths passing near the quarries to various parts of the villages. The highway itself pose a great danger to the densely populated community. Many accidents have occurred because the road cuts through the middle of the community and people need to keep going to and from each side. The 1.3m wall erected along the middle of the carriageway for traffic safety purposes is also a great inconvenience. Those who cannot scale the wall have to walk many kilometres just to find a spot to cross the road. Tunnels provided are not used after dark for fear of mugging.

The people of Gitaru organised themselves early even before the completion of the road to hold the European Union, who were the funders of the project, accountable for the damages they were suffering and for the deterioration of living standards in the community as a direct result of the construction of the road. This organising was done by a few people who were directly affected. It was not a communal effort. These people got together and approached the Public Law Institute, to institute for them a class interest suit against the EU for the damage in the community. These persons recognised their violated rights, and had enough trust in the legal system to seek redress through it. The case did not get very far, but it did bring the matter to the attention of the public in and out of the country. The EU, without directly admitting liability began dialogue with the community through The Legal Aid Centre and Oxfam, with a view to identifying ways in which it could assist the communities to bring about development in the area and therefore hopefully bring them to the level they were at before the road project.

After this offer by the EU, many groups began organising themselves in Gitaru with the hope that they would benefit. After identifying what projects they needed in the area for communal benefit however, the EU has however not done much else and the community continues to suffer. The organising that was visible after the EU offer has fizzled, and the latent organising is left to the very original group which were most directly affected.

The gitaru case is a good example of a case where communities identify a non-state entity as a referent in an oppressive situation. However because of the traditional construction of the right which places the state at the center of the equation, the legal system is not able to offer any remedy. It seems to beg for the deconstruction of the rights concept to incorporate other referents alongside the state. In this situation of Gitaru, had the residents been well informed, they could have attached the state as another defendant for failing to involve them in the decision to construct the road and its design, and for exposing them to all the dangers that have befallen them. To many of them, the oppressor was the European Union. Many of them did not see what relevance their situation had to the constitution.

4.7   The Kwale community, in the Titanium mining area of Coast Province

Kwale is one area on the south coast of Kenya, which is richly endowed with some rare minerals. One of those minerals is Titanium. An international mineral exploration company by the name of Tiomin has been awarded concessionary rights for mining titanium in the Kwale area. It has

identified deposits of Titanium in Malindi and Kilifi area as well. It is estimated that a total of approximately 500 acres will be mined in Kwale alone. This will be over seven years, and so in any particular year approximately one seventh of the area will be mined. However according to the company, until feasibility studies are completed it is not possible to know exactly how much land is required.

By July this year, over 80 landowners had signed the lease agreements with the company. This is over 75% of the freehold land the company may require. The lease package for the freehold land is made up of three components. A lease payment of Kshs 2000 per acre per year (escalating at 10% per annum), and a flat rate payment of Kshs. 9000 per acre paid when and if the company needs the land. A land payment based upon the development on each plot will also be paid.

Nearly all the minerals produced will be exported except some Zircon which may be sold to the Kenyan foundry industry. The government will receive a royalty on all mineral sales locally and internationally, and the company will pay normal Kenyan taxes on the mining operations. The royalty is a percentage of the value of minerals sold (probably 2.5 percent) and is paid irrespective of the profitability of the project.

The company says that it has plans to restore land for farming use by the farmers after the mining exercise using technology from other experienced countries like South Africa with modifications for the Kenyan ecology.

The company has plans to improve the area. The improvements planned will fall into two groups. The priority improvements are however those that are necessary for the project. For example, many public roads will be upgraded which will improve access to the area and thus have a positive impact for marketing of farmer products, etc. The second group is projects that the company will enter into with the local community. These are projects which must be proposed by the community and the projects must produce sustainable benefit. According to the company, these projects would fall into four main areas ; infrastructure, education, health/sanitation and agriculture.
It is estimated that the project will directly create between 170 to 200 jobs. There will be other secondary jobs created by the project (suppliers, sub-contractors, etc). These indirect jobs may be approximately 1,000.

The community was never involved in the consultations leading to the signing of the contracts. The titanium deal is worth six billion Kenya shillings (approximately US$ one billion).

According to the community members, the community was never formally informed by the government that negotiations with implications of temporary dispossession of their land were going on. They were never at any stage involved in the consultations leading to the signing of the contracts between the government and the company. They however did not think that this fact of being denied critical public information at a time when it would have been useful to them was a denial of their rights. According to them the government had not done anything wrong to them. It was only in retrospect upon probing, that they thought that if they had been informed then they may have been

more prepared to deliberate and negotiate rates, and probably even have the choice to refuse to have any mining taking place on their land. Even then to them it was not a rights issue.

The first they heard of the company and the intended plans was when some chiefs in the area
> *"riding on brand new motorbikes provided by the company went around asking people to sign some forms which would bring them money personally and bring development in the area".*

Many people signed the forms without really understanding what their effects would be. The forms were leases to the company. It seems that to many people, in the first instance the moneys proposed were big moneys, but upon reflection many of them felt that it was inadequate. In retrospect many people think that the administration through the chiefs played around with their land rights. They however did not seem to recognise the state behind the chief in their reference to the issue as a rights issue.

After establishing that there was unrest around the issue of the payments, a group of landowners, and some representatives of the provincial administration formed a community committee to negotiate better lease rates with the company. This committee is however said to be exclusive and does not report back to the represented landowners on a regular basis. There is said to be a lot of secrecy around the new negotiated figures, and there is suspicion of compromise among the officials of the committee. The committee also excludes a huge group of affected persons who are not landowners but squatters on part of the designated area. These are trying to organise themselves to seek for alternative settlement from the government.

