

Volume 5 Number 4



# Quarterly Human Rights Report

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*Kenya Human Rights Commission*

The Kenya Human Rights Commission (KHRC) is a non-governmental membership organization founded in 1992. It has observer status with the African Commission on Human and Peoples Rights, is a member of the International Federation of Human Rights (FIDH) and is the 1998 winner of the MS International Award.

The mission of the Commission is to promote, protect and enhance the enjoyment of the human rights for all Kenyans.

To achieve this mission, the KHRC carries out activities through its three programs of Research and Monitoring, Advocacy, and Human Rights Education and Outreach. A variety of activities such as the production of human rights status reports, campaigns on key human rights issues, community based human rights education and the production of a variety of information, education and communication materials are carried out through these programs. Throughout all its work, the KHRC is committed to mainstreaming gender.

Through its community based human rights approach and whose core aim is to strengthen the human rights movement in Kenya, the KHRC currently gives legal cover and institutional support to 12 human rights groups and communities in Isiolo, Mwingi, Meru, Nyahururu, Mombasa, Nairobi, Thika, Siaya, and Tinet. As such groups and projects grow and stand on their own, the KHRC is prepared to take on others for similar support.

### **KHRC's Strategic Objectives**

The main strategic objectives of the KHRC include the following:

- Support human rights centred governance
- Hold state, institutions and individuals accountable for human rights violations
- Strengthen the human rights movement in Kenya
- Reduce human rights violations in Kenya
- Develop the human and institutional capacity of KHRC
- Secure the financial stability of KHRC

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# Acknowledgments

*This report was written by **Noelina Nabwire**  
and edited by **Andrea Wobick**.*

<b>Askari</b>	Guard/Soldier/Police officer
<b>Chang'aa</b>	Traditional brew
<b>Ksh</b>	Kenya shilling(s)
<b>Kiosk</b>	Shop
<b>Matatu</b>	Public service vehicle
<b>Manyatta</b>	Maasai traditional house
<b>Miraa</b>	Khat
<b>Panga</b>	Machete
<b>Rungu</b>	Club
<b>Shamba</b>	Garden/Farm
<b>Sungu Sungu</b>	Vigilante groups in Kuria and Tanzania
<b>Wananchi</b>	Citizens
<b>Youth winger</b>	Member of an informal KANU security wing

**Administrative Officers**

<b>AG</b>	Attorney-General
<b>AP</b>	Administration Police (officer)
<b>DC</b>	District Commissioner
<b>DO</b>	District Officer
<b>DCIO</b>	District Criminal Investigations Officer
<b>DSIO</b>	District Security Investigations Officer
<b>GSU</b>	General Service Unit
<b>OCPD</b>	Officer Commanding Police Division

<b>PC</b>	Provincial Commissioner
<b>CID</b>	Criminal Investigation Department

**Political Parties**

<b>DP</b>	Democratic Party
<b>FORD-KENYA</b>	Forum for the Restoration of Democracy - Kenya
<b>FORD-ASILI</b>	Forum for the Restoration of Democracy - Asili
<b>IPK</b>	Islamic Party of Kenya
<b>KANU</b>	Kenya African National Union
<b>KNC</b>	Kenya National Congress
<b>NDPK</b>	National Development Party of Kenya
<b>SDP</b>	Social Democratic Party
<b>UDM</b>	United Democratic Movement
<b>NAK</b>	National Alliance of Kenya
<b>NARC</b>	National Rainbow Coalition

**Others**

<b>ACHPR</b>	African Charter on Human and People's Rights
<b>ACRWC</b>	African Charter on the Rights and the Welfare of the Child
<b>CEDAW</b>	Convention on the Elimination of Discrimination Against Women

# Glossary of Terms, Abbreviations and Acronyms

<b>CRC</b>	Convention on the Rights of the Child	<b>KTN</b>	Kenya Television Network
<b>EPRDF</b>	Ethiopian People's Revolutionary Defence Forces	<b>MOH</b>	Ministry of Health
<b>FGM</b>	Female Genital Mutilation	<b>OLF</b>	Oromo Liberation Front
<b>ICCPR</b>	International Covenant on Civil and Political Rights	<b>QHRR</b>	Quarterly Human Rights Report
<b>ICESCR</b>	International Convention on Economic, Social and Cultural Rights	<b>UDHR</b>	Universal Declaration of Human Rights
<b>KBC</b>	Kenya Broadcasting Corporation	<b>KCC</b>	Kenya Cooperative Creameries
<b>KHRC</b>	Kenya Human Rights Commission	<b>KPCU</b>	Kenya Planters Cooperative Union
<b>KNUT</b>	Kenya National Union of Teachers	<b>CRADLE</b>	The Child Rights Advisory and Legal Centre



# Participatory and Human Rights Centred Governance

by Davis Malombe

For the last forty years, the KANU Government, a regime that had little respect for human rights, rule of law, social justice, transparency or accountability, ruled Kenya. On December 27<sup>th</sup> 2003, the NARC government rode to power on a popular vote and three days later, President Mwai Kibaki was inaugurated into office. In his inaugural speech, the President noted that **“the true purpose of the government is to make laws and policies for the general good of the people, maintain law and order, and provide social services that can enhance quality of life...”**

During the 2002 campaigns, NARC promised to address all the ills affecting the country by introducing free education, free health care, fight against corruption, upholding the rule of law and human rights, completing the constitutional review process, improving infrastructure and security, revamping our economy and empowering women among others.

Although the Kenya Human Rights Commission (KHRC) endorsed the candidature of Hon. Mwai Kibaki as the presidential candidate, and NARC as its favourite political party in October 2002, KHRC has retained its **independence** by taking its **agenda** to the government, providing constructive criticism and acting as a watchdog over government action, based on four of its strategic objectives:

- i) **Supporting human rights centered governance**
- ii) **Holding state, institutions and individuals accountable**
- iii) **Strengthening the Human Rights Movement in Kenya**
- iv) **Reducing human rights violations.**

In January 2003, the Kenya Human Rights Commission among other actors in Kenya issued an **Agenda to the NARC Government**. The KHRC's agenda included matters for urgent and immediate action. These included, the constitution review, ending corruption, establishment of a truth and reconciliation commission, gender sensitivity and inclusiveness, human rights in Northern Kenya, establishment of an Office for the First Lady, globalization, terrorism and issues pertaining to foreign affairs, among others.

Towards the end of March and again in December 2003, Kenyans audited government performance since it came to power and were unanimous that NARC had not only failed to perform satisfactorily, but that the civil society had 'taken a holiday' instead of keeping the government on its toes. KHRC on its part shifted its theme for the International Human Rights Day celebrations from "*Mwamko Mpya Kenya Mpya*" (**Dawn for New Kenya expected in 2002**) to *The Struggle Continues, Bado Mapambano*; a clarion call on Kenyans to awaken and hold the government accountable

## **Citizens and civil society's duty to hold the government accountable**

Like other players on the Kenyan political scene, the Kenya Human Rights Commission, welcomed NARC into power, but still maintained its watchdog role over the state and its institutions in the area of **protection** and **promotion of human rights, constitutionalism** and **democracy**. The organization would take its agenda to the state in the national interest; agitate for relations between state and civil society that are based on **independence, permanence, relevance** and **integrity**. The Kenya Human Rights Commission stands opposed to **co-option, intimidation, oppression** and **emasculatation** of the civil society by the state.

The Kenya Human Rights Commission was at all times aware that whatever the NARC government achieved on the basis of the agenda given by the organization would depend fundamentally on the **agitation** of the **Kenyan people**. Without a **vigilant** and **vibrant citizenry**, the Kenya Human Rights Commission knew that the NARC government would not honour its pledges and promises. In the Report Card, the underlying theme is the **GLORIFICATION OF THE KENYAN PEOPLE**, for agitating and demanding that NARC delivers on its promises and pledges. The underlying theme is that Kenyans need to maintain vigilance, agitation and vibrancy to force the government to deliver. The broken promises and pledges reflect the weakness of the citizenry in holding the state accountable.

## **Glorification of Kenyans: Towards Enhancing a Participatory and Community Driven Human Rights Centered Governance in Kenya**

This thematic framework is based on the KHRC belief in human rights centered governance and a political culture that recognizes that:

- (i) All **governments in power must be of the people, by the people and for the people.**
- (ii) **Sovereignty of the people** is the foundation of the state.
- (iii) Constituent **power of the people** must be always exercised in decision-making within society and the Government.
- (iv) Respect for human rights, the rule of law, promotion of social justice and gender parity, participatory and accountable, governance are the pillar of every state.
- (v) Politics is not merely a power game and a reserve of the elite for their own ends but **a social contract between the state and its citizens for national good.**
- (vi) **Governments in power are not principals but agents of the people** where the citizenry reserve its authority to ensure that the above aspirations are attained for the present and future interests of the nation.

For human rights defenders, this can only be realized if the citizenry becomes innovative, adaptive and aggressive in focusing on the existing and emerging human rights issues, aimed at enhancing community/people driven human rights-centered-governance among state and key non-state actors at local, national and international levels.

KHRC recognizes that human rights work is a continuing struggle; a learning and participatory process that needs resilience in energy; commitment in pursuit; consistency in articulation and strength in leadership and the led, for reflective actions to meet the changing social, political and legal demands.

In line with this, the organization has a Vision 2012 Strategic Plan (V2012) with the overall goal of: **“rooting human rights and democratic values in all communities to enable them to claim and defend their rights”**.

The KHRC audit of the NARC government in December 2002 (both internally and externally) showed that the government has neither lived up to its promises, nor the expectations of the people. This has led to the creation of a better conceptual and pragmatic work of politics – *Human rights as politics* -which gives a basis for assessing the development record of the government in power.

The human rights centered, **governance as an indicator of performance**, is based on the premises that civil and political rights are the rudiments of political democracy and economic and social rights the critical building blocks for social democracy. This strikes a balance between human rights on one side and democracy and development on the other.

Towards enhancing community driven human rights centered governance, the commission has a vision on making social movements to be the critical medium in the power struggle. This approach based on the holistic perspective of the rights of grassroots communities would shift the focus of the struggle for human rights beyond established institutions to an educated citizenry well aware of its rights.

Through this tool, citizens will be expected to develop values and commitment to change which together with higher levels of energy and enthusiasm, will result in more advanced strategies for advocacy in the struggle for democratic ideals.

To take the struggle to this level, KHRC will ensure that communities organized around specific issues are strengthened and developed into powerful advocacy networks. The commission on its part, will develop capacity to enhance leadership in human rights discourse, advocacy and democratic development, in it works with other interested institutions at all levels.

The removal of KANU from power led to laxity by Kenyans, among other strategic actors to hold the new government accountable. This under performance by the government drives home the point that the liberation struggle is not a matter of winning or losing a specific battle, but an ongoing war, until sustainable structural and institutional reforms are in place for the attainment of their rights and to meet their needs.

Citizens, human rights groups and other strategic actors in the liberation movement need to re-focus their efforts and re-ignite the spirit of activism and genuine change in Kenya. The **March for Justice<sup>(1)</sup>** being organized by the KHRC under the auspices of the Kenya Human Rights Network shall be the litmus test for the commitment of the citizenry and the civil society in ensuring human rights centred governance is rooted in Kenya.

***The struggle continues; Bado Mapambano- Pamoja Tutetee Haki***

## A. Extra-Judicial Executions<sup>1</sup>

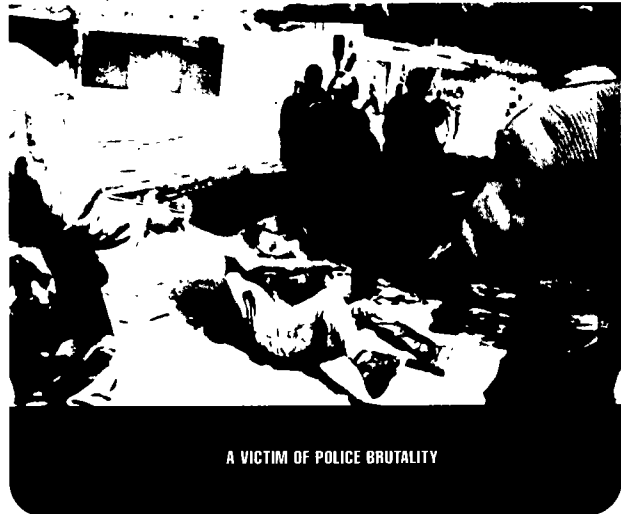
The Kenya Human Rights Commission's documentation of extra-judicial executions<sup>2</sup> in 2003 shows an increase in comparison to the year 2002. Most of these executions were allegedly an effort by the government to curb crime. The media as a whole did not exercise neutrality or impartiality and instead participated in concluding the guilt of suspects who were not tried in a court of law. It was common to find sensational headlines such as "Notorious Highway gangsters gunned down".

Furthermore, few media reports contained well-rounded perspectives on accounts of extra-judicial killings (noting that this can be difficult in such cases as sometimes witnesses are unwilling to come forward). Members of the media should be more diligent in their efforts to follow up on such stories and, wherever possible, give balanced accounts of the event.

The KHRC acknowledges that crime may be on the rise and that law enforcement officials should be supported in their efforts to

reduce it; however, it must be done in a manner that respects individual rights. The fact that several individuals that the police kill are victims of mistaken identity should pose as a strong deterrent to the police and should mobilize citizens of Kenya to take action to end these abhorrent, unlawful killings.

Worse still is where there seems to be a conspiracy among government agents to perpetuate this crime. In fact, even in incidences where the perpetrator comes in the open to admit to such a heinous crime, no actions is taken, it remains mere rhetoric. One such case occurred in mid-



<sup>1</sup> The Kenya Human Rights Commission (KHRC) defines extra judicial execution as any unlawful, deliberate and summary killing by a government agent(s) by order, complicity or acquiescence thus denying the victim the right to life, liberty and security of person in addition to the right to a trial.

<sup>2</sup> The Kenya Human Rights Commission (KHRC) defines extra judicial execution as any unlawful, deliberate and summary killing by a government agent(s) by order, complicity or acquiescence thus denying the victim the right to life, liberty and security of person in addition to the right to a trial.

February in Lakipia district; a district officer shot a seventeen-year-old boy in the chest, killing him on the spot. The killing occurred in an operation to evict Samburu herds people from a community conservation area. The DO admitted to killing the boy, but said that he did so in self-defense. Two weeks after the shooting, the DO was still in office while the Lakipia DC said he was conducting an investigation.

The extra judicial execution by police of 13-year old Mutua Maundu (13 yrs) December 25, 2003 by police officers was especially disturbing because police shot the helpless boy six times and later claimed self-defence. Another extremely disturbing incident clearly indicating government's conspiracy to perpetuate this vile crime occurring during the year came in the wake of a wave of terror ignited by violence instigated by Mungiki gang members. In response to Mungiki instigated violence, Rift Valley Provincial Commissioner Peter Raburu issued a shoot-on-sight order to the Kenyan Police Force. Whenever a police officer encountered anyone suspected to be a member of the Mungiki sect, Mr. Raburu was advocating for those police officers to resort to extra-judicial executions.