The committee of landowners does not look at the matter from a rights perspective, but from a business deal perspective. They do not see the company as owing them any duty to recompense them reasonably, to them it is a matter of negotiation. The presence of the administration officers (DO and Chief), seems to have depoliticised the dynamic. It is just a money matter, and the government is on their side.

The fact that this area has not seen any kind of infrastructural development since independence, has been said by some organisations seeking to work with the Kwale people to be one of the explanations of the lack of hostility towards the company. They are happy about the promised infrastructural developments and employment, and see the company more broadly in that light. The dependency syndrome is in this area played out with a private concern. It is an illustration of what developmentalism has done to the innate sense of right and wrong among the poor of Kenya, and therefore the potential for the use of the human rights framework.

A number of advocacy organisations including Action- Aid Mombasa, Muslims for Human rights, Kwale Rural Development Program, among others have come together to try and assist these people to deal better with the company and to protect their rights. These efforts are however at the initial stages. From the few visits made there by these groups, it is evident that the community has not clearly apprehended the total effect of the mining exercise on their lives, livelihood and their

lifestyles.

4.7   The sectoral issue of health

The situation analysis of the health status of the people of Kenya can only be looked at by reviewing certain indicators. Infant mortality rates is considered one of the best indicators of the health status of a population. Estimates of infant mortality in Kenya, during the period 1960-1965 show a decline from a level of over 120 deaths per 1000 live births to the level of 61. The same level of improvement is seen in the under fives mortality rate which also takes into account the countries ability to deal with common childhood diseases (from a rate of 202 per 1000 in the 1960 to a rate of 90 per 1000 in 1995). By African standards Kenya would appear to be doing very well, but by international standards it is still below standard. 16% of infants born in Kenya have low birth weight, whereas of the children under five, 27% suffer from underweight. 11% are wasted and 26% are stunted. Stunting is defined as a height for age below 90% of the WHO standards and may be considered as an indication of chronic malnutrition, as opposed to acute malnutrition (wasting). In Kenya stunting is a major problem especially in the high mortality areas like in the coast, Eastern, Western and Nyanza provinces.

Other health indicators include the percentage of the population with access to safe water, sanitation and those who are fully immunised against the childhood diseases. In Kenya safe water is available to only 49% of the rural population and adequate sanitation is available to only 18% of the same population.

The demographic indicators that may describe the health status of a population are the crude death rate and the life expectancy at birth. These indexes for Kenya in 1995 were 12 and 55 respectively having improved from 22 and 45 in 1960. The total fertility rate (which currently stands at 3.8 in Kenya) may be a direct measure of family planning usage but more strategically it gives some insight as to the general development of the population as fertility is closely linked to child survival rates and to the education of the mother.

Economic indicators are also important. The percentage of the Kenyan population that is below absolute poverty levels is 10% in the urban areas and 55% in the rural areas. This is an important indicator as to who can access health care services especially now when increasingly there are financial implications brought on by the SAPs and the cost-sharing policies. Other indicators of the health status are next to or dismal.

From the field survey, it was clear that the bulk of the health infrastructure has been provided by the government. This infrastructure has however largely collapsed. The government hospitals are under-staffed or else manned by demoralised and under paid staff. There are usually no drugs, and the most mundane of equipment is either missing or has broken down. Corruption has infiltrated the government hospitals so that the quality of care and availability of drugs and reasonable food at the hospitals depends on who one knows in the administration, or how much they are able to pay under the table. The same applies to mortuary facilities. Officially however due to the cost-sharing policy,

members of the public have to pay a small fee for registration and other services. This in itself has restricted the very poor people from accessing these services.

Many private clinics have mushroomed in many of the areas surveyed. The residents say they are forced to resort to these because they are afraid of going to the public hospitals because most people who go there do not come out alive, they die or are sent home to die. They however are also apprehensive of these private clinics because they are not sure of the qualifications of some of the staff there or the authenticity of the drugs given to them there. There have been many scandals of faking of drugs whereby people are given chalk instead of real drugs. This has caused a lot of fear among the rural populations. Many people said that there are no standards or mechanisms of regulation of these clinics and hospitals and it puts many ignorant people at risk.

Communities have come together and pooled resources in some areas to put up their own community run health facilities. The services offered by these are however limited and they find they have to resort to public hospitals for serious cases. In most of these areas there are one or two mission hospitals which are overcrowded due to the demand from better services. These are also however slowly giving way to dilapidation due to the inability of many of the inpatients to pay up bills. Some of these have been partly taken over by the government and this has compromised their standards and independence.

Even though this phenomena of inadequate health facilities and deteriorating health within the population is evident in all the areas surveyed, there is no evidence whatsoever of any organising to challenge government policy, corruption and mismanagement of health resources, and to protest the deteriorating standards of government health facilities. Most of the people interviewed did not think that health was a right. They thought that it is just a service the government used to provide, but has now stopped doing so due to corruption and lack of funds.

Organising around the health issue as a rights issue is only evident at the national level among national NGOs. These are however largely focused on HIV Aids or on specific other diseases or around health issues of interest groups such as women. They are service delivery and educational in approach with little rights advocacy in their work and approach except the reproductive health focused organizations.

After some investigation, the researchers found out that the probable reason for lack of organising around health issues at the community and national levels as may be because there is nothing about it that brings people together. There is no legal framework or institutions such as unions or cooperatives such as are evident in other areas such as labour, and marketing. There has therefore not been any rallying points for community advocacy organising in this area.

4.7   The sectoral issue of education

There has been rapid expansion of the education system in Kenya since independence in 1963. This

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expansion has been guided by the government s long standing concerns of combating ignorance, disease and poverty. Investment in education by the government and other partners since independence has been quite impressive and it is a gauge of commitment to the service. Total expenditure in this sector went up considerably by 14.3% from Kenya pounds 1,3080.9 million in the 1995/96fiscal year to Kenya pounds 1,692.3 million in the 1996/97 fiscal year. Closer analysis however of the government of Kenya Appropriation Accounts and Budget Estimates indicate that over the ten-year period, the percentage share of government expenditure going to education has been on the decline.

Educational reform initiatives in Kenya since 1980shave had three major impacts, among others. One, increased cost of education and a heavy burden on households. Two, scarcity of instructional materials, such as textbooks and support services, such as school uniforms. Three, increasing negative effects on access to and quality of education. In terms of costs, a household spends Kshs. 43,950, Kshs. 4,620, and Kshs. 81,000 annually on one child enrolled in an urban, a rural and a private upper primary school (std 4-8) respectively, which translates into Kshs. 4883 for urban , Kshs. 513 for rural and Kshs. 9,000 for private schools per month.[19]

The introduction of cost-sharing in education in 1998 led to increased costs of education for the parents and the beneficiaries of education since parents and the community were expected to meet increasing cost of education for their children. Available studies indicate that if one child goes to school, the proportion of family income spent on education is 7%, for two children the figure is between 11% to 15% and three children it ranges from 17% to 22%. With the high cost of education and low salaries, a middle-income household in an urban area with two children in a medium-cost public school, could be spending as much as a fifth of its monthly income on education, if such a household values education and considers it a priority. Understandably, high cost of primary education is one of the major factors that contributes to the inefficiency of education. Existing surveys indicate that most parents are unable to meet the necessary education costs. The ministry of Education, in a consultative meeting with donors in 1996 summarised the situation by stating that:

> "the level of poverty in the country has gone up and the plight of the poor aggravated to the extent where many Kenyans can no longer have access to this basic need because they simply cannot cost-share; for example, the number of primary school pupils in absolute poverty need for textbooks and school feeding has gone up from 1.7 million and 53,000 to 4.2 million and 2.1 million respectively; the number of secondary school students in absolute need for bursary assistance has gone up from 155,000 to 400,000; and nearly all of the 46,000 university students population require loans".[20]

Trends in enrolment for education indicate a downward curve. With regard to quality, event though there is no universal definition of quality education, cross-national studies have indicated important inputs which affects efficiency and effectiveness of any education system. Discussion over the quality of the Kenya 8-4-4 system has been controversial. However there are shortages of essential

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[19] Abagi O. (1997c), Public and Private Investment in Primary Education in Kenya: An agenda for Action. Discussion paper, No. 005/97, Nairobi: IPAR.

[20] Ministry of Education, 1996.

physical facilities, basic instructional material, overloaded school curricula, and the whole schooling system is examination oriented.

The above indications of a deterioration in the provision of the educational service are confirmed by the survey findings. Most people interviewed indicated that the cost of education was now too high. The fees were too high and there were too many incidentals to purchase for the pupils. At the same time the parents had to cater for the maintenance of the school structures and developments therein. Many felt that this was the case because of corruption and because of the cost-sharing policy. Many decried the 8-4-4 system saying it was not only too expensive but also did not prepare students adequately for the market once completed school. This explains the high rate of unemployment even among graduates from the universities. There was a lot of frustration among the teaching and administrative staff due to late pays, low salaries and increasingly reduced benefits. They then let it out on the students with the effect that there was now a lot of indiscipline and unrest and rebellions in schools.

Most of those interviewed did not see education as a rights issue. They however said that the government should stop meddling in the system and should put responsible people in the ministry of education and not psychophants of the President. The issue was personalised as a number of those interviewed thought that a certain ex-minister of education was responsible for the mess in the entire system. Some people felt that the government should leave them alone to develop their own schools and stop interfering.

There was observed a phenomenon of many private schools coming up all over the country and in the areas surveyed. These are expensive relative to government schools, but people prefer to take their children there because they think the standards are better. Some of those with their children in these schools however indicated that the government had abdicated role of checking the standards in these schools. According to them, there is almost no regulation and most of these are run purely as, and for commercial interests.

As in the area of health, there is no organising at the community level around the issue of education. The only level of agitation reported was at the institutional level where parents protest against certain administrative policies or seek to be heard by the administration on certain issues. This is usually done ad hoc in crisis times, or through the Parents Teachers Association. The other level where organising around the issue of education is at the national NGO level. Advocacy organisations such as the Legal Aid Centre, Action Aid and others have been instrumental in this respect.

4.7   Human rights organizations

The study revealed that the development of formal human rights organizations in Kenya began in the early 1980s with organisations such as the Public Law Institute (PLI), the Kituo Cha Sheria (Kituo) and the International Commission of Jurists Kenya section (ICJ-K). ICJ-K had been in existence since the late fifties but had been the domain of white lawyers loyal to the colonial

administration the training of African lawyers began soon after independence. Eventually the African lawyers joined the ICJ-K and revolutionalised it in the late seventies and eighties to become the platform from which dissent against the repressive government could be voiced. All these organizations operated from Nairobi and were the domain of the educated elite. They purported to have national coverage.