Our position as the Kenya Human Rights Commission is that regardless of the crimes the Mungiki may be guilty of, a shoot on sight order is a blatant, gross violation of human rights. Not only would we see a

degeneration of Kenyan society into lawlessness and anarchy, but also the order denies Kenyan citizens the right to life and the right to be tried before a court of law.

The year 2003 has recorded an increase in extra-judicial executions compared to the year 2002. As an organization, we believe that impunity, the negation of justice, continues to prevail in Kenya and often remains the cause of extra-judicial executions and the government has failed in ending the impunity.

Under international law, governments have a duty to protect people's inherent right to life and to prosecute serious violations of physical integrity. But the Kenyan government enforces these protections selectively, leaving people vulnerable to lawlessness and abuses such as police brutality, torture, and extra judicial executions.

As an institution, we therefore recommend that;

- **Legislative and Policy Reforms:** The legal framework under which the police operate grants them wide discretionary powers without providing effective check-and-balance mechanisms. An example is the police investigate all cases against themselves and in the absence of an independent investigator or complaints body Kenyans can expect very little justice. These laws must be

immediately overhauled, the completion of the constitutional review process notwithstanding.

- **Institutional Reform:** The Kenya Police Department has embarked on a crucial process of developing a strategic plan. It is moving towards becoming a police service and as a matter of priority must identify its long-term goal and how it intends to achieve it. The department must be reorganised to meet these new objectives and move towards results-oriented management so its activities can be measured against its stated aims.
- The **Police Standing Orders** must be revised to conform to the spirit of the constitution and internal accountability mechanisms identified

and reworked. This involves reviewing the internal complaints' and disciplinary mechanisms.

- **Ending the Cycle of Impunity:** The prevailing culture in the rank and file encourages officers to commit human rights violations and expect no ramifications. This explains the persistence of numerous and serious human rights violations by police officers who enjoy impunity for their actions. To reverse this cycle, the K-HURINET recommends the establishment of a tribunal to hear about the violations committed by the police while demanding that the government heed the advice of the Task Force on Truth Justice and Reconciliation, which recommends the establishment of a commission to deal with transitional justice.

## B. Torture

Torture in Kenya continues unabated and is inflicted as a way of extracting information. This is contrary to President Kibaki's promise when he unveiled responsibilities for the security services, National Information Security Services (NSIS), successor to the directorate of Security Intelligence (the Special branch), a dreaded wing of the police known for political crackdowns during the single party days that in the 80s and early 90s, that torture would be a thing of the past..

Worse still, torture perpetrators have expanded beyond security state agents to security agents beyond the Kenyan borders raising serious issues of the country's sovereignty. The Optional Protocol to the Convention against Torture and Cruel, inhuman or Treatment or Punishment, which Kenya to date has not ratified, recognizes in its preamble that States have the primary responsibility for implementing those articles (Articles 2 and 16 of the Convention which oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction) that strengthen the protection of people deprived of their liberty and the full respect for their human rights.<sup>4</sup> The protocol's emphasis is on directing efforts towards prevention in as far as eradication of torture is concerned which among others involves a preventive system of regular visits to places of detention.<sup>5</sup>

However, in instances where the state fails in its responsibility to protect and promote peoples' civil rights and liberties as revealed during the quarter is worrying. A revelation by Mander Central MP, Billow Kerow that Ahmed Mohammed Surur, a charcoal dealer had been arrested in June 2003 and allegedly tortured by "white" agents from the Federal Bureau of Investigations (FBI),<sup>6</sup> took most of us by surprise. Worse is that this happens in the first year of governance of a new regime, elected on a popular majority and whose main election pledge was to protect and promote human rights as a matter of priority. Mohammed Ahmed Surur, aged 33, on December 2003 claimed that he had been arrested and handed over to the FBI by Kenyan security agents.<sup>7</sup> Mohammed claimed that he was arrested on May 31, 2003 and held in custody by the FBI for six months. He further alleged that he was arrested along Mombasa's Biashara Street, blindfolded and briefly detained in a residential house before being driven to Nairobi. He further claimed that those who arrested him were Kenyan security personnel who later handed him over to the foreign agents. Surur alleged that he was tortured and forced to confess that he knew about the terrorist attack on paradise Hotel in Kikambala. One of human rights organisations, Independent Medical Legal Unit (IMLU) was reportedly following up the case pressurizing the government to explain why foreign agents were terrorizing Kenyans.

<sup>4</sup> Optional protocol to convention against Torture and cruel, inhuman or Treatment or

<sup>5</sup> *ibid*

<sup>6</sup> "FBI tortured suspect-MP," The People Daily, October 15, 2003

<sup>7</sup> "Suspect alleges torture," East African Standard, December 3, 2003



Amid such serious allegations against the government and equally arising disquiet among Kenyans on the government's priority the Attorney-General published the Anti-terrorism Bill. The Kenya Human Rights Network (K-HURINET) over the quarter launched a campaign against the enactment of the Suppression of Terrorism (SOT) Act in Kenya. Condemning all terrorist acts, state-sponsored or otherwise, they were categorical that they would support any positive effort towards combating terrorism but not initiatives like the SOT Bill, which they viewed as the greatest threat to the fundamental rights and freedoms of Kenyans, since the dark days of one-party dictatorship in Kenya. The SOT Bill does little to suppress terrorism, instead, it suppresses our rights; takes away, wholesomely, the fundamental rights of Kenyans without effectively dealing with terrorism. Among others, the Bill;

- Contravenes the Kenya Constitution
- Brings back the era of indefinite detention in Kenya
- Mandates the police to hold a suspect incommunicado.
- Empowers the police to take away one's property without due redress.
- Ensures that once a person or an organization is declared a "terrorist" by the Minister there is nothing such a person or organization can do to revoke the declaration. This is a great threat to civil society organizations and human rights defenders in the front line in Kenya, and all those who may voice opposition to government.

- Makes it possible for a police officer to shoot anyone with impunity in the pretext of fighting terrorism
- Makes it illegal to stand surety for a accused person.
- Makes it illegal to offer any services, including legal services, to a suspect.
- Outlaws dissent and the freedom of assembly and expression.

Torture in Kenya as alluded to above has mainly been inflicted on suspects as a way of extracting information. However, during the 80s and early 90s, widespread torture and sometimes killings of political dissenters especially during the Mwakenya crackdown was rampant by the Special Branch. This has been a known secret in the country's history but was further affirmed in the year when the new regime opened to the public the infamous Nyayo House torture chambers where for the first time, surviving victims of the torture in the chambers had an opportunity to express themselves. Thus in various bids to seek justice, Citizens for Justice (CFJ), an organization that seeks justice for all political, social and economic injustices in Kenya filed the first bunch of the over 2,000 cases it had prepared for compensation and reparation at the High Court.<sup>8</sup> CFJ brings together victims of injustices in Kenya like tribal clashes in Rift Valley, Wagalla massacre, Likoni clashes and the Nyayo House chamber victims. Through the chairperson, they expressed disappointment that Kiraitu Murungi, the Minister for Justice and Constitutional Affairs (MOJCA) Ministry had failed in his promise to ensure that they would compensate the torture victims. Victims of

<sup>8</sup> "Lobby to file for compensation of torture victims," October 7, 2003

torture held a peaceful demonstration to demand compensation.<sup>9</sup>

The pleas of torture victims in Kenya continue to fall on deaf ears, despite the fact that Kenya is a signatory to the United Nations Convention Against Torture and the Universal Declaration on Human Rights.<sup>10</sup>

The quarter too saw the launch of a book detailing the harrowing experiences of survivors and victims of the infamous Nyayo House torture chambers. The launch included a walk which began from the torture chambers, which, according to human rights activists, have been turned into a warehouse or storage facility and a parking bay. The Chairperson of the Kenya National Commission on Human Rights condemned this, saying it made a mockery of human rights.<sup>11</sup>

In another incident, torture claims were documented by three men charged with the murder of lecturer Crispin Mbai.<sup>12</sup> Lawyers of the three claimed that they had been severely beaten and tortured by police to implicate politicians in the killing. Dr. Mbai, who headed the technical committee on devolution of power at the National Constitutional Conference, was shot dead in his home. Later, the government ordered for an identification parade to enable suspects in the Mbai murder to flush out police officers who allegedly tortured them.<sup>13</sup> An independent

police team appointed by the Attorney-General to investigate the alleged torture promised to deliver its report in two weeks time.<sup>14</sup> Later, it was reported on November 18, 2003 that the state would prosecute 22 police officers accused of torturing the three.<sup>15</sup> The Deputy chief state counsel Horace Okumu noted that the AG had perused the investigating file against the officers and established that indeed the suspects were subjected to physical mistreatment.

Though severally the police have denied reports implicating them in misdeeds like torture, a report by IMLU confirms this. According to the study findings, the police remain the most notorious state department perpetrating torture.<sup>16</sup> According to the report, conspiracy by law enforcement officers to torture suspects and fabricate charges with intent to defeat justice continues to be perpetrated in systematic and most perfected manner.

Justice in Kenya is arbitrary when dealing with cases of torture by police. The lack of effective action by the government is evidence of its acquiescence in the actions of the police and the failure to respect the rule of law. Those who are victims of police brutality usually are the least able to speak out or bring their case to court. Unless the family of a victim of torture speaks out, or there is pressure from human rights groups, investigations and prosecutions are rare.

<sup>9</sup> "Activists demand pay over alleged torture," East African Standard, October 8, 2003

<sup>10</sup>

<sup>11</sup> "Torture chambers now govt stores," People Daily, December 15, 2003

<sup>12</sup> "Torture Claims in Mbai murder case," Daily Nation, October 14, 2003

<sup>13</sup> "3 in Mbai case to identify torturers," People Daily, October 28, 2003

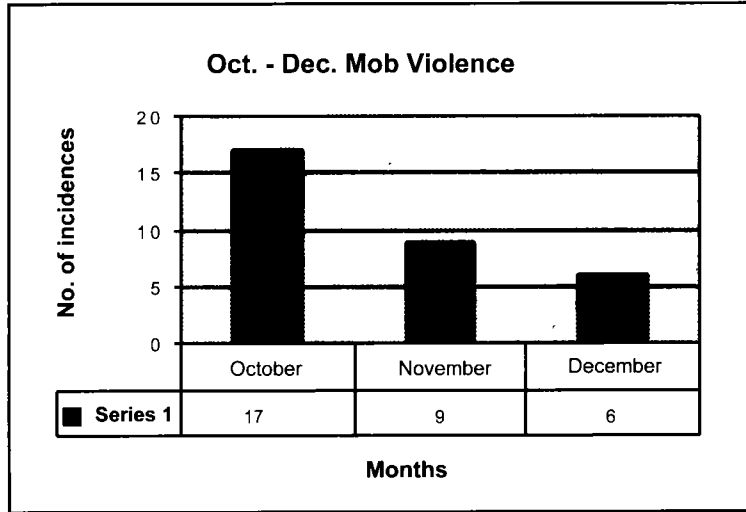
<sup>14</sup> "22 probed on torture claims," Daily Nation, November 11, 2003

<sup>15</sup> "Mbai Murder policemen to be prosecuted," Daily Nation, October 18, 2003

<sup>16</sup> "The Police force most notorious department," People Daily, December 21, 2003

## C. Mob Violence

The recent surge in mob violence and the failure of the police to stem the tide present a concern. In 2003 the Kenya Human Rights Commission documented 116 incidences of mob violence in which the victims were killed compared to 65 in 2002. When mob violence occurs the victim is denied the rights to life, integrity of person and due process. Mob violence continues to occur because of the impunity enjoyed by



its perpetrators. Police seldom arrest and charge mob violence suspects entrenching the belief that it is a legitimate form of justice. Charles Ontita, the police boss in the area, revealed this.<sup>17</sup> He noted that two to four cases were being reported every month saying that the elderly people were targeted.

Mob violence incidences continued over the quarter. In our last quarter, we reported how this crime has permeated the very fabric of society. This quarter, the madness of lynching suspected witches moved from Kisii to Malindi.



A VICTIM OF MOB VIOLENCE

<sup>17</sup> "Alarm as old people are murdered in district," Daily Nation, October 28, 2003

<sup>18</sup> "Alarm as old people are murdered in district," Daily Nation, October 28, 2003

## D. Violence Against Women

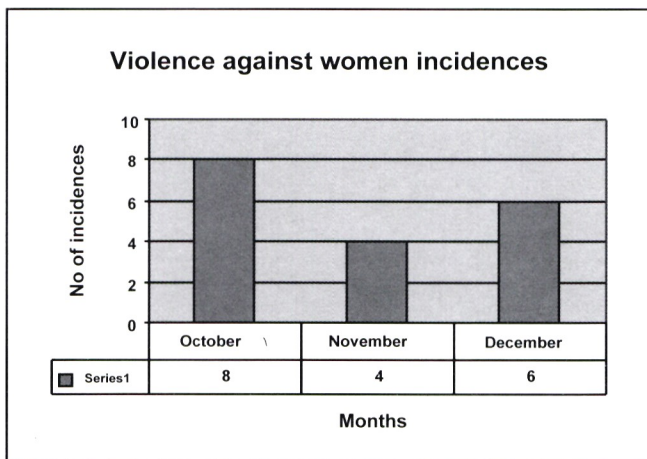
*The criminal justice system deals in a criminal trial of rape as if the victim is on trial. The law provides overwhelming protection to the suspect and almost none to the victim. The suspect is allowed by the Constitution to be represented as of right. Yet the victim is not represented nor supported... legislations should allow the prosecutrix protection too by including provision in the Evidence Act and the Penal Code. This would reduce the overwhelming attacks by the defense on the Character of the complainant as they do not anticipate the same. Secondly, the victim should be allowed to adduce such relevant evidence against the accused.*

Margaret Muigai (Magistrate)

A critical analysis of all socio-political and economic evils afflicting Africa today indicate that these have a positive relationship with human rights abuse and, more specifically, to unequal power and social relations between men and women.<sup>19</sup>

Women the world over suffer because of their gender. In our last Quarterly Human Rights Report, we noted that we live in a world in which women do not have basic control over what happens to their bodies, and that they can neither depend on the government nor society including close family members for protection from physical violence in the home, with sometimes-fatal consequences, including increased risk of HIV/AIDS infection.

Cultural relativism still remains a challenge in the fight for the protection of women rights where arguments that sustain human rights violations against women such as the lack of universality of human rights and culture specificity of human rights for women still persist.



The quarter recorded a total of 18 incidences of violence against women. Though less than the number recorded in the previous quarter, it does not necessarily mean that there was a reduction of violence against women incidences. This could be largely due to the fact that such incidences among them violence against women, women inheritance, rape, are rarely reported as they are considered to be 'normal'.