Their approach to the rights issues seemed to have been greatly influenced by what was from their perspective the needs of the day. These were the denial of fundamental freedoms and violations of civil and political rights. At the international level, the human rights movement was also focused on civil and political rights as the first generation and therefore priority rights.

Programs of these organizations were therefore determined by the political climate and the way they thought the citizens were being affected. One of the major strategies used by all of them to date was the education of the masses on their rights (civil and political), and basic principles of law which would assist them to realise these rights. This has been done to date through the paralegal training and the legal aid approach. At the beginning this was done in the urban areas (Nairobi and Mombasa) alone, but eventually the organizations have began working with communities in the rural areas. Another approach which has been used is the seminar/workshop approach.

The numbers of human rights based organizations grew with intensification of repression in the late eighties and with the pressure for constitutional reform to facilitate for multi-party politics in the early eighties. Around this time the strategy most used was seminars and workshops with increased focus on rural populations. Women s rights organisations also became visible and were heard around this time than ever before.

Some organisations such as the Kenya Human Rights Commission introduced a strategy of direct activism. This has been predominantly reactive protest against violations aimed at curbing impunity. This has evolved over time to now include proactive strategies such as working with communities to identify their problems and come up with ways of addressing them to pre-empt violation.

Their efforts were however often frustrated by the administration through dispersal of meetings, requirement of licences from meetings, deregistration and denial of licence. After the 1992 general elections due to the apathy among rural populations, human rights organisations focused their efforts to working with these populations to educate them on their civil and political rights and their relationship with the government and their role in governance. Different strategies such as village market theatre were introduced. There are now many organisations in Kenya which have adopted the human rights approach to their work. In the last five years, due to the responses they have been getting from their work with communities, the increased evidence of poverty, and the turn in the wind of the human rights movement at the international level, most of these organizations acknowledge the need to incorporate social, economic and cultural rights in their human rights focus. The turn is however slow and almost reluctant. Some have argued that their agenda is broadly donor driven to the extent that they rely entirely on donor funds. Most donors are still surely and solely focused on the democratisation question, and the poverty question is from this perspective. This

constrains the extent to which organisations relying on these donors can change their approaches to the rights question.

Questions about the justiciability and enforceability of these rights, the government s ability to deliver and the issue of raising false hope among the poor were raised by some organizations.

5.0 ANALYSIS OF FIELD SURVEY FINDINGS

5.1 Nature of economic, social and cultural problems

The areas surveyed revealed widespread phenomenon of poverty, unemployment and disease as affecting a very large percentage of the populace. The most highlighted problems were lack of food, adequate clean water, medical facilities, poor infrastructure, unemployment among the youth and lack of security. Those interviewed were all acutely aware of these problems. The pervasive nature of these problems and the apparent lack of an enabling administrative environment have negatively impacted on the general standards of living in these areas. Most of these problems are not recent, but have afflicted the people for many years in varying degrees. Recent years have seen a drastic intensification of the problems. The interviewees varyingly attributed the problems to different things varying from, vagaries of weather, bad politics, corruption, impunity of government, poor governance and fate. All the communities studied expressed the recognition that these conditions are an affront to their dignity and a threat to their survival and that of their children.

5.2 Perception of the problem

In terms of perceiving their problems as a denial of their rights, different areas recorded different reactions. In areas where the problem revolves around land and security, the citizens were clear that their plight reflected a denial of their rights by the government. This was particularly pronounced in urban areas and the areas hit by cattle rustling. On these issues, interviewees did not need prodding to come up with reference to rights. In other areas however, when expressing the problems confronting them, the interviewees did not refer to them as an affront to their rights until prodded further. They kept referring to issues of dignity and survival. *Riu ona tutituraga ta andu aria angi, ni ta nyamu.* (Now, we do not even live like other human beings, we live like animals).

In areas where the problems revolve around lack of food, adequate clean water, education and medical facilities, those interviewed did not seem to think that the government had a duty to provide these services. They did not perceive the problem as one involving the issue of rights at all. It seemed that the benefactor syndrome pervades the citizenry with regard to services like these. The respondents also did not associate their problems to a faulty constitutional order or an undemocratic system of governance. Some however referred to corruption and bad leadership, but did not seem to see the role of the constitution and the legal system in the whole picture. This was more pronounced in areas where the only access to information is the state controlled KBC radio. The constitution as an instrument of governance seems to have been alienated from the people with the result that few understand its meaning and functions in their lives.

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Even after acknowledging that their problems were rights issues, most were not able to explain how it is their rights. The language used by the interviewees in expressing and articulating their needs/problems as rights issues is different from the formal rights language. They use the words *haki* (rights). The explanations, however do not bring the state into the picture, but focus a lot on the history of the acquisition of the right. For example, *'we have always lived on this land, so it is our right*; or *the company deceived us, so we sold our land rights to them without* knowing, or *our dues from coffee is right, so all those middle men should be removed"*. There is no problem in identifying a situation of entitlement, but there is no basic understanding of the role of the state in the whole scenario. Viewed from the perspective of the formal construction of the right, these may not be straight forward rights issues. It seems that these communities are so far removed from the state, and therefore understanding the relationship between them and it. It seems therefore the claim of entitlement/right emanates from natural law, and the innate recognition of right from wrong. This disjuncture seems to affect their modes and targets in activism. Most of their activism targets non state entities, or personalities within the state. In other instances they looked inward to solve the problems themselves. The unique feature of this approach is that since the cause of the problem is outside their community, they are caught in a vicious circle where they keep solving problems as they arise but are unable to look up to see who is causing them. In those situations they seem unable to identify the face and role of the state and to therefore make certain demands from it.