That legislation is important in ensuring protection and promotion of human rights is a fact. In Kenya, the power to make legislation is vested in Parliament. We would expect that any Member of

<sup>19</sup> Perceptions of Human Rights from the Social Teaching of the catholic Church: The Case of Women's Rights on Kenya in The East African Journal of Human Rights and Democracy, East African Human Rights Institute,

Parliament should spearhead efforts towards promotion and protection of human rights for all Kenyans in general and women. This however is not the case and could to a considerable extent explain the laxity with which parliament has treated the passing of bills relating to women's protection. Sospeter Ojaamong, a Member of Parliament, representing Amagoro constituency, was over the quarter implicated in a wife battering case.<sup>20</sup> The MP was accused of allegedly battering his wife, Linet Amondi Otieno. Interestingly, when FIDA, an organization that fights for the rights of women contacted the MP for comments after the wife reported the case at their offices, he allegedly said that he did not need FIDA to solve his domestic problems. And this is where such matters are seen as private and if we were to read from Ojaamong's script, a legislator, then protection of women and men from domestic violence becomes a problem. Condemning the act, the FIDA chairperson, Joyce Majjiwa termed the act an abomination and called for the arrest of the MP. He was on October 31, 2003 charged with assault to which he pleaded not guilty.<sup>21</sup> The case was listed for hearing on February 4, 2004.

However, comments from legislators were shocking with some abusing FIDA members for protecting women. An assistant minister, Fred Gumo, claimed that FIDA should be punished because they were dismantling families.<sup>22</sup> This is a clear

indication of impunity in as far as women rights violations are concerned and how members of the August house trivialize women issues. The hope that the Family Protection Bill aimed at addressing such ills will sail through the house is dwindling if a cabinet minister is opposed to moves to bring perpetrators of domestic violence to book because what the MP seems to be saying is that a man can batter his wife in the quiet of his home without interference from 'outsiders'.

That domestic violence is real in our society is undeniable and trivializing the whole issue into a 'FIDA is destroying homes' affair is simplistic and escapist. FIDA and other human rights organisations fighting for women rights should be encouraged for the work they undertake which is assisting battered women access justice when their rights are violated. This was happening amid revelations that cases of wife beating had increased more than 100 per cent since the beginning of the year.<sup>23</sup> We should acknowledge that women suffer silently and in most cases when they seek intervention for violation of their human rights they are often subjected to embarrassment, ridicule and verbal abuse. This is further affirmed by FIDA's 2003 annual reports that revealed that of all cases reported, only 10.89 per cent were registered on the police occurrence books showing that the public does not consider reporting violations to the police in the first instance.<sup>24</sup>

<sup>20</sup> "FIDA wants MP arrested for allegedly battering wife," People Daily, October 10, 2003

<sup>21</sup> "MP Charged with attacking his wife," Daily Nation, November 1, 2003

<sup>22</sup> "Gumo condemns FIDA "for destroying families"," East African Standard, November 3, 2003

<sup>23</sup> "Wife beating on the rise," East African Standard, December 20, 2003

<sup>24</sup> "Wife beating on the rise," East African Standard, December 20, 2003

Another angle to the alleged Ojaamong Wife battering case is the blatant violation of women's professional rights. Judging FIDA employees on grounds of marital status is disturbing. It should be noted that unlike marriage, which is a contract between two people who agree to it, FIDA officials are as trained as any other lawyer and are qualified to assess cases and represent clients and hence their marital status irrelevant, it is a professionalism issue. Such a statement from a cabinet minister of Gumo's stature trivializes the spirit of the government, which considers gender equity a prerequisite for national development and realization of the full potential of every Kenyan.

Domestic violence is a complex affair and in most cases, those affected are petrified of leaving their spouses and by the time the victim comes out in the open, they would have gone through hell. Encouraging however were reactions to this case by not only human rights groups but also fellow members of parliament who condemned Ojaamong's alleged actions and Gumo's abusive remarks regarding the case. In a statement to commend the President and NARC in their role of bringing women to the center of decision making since assuming power, the Coalition on Violence Against Women (COVAW) and the Kenya Women Political Alliance, called on the government to take urgent action to forestall actions and utterances of people in its ranks who were

reversing the gains on human rights and demanded an apology.<sup>25</sup> Calling for his resignation, nominated MP, Adelinah Mwau, demanded that the MP quits his cabinet post.<sup>26</sup> In a forum organized by the Coalition on Violence Against Women (COVAW), Assistant Minister Robinson Githae on behalf of the Minister for Justice and Constitutional Affairs promised that the government would publish the Domestic Violence Bill for presentation in parliament in early 2004.<sup>27</sup>

Ironically, as the Justice and Constitutional Affairs Ministry was promising the enactment of the Bill into law, members of the August house, the debaters and passers of the Bill were accused of sexual harassment on the other hand. Female members of parliament accused their male colleagues of subjecting them to "sexual overtures and innuendos".<sup>28</sup> They said they would lobby the government to implement strict laws against domestic violence, sexual exploitation and harassment of women in parliament and society at large and fight for improvement of women's health and sanitary services through the provision of critical facilities. The women in another forum also demanded the review of procedures in the house terming them oppressive.<sup>29</sup> The women MPs noted that both parliamentary and administrative policies and procedures serve not only to widen gender gaps but also affect women legislators negatively.<sup>30</sup> They among others demanded for a sexual

<sup>25</sup> "Government should support the war on gender violence," East African Standard, December 22, 2003

<sup>26</sup> "Githae praises Fida," East African Standard, November 27, 2003

<sup>27</sup> "Government to re-publish Bill on Domestic violence," The People Daily, November 27, 2003

<sup>28</sup> "Male MPs are accused of Sexual harassment," People Daily, December 17, 2003

<sup>29</sup> "Review laws, say women MPs," Daily Nation, November 21, 2003

<sup>30</sup> "Review laws, say women MPs," Daily Nation, Friday, November 21, 2003

harassment policy, maternity and paternity policy and new regulations to ensure equal representation in parliamentary committees in a memorandum they presented to the Speaker, Francis Ole Kaparo.

## Rape

Rape remains one of the most abominable crimes in the world and is shrouded by secrecy as it occurs 'in the dark'. That there is more focus on rape incidences in the country is a fact. Whether it is due to the fact that currently, more women and Kenyans in general are aware of their rights and are able to recognize that rape is a human rights violation or if the moral decadence that has seen rape incidences sour is a discussion for another day. A fact that cannot be denied however is that very few rape incidences are reported. What remains a cropper in the offence of rape is the three elements that have to corroborated in respect before it is proved before a court of law that indeed rape occurred;<sup>31</sup>

- That there had been penetration
- The penetration was without the consent of the victim
- It was the accused who in fact committed the offence.

## Development of the Rape Case implicating British Soldiers

In our last quarter, we reported the alleged rape claims of women in Laikipia and Samburu districts by British soldiers which many Kenyans condemned calling them among others a gross violation of defenseless and helpless women's fundamental human rights. However, in September the case had taken a completely new turn with claims that the allegations could be untrue. Hence the concern that forced many NGOs to demand for an independent investigation during the quarter.<sup>32</sup> They urged both the Kenyan and British governments to re-open the cases with a view of ensuring that the women are adequately compensated for the alleged violations. Amid these were bribe allegations in which police officers had been implicated to plant into their records forged rape claims against the British Army.<sup>33</sup> It was reported that forensic experts from London brought in to study police records claimed that rape reports alleged to have happened in 1970s and 1980s were implanted in police occurrence books but upon scrutiny by use of electronic gadgets were found to have been recent entries up to this year.<sup>34</sup> However, it would be simplistic to just ignore the claims as forgeries as though the mixed race children were forgeries too.

<sup>31</sup> Sexual Offences and Judicial Reactions in Enhancing Women's Rights, Kenya Section of the International Commission of Jurists, Nairobi, 2003

<sup>32</sup> "NGOs demand rape probe," East African Standard, October 1, 2003

<sup>33</sup> "Police refute bribery claims in rape case," Daily Nation, October 2, 2003

<sup>34</sup> "Police refuter bribery claims in rape case," Daily Nation, October 2, 2003

And this shows how violence against women is condoned where the victims are denied justice and perpetrators protected. But what about the senior British officers, what did they do when these complaints were lodged? Secondly, how can a perpetrator investigate her/his own crime?

On a positive note, as this was happening, the women went ahead and lodged a multi-million dollar compensation claim against the British government through a London law firm, Leigh, Day and Co. Disgusting though during the hearing of this case has been United Kingdom (UK) Ministry of Defence, which has maintained that the rape claims were never reported. Worse are the media in the UK, particularly the press that decided to rubbish the whole compensation claim. What we need is a serious investigation into the matter because at least one fact is clearly shown by the existence of mixed race children – that either there was voluntary sex or rape instead of diverting our attention to trivia. These women have definitely undergone psychological trauma and physical injuries to be lying and if anything, what we need is an impartial commission of inquiry into the matter! How can the accused investigate atrocities they are accused of committing?

On a positive note, British Lawyer, Martin Day, representing the women in a letter revealed that military police were trying to identify soldiers suspected of raping Kenyan women.<sup>35</sup> This contradicts the

earlier assertion by the British High Commission that initial investigations had unearthed no genuine claims in the police records. However later in November, victims of the alleged rape ordeals protested at what they termed a 'humiliating grilling exercise' to authenticate the claims.<sup>36</sup> It is quite baffling that the male interrogators were demanding detailed narrations, but surely how can an accused be a judge? Following this harassment and intimidation of the women, it was agreed that the British government involve women rights organisations to investigate the rape claims.<sup>37</sup> This agreement was reached after a meeting between FIDA and British representatives. In a statement to commend the President and NARC in their role of bringing women to the center of decision making since assuming power, the Coalition on Violence Against Women (COVAW) and the Kenya Women Political Alliance, called on the government to issue a statement on the alleged rape cases in Laikipia and Samburu and monitoring of the investigation being carried out by the Royal Military Police and measures to prevent further violations on Kenyan citizens.<sup>38</sup>

Though commendable in as far as protection and promotion of women rights is concerned in comparison to the previous regime, some decisions in general and appointments in particular during the quarter largely contrasted the

<sup>35</sup> "Britain hunts soldiers over rape claims," Daily Nation, October 21, 2003

<sup>36</sup> "Some 'victims' could have been merely loose," November 13, 2003

<sup>37</sup> "Samburu rape saga draws more protests," East African Standard, November 12, 2003

<sup>38</sup> "Government should support the war on gender violence," East African Standard, December 22, 2003



government's commitment to enhancement of women's rights. The appointment of parastatal chiefs was a blow to women. Out of the 30 parastatals listed for shake-up, only one woman was appointed, Esther Koimet, who is a former investment secretary at the Treasury.<sup>39</sup> This does not reflect what the Narc government alleged to be committed to; Affirmative action and the one-third representation of women in all key government appointments. Another blow during the quarter was in the appointment of judges where competent women were left out. Expressing disappointment to the whole process, FIDA noted that women were sidelined in the appointment in a recruitment process they said lacked transparency.<sup>40</sup>

### **Stripping Women**

One disturbing yet rampant form of gender violence in recent times is stripping of women in the name of being 'indecently dressed'. Hooligans do this and matatu touts. Thirteen people were arrested for this indecent act.<sup>41</sup> One disturbing incident during the quarter was the stripping of a visiting female volunteer and social worker, 24-year-old Amina Ngom from France. In a Press statement to the commissioner of Police, the Kenya Voluntary Development Association (KVDA), an NGO that mobilizes volunteers internationally to support needy

development projects had hosted 35 volunteers from Kenya, France, Germany, Korea, Australia, Canada, UK and Japan, where they were involved in the construction of a secondary classroom. On December 18, 2003, a volunteer from France, the press statement further alleged that there were several other women who had been subjected to this without the intervention of the police.

This is wrong and unfortunate that after 40 years of independence, some men are so insensitive and have decided to arrogate themselves the role of moral, dress and cultural watchdogs! It is time the government put a stop to this madness.

### **Women and Property Rights**

The KHRC documented an interesting trend over the quarter.<sup>42</sup> According to one Susan Owala, a beach coordinator with a local NGO, women are only paid after selling fish, and failure to sell leads to demands for sex from suppliers. Because women lack other alternatives with respect to work, they often have no other way to escape their poverty.

While this trend refers to the fishery industry, it is likely that the same applies to women in other industries. In their research findings on Women and Property Rights in Kenya, the Human Rights Watch underscored a complex mix of factors

<sup>39</sup> "Women not happy about appointments," Daily Nation, December 20, 2003

<sup>40</sup> "FIDA unhappy with list of new judges," East African Standard, November 2, 2003

<sup>41</sup> "Police arrest 13 for stripping woman," Daily Nation, December 23, 2003

<sup>42</sup> "Sex for fish," East African Standard, November 6, 2003

underlying women's property rights violations in Kenya;<sup>43</sup>

- Discriminatory Laws – Kenya's current constitution permits discrimination in personal and customary laws, which are central to property rights. The Law of Succession Act, for instance, contains some discriminatory provisions, and even the positive aspects of this law are largely unenforced. Although case law establishes that family property may be evenly divided upon separation or divorce, women rarely get an equal share of the property in practice. Customary laws of course give men more property rights than women
- Discriminatory Practices – Customary practices obstruct women's equal rights to property and prevent women from seeking redress for violations of these rights

- Biased attitudes
- Unresponsive Authority figures
- Ineffective courts – lawyers and individual women complain that Kenya's courts are biased, slow, corrupt, and staffed with ill-trained or inept judges and magistrates
- Other obstacles such as low levels of awareness of rights, the time and expense of pursuing claims, violence against women, and the social stigma of being considered greedy or traitors to their culture if women assert their rights

Though the government has initiated various initiatives in protecting and promoting the rights of women as evidenced above, a lot more needs to be done and this should be concerted effort by all Kenyans.

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<sup>43</sup> Research Findings on Women's Property Rights in Kenya in Enhancing Women's Rights in Kenya, Kenya Section of the International Commission of Jurists, Nairobi, 2003

## E. Violence Against Children

Nearly every country in the world is now party to the Convention on the Rights of the Child, and many have taken significant and concrete steps to end the abuse of children. But for too many children, the promises of the Convention remain hollow and the abuse they endure every day contradicts commitments made by their governments.<sup>44</sup>

Hundreds of millions of children across the globe are victims of exploitation, abuse and violence each year. Some of the effects of child abuse include poor physical and mental health, denial of education, homelessness, vagrancy and even death. Moreover, if and when these children of their own, they cycle of violence is likely to repeat itself.<sup>45</sup>

Though many children suffer in silence, the impact of abuse is very real. Yet child protection remedies regularly meet with resistance at all levels of society – from governments to community leaders to parents – because child abuse occurs mostly in private and is associated with criminality and corruption. In many cases, it is privately tolerated and publicly denied.<sup>46</sup>

The quarter marked an increase in incidences of violence against children. Children are our future, and how we treat and take care of them affects everybody's future. Incidences of violence against children ranged from defilement and female genital mutilation to confinement in prisons on behalf of their parents and death due to theft allegations ranging from

Kshs 10 to 1,000. Perpetrators of child abuse are often those who hold positions of power over children – parents, relatives, teachers and law enforcement officers. The quarter was also characterized by garish accounts of cannibalism and pedophilic incidences directed at children.

### Sexual Abuse

The world over, children continue to be sexually abused and exploited in various ways. Abuse occurs in homes, schools, detention and correctional facilities and in homes where they work as domestic house helps. The abuse leaves children permanently physically and psychologically traumatized. The rampant incidences of child abuse saw the Juvenile Justice Network organize a procession to protest against rising cases of child defilement.<sup>47</sup> Urging the government to take primary responsibility towards protection of defiled children, nominated MP Adelina Mwau further called on the government to provide social workers and legal aid to minors who are sexually abused as she flagged off the procession. In Parliament, Justice and Constitutional Affairs Minister Kiraitu Murungi and Attorney General Amos Wako were taken to task to give the government's position on the increasing defilement and rape cases in the country.<sup>48</sup> On behalf of Parliament, House Speaker Francis ole Kaparo noted that all parliamentarians abhor the beastly behaviour of people who continue to defile children and rape women.

<sup>44</sup> <http://www.hrw.org/campaigns/crp/promises/conclusion.html>

<sup>45</sup> [http://www.unicef.org/media/media\\_9482.html](http://www.unicef.org/media/media_9482.html)

<sup>46</sup> *ibid*

<sup>47</sup> "MP leads march against sex pests," Daily Nation, December 21, 2003

<sup>48</sup> "Kiraitu and AG to explain rise in rape cases," Daily Nation, December 10, 2003

There were some rays of hope, however, in a quarter that witnessed a worrying spate of defilement incidents. In one case senior principal magistrate Margaret Wachira ruled that Paul Ngure, a 22-year-old man who raped a sick four-year-old girl, should be imprisoned for life with hard labour, and described him as a barbarian worse than a beast.<sup>49</sup> The girl fought for her life at the Nairobi Women's hospital where she had to use a colostomy bag to pass urine. A medical report signed by Dr Sam Nthenya, a gynaecologist at the Nairobi Women's Hospital, revealed the child suffered multiple bruises and an extensive tear and required several stitches.<sup>50</sup>

The consequence of the above-mentioned particular case is positive; however, it is still the exception and not the norm. Crimes against humanity such as rape and defilement must draw harsh penalties. Punishment should be greater than for those crimes that do not risk an individual's bodily integrity and health, such as property crimes. We must send a message that these acts will not be tolerated in order to end such violations.

In our last QHRR, we expressed concern over the fact that in cases involving guardians and relatives, other parties frustrate efforts to seek justice for children. This persisted over the quarter as evidenced in a case where an accused, Augustine Mutua Sekeni, the uncle of a 14-year-old victim, was set free when the prosecution withdrew the case against him citing frustration of the case by investigating officers.<sup>51</sup> The prosecutor,

Eunice Mbula, said she had to withdraw the case since police in Makueni had refused to comply with an order to have the file brought to court for the trial to continue. Later on, a police officer was alleged to have gone to Machakos to tell the girl's aunt to withdraw the case.<sup>52</sup> Although it was not clear whose interest the police officer was acting in, a letter from the accused's Akiimi clan from Kathonzweni to the court allegedly urged the Makueni Resident Magistrate to terminate the case on grounds that he had agreed to deposit a Shs 10,000 bond with the clan to reach an out-of-court settlement.<sup>53</sup> The elders are reported to have said that cases of such nature were rampant and that they are normally settled amicably out of court and all parties affected are normally satisfied.

Even when acceptable cases of child abuse get to court, meeting the evidentiary burden is difficult. First, in many cases, there are no witnesses to the crime. Second, unless the child gets to a hospital within a short time frame, there is often no medical report to rely on, leaving the court with little solid evidence to go on. Third, children may be scared to testify against the accused if that individual has a personal relationship with or holds a position of power over them. Finally, if the crime involves a small child, she or he may have difficulty recalling the incident or relating the information required to secure a conviction by the court.

Another problem that can occur is that it is very difficult, if not impossible, for some victims' families to raise enough funds to

<sup>49</sup> "Child rapist is jailed for life," East African Standard, December 9, 2003

<sup>50</sup> "Child rapist is jailed for life," East African Standard, December 9, 2003

<sup>51</sup> "Girls in tears as sex attack suspect freed," Daily Nation, November 25, 2003

<sup>52</sup> "Defilement of girls on the rise: Most cases are usually settle out of court by elders," Daily Nation, December 5, 2003

<sup>53</sup> "Defilement of girls on the rise," Daily Nation, December 5, 2003

cover court costs. Further, those families that attempt to pursue the case may face stigma from their community or even be threatened with ex-communication. This occurred in a case reported in our last QHRR where clan elders in Misakwani village, Machakos district were allegedly meeting to undertake a cleansing ritual intended to conceal defilement of a girl by her grandfather.<sup>54</sup> The parents of the girl were reportedly threatened with excommunication from the community on attempts to report the matter to relevant authorities. The accused, however, was later arrested and the area police boss promised that he would be charged after a comprehensive doctor's report was secured and investigations completed.<sup>55</sup> Nahashon Mwilu Kilonzi, 70 years old, the accused, told the court he did not understand why his own son had turned against him and told him that the family would have to move out of his home.<sup>56</sup> The son admitted that it was not his wish that the matter ended up in court because the accused had allegedly defiled his daughter. Elsewhere in western province, a 50-year-old man is alleged to have been fined four head of cattle, a goat and a chicken by the council of elders after confessing that he had impregnated his 16-year-old daughter.<sup>57</sup> However, the executive directors of the Center protested the decision for Rehabilitation of Abused Women (CREAW) and the Alliance for the Advancement of Children (KAACR) demanded that the man be prosecuted.

## Parents, Guardians and Teachers as Perpetrators

Other incidences of violence against children witnessed over the quarter were conducted by close relatives. In one such incident, Toroitich Chelal, a one-year old boy died a horrendous death on December 6, 2003 at Kiptumo village, Koibatek district.<sup>58</sup> His 40-year-old uncle, Francis Chelal, allegedly hacked his head with a panga and drank his nephews blood and ate his raw flesh before cooking the rest in a pot.<sup>59</sup>

Eric Murimi, an eleven year old standard five pupil, was beaten to death by his grandmother for allegedly stealing Sh 8,000 at Rwambiti village in Kirinyaga district.<sup>60</sup> Two-year-old Elijah Okemo was butchered during the quarter by his mother, eighteen-year-old Janet Kwamboka, in a bid to win a lover.<sup>61</sup> According to a close relative of the suspect, Kwamboka intended to get married to a middle-aged man after the father of the child disowned her and the baby frustrated her efforts to get married. According to the local police boss, Herbert Khaemba, the deceased's body had several multiple wounds on his face and neck.

Though not dead, 14-month-old Elizabeth Njambi was brutalized and tortured by her mother's lover after their affair went sour.<sup>62</sup> The jilted lover reportedly went to see the mother and found the house locked. He then broke in, pounced on the baby and

<sup>54</sup> "Row Simmering Over an Alleged Defilement," People Daily, August 14, 2003

<sup>55</sup> "Grandpa in for defiling minor," East African Standard, August 21, 2003

<sup>56</sup> "Defilement charge man disowns son," Daily Nation, October 7, 2003

<sup>57</sup> "Groups protest at girl's defilement," Daily Nation, November 6, 2003

<sup>58</sup> "Cannibal shock as man eats nephew," East African Standard, December 9, 2003

<sup>59</sup> "Man charged with murder, eating corpse," East African Standard, December 18, 2003

<sup>60</sup> "Boy, 11, dies after beating," East African Standard, December 6, 2003

<sup>61</sup> "Teenage girl arrested for allegedly butchering son," People Daily, December 3, 2003

<sup>62</sup> "Man bites, burns 14-month-old baby," East African Standard, October 11, 2003

tortured her by burning her using cigarette butts then sank his teeth in her flesh, leaving her with gaping wounds.

Elsewhere, Fredrick Ngwono Oyugi, a Form two student at Hono secondary school did not survive an attack by church pastors. Leaders from the Tehila Gospel Assembly Church tortured the deceased to death on allegations that he had stolen Sh 1,000.<sup>63</sup> Joyce Chepkemioi, ten-year-old girl, lost her life at the hands of her mother on allegations that she had stolen four eggs worth Sh 20 from a neighbour.<sup>64</sup>

Elsewhere, the normal growth of James Kimathi, an 18-year-old boy is stunted. He is alleged to have been confined to a chicken coop for more than 10 years by an abusive stepmother.<sup>65</sup> Shocking was the fact that despite his age, the boy was still in pre-unit, said that he was not allowed to socialize with other children in the village, tortured and given leftovers to feed with the chicken by his step-mother. Both parents were later arrested.

Children over the quarter not only suffered under the parents' hand but teachers' too. Despite the fact that corporal punishment has been officially banned, serious cases were documented during the quarter. In one incident, Charles Ndungu, a 13-year-old boy sustained fractures in three of his fingers after a teacher allegedly beat him for arriving in school late.<sup>66</sup> Jacob Njoho, a Standard four pupil is alleged to have been assaulted by his teacher after making noise. He was admitted to the hospital

unconscious and with blood oozing from his ears and injuries suffered from the teacher's beating.<sup>67</sup>

## Female Genital Mutilation

The quarter saw 300 girls in West Pokot undergo the Alternative Rite of Passage (ARP), a ceremony that emphasizes 'circumcision' of the heart and mind but not the body.<sup>68</sup> The purpose of the ceremony was to uphold the positive aspects of Pokot traditions while discarding harmful practices. A setback after the graduation though was the circumcision of 120 of the girls (between 13 and 17 years of age) who had graduated.<sup>69</sup> The chairperson of Sabaoth council of elders, Philip Chebus, said that FGM was significant to the community and would thus continue. Minister of State, Lintah Kilimo noted that the practice was greatly undermining girls' education in some parts of the country.<sup>70</sup>

We join the minister in not only calling on state agents to ensure that the practice is eradicated but also stiffer penalties for those accused of FGM. Unfortunately, during this quarter some court action was a blow to the fight against FGM. In one such incident, three women convicted of circumcising a young girl received a very light sentence. Several women and local MPs protested the court's decision.<sup>71</sup> Two MPs from the Pokot region announced that a cultural day had been set aside to focus on the FGM and that the occasion would

<sup>63</sup> "Student 'tortured to death in church,'" East African Standard, November 4, 2003

<sup>64</sup> "Girl, 10, Killed," East African Standard, October 9, 2003

<sup>65</sup> "Terror in a chicken coop," East African Standard, November 13, 2003

<sup>66</sup> "Teacher breaks pupil's fingers," Daily Nation, November 19, 2003

<sup>67</sup> "Pupil, 12, hospitalized after assault," People Daily, November 20, 2003

<sup>68</sup> "An alternative rite of passage," people Daily, December 17, 2003

<sup>69</sup> "Girls' escape short-lived as the get 'cut,'" Daily Nation, December 19, 2003

<sup>70</sup> "Civil servants abetting female cut warned," Daily Nation, December 9, 2003

<sup>71</sup> "Women protest court leniency on circumcisers," Daily Nation, November 27, 2003

be marked every December with festivals to educate the community on the dangers of the rite.<sup>72</sup> This also comes amid worrying counter efforts that undermine efforts to eradicate the practise. During the quarter, nurses at government hospital were allegedly carrying out FGM.<sup>73</sup>

A further problem is some parents' perception on FGM. One parent, Mary Mōraa, accused the media of blowing the whole issue out of proportion, noting that as parents, they had been warned to have the act performed in hospitals rather than at home for health reasons.<sup>74</sup>

### **Child Labour**

Though the government and Kenyans may be happy about the introduction of free primary education, it should be noted that child labour is still a regular occurrence, and concerns such as retention, completion and transition from primary to secondary education should be addressed. During the quarter, many leaders acknowledged that child labour is a setback to learning. In Nyando, the District Commissioner Hassan Farah noted that child labour was to blame for low enrolment rates as many parents preferred to have their children at home to engage them in sugarcane farming.<sup>75</sup>

### **Arrest of street children**

Street children throughout the world are subjected to physical abuse or even death

by police or and governments treat them as a blight to be eradicated rather than as children to be nurtured and protected.<sup>76</sup> They are frequently detained arbitrarily by police or criminally charged with vague offenses such as loitering, vagrancy, or petty theft.<sup>77</sup> They are tortured or beaten by police and often held for long periods in poor conditions. Girls are sometimes sexually abused, coerced into sexual acts, or raped by police. During the quarter, a 17-year-old street boy was shot by police and detained at the Central Police station.<sup>78</sup> Njoroge Kamau is reported to have been shot in the temple by police for allegedly attempting to steal a coat and a mobile phone from a police reservist. The boy however denied the allegations. According to the Inter-Medico Legal Unit, the boy was psychologically traumatized and needed urgent attention.

Viewed as "anti-social", criminal, or a scourge on a city's tourist-filled streets and business districts, many police and ordinary citizens simply wish street children would disappear by any means. Because of this, street children face extortion, theft, severe beatings, mutilation, sexual abuse, and even death from a variety of sources.<sup>79</sup>

It's a fact that children are vulnerable to abuse and the violation incidences are worsening by the day despite ratification of CRE and enactment of Children's Act 2001 upon all Kenyans to end violence against children as they are our future.

<sup>72</sup> "Pokot leaders to have annual anti-FGM festival in December," October 18, 2003

<sup>73</sup> "Girl circumcision rife in hospitals," Daily Nation, October 21, 2003

<sup>74</sup> "Parents defy female cut ban: Residents are now taking girls to hospitals to undergo the operation," daily Nation, December 5, 2003

<sup>75</sup> "Child labour a setback to free learning," Daily Nation, October 6, 2003

<sup>76</sup> - <http://humanrightswatch.org/children/street>.

<sup>77</sup> *ibid*

<sup>78</sup> "Shot street boy treated as police prepare charges," Daily Nation, November 6, 2003

<sup>79</sup> <http://humanrightswatch.org/children>

## F. Informal Repression<sup>80</sup>

In emerging democracies, one form of informal repression entails violence between ethnic communities that have had long-standing and latent rivalries. Another is inciting new conflict between communities that had previously co-existed peacefully.<sup>81</sup> In our last quarter we reported that informal repression in Kenya creates many hazards – banditry, cattle rustling and ethnic cleansing, among others. It has been noted that when faced with opposition, dictatorial governments create informal political groupings, which create insecurity, allowing the governments to maintain the status quo.<sup>82</sup>

Incidents of cattle rustling in Gucha district continued during this quarter. What reportedly began as a minor theft incident at Gesombo village in which eight cattle were stolen degenerated into full-scale cross-border skirmishes.<sup>83</sup> This resulted in the razing down of 32 houses and several cattle driven away from either side of the border despite the presence of security personnel.