5.3 Efforts by citizens to address the problems

In many areas surveyed, the citizens most invariably resort to self help action in trying to tackle the problem. Some of these self-help activities are individualised while others are group oriented. Various associational forms emerge in response to specific economic and social needs. Some of these activities are spontaneous while others are well planned by the community members. The spontaneous activities seem to take on an agitational form. Such activism seems prevalent in recent months. It is reactive and narrowly focused on a specific issue of immediate concern. In most of these areas, there is abject poverty with all the basic needs being inadequately addressed. The reactive narrow focused approach to problems does not seem to lead to a culture of proactive resistance to the entirety of the degrading conditions of living. When confronted with this question, most interviewees said that they would not have the time or other resources to waste confronting the state and other stronger forces, they just have enough to survive on. In the rice growing community of Mwea for instance, the issue under contestation in the recent unrests was marketing of the rice. The main problems seem however to be the land ownership and therefore freedom question. The farmers do not own the land, they are tenants of the National Irrigation Board. So they are not free to do just anything with it. They cannot refuse to grow the rice and they have to do it in a certain way. They cannot determine how they want to live their lives and cannot live above certain dismal standards of living.

In Kwale, the community was focused on getting annual rent/compensation for the use of their land by the mining company. The issue seems really to be that the government signed off their rights, by giving concessionary rights to the mining company without informing the community. . Then there

is the issue of future environmental damage in the area, which is not being seen as a major issue of concern at the moment. This seems to indicate that needs and problems are narrowly defined such as may not be of long term or much benefit by way of raising the standards of living in the communities in the long run. It has been argued elsewhere (such as in Latin America) that the nature of rights advocacy is such that once communities or interest groups achieve their immediate need, the organisation fizzles, and others come up as crisis arise. The question for the Kenyan context however is whether this is desirable especially given the increasing desire to adopt the human rights framework. It seems that it would be more profitable to attempt to develop a human rights culture which scans the entirety of community problems and attempts to seek long term solutions for them.

There is no evidence of agitation and organising around the issues of health and education at the community level. Any organising is for self-help initiatives or else targeted at the institutions in the area especially schools. Being parents gives them this leverage. It seems that the element missing in the health and education areas is that which brings people together. These have always been provided by the state. There have not been unionism, co-operatives or any other form of organising around these issues. Communities have therefore not mobilised to agitate around these issues, even though they all acknowledge the degeneration of the services.

In a number of areas, especially arid and semi- arid areas like Turkana and Isiolo, the people exhibit a general spirit of resignation since in their view, the opportunities for redressing the problems are rare.

In such places, the citizens are heavily dependent on governmental, church and non-governmental relief agencies to solve their recurrent problems.

5.4 Constraints in organising

In seeking to tackle their problems, the citizens encounter a variety of financial and operational problems. The provincial administration is always a formidable adversary especially where some of these groups activities are considered as challenging the legitimacy of government. The groups also encounter monetary and internal organisational problems. It is difficult to maintain a useful level of momentum to the end. It is difficult to reach a consensus and many people cow along the way. There is also political interference in the groups activities by local leaders. The local member of parliament, councillor, or chief in most cases seem to hijack community s efforts as part of his development program . This politicisation of community based activities by the local leadership ends up detracting a number of groups from their original intention of jointly addressing common socio-economic problems. In some areas such as Kwale where the state representatives are involved in organising, they seem to control the organisation and to be exclusive. For example, the squatters have been excluded from the committee which is negotiating with the mining company. It consists of land owners and the government representatives. This is because the squatters would bring in fundamental issues of land ownership, and of the government having them displaced without offering alternative settlement.

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5.5 Perception of state/government and its role

The manner of resistance, varies in different communities and seems to depend on the level of economic leverage and how the community interacts or confronts the state. It also seems that the understanding of relationship with government increases with increase in economic leverage. The Nyeri community seemed to understand more the relationship with the government and their statements of demand were strong and sure. In Mwea, the relationship was not clear, and though their organising was strong, the strength seemed to emanate more from too many years of suffering and bitterness, than from an understanding of the role of the state in the whole scenario. Most people say that their problems have something to do with the government, but they are not sure what. Most talk about corruption in the Moi regime. They think that if President Moi and his government were to leave office things would get better. Many of them see the government in individual officers in the administration. They do not see the role of institutions. This makes it difficult to see things through the rights framework. Problems become personalised. Joseph Kamotho, the former minister for education is seen as the cause of the problems in the education sector. If he is out of government, then things might change. They do not see the state and the power dynamics.

Some people purport there is no more government left except the chief who only harasses them. They wish they would be left alone to fend for themselves. However others feel that their efforts to fend for themselves will be futile if the government does not play its role. We need the roads, and the bridges and security. We cannot do all this and everything else as well! one youth in Mwea Exclaimed in exasperation. When asked whether the government owes them the duty, the youth said strongly, Yes, that is why we elected them, and we give them our money in taxes. The youth seemed more articulate in these issues and more agitated. The older people especially men expressed some stoic bitterness. Some women cursed.