The skirmishes led to the closure of five primary schools along the Nyamira-Buret-Bomet border.<sup>84</sup> Allegations of partiality

in maintaining security in the area were recorded on the part of the security personnel. An ethnic agenda was cited as people from Geta in Nyamira district were allegedly ordered to disarm and surrender by security personnel from Bomet when their foes shot at them with arrows.<sup>85</sup>

During the quarter there were threats by political leaders, similar to those that led to the ethnic violence seen in 1992 and 1997. Two Kanu MPs had been quoted as threatening to lead the eviction of other ethnic groups from Trans-Nzoia district, claiming that the area historically belonged to the Sabaot and Pokot communities.<sup>86</sup> However, this was rebuked by the government who warned them to stop their threats. Through the Rift Valley provincial commissioner, Aggrey Mudinyu, the government noted that it would not allow resurgence of ethnic clashes as witnessed in 1992 and 1997.<sup>87</sup> The Minister for State in the office of the vice president Linah Kilimo strongly condemned the two, accusing them of fuelling the increased banditry and cattle rustling incidents in the North Rift region.<sup>88</sup> Detectives later interrogated them over the remarks.<sup>89</sup>

<sup>80</sup> "Informal repression often entails the instigation of violence between ethnic groups that may have long-standing and latent rivalries or inciting new conflict between communities that had previously lived together in harmony. Sometimes communities of the same ethnic background have been set against each other on political grounds. In other situations, governments have fomented religious rivalries" Introduction to Monitoring State-sponsored Violence in Africa (January 2000) Article 19, Civil Liberties Organization (CLO-Lagos), Kenya Human Rights Commission and Network of Independent Monitors (NIM-Durban)

<sup>81</sup> Darkness at noon: the politics of cattle rustling and political violence in Transmara. Central Depository Unit, 2003

<sup>82</sup> "Chabal et al (eds), Africa Works: Disorder as a political instrument, London, 1999

<sup>83</sup> "Panic as residents flee homes," Daily Nation, October 16, 2003

<sup>84</sup> "Five Primary schools remain shut in troubled border area," Daily Nation, October 16, 2003

<sup>85</sup> "Ethnic Clashes Bias Rampant," Daily Nation, November 12, 2003

<sup>86</sup> "Govt to act on threats of eviction," East African Standard, October 8, 2003

<sup>87</sup> "Politicians warned on threats," Daily Nation, October 21, 2003

<sup>88</sup> "Minister condemns Kanu MPs for fuelling banditry," People Daily, October 30, 2003

<sup>89</sup> "MP quizzed over warlike utterances," Daily Nation, December 13, 2003



In a remarkable move, an apology was made by a senior government official to the Marakwet community. The vice-president and minister for Home Affairs, Moody Awori, apologized to the community following the killing of eleven people attending a polio immunization programme at Tot health center five years ago six of which were children.<sup>90</sup> He also assured the gathering that it was the primary responsibility of the government to protect people's lives and property irrespective of political affiliation and tribe and cautioned politicians against issuing inflammatory statements.

Inflammatory statements by politicians contributed to the ethnic clashes that rocked the country following the multi-party elections in 1992 and 1997. This led to the death of thousands of Kenyans and the displacement of many others. Internally displaced people over the quarter, the majority whom are victims of the politically instigated clashes, sought reparations. The victims, under their umbrella organization, The Human Resettlement and Disaster Care (Huredica) sought compensation for property lost during the clashes and demanded Sh 31.2 billion.<sup>91</sup>

Another problem that has fuelled incidences of banditry and cattle rustling in Kenya and across the borders is the infiltration of small arms. According to one report, global arms trade is dangerously

unregulated and allows weapons to reach repressive governments, human rights abusers and criminals.<sup>92</sup> This was revealed during the launch of the 'Control Arms' campaign aimed at reducing arms proliferation and misuse and convincing governments to introduce a binding arms trade treaty. The campaign is an initiative of three organisations – Amnesty International, Oxfam and International Action Network on Small Arms (IANSA) and has been launched in over 50 countries.

Among the report's findings are the following:

- National arms export controls are riddled with loopholes. The easy access to arms increases the occurrence of armed violence, acts as a trigger for conflicts, and prolongs wars once they break out. Civilians are increasingly being targeted.
- Conflict and armed crime prevent aid reaching those who desperately need it, and often lead to the denial of access to health care and education.
- The 11 September 2001 attacks in the United States and the resulting 'war on terror' have fuelled weapons proliferation, rather than focusing political will on controlling arms.

<sup>90</sup> "State now apologizes to Marakwet for deaths," Daily Nation, November 11, 2003

<sup>91</sup> "Tribal clashes victims seek Shs 31.2 billion from state," East African Standard, December 1, 2003

<sup>92</sup> [www.controlarms.org](http://www.controlarms.org)

<sup>93</sup> Shattered Lives: The Case for tough international arms control, [www.controlarms.org](http://www.controlarms.org)

The report describes how the possession of increasingly lethal weaponry is becoming a normal part of daily life in many parts of the world.

Alongside the call for an Arms Trade Treaty, the Control Arms campaign is also calling for:

- Governments to develop and strengthen regional arms-control.
- Governments to rigorously control national arms exports, brokers and dealers, and do more to prevent law enforcers misusing their weapons and to protect citizens from armed violence.
- Local authorities and community leaders to help improve safety at a community level by developing projects designed to reduce the local availability and demand for arms.

Small arms play a key role in perpetrating abuses of international human rights and humanitarian law – through their direct use or through the threat of use.<sup>93</sup> More injuries, deaths, displacements, rapes, kidnappings, and acts of torture are

inflicted or perpetrated with small arms than with any other type of weapon.<sup>94</sup> Locally, the influx of small arms has been linked to the rise in cattle rustling and banditry incidents. The small arms influx in the country has been largely blamed on the civil war on Sudan as noted by Cabinet minister Linah Kilimo.<sup>95</sup>

According to the Security research and Information (SRI)'s research, there are about 127,519 illegal firearms in the North Rift regions.<sup>96</sup>

In a bid to end cattle rustling and other criminal activities, two new police posts were opened on the Turkana/Pokot border. It is hoped that these posts will also help boost security and curb banditry in the region.<sup>97</sup>

Our documentation of incidences of informal repression and research into the same clearly reveals that political violence to a large extent is perpetuated by the political class to hold onto power through exploitation of differences among communities for selfish whims.

It's upon the government and all Kenyans to end insecurity in the country.

<sup>94</sup> Ibid

<sup>95</sup> "Pokot, Marakwet raiders using guns from Sudan," East African Standard, December 2, 2003

<sup>96</sup> "127,000 illegal guns in N rift, says report," East African Standard, December 16, 2003

<sup>97</sup> "2 border security posts are opened," Daily nation, November 25, 2003

## G. Prisons

The Minister for Home Affairs has confirmed that Kenyan prisons are congested and inmates are subjected to inhuman conditions that upon release from the institutions aimed at rehabilitating them, many are in worse form than when they went to prison and unable to function in society or leave a criminal life behind them. . Reforms aimed at turning the institutions from torture chambers to correctional institutions are desperately needed.<sup>98</sup>

In our last report, we lauded gestures by the government aimed at improving prison conditions but emphasized the importance of backing such gestures with clear strategies - inmates must know why they are in jail, should receive counseling and be provided with skills that will assist them in rehabilitation. And hence to the 11,500<sup>99</sup> prisoners who benefited from the presidential clemency over the quarter should be given the benefit of the doubt to prove they deserved it and would be of good conduct.

However, these gestures have been met by skepticism. To some, crime is a choice, premeditated and done by those who have options and know consequences and argue that war on crime should therefore be won by deterrent and punitive measures and not by 'being nice' to criminals and donating Television sets.<sup>100</sup>

## Congestion

Congestion in prisons remained a problem during the quarter despite various efforts by the government to de-congest the institutions. In one incident, a Nakuru Chief magistrate, Gladys Ndeda, expressed concern over the 2,100 capacity of the Nakuru GK prison whose capacity should be 800 inmates.<sup>101</sup> Elsewhere in Western Province, the provincial prisons commandant, Richard Ombima expressed concern that the five prisons in the province were over-populated by nearly 100 per cent.<sup>102</sup> Congestion in prisons as a concern was raised in Parliament. The minister of state in the office of the vice president and ministry of home affairs and national heritage Linah Kilimo disclosed that of the 89 prisons, two borstal institutions and one youth corrective training center in the country, whose intended capacity is 16,000 was holding 43,393 inmates.<sup>103</sup>

Courts have also joined efforts towards decongesting prisons. In Kilifi district, courts sentenced 174 petty offenders to work under the Community service Order (CSO) programme rather than sending them to prison.<sup>104</sup> The area probation officer, Henry Nyakundi, reported that the programme had reduced the number of prison inmates in the district.

<sup>98</sup> \*\*\*\*Quote report by the Standing committee on human rights\*\*\*\*

<sup>99</sup> "11,500 convicts freed in time for Christmas," Daily Nation, December 23, 2003

<sup>100</sup> "The guests in our prisons," East African Standard, December 17, 2003

<sup>101</sup> "Court's concern over congestion," East African Standard, December 20, 2003

<sup>102</sup> "Jails crowded," East African Standard, December 15, 2003

<sup>103</sup> "43,393 inmates in Kenyan prison," People Daily, October 30, 2003

<sup>104</sup> "community service for offenders," East African Standard, October 12, 2003

Though congestion is seen as a problem which has largely been caused by the imprisonment of petty offenders who would be punishable under the Community Service Order, a revelation by the Commissioner of Prisons, Abraham Kimakil that about 20 per cent of inmates are innocent victims of an inefficient judiciary was disturbing.<sup>105</sup> He among others blamed the judiciary and police for the deplorable prison conditions saying that magistrates for up to eight months deliberately delayed the hearing and delivery of judgments. He further noted that some of the inmates were in prison because they did not know how to defend themselves or were too poor to afford the services of an advocate.

## **Prison Reforms**

The establishment of 16 magistrate courts in prisons was another welcome move during the quarter. Chief Justice Evan Gicheru established 16 magistrate courts in prisons and remand homes divulging that the move was aimed at addressing the delays and backlog of cases and part of the structural and institutional changes in the judiciary.<sup>106</sup> The courts are to be established in Nairobi Remand and Allocation Home, Langata Women's Prison, Kamiti Maximum Prison, Nyeri, Kisumu, Meru and Embu Main prisons. Others are to be established in Kakamega, Nakuru, Kisii, Machakos, Kitale, Kericho, Bungoma, Mombasa, and Eldoret prisons.

The quarter also marked the launch of the Prisons' Corruption Prevention Committee. Abraham Kimakil said that 100 officers had been trained on integrity assurance in order to speed up sensitization among police staff. He also gave a hotline for any complaint or corrupt deal.<sup>107</sup>

It is also encouraging to know that the government is aware of the need for more reforms in prisons. The vice-president has promised that the government would proceed with reforms to comply with all international conventions.<sup>108</sup>

Plans to set up special facilities for women prisoners were welcome too. Assistant Commissioner of Prisons Rose Muturi disclosed this saying that the move was aimed at ending the suffering of children who go with their mothers to jail.<sup>109</sup> However, apart from setting up the facilities, the government should make an inquiry into the circumstances under which women in custody conceive and give birth. As there have been allegations of rape, an investigation is important. As a mother who has a child because of rape or because of other reasons should not just be taken to such a center but circumstances surrounding the conception should be looked into, especially against a background where most prisoners do not have the right to conjugal rights currently. Currently, women prisoners with their children share cubicles with their offenders, which is not good for children.

<sup>105</sup> "9,000 innocent people in jail," October 22, 2003

<sup>106</sup> "Magistrate courts set up in prisons," East African Standard, November 22, 2003

<sup>107</sup> "Prisons graft team," East African Standard, October 1, 2003

<sup>108</sup> "Awori calls for more reforms in prisons," East African Standard, November 28, 2003

<sup>109</sup> "Special facility to be set up for prisoners with children," East African Standard, November 15, 2003

## H. Death Penalty

While marking the World Day Against the Death Penalty, October 10 2003, Amnesty International's call on the government's around the world was to cease executions immediately.<sup>111</sup>

The death penalty, an outmoded form of retributive justice, not only perpetuates a culture of violence and death but violates the very foundation of human value. Currently there are 76 countries that have abolished the death penalty for all crimes and 16 for all but exceptional

crimes, with an additional 20 countries which are now abolitionist in practice.<sup>112</sup>

Prisoners during the quarter while presenting their grievances to the vice president and Minister for Home Affairs, Moody Awori, in Eldoret termed the death penalty as undesirable in the country's era of democratization.<sup>113</sup> The vice president assured them that the government would ensure the accused are able to hire lawyers and that justice done and the community service programs would be introduced to those involved in petty offences.

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<sup>111</sup> <http://web.amnesty.org/pages/deathpenalty-index-eng>

<sup>112</sup> *ibid*

<sup>113</sup> "Prisoners seek ban of death sentence," East African Standard, November 10, 2003

Police are authorized by law to use force. This means that a key element of police work is the ability to coerce recalcitrant persons into compliance with the law sometimes with fatal circumstances. In Kenya, cases of police brutality and use of excessive force has soared.

Kenyans were assured over the quarter that the time to be scared by the sight of a police or prison officer was over. Vice-president Awori told police officers that the country opened a new chapter when the Narc regime came to power and that they had to embrace human rights while serving Kenyans.<sup>114</sup> However, despite these assurances, there were some disturbing incidents involving the police during the quarter.

Police brutality incidences continued, reminiscent of the dark days of Kanu where police violently broke up demonstrations, More than 300 striking Kisumu municipal workers, led by their union leader, Fredrick Odoje, are alleged to have been descended upon by a contingent of anti-riot police officers as they demonstrated due to reports that they would not be paid their salary arrears.<sup>115</sup> Scores were apparently injured and others arrested. Elsewhere, more than 60 anti-riot police officers are reported to have attacked farmers during a meeting at the Ndunguri Coffee Factory.<sup>116</sup> The police are reported to have violently charged at the crowds, clobbering the farmers, (most of whom were women) were all ejected from the factory premises.

The quarter also reported gender bias with respect to police brutality. Independent Medico-Legal Unit Advocacy officer Evans Wafula disclosed that seventy-five percent of victims of torture and arbitrary arrests by police in Kenya were women, many of whom are forced to exchange sex for freedom.<sup>117</sup> Women were arrested in police swoops and charged with loitering on the streets for purposes of prostituting. Six women arrested in one such swoop filed an application seeking an order to quash the conviction and sentence imposed on them.<sup>118</sup> The women through their lawyer, Ojwang Agina, challenged the magistrate's decision saying that this is a matter of paramount public interest. They stated that many young women all over the country fear venturing into entertainment spots at night lest they be arrested and branded prostitutes.