5.6 Level of understanding of human rights and the constitution

Many areas surveyed exhibited a general lack of human rights awareness. A few areas where civic education workshops have been conducted exhibited a higher level of awareness. The human rights awareness programs are carried out by organizations mainly from Nairobi through workshops and seminars. The impact of such activities on the general populace is however difficult to gauge. There is an emerging trend whereby church organizations especially the catholic church ad the NCCK are establishing rights centers under the aegis of their Justice and Peace Commissions. A few human rights organizations are also assisting communities to establish their own human rights centers, especially through the paralegal training approach. This awareness however is recent and does not seem to inform the nature and incidence of organising around basic needs on the ground.

Some people have heard about the constitution but see no relevance of it in their lives. Others have heard about it and believe that if their needs are incorporated therein, they will become law, and law is bound to be obeyed, so *hakuna mtu atatuchezea tena* no one will undermine us again. One teacher in Nyeri wondered what difference it will make whether these things are put in the constitution or

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not because even those that are already there are not respected. In some areas it has been romanticised through civic education, in others the message has not reached.

An illustration of the misunderstanding and romanticisation of the constitution is the fact that a significant number of respondents viewed the constitutional reform issue in sectoral terms according to their specific problems. Thus the Pokots want the constitution reviewed so that their land, which formally belonged to them in the pre-colonial times (Trans-Nzoia and Uasin Gishu districts), can be returned to them. They also want it reviewed so that the government security especially against the Karamoja of Uganda can be enhanced. The Turkana want it reviewed so that the rights of pastoralists can be protected (equal development for all approach), poverty and famine eradicated and their security especially against the Pokot and Ethiopian cattle rustlers is enhanced. The same is true of the people of Isiolo whose constitutional priorities are the enhancement of security in the area, especially the eradication of banditry, the provision of adequate and clean water and a recognition of the pastoral peoples.

Other communities had similar vision of the constitution. None however had any clear idea of how the constitution would do this.

The general concepts of justice, good governance, human rights, rule of law and equality were not clearly articulated.

5.7 National human rights organizations: mechanisms of addressing rights issues

Traditional human rights organizations have focused on civil and political rights. This is changing. With increased focus on working with communities at the community level, they have found that community priorities are with issues of basic survival and not national politics. Most now apply educational mechanisms such paralegal training, seminars and lectures, theatre and dissemination of materials for reading. Others offer legal aid services or advisory services to the public or sectors of the public. Some engage in advocacy at the national level on legislative reform, remedy on specific public wrongs by public officials against individual citizens or groups of citizens. This advocacy may be through diplomatic means, or protests and marches. Most of them are based in Nairobi and this limits their rural community reach. Their level of organising and understanding of human rights is however more superior than that of community organizations. Whereas this is not a problem per se, it may be a problem where they purport to teach human rights to peasant communities, and proceed from the very formal and academic level of human rights understanding, assuming that communities have experience or understanding of rights at all. This has happened and compromised the impact of many projects of the organizations we interviewed.

There seems to be need to explore ways of getting national human rights organizations to work with communities to develop together a discourse of rights which reflects the exact way in which people are experiencing oppression, and which can be understood by all.

The national human rights organizations seem reluctant to change their agendas to incorporate a focus on social and economic rights. On probing however, it seems that the constrain is not so much with the organizations, but with the fact their agenda is directly linked to their donors agenda. According to them, most donors do not yet seem to appreciate the utility of the human rights framework in addressing basic needs and therefore in poverty eradication.

An interesting observation by the researchers which could be used in long range to explain the reluctance may be that most of the founders and a good number of the workers in the human rights organisations are American trained. America has been one big stumbling block in the development of international human rights law around social and economic rights. It has not incorporated them in its local human rights jurisprudence. This thinking may be of some persuasion among these people and hence in the movement. This deduction is however just an inference not a scientific finding.

5.8 Activities of development organisations

The survey revealed an extensive presence of service delivery non-governmental organizations in a number of areas, especially where the local political leadership was receptive. Most if not all organizations operating in these areas are service delivery oriented. Most of them are international non-governmental organizations operating within the framework of their mandate in the mother countries. These are such as Oxfam, Plan International, World Vision, and Action Aid among others.

The main strategy of these organizations is through humanitarian relief delivery to affected peoples or carefully targeted needy areas. There is hardly any partnership between the international NGOs and their local counter parts. Broadly, the relief organizations do not approach the problems in these areas from a rights perspective. There is however an interesting phenomenon developing of some of the traditional service delivery organisations spearheading the human rights approach to development. Action Aid B Kenya has taken leadership in the promotion of the basic rights framework in addressing poverty. It has got into partnership with a number of local advocacy organizations including mainstream human rights organizations. This is commendable progress. The worrying trend in all this is that it seems much easier for government and bilateral and multi-lateral donors to support such initiatives led by international organizations than those led by national organizations. This was very clearly illustrated in the development of the education master plan which sought to have basic education endorsed as a basic right. It is also very clear in the Basic Needs are Basic Rights Campaign where Action Aid is holding meetings with governmental representatives from relevant departments to help them internalise the rights approach in their work against poverty. The effect of this from the point of view of local organizations is that it de-politicises them, and renders them irrelevant in their attempts to advocate certain things with the government. It also means that they have to compete for funds to do advocacy work with huge organizations like Action Aid.