A positive note with respect to the police has been a fact-finding mission conducted by top police chiefs and members of the Parliamentary Select Committee on Security. The group is attempting to ascertain the state of police stations, the cases of rising crime and the poor conditions that police live and work in. Other issues dominating the agenda were police training, inadequate pay, insecurity, police brutality and abuse of human rights. The Police Commissioner stated that this mission intended to move towards transparency in the police force, and urged police officers to assist in the fight against crime and corruption.

<sup>114</sup> "Awori asks officers to respect rights," East African Standard, November 3, 2003

<sup>115</sup> "Riot police break up protest by council staff," Daily Nation, November 5, 2003

<sup>116</sup> "Ten hurt as police break farmers' riot," East African Standard, November 22, 2003

<sup>117</sup> "Rights group blasts police for brutality," East African Standard, December 20, 2003

<sup>118</sup> "Court jails six women for loitering on streets," East African Standard, December 16, 2003

<sup>119</sup> "Women apprehended in 'twilight swoop' seek to challenge sentence, People Daily, December 20, 2003

<sup>120</sup> "Police assault victim seeks help from Kiraitu," Daily Nation, December 16, 2003

# III. Civil Rights and Liberties

## A. Freedom of Peaceful Assembly and Association

Freedom of peaceful assembly and association was disrupted in various incidences during the quarter. In one incident, former cabinet minister Isaac Ruto, accused the government of copying the Kanu regime's style of stopping meetings.<sup>121</sup> He further called on the National Security Minister to explain why police and provincial administration stopped meetings. In another incident, police in riot gear dispersed a harambee function supposed to have been presided over by two Kanu MPs.<sup>122</sup> Members of the public who arrived at the venue were chased away by officers who claimed that the function had not been licensed.

The two MPs condemned the police action saying that the 1997 IPPG had

removed the permit requirement to hold meetings and insisted that they had already notified Kitale Police Station. However, they were barred and claimed that the Kwanza MP, Noah Wekesa was behind the action.

Elsewhere the Samburu West MP Simeon Lesirma protested at the cancellation of a tour to Baragoi Division in Samburu district by the Parliamentary Select Committee (PSC).<sup>123</sup> He is alleged to have told the press that the cancellation of the meeting demonstrated the government's unwillingness to stamp out cattle rustling and banditry, which had claimed hundreds of lives in the district. He said that this was the third time the PSC, had postponed the visit.

<sup>121</sup> "Ex-minister cries foul on meetings," Daily Nation, October 15, 2003

<sup>122</sup> "Police stop Kanu's Serut, Moroto from holding rally," East African Standard, October 20, 2003

<sup>123</sup> "Here's one irate MP, and he's fed up," Daily nation, December 20, 2003

## B. Freedom of Speech and Press

The arrest of three journalists in September caused outrage. The arrest and detention of three senior East African Standard journalists over a story they had published regarding the murder of constitutional review official Dr. Chris Mbai was condemned by not only politicians but by media outlets and other organisations. In a joint statement, The Kenya Union of Journalists (KUJ), Media Development Association (MDA) and the Coalition of Youth Against Violence (CYAV) argued that by publishing the story, the three scribes were exercising their freedom of the press and the right of the people to know the truth.<sup>124</sup> The three arrested journalists are the Standard Group Managing Director Tom Mshindi, Sunday Editor David Makali and Associate Editor Kwamchetsi Makokha.

On a different note, a departure from what we reported in our last quarter on the confusion that had become the broadcasting industry where the Tourism and Information Minister, Raphael Tuju revealed that the government had finalized a Broadcasting Bill which it planned to introduce in parliament to create a legal framework for the growth of the sector.<sup>125</sup> He further blamed the slow growth in the sector on the lack of a clear policy and legal framework to guide licensing and regulation players as well as provision of

broadcast services. He also divulged that the government was almost ready to release a National Information and Communications Technology (ICT) policy that reflects the converging reality of technologies in the ICT and broadcasting field. He also assured the media industry that the government was committed to uphold the principles of media freedom and independence but urged the media to exercise social responsibility and carry out their business of delivering information, entertainment and educational services for Kenyans.

Media freedom requires skilled and politically conscious journalists, a literate public, technological capability to produce and disseminate information, and a society liberated from basic struggle for food, shelter, and medicine. Tourism and Information Minister Raphael Tuju noted over the quarter lambasting both electronic and print media journalists of being ignorant of environmental laws saying that they had little knowledge of the new Environmental Management and Co-ordination Act (EMCA).<sup>126</sup> Many journalists are not familiar with the Universal Declaration of Human Rights and international human rights treaties and mechanisms. They often misunderstand the difference between human rights law

<sup>124</sup> "Scribes' arrest: Govt move is denounced," People Daily, October 1, 2003

<sup>125</sup> "Tuju. Broadcast Bill ready," East African Standard, October 2, 2003

<sup>126</sup> "Tuju raps the media," East African Standard, November 17, 2003



and the laws of war and as result, human rights are often erroneously regarded as relevant only to conflict.<sup>127</sup> A lack of familiarity with human rights standards leads some to fear that, if they integrate human rights into their report, these may become politically biased and yet knowledge of human rights will most likely make most reports fairer.<sup>128</sup>

All media members who report on matters that involve human rights issues either directly or indirectly have an obligation to understand the legal entities that outline Kenyan citizens' and governments' obligations in order to produce fair and balanced journalism.

One factor that can be attributed to lack of coverage of human rights issues in our is the battle for space, which is fought out in most newsrooms. However, the tyranny of the breaking story and the pressure to deliver ever-more dramatic images and sensational coverage in a highly-competitive news environment militate against deeper and more explanatory coverage and hence reduces the time available to consider human rights issues professionally and in more depth.<sup>129</sup>

A crackdown on the alternative press popularly known as the gutter press continued during the quarter was indeed a

warning that the relatively impressive media freedom could be clawed back by the government. In one incident, Attorney-General Amos Wako issued a warning that the state would crackdown on at least six publications over what he termed unethical journalism.<sup>130</sup> He accused the Citizen, Independent, Kenya Confidential, The Patriot, The Monitor and The Dispatch of maliciously damaging names and reputations of people through unfounded stories, saying that they need to be curtailed and must comply with all stipulated laws. The government stated that the entities had not made any application for registration and were therefore operating illegally.<sup>131</sup> The move however was termed as censure by various media watchdogs. The KUJ termed the move draconian in a government that cherished democracy.<sup>132</sup>

Other incidences that were reminiscent of the KANU regime were situations in which the press was barred from attending proceedings of various legal cases. In Nyandarua, the press was excluded from the proceedings of a case in which a farmer sought to sue British American Tobacco (BAT) for the loss of his leg due to smoking.<sup>133</sup> Another case was one in which High Court Judge Hatari Waweru allegedly blocked the press from hearing a case in which the former law firm of his fellow

<sup>127</sup> Journalism, media and the challenge of human rights reporting, International Council on Human Rights Policy, Switzerland, 2002

<sup>128</sup> *ibid*

<sup>129</sup> *ibid*

<sup>130</sup> "State to crack down on publications," East African Standard, December 4, 2003

<sup>131</sup> Publications banned," People Daily, December 10, 2003

<sup>132</sup> "Union criticizes move to ban newspapers," East African Standard, December 18, 2003

<sup>133</sup> "Press barred," East African Standard, December 19, 2003

judge Martha Koome was adversely mentioned in a dispute over a forged will.<sup>134</sup> In Kisii, a business tycoon, Aswin Ramji Gudka allegedly rained kicks and blows on Oanga Oyugi, a People Daily correspondent in Kisii for attempting to take his photos in court.<sup>135</sup>

Journalists, the media and human rights organizations all play a distinct but equally vital role in creating open societies that are able to defend and promote fundamental rights. It is incumbent upon the parties to understand such roles and act accordingly.

### **Defending the Right to expose the truth**

The cases that have been reported throughout the quarter and the year are indicative of the need for journalistic freedom in order to expose the truth about the problems in Kenyan society. The constitutional review process underway

also reveals the need for freedom of the press. The Kenya Human Rights Commission thus advocates for constitutional protection of freedom of expression, preventing the Government from creating laws that would alter, minimize or dissolve this right (similar to the First Amendment enacted in the United States).

Independent media enable the public to make informed choices and to participate more effectively in national processes of political, economic, social and cultural development. The vital role of the media in setting the development agenda of a country, shaping opinion and watchdog role cannot be overemphasized. This requires that at all times, journalists and media houses are supported not only by the government but also Kenyans at large in their work of information dissemination.

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<sup>134</sup> "Press barred," People Daily, December 16, 2003

<sup>135</sup> "Businessman beats journalist," People Daily, December 17, 2003

## C. Interference with NGOs

Non-governmental organizations (NGOs) comprise a large part of Kenya's civil society. Their role in the process of development is crucial, as was their role in Kenya's transition from an autocratic to a democratic country. Because of this importance, accountability within NGOs is crucial so they do not fall into the same traps as the governments they have criticized.

In other incidences, NGOs were accused of sabotaging the government's efforts towards human rights protection and promotion. Civic leaders in Kajiado urged the government to vet all NGOs in the district to establish their activities as some were accused of having been turned into family businesses.<sup>138</sup> Health Minister Charity Ngilu later announced the NGOs had to keep off the campaign against HIV/AIDS.<sup>139</sup> As demands for accountability reached fever-pitch amid allegations of theft of money intended for the HIV/AIDS campaign having dominated the last quarter, there was a demand that 15 NGOs in Nyando district account for Sh 8 million towards the fight.<sup>140</sup>

The quarter was also characterized by the harassment of personnel working with NGOs. In an incident, a medical practitioner with the Independent Medico-Legal Unit (IMLU) who conducted examinations on three suspects in the Mbai murder case after allegations that they had been tortured had his house ransacked by police. Two truckloads of regular and administration police officers are reported to have stormed his residence, apparently looking for firearms.<sup>141</sup>

COTU's Secretary-General continued his tirade against NGOs. During the quarter, not only did he warn Kenyan workers not to allow NGOs meddle with workers' rights, but erroneously stated that NGOs were increasingly getting the support of international donors to meddle and disorganize African governments and trade unions.<sup>142</sup>

It should be noted that NGO's governments and other players in the protection and promotion of human rights complement each other and should collaborate towards the same. The government should strengthen such collaborative efforts.

<sup>138</sup> "Civic men fault NGOs," East African Standard, October 14, 2003

<sup>139</sup> "Ngilu bans NGOs from anti-Aids campaigns," East African Standard, December 6, 2003

<sup>140</sup> "NGOs ordered to account for Aids money," Daily Nation, October 25, 2003

<sup>141</sup> "Harassment cited in Mbai murder saga," October 26, 2003

<sup>142</sup> "NGOs being used to fight African governments," People Daily, October 30, 2003

## D. Administration of Justice and the Rule of Law

The quarter saw the release of the much-awaited report by the Integrity and Anti-Corruption Committee. The report found that of the nine Appeal Court judges, five were corrupt, proof of graft and misconduct was leveled against 18 High Court judges, 82 magistrates were accused of graft and that corruption included bribes and sexual favours.<sup>143</sup>

There was overwhelming evidence of corruption in the cases against the members. In one incident, a video tape of an Appeal Court judge accepting a bribe was found.<sup>144</sup> The committee revealed that they found 22 causes of corruption among them poor terms and conditions of service, delays in hearing and deciding cases, greed, ignorance by the public about their rights and the wide discretion given to the judiciary in deciding and dealing with cases.

Various groups supported the move and demanded that all those mentioned should resign pending investigation. The Chief Justice then called upon those who had been adversely mentioned in the report to resign or face a tribunal.<sup>145</sup> The Justice and Constitutional affairs Minister Kiraitu Murungi said that the government backed the report and that the government would not interfere with the reforms in the judiciary.<sup>146</sup>

Although we laud this move, the Kenya Human Rights Commission hopes that the radical surgery as promised by the Minister for Justice and Constitutional Affairs, goes beyond the judiciary to involve the legislature and the executive.

Later, President Kibaki appointed two tribunals to investigate corruption allegations against 23 judges.<sup>147</sup> One tribunal was to be led by the Appeal court judges and headed by Justice (Rtd) Akilano Akiwumi and the other tribunal, to be chaired by Lee Muthoga, would investigate the high court judges named in the report. The report further revealed that the credibility of lawyers was questioned because they were allegedly used as conduits. Other accomplices included paralegal staff. Some of the charges they are accused of are sexual harassment, and openly soliciting bribes and drinking with magistrates and litigants.<sup>148</sup>

Though pleased with this move, human rights organisations among them the International Commission of Jurists (ICJ) petitioned the government to conduct fair and impartial investigations against judges, magistrates and paralegal staff implicated in corruption.<sup>149</sup>

<sup>142</sup> "NGOs being used to fight African governments," People Daily, October 30, 2003

<sup>143</sup> "Revealed: Top judges caught in corruption," October 1, 2003

<sup>144</sup> "Judge video-taped receiving cash bribe," Daily Nation, October 2, 2003

<sup>145</sup> "Quit or face trial, CJ tells graft judges," Daily Nation, October 4, 2003

<sup>146</sup> "Kiraitu: Judiciary purge free of government interference," East African Standard, October 10, 2003

<sup>147</sup> "Kibaki sends judges hoe," East African Standard, October 16, 2003

<sup>148</sup> "Purge: 46 court officials could lose their jobs," Daily Nation, October 26, 2003

<sup>149</sup> "Judges: ICJ petitions govt," People Daily, October 27, 2003

## A. Workers' Rights

*Society no longer accepts the view that the conduct of global corporations is bound only by the laws of the country they operate in. By virtue of their global influence and power, they must accept responsibility and be accountable for upholding high human rights standards*

**(UNDP 2000b:80).**

The United Nations Sub-Commission for the Promotion and Protection of Human Rights adopted the Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights in August 2003.<sup>150</sup> The norms set out the legal responsibilities for companies in terms of human rights, labour and environmental standards.

There were various demonstrations and protests among workers against alleged delay in payment of terminal benefits, poor working conditions and delays in salary payments during the quarter. The Mombasa, Nakuru and Kisumu municipal council workers held protests demanding salary arrears. In another incident, the Nairobi branch of the Kenya Local Government Workers protested over alleged illegal suspension of more than 300 city council workers.<sup>151</sup>

The Labour and Human Power Development minister Ali Mwakwere accused some trade unions of promoting disharmony and corruption within the

labour industry.<sup>152</sup> He added that some trade unions were engaging in malpractices in cahoots with labour officers out to frustrate employers and employees. During the quarter, the passing of the Pension Amendment Bill took place, which is designed to save retirees the grading pleas for payment, demands better planning to ensure the retirement is followed with the final cheque.<sup>153</sup> However this Bill only covers civil servants only and we think it should cover the private sector as well. To ensure that the backlog at the Pensions Department had been cleared in readiness for the coming into effect of the new pensions law, the government appointed a task force.

Interestingly, as the new regime promised workers better terms, Narc's secretariat employees had not been paid salaries for ten months.<sup>154</sup> For a government that promised to secure workers' rights, this is a gross abuse of workers' rights. The 50 employees demanded Sh 10 million in arrears, which they claimed they had not been paid for the past ten months.<sup>155</sup>

<sup>150</sup> Ethical Corporation Magazine, October 2003

<sup>151</sup> "Union up in arms over 300 staff suspended by City Hall," People Daily, October 14, 2003

<sup>152</sup> "Minister blames Unions," East African Standard, October 29, 2003

<sup>153</sup> "Union lauds move on pay," People Daily, October 3, 2003

<sup>154</sup> "Mwenge house workers in pay arrears demo," Daily Nation, December 22, 2003

<sup>155</sup> "Mwenge House workers in pay arrears demo," Daily Nation, December 22, 2003

During the quarter, donor aid was resumed, which is crucial to the revival of the economy. However, it came with conditionalities; among them, downsizing of the Civil Service.<sup>156</sup> Finance minister David Mwiraria stated in Parliament that retrenchment was one of the conditionalities.<sup>157</sup> However later, the minister for finance, David Mwiraria said that in his negotiations, the core issue was the excessive government wage bill, which stood at 9.6 per cent of gross domestic product (GDP).<sup>158</sup> Our emphasis has been that resumption of donor aid is good, but it should be negotiated to ensure that the human rights and dignity of Kenyans are enhanced.

The inauguration of a multi-million shilling apparel factory targeting the export market took place during the quarter, bringing into focus the problem of multinational corporations (MNCs) exploiting minimum labour standards and restrictions on freedom of association and expression in developing countries such as Kenya. This is further compounded by the fact that many of the individuals that work at such companies are uneducated and thus unaware of their rights. In turn, companies and local

officials are less likely to act on the rampant violations of workers' rights that occur in such entities.

Another contentious issue is that most of these MNCs are "above the law" and are only regulated by codes of conduct. Whether voluntary codes of conduct actually serve to improve the working conditions in multinational corporations, they remain the best option as domestic law has proven woefully inadequate to address the human rights violations by MNCs. In many cases, MNCs, are more powerful economically and thus politically than some states, especially those that are still developing economically that rely on foreign direct investment (FDI). Furthermore, countries with high levels of unemployment such as Kenya rely on



<sup>156</sup> "Civil Servants need a kind retrenchment," East African Standard, December 9, 2003

<sup>157</sup> "Lay-offs may start in March," East African Standard, December 5, 2003

<sup>158</sup> "Mwiraria says claims of mass layoffs untrue," Daily Nation, December 22, 2003

such corporations and FDI to create job opportunities, thus putting workers at the mercy of such entities. Therefore, voluntary codes of conduct are all that many states can rely on at this point to ensure corporate social responsibility by MNCs.

It is important to note that the liberal economic agenda that spawned Corporate Responsibility is a response to the inequities which the economic liberalism agenda produces – all trade is supposedly equal, ask not who is doing what to whom, money is neutral, and because all that matters is one dollar is as good as another.<sup>159</sup> Therefore, Corporate Responsibility aimed at taking into account the consequences of who does what to whom – the social and financial exclusion, the environmental destruction, the damaged communities, central to

Corporate Responsibility is the fact that all dollars are not equal, it is better to manage forests sustainably, better to pay decent wages and that it is unacceptable simply to take money and run.<sup>160</sup>

Thus, in a world where multinational companies wield immense power in as far as major decisions are required, the Kenya Human Rights Commission's advocacy for workers' rights has noted that the media is an important ally in the fight for workers' rights as to both parties, quality means more than the quality of a particular product, it is also the quality of the working conditions of the workforce, quality of the environment within which the product is produced and quality of the lives of communities' around the factory among others.

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<sup>159</sup> Cancun and all that in Ethical Corporation Magazine, November 2003

<sup>160</sup> *ibid*

## B. Harassment of the Poor<sup>161</sup>

Poverty is multi-dimensional; it includes shortage of income and a corresponding deprivation in other aspects of life such as knowledge, life expectancy and standard and quality of life experienced.<sup>162</sup> The poor in Kenya tend to be clustered in certain social categories as follows:<sup>163</sup>

- a. The landless
- b. The handicapped
- c. Female headed households
- d. Households headed by people without formal education
- e. Pastoralists in drought prone ASAL districts
- f. Unskilled and semi skilled casual labourers
- g. AIDS orphans
- h. Street children and beggars

In most cases the world over, weak and ill-defined security of tenure typically results in the poor being denied access to resources. When the poor have no ownership of a resource, there is little or no incentive for them to use it in a sustainable manner. And in most cases, as well illustrated by the kiosk demolition approach by the Narc regime during the year shows a top-down approach which have regarded people as part of the problem rather than part of the solution, are bound to fail.

Some solutions may be:

- a. Strengthen the participation of the poor in decision making re
- b. Protect the natural asset base of the poor through protecting the access the poor already have to critical resources such as entitlements to land, water etc,

<sup>161</sup> The KHRC documents incidents of the harassment of the poor, especially hawkers and residents of slums, because of their frequency and often -violent nature and the inherent vulnerability of the poor when it comes to arbitrary state action. The KHRC considers this form of harassment a consequence of the criminalizing of poverty.

<sup>162</sup> Poverty – A National Crisis in National Poverty Eradication Plan 1999-2015, Department of Development Co-ordination, Office of the President, 1999, Nairobi

<sup>163</sup> *ibid*



## C. Corruption and Human Rights<sup>164</sup>

*“Rich Countries must provide practical support to developing country governments that demonstrate the political will to curb corruption. In addition, those countries starting with a high degree of corruption should not be penalized, since they in most urgent need of support.”*

### **Peter Eigen, Chairperson Transparency International (TI) during the launch of the TI Corruption Perceptions Index 2003 (CPI)**

Nine out of ten developing countries are in urgent need of practical support to fight corruption, the annual Corruption Perception Index (CPI) reveals.

It is imperative that developed countries enforce international conventions to curb bribery by international companies, and that private business fulfill their obligations under the OECD Anti-Bribery Convention, namely to stop bribing public officials around the world. Peter Eigen revealed this during the launch of the Corruption Perception Index.

In Kenya, there are three types of corruption:<sup>165</sup>

- Petty Corruption – This level of corruption is so common that many Kenyans do not think it is wrong at all. It involves the payment of small amounts of money or other gifts to either speed up state functions that are already a taxpayer’s right or to avoid legal sanctions for minor infractions of the law
- Grand corruption – paying a government minister a hefty kickback to facilitate favourable review of a tender application is one example of grand

corruption. Another is payment of similar large sums to senior customs officials to be allowed to import goods without paying tax or customs duty. This level of corruption is also quite prevalent. The common denominator is big money and high-ranking personnel.

- Looting – This term aptly describes the most destructive kind of corruption. It occurs when the state pays huge sums of money for goods or services that are not delivered. The large number of parastatals that have been totally run into the ground by managers robbing their coffers is also a type of looting. The enormous sums of money involved have serious macroeconomic implications because payment for goods not delivered or services not rendered produces inflation. This kind of corruption can only take place with the approval, complicity or knowledge of the head of state in countries where there is a disproportionate concentration of power in the highest political office. Such corruption, which is symptomatic of wide-scale political failure, is essentially cannibalistic because it undermines and eventually consumes the very state that enables it.

<sup>164</sup> The KHRC documents incidences of corruption because of its impact on the socioeconomic rights of Kenyans, as well the civil rights of Kenyans when corruption takes place in the process of the administration of justice.

The NARC government has put in place a number of measures to fight corruption. They range from the creation of the post of the Permanent Secretary in the Office of the President in charge of Public Ethics and Governance and the enactment of the Anti-Corruption and Economic Crimes Act and the Public Officer Ethics Act to a launch of a five-year national anti-corruption campaign by President Kibaki which aims at changing cultural attitudes towards corruption. In the 2003 CPI, Kenya scored 1.9 out of a possible 10 and is perceived to be among the eleven most corrupt countries of those surveyed.

The CPI focuses on corruption in the public sector and defines corruption as the abuse of public office for private gain.<sup>166</sup> The surveys used in compiling the CPI tend to ask questions in line with the misuse of public power for private benefit, with a focus, for example, on bribery taking by public officials in public procurement.

59% of Kenyans consider corruption to be the number one national issue.<sup>167</sup> The survey sought to determine the public's opinion of current state of politics in Kenya, corruption in the government and judiciary, the government's performance and anti-corruption initiatives undertaken by the government.

In the survey, half of Kenyans (50%) observed that corruption is still a concern with respect to the current government and cited tribalism/nepotism, bribery and public procurement as key issues.

In an attempt to fight corruption in the public service, cabinet minister Raila Odinga said corruption and unethical behaviour by public officials are serious threat to the basic principles of democratic governance undermining public confidence and principles of governance.<sup>168</sup> Various government officials including the president during the quarter assured Kenyans that the fight against corruption was still on.

And in an announcement to rid the public service of corruption, public officials were required to declare their wealth. Civil servants were supposed to declare their individual incomes and those of their spouses and dependants, and to reveal how they were acquired.<sup>169</sup> It was later announced that civil servants who either cheated or failed to submit their wealth declaration forms would be sacked and prosecuted.<sup>170</sup>

Also interesting during the quarter was a revelation that over 100 Kenyans (among them prominent politicians and business people) had stashed monies in foreign bank accounts in an amount estimated upwards of Shs 600 billion.<sup>171</sup> Economic looters who had stashed away ill-gotten money in banks abroad were compelled by an international law to repatriate the funds as Kenya through the Minister of Justice and constitutional Affairs, appended his signature to the United Nations Corruption.<sup>172</sup> This is a critical step in the global fights against corruption.

<sup>165</sup> Our Problems Our Solutions: An Economic and Public Policy Agenda for Kenya, Institute of Economic Affairs, Nairobi, 1998

<sup>166</sup> Adili: A News Service from Transparency International-Kenya, October 6, 2003, Issue 46

<sup>167</sup> Adili: A News Service from Transparency International-Kenya, October 20, 2003, Issue 46

<sup>168</sup> "Raila warns workers on corruption," East African Standard, October 1, 2003

<sup>169</sup> "Rush to beat wealth deadline," Daily Nation, October 2, 2003

<sup>170</sup> "Civil Servants could lose their jobs over wealth," Daily Nation, October 16, 2003

<sup>171</sup> "Kenyans holding billions in foreign bank accounts," People Daily, October 13, 2003

<sup>172</sup> "Govt to ratify UN convention on corruption," People Daily, December 6, 2003

## D. Land Grabbing

The quarter marked conflict amongst MPs when they differed with Lands Assistant Minister on the repossession of irregularly allocated land.<sup>176</sup> This comes with the new regime investing irregularly acquired land during the Kanu regime.

Land in Kenya is governed by a complex mixture of English land law and Kenya traditional tenure or customary law. Thus, in the absence of an integrated land policy, the unresolved issues of tenure persist. Currently, there are three types of tenure in Kenya:<sup>177</sup>

- a. **Individual or private tenure** - derived from English land law, which confers on an individual or corporate entity the title to a specified piece of land; ownership maybe freehold or leasehold.
- b. **Customary tenure** - which still prevails in areas that have not been adjudicated, consolidated and registered. These lands, designated as trust land, are communally owned and are usually administered by local governments. There is a huge array of

variations in customary tenure, depending on the local communities.

- c. **Public tenure** - refers to landholding and use of unalienated government land. Such land is supposed to be reserved for public purposes unless it is privatized through a presidential decree.

The last few years have witnessed the rabid privatization of public land through presidential grants, to the extent that there is a very real fear that this trend will result in the death of land tenure.<sup>178</sup> The lack of a consistent policy on land, as well as of the political will to enforce existing laws, has resulted in a myriad of ills: land related corruption, poverty and homelessness, disappearance of public land, use of land as political reward, soil erosion and degradation, seemingly endless land disputes, inefficient land use and conservation, and ethnic/social clashes and tension that have resulted in death, misery and the displacement of thousands of Kenyans.<sup>179</sup>

<sup>175</sup> Kenya's land grabbing problem is the result of a weak land law policy framework that encourages corruption in the acquisition of land. The leading grabbers much like in the case of departmental corruption in government are senior politicians including cabinet ministers, ruling party and opposition parliamentarians, civil servants and politically well connected individuals.

<sup>176</sup> "Sanctity of land title deeds causes major clash," Daily Nation, October 1, 2003

<sup>177</sup> Our Problems Our Solutions: An Economic and Public Policy Agenda for Kenya, Institute of Economic Affairs, Nairobi, 1998

<sup>178</sup> ibid

<sup>179</sup> op cit note 186 page 14

This report is drawn from data collected for the Kenya Human Rights Commission (KHRC) first national survey on the perception of Kenyans on some specific government departments' human rights centered governance. It was part of KHRC's objective to form an informed platform of engaging those specific government departments on the human rights centered governance effort. The survey was conducted using a structured questionnaire administered to a total of **2400** respondents in November 2003.

## **Survey Design**

The survey captures the general perceptions of ordinary Kenyans from both the rural and urban areas of the country. Respondents provide information on their perception of the specified departments with regard to governance and human rights in the last year since the new government took over in December 2002. The perceptions are categorized based on the overarching framework of the study as described in the background i.e.

### **Under Governance**

- Due process
- Transparency
- Accountability
- Service delivery

### **Under Human Rights**

- Economic, Social and Cultural Rights
- Civil and Political Rights
- Women's Rights
- Children's Rights
- Respondents are asked whether they interact with the specified government departments, how often they interact with them, the purpose of their interaction and finally their perceptions of the government department's performance in reference to the governance and human rights parameters provided. On average the respondents encountered the departments >>>>> per person. The data is used to construct eight indicators that capture different aspects of human rights centred governance as shown above and further described by four parameters each indicated in the overarching framework.

An aggregate score that comprises 50% of the final score card is constructed as an unweighted average of the eight indicators, with a value range from 0 (worst possible rating) to 10 (best possible rating).

# 1. Sample Characteristics of respondents interacting with specified government departments

Out of the 2400 respondents interviewed, 57.4% were male and 42.6% were female, of this, 11.2% were from the AB social class, 66.1% from the C1C2 and 22.6% were from the DE.