5.9 Mechanisms of redress

The legal system is the only system of redress for violations of rights. In Kenya however it is not

accessible to all, and even for those who can access it are not treated equally by the law. The rule of law is undermined, and this *ab initio* renders this system in-effective and unreliable. The traditional systems of redress and dispute resolution have for all practical purposes either disintegrated or where they exist are inadequate. Communities have therefore resorted to extra-legal mechanisms of redress such as those witnessed in West Pokot. Others such as Mwea combine the legal with the extra-legal. The legal redress however is only available under the very limited and restrictive laws within which socio-economic organisation, and property ownership are regulated.

5.10 Evangelisation and depolitization of poverty

There is evidence of religiosity and evangelisation in marginalised areas with many non-mainstream Christian denominations taking center stage. The evangelisation is tinged with tangible benefits such as health clinics and schools. Most of them seem to be of American origin. This phenomenon seems to have the effect of removing the struggle for human dignity from the purview of a rights framework. It has led the affected peoples to accept their fate. This is evidenced by their resignation to their situations. It also seems to intensify the dependency syndrome in the affected areas, but this time the dependency is not targeted to the government but from these religious entities. An interesting characteristic of these entities is that they have a way of extracting money and resources such as labour from the beneficiaries of their charity. This increases the dependency because most people will give so that they can receive several fold back.

This phenomenon is widespread in Busia and Turkana. It appears not to have extensively penetrated the other survey areas to the same extent due to the entrenchment of mainstream churches and religions such as the Catholic, Anglican and Islam.

6.0   ARISING ISSUES OF CONCERN: PROSPECTIVE AREAS FOR FURTHER RESEARCH

Conceptual

1   How can we re-orient our research approaches so that they begin by developing our own experiences and historical processes as legitimate units of analysis, instead of always beginning with external experiences as the units on which to reconstruct and therefore name our experiences? If the human rights framework is to work in our contexts, it must be constructed from a legitimate indigenous background of experiences and realities, not from a comparative analysis of the European or American experiences and realities.

2   How can rights be constructed in a terrain of the fast changing state, and where third parties have become pertinent to the state-citizen relationship?

3   How can the utility of the rights framework be brought to bear in the lives of the peasant communities of Kenya who have lost hope in the state and are looking inward for survival?

4   Given the history of constitutionalism in Kenya, how should basic rights be incorporated in the constitution so as to make a difference in the lives of the poor of this country?

5   What is the effect of the evangelism approach to poverty on the rights framework, and peoples ability to demand for their rights

Organisational/Logistical

1. How can international development organizations which are now engaging in advocacy work together with local advocacy organizations without using them as rubber stamps, and without rendering them irrelevant to the government.?
2. How can the modes of organising among peasant communities be made more effective in a restrictive legal and administrative environment?
3. How can national organizations and community initiatives work together make the rights framework more useful as a tool for social transformation in Kenya?
4. How can the legal system be rendered more supportive of the rights framework as a tool of social transformation?

7   RECOMMENDATIONS

1. Discourse around issues of basic rights must be gauged from the people who experience basic want on a daily basis and who struggle to survive through resisting these oppressive circumstances.

2. Basic rights construction must be expanded to include other referents other than but together with the state, who are responsible for the conditions of the lives of people. There is need to look for ways to pluralize the human rights construct so that it accommodates others referents alongside the state whose activities and/or actions are having oppressive and threatening effects on peoples lives. This needs to be done from the realities of our context. In order to do this, national organizations need to adopt an global perspective to their rights advocacy even as they work locally. This is important because many of the causes of the oppressive conditions of peoples lives are increasingly caused by policies and laws made thousands of miles away, in for a where local organizations may have had an effect if they had been focused internationally.

3. Constitutionalisation of basic rights must be accompanied by reforms in the legal system to legalise social pluralism to allow for people and communities to freely organise and demand for their rights. The constitution should also not be presented as an instant panacea to peoples social economic problems. The utility of the constitution must be properly explained to the peasant masses. They must also be helped to understand the importance of the legal system being supportive of the constitution. The reform must therefore be comprehensive as to include requisite reforms throughout the entire legal system.

4. National organisations and the communities need to develop together mechanisms of working under the human rights framework. This will assist in the development of a

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construct and language of rights that is easily understood by all and mechanism of enforcement which are accessible to all.

5. It is very important that the discussions began during the various presentations in the progress of this study be maintained, and that representatives of peasant communities be included in them. It would also be useful to invite the development organizations to participate. This would be one way to develop a discourse around the rights question in our present and changing context. It may also be the site for the development of the mechanism through which communities and mainstream human rights organisations should work together.

CONCLUSION

The many years of authoritarian one party dictatorship have negatively impacted on the human rights environment in Kenya. Neither the inclusion of civil and political rights aspects of human rights in the constitution nor the reintroduction of multiparty politics have generated a human rights culture. The constitution has never served as an instrument of democratic governance in the country or as a defender of justice. It has been alienated from the people to the extent that the majority of the citizens are note aware of its content. Instead, the people continue to experience the administrative power of the state through instrumentality of the provincial administration, which institution derives its existence directly from the president and not the constitution.

The constitution itself being a compromise package between contending elites at independence peripherilised the people hence their alienation. The result was undefined nationalism fired by the attainment of independence which ushered in a type of governance largely based on hope and enthusiasm but not law and accountability to the people. The retention of colonial institutions and laws has meant that the citizens have been all along relegated to mere recipients of policy. The state-citizen dichotomy has never been on a rights duty continuum. It has been based on an order directive compliance continuum. This phenomenon has characterised both regimes of President Kenyatta and Moi. The retention and consistent application of antihuman rights laws to the citizens over the years has further whittled down the already weak human rights regime as currently embodied in the constitution. Thus, the basic rights of assembly, association, expression, movement and conscience have been stifled by an overbearing and heavy handed regime. The net effect of this situation has been a complete obliteration of social, economic and cultural rights from Kenya's human rights parlance. The situation has further been exacerbated by a hostile judiciary which has negated the development of a human rights jurisprudence.

It is not only desirable but imperative that a new constitution be inclusive of a comprehensive Bill of Rights comprising the civil and political and economic, social and cultural aspects. The latter component should not be some kind of wish list of obviously unattainable goals. It should be a programme of undertakings by successive governments reflective of ideals to which every Kenyan aspires. Embodying such rights in the constitution will have the added advantage of introducing the imperative of responsibility on the part of governments in the manner in which they manage the

economy of the nation. Corrupt governments will hardly survive the litigation that is sure to follow. Perhaps great challenges for human rights practitioners will arise from the need to socialise the contents of the new constitution to the public in manner that makes it a living reality in their day to day lives. This will inculcate a spirit of vigilance in the psyche of the citizens. It is through such vigilance that the government can be periodically called upon to account in the even of human rights violations. In this regard, human rights should be socialised to the public as a complete package because they are inter dependent. It is only through courts of law and agitation through democratic institutions that the government can attain the requisite sensitivity necessary to guarantee the peoples rights.

Any constitutional reform must not only entail the change of relevant principles of governance; but also a comprehensive institutional reform. Such reform will guarantee the formalisation of peoples agitation. As matters now stand, the realisation and enjoyment of human rights by ordinary Kenyans is as yet a dream to be achieved.

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ANNEX I: LIST OF PERSONS INTERVIEWED

Mwea

1. Veronica Njenga	Female	Middle aged
2. Wangui	Female	Middle aged
3. Lucy Nyambura	Female	Middle aged
4. John Njau	Male	Youth
5. Caleb Nyaga	Male	Youth
6. Geoffrey Mbuthia	Male	Middle aged
7. Peter Njoroge	Male	Old aged
8. Paul Njoroge Kamau	Male	Old aged
9. Phillip Kimani	Male	Old aged
10. Wanjiku	Female	Old aged

Nyeri

11. Pauline Wanjiru	Female	Middle aged
12. Jane Wakarura	Female	Middle aged
13. Eustas Nginu	Male	Middle aged
14. James Mwangi	Male	Middle aged
15. Samuel Mwangi	Male	Middle aged
16. Wanderi	Male	Youth

Kwale

17. Alfred Odhiambo	Male	Youth

NB: This was supplemented by readings of media materials and informal talks with other persons knowledgeable of the Kwale mining issue.

Kangemi

18. Melita Mutia	Female	Middle aged
19. Mary Nganga	Female	Middle aged
20. Osbon Obusebwa	Male	Middle aged
21. Jane Kamau	Female	Middle aged
22. Charles Onyando	Male	Middle aged

Gitaru

23. Opiata	Male	Middle aged
24. Hon. Paul Muite	Male (MP)	Middle aged
25. John Murweru	Male	Youth

NB: This was supplemented by readings from surveys conducted by Kituo cha Sheria and Oxfam Kenya.

Human Rights Organisations

26. Wambui Kimathi B Kenya Human Rights Organisations
27. Jane Weru B Kituo cha Sheria
28. Gitu Mburu B Legal Resources Foundations
29. Kagwiria Mbogori B International commission of Jurists (Kenya Section)

ANNEX II : INTERVIEW QUESTIONS

1.   Nature of the problem (economic social and cultural)

- What is your main problem (s) in this area?
- How intense and widespread is the problem?
- for how long has the problem existent in this area?

2.   Addressing the problem

- What are the people doing to address the problem?
- What difficulties are they encountering in their efforts to address the problem?
- How are you surviving right now?

3.   Organisational forms

- What rights based organizations/ groups exist in this area?
- What other organizations /groups exist in this area?
- To which organisation do you belong ?
- Why did you join this organisation/group?
- Is this organisation/ group registered?

4.   Operational problem

- What problems/hindrance(if any) did your organisation/group experience during its
- formation?
- What problems/hindrance (if any) does your organisation experience during its
- operations?
- What traditional forms and institutions exist in this area for the purpose of solving
- people s problems?
- What strategies does your organisation employ in addressing the problem?
- To what extent have these strategies been successful?

5.   Perception of the problem

- Who/what do you blame for your problems in this area?
- Do you think you have a right to be free from this problem?
- Why do you think you continue to be afflicted by this problem?
- do you think the government has any role to play in this problem?(Causation and resolution)

6. Suggested solutions

- What do you think can be done to solve this problem? (Legal, administrative, politicaland institutional).
- Do you think a new or reformed constitution can resolve these problems as is being
- Suggested by some people?

7. Human rights awareness

- Do you think you have any rights as a Kenyan under the constitution?
- What types of rights do you have?
- Do you enjoy these rights? If not why not?
- Are you aware of the debate about the need to reform Kenya s constitution?
- Do you think the constitution should be reviewed?

8. Existence of other organizations

- Are there any other organizations operating in this area for the purpose of
- addressing this problem?(external e.g. NGOs etc.)
- Do you have any links with such organizations?
- What exactly do these organizations do to address the problem?
- To what extent are the people involved in the organizations activities?