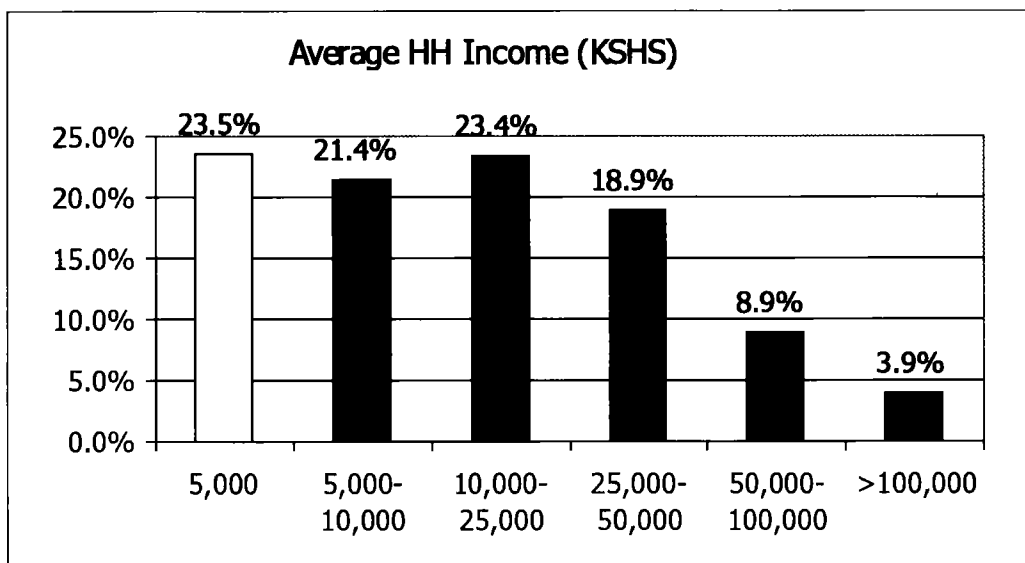
## 1.1 Age

Age	Total %	Education Level	Total %	Employment Status	Total %
18 - 20	3.4	None	1.0	Unemployed	19.3
21 - 30	45.1	Primary	6.0	Self employed	28.6
31 - 40	29.2	Post Primary	4.2	Family business	12.6
41 - 50	15.1	Secondary	30.9	Private Sector	16.7
51 - 60	4.7	Post Secondary	37.5	Govt/Parastatal	17.4
60	2.5	Univ. & above	20.3	Community	5.4
	<b>100.0</b>		<b>99.9</b>		<b>100.0</b>

More than three quarter (77.7%) of the respondents were under 40 years of age, (45.1%) were between age 21 and 30, and only (7.2%) were over age 50.

## 1.2 Educational Background

The majority of the respondents (88.7%) had secondary school education and above while only 1% had no education at all.



### 1.3 Employment Status

Nineteen percent of the respondents indicated that they were unemployed, 29% were self employed, 13% were working in family enterprise, 17 % were employees in the private, 17% public and 5% community sectors.

### Average household income

Only 24% of the respondents indicated household incomes below Ksh. 5,000 per month. Twenty one percent [21%] of the respondents have a household income of between Ksh. 5 000 and Ksh. 10,000, 23.4 % a household income of between Ksh. 10 000 and Ksh. 25,000, while 28% have a household income of between Ksh. 25 000 and Ksh. 100 000 and only 4% had an income of greater than Ksh. 100 000.

## 2. Overview of the Findings

### 2.1 Frequency of Interaction

	<b>% Of total Respondents</b>
Ministry of education	71.6%
Ministry of Justice and constitutional affairs	57.3%
Kenya Police	70.0%
Kenya Prisons	39.7%
Ministry of Trade and Industry	67.7%
Ministry of Labor and Human resource development	56.2%
Presidency	44.3%
Parliament	49.4%

The highest interaction was with the Ministry of Education (72%), followed closely by the Kenya Police (70%) and the Ministry of Trade (68%), while the lowest was with the prisons (40%) followed by the presidency at (44%) as expected.

The Ministry of education had the highest daily interaction at 46% while the prisons had the lowest at 7%. On average, 24% of the respondents interacted with the government departments on a daily basis, 14% weekly, 24% monthly and 32% on a yearly basis.

## 2.2 Nature of Interaction

	<b>Educ.</b>	<b>Justice</b>	<b>Police</b>	<b>Prisons</b>	<b>Trade</b>	<b>Labor</b>	<b>Presi- dent</b>	<b>Parlia- ment</b>	<b>Av. %</b>
Service	76.3	16.8	10.1	13.1	12.3	21.8	41.9	38.7	29
Regulatory / Law Enforcement	4.1	61.4	76.9	52.8	42.3	23.9	23.7	24.9	39
Business	9.2	15.1	7.1	17.8	31.5	25.1	9.9	12.7	16
Employment	9.9	5.3	5	8.6	13.3	27.2	14.1	12.8	12
Visits / social	0.5	1.2	0.7	7.1	0	2	8.5	4.2	3
Press conference	0	0	0	0	0	0	1.3	6	1
									<b>100</b>

Of these interactions, 39% of the respondents interacted with the departments for regulatory / law enforcement purposes, 29% for service related issues; 16% interacted for business and 12% for employment purposes.

## 3.0 Departmental Perceptions

### 3.1 Human Rights

	<b>Education</b>	<b>Justice</b>	<b>Police</b>	<b>Prisons</b>	<b>Trade</b>	<b>Labour</b>	<b>Presi- dency</b>	<b>Parlia- ment</b>
<b>HUMAN RIGHTS</b>								
Civil and Political Rights	6.2	5.4	4.1	4.4	5.1	5.1	6.0	5.9
Econ, Socio & cultural Rights	6.4	5.5	4.5	4.4	5.0	5.2	6.1	6.2
Women's Rights	6.3	5.7	4.7	4.6	4.9	5.1	5.8	5.9
Children's Rights	6.3	6.0	4.8	4.6	4.9	5.2	6.1	6.1
<b>Average</b>	<b>6.3</b>	<b>5.6</b>	<b>4.5</b>	<b>4.5</b>	<b>4.9</b>	<b>5.2</b>	<b>6.0</b>	<b>6.0</b>

In upholding civil and political rights, the ministry of education had the highest mean score (6.2) followed by the presidency (6.0) while the police had the lowest score below average (4.1). The prisons department had the next least score of 4.4.

With regard to upholding economic social and cultural rights, the ministry of education was perceived to be the best performer with a mean score of 6.4, which was also its highest score under human rights. Parliament had the best next score (6.2) followed by the presidency (6.1). In this category the prisons department had the lowest score.

In upholding women's rights and children's rights the ministry of education had the best score of 6.3 while prisons had the worst score for both of 4.6.

The average perception of Kenyans who interact with these government departments on human rights is average. None of the departments is perceived to be performing above average. In general however, the ministry of education, president and the parliament performed the best with an average of 6.3, 6.0 and 6.0 respectively, while, ministry of trade, prisons and the police were perceived to perform below average with scores of 4.9, 4.5 and 4.5 respectively.

## 3.2 Governance

	<b>Educa- tion</b>	<b>Justice</b>	<b>Police</b>	<b>Prisons</b>	<b>Trade</b>	<b>Labour</b>	<b>Presid- ency</b>	<b>Parlia- ment</b>
<b>GOVERNANCE</b>								
Due Process	5.8	5.5	4.2	4.2	4.7	5.0	5.7	5.8
Service Delivery	5.9	4.9	4.0	4.1	4.7	4.8	5.5	5.6
Accountability	5.8	5.3	4.3	4.4	4.7	5.0	5.8	5.8
Transparency	5.7	5.0	4.1	4.2	4.6	4.9	5.5	5.8
<b>Average</b>	<b>5.8</b>	<b>5.2</b>	<b>4.2</b>	<b>4.2</b>	<b>4.7</b>	<b>4.9</b>	<b>5.6</b>	<b>5.8</b>

In due process both parliament and the ministry of education were perceived to be the best performers with a mean score of 5.8., and the police and prisons were perceived to be the worst performers with a mean score of 4.2.

For service delivery, accountability and transparency, the ministry of education was perceived to be the best performer with a mean score of 5.9, 5.8 and 5.7 respectively. Once again the police and prisons department trailed with a below average of 4.0, 4.3, 4.1 and 4.1, 4.4, 4.2 respectively.

The average perception of Kenyans with regards to the department's performance in governance is also generally low. Four of the departments, ministry of labour, ministry of trade, the police and the prison were perceived to be performing below average with scores of 4.9, 4.7, 4.2 and 4.2 respectively. The other four departments performed just above average with all the average scores at below 6.0.

## 4.0 Aggregate Scores

	<b>Educa- tion</b>	<b>Justice</b>	<b>Police</b>	<b>Prisons</b>	<b>Trade</b>	<b>Labour</b>	<b>Presi- dency</b>	<b>Parlia- ment</b>
HUMAN RIGHTS	6.3	5.6	4.5	4.5	4.9	5.2	6.0	6.0
GOVERNANCE	5.8	5.2	4.2	4.2	4.7	4.9	5.6	5.8
<b>Average</b>	<b>6.0</b>	<b>5.4</b>	<b>4.3</b>	<b>4.4</b>	<b>4.8</b>	<b>5.0</b>	<b>5.8</b>	<b>5.9</b>

The overall score with regard to human rights centred governance revealed five of the departments to have been perceived as performing just above average i.e. the ministry of education, parliament, the presidency, ministry of justice and ministry of labour with scores



of 6.0, 5.9, 5.8, 5.4 and 5.0 respectively. The other three departments were perceived to be performing below average i.e. ministry of trade, prisons and the police with scores of 4.8, 4.4 and 4.3 respectively.

## 5.0 Summary Tables

### 5.1 Human Rights

	Education	Justice	Police	Prisons	Trade	Labour	Presidency	Parliament
<b>Civil and Political Rights</b>								
Physical Integrity	6.2	5.5	4.2	4.1	4.9	5.1	6.0	5.8
Non Discrimination	6.3	5.2	4.1	5.4	5.0	5.0	5.8	5.8
Liberty of the individual	6.1	5.4	4.0	4.0	5.2	5.1	6.1	5.9
Political participation	6.0	5.4	4.2	4.2	5.1	5.3	5.9	6.2
<b>Average</b>	<b>6.2</b>	<b>5.4</b>	<b>4.1</b>	<b>4.4</b>	<b>5.1</b>	<b>5.1</b>	<b>6.0</b>	<b>5.9</b>
<b>Econ, Socio &amp; cultural Rights</b>								
Adequate Standard of living	6.0	5.3	4.2	4.2	5.0	5.1	5.7	6.0
Physical and mental health	6.4	5.5	4.5	4.3	4.9	5.2	6.3	6.2
Right to education	6.7	5.6	4.7	4.6	5.0	5.3	6.2	6.3
Cultural Diversity	6.4	5.4	4.4	4.4	5.0	5.2	6.0	6.1
<b>Average</b>	<b>6.4</b>	<b>5.5</b>	<b>4.5</b>	<b>4.4</b>	<b>5.0</b>	<b>5.2</b>	<b>6.1</b>	<b>6.2</b>
<b>Women's Rights</b>								
Sexual Harassment	6.3	5.8	4.6	4.6	4.8	5.1	6.0	6.1
Domestic Violence	6.3	5.9	4.9	4.8	4.8	5.2	5.9	6.0
Gender based discrimination	6.3	5.7	4.7	4.5	5.0	5.1	5.7	5.8
Encourage affirmative action	6.1	5.3	4.5	4.6	4.9	5.1	5.7	5.8
<b>Average</b>	<b>6.3</b>	<b>5.7</b>	<b>4.7</b>	<b>4.6</b>	<b>4.9</b>	<b>5.1</b>	<b>5.8</b>	<b>5.9</b>
<b>Children's Rights</b>								
Common Parental Responsibility	6.5	6.0	4.7	4.5	4.9	5.2	6.0	6.1
Discourage Physical c abuse	6.5	6.1	4.9	4.8	5.0	5.3	6.2	6.2
Care and Protection	6.3	5.8	4.8	4.5	4.8	5.1	6.0	6.1
Protection in judicial processes	5.9	5.9	4.7	4.5	4.7	5.2	6.0	6.0
<b>Average</b>	<b>6.3</b>	<b>6.0</b>	<b>4.8</b>	<b>4.6</b>	<b>4.9</b>	<b>5.2</b>	<b>6.1</b>	<b>6.1</b>

## 5.2 Governance

	Education	Justice	Police	Prisons	Trade	Labour	Presidency	Parliament
<b>Due Process</b>								
Right to a hearing	5.8	5.5	4.3	4.2	4.7	5.0	5.7	5.8
Fairness	6.0	5.3	4.1	4.2	4.7	5.0	5.7	5.8
Liberty of the individual	5.9	5.4	4.2	4.3	4.7	5.0	5.7	5.9
Reasons for decisions	5.5	5.6	4.2	4.2	4.6	4.9	5.5	5.8
<b>Average</b>	<b>5.8</b>	<b>5.5</b>	<b>4.2</b>	<b>4.2</b>	<b>4.7</b>	<b>5.0</b>	<b>5.7</b>	<b>5.8</b>
<b>Service Delivery</b>								
Cost effective	5.9	4.9	4.0	4.1	4.8	4.9	5.4	5.5
Time	5.8	4.6	3.9	4.0	4.6	4.8	5.3	5.5
Quality of service	5.8	4.9	4.0	4.1	4.8	4.8	5.6	5.7
Effectiveness	5.9	5.2	4.2	4.3	4.7	4.8	5.6	5.6
<b>Average</b>	<b>5.9</b>	<b>4.9</b>	<b>4.0</b>	<b>4.1</b>	<b>4.7</b>	<b>4.8</b>	<b>5.5</b>	<b>5.6</b>
<b>Accountability</b>								
Administrative	5.9	5.4	4.5	4.5	4.7	5.0	5.7	5.7
Parliamentary	5.7	5.2	4.2	4.4	4.7	5.0	5.7	6.0
Civil Society	6.0	5.2	4.2	4.3	4.8	5.1	5.9	5.8
Judicial	5.7	5.4	4.4	4.4	4.7	5.0	5.7	5.7
<b>Average</b>	<b>5.8</b>	<b>5.3</b>	<b>4.3</b>	<b>4.4</b>	<b>4.7</b>	<b>5.0</b>	<b>5.8</b>	<b>5.8</b>
<b>Transparency</b>								
Access to information	5.8	5.0	4.0	4.2	4.6	4.8	5.5	6.4
Tolerate scrutiny or debate	5.8	4.8	4.0	4.1	4.5	4.8	5.4	5.6
Disclosure to the public	5.7	4.9	4.0	4.1	4.7	4.8	5.4	5.6
Discourage conflict of Interest	5.5	5.1	4.3	4.4	4.7	5.0	5.5	5.7
<b>Average</b>	<b>5.7</b>	<b>5.0</b>	<b>4.1</b>	<b>4.2</b>	<b>4.6</b>	<b>4.9</b>	<b>5.5</b>	<b>5.8</b>

**Our Approach:**

***"to adequately root human rights and democratic values in all communities, in order to enable them to claim and defend their rights"***

***Kenya Human Rights Commission***

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