

# KatibaNews

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Will Kenya survive  
the grand coalition?

The human rights  
record in Kenya

Land reforms in post  
independent Kenya

Safeguarding affirmative action  
in the Kenyan Constitution

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# ABOUT THE MEDIA DEVELOPMENT ASSOCIATION

The Media Development Association (MDA) is an alumnus of graduates of University of Nairobi's School of Journalism. It was formed in 1994 to provide journalists with a forum for exchanging ideas on how best to safeguard the integrity of their profession and to facilitate the training of media practitioners who play an increasingly crucial role in shaping the destiny of the country.

The MDA is dedicated to helping communicators come to terms with the issues that affect their profession and to respond to them as a group. The members believe in their ability to positively influence the conduct and thinking of their colleagues.

The MDA aims at:

- Bringing together journalists to entrench friendship and increase professional cohesion;
- Providing a forum through which journalists can discuss the problems they face in their world and find ways of solving them;
- Organising exhibitions in journalism-related areas such as photography;
- Organising seminars, workshops, lectures and other activities to

discuss development issues and their link to journalism;

- Carrying out research on issues relevant to journalism;
- Organizing tours and excursions in and outside Kenya to widen journalists' knowledge of their operating environment;
- Publishing magazines for journalists, and any other publications that are relevant to the promotion of quality journalism;
- Encouraging and assist members to join journalists' associations locally and internationally;
- Creating a forum through which visiting journalists from other countries can interact with their Kenyan counterparts;
- Helping to promote journalism in rural areas particularly through the training of rural-based correspondents;
- Advancing the training of journalists in specialised areas of communication;
- Create a resource centre for use by

journalists;

- Reinforcing the values of peace, democracy and freedom in society through the press;
- Upholding the ideals of a free press.

Activities of MDA include:

- Advocacy and lobbying;
- Promoting journalism exchange programmes;
- Hosting dinner talks;
- Lobbying for support of journalism training institutions;
- Initiating the setting up of a Media Centre which will host research and recreation facilities;
- Working for the development of a news network;
- Providing incentives in terms of awards to outstanding journalists and journalism students;
- Inviting renowned journalists and other speakers to Kenya;
- Networking and liking up with other journalists' organisations locally and abroad.



This newsletter is meant to:

- 1 Give critical analysis of democracy and governance issues in Kenya.
- 2 Inform and educate readers on the ongoing Constitution Review Process.

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## THIS MONTH APRIL 2008



Internally displaced persons line up for aid in one of the camps in the country.

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# EDITORIAL

## We are still deep in the woods

If our politicians were to be believed, then Kenya should by now be seen, not just perceived, to have returned to full normalcy, at least on the political front. But the goings on in the political arena still leave a lot to be desired.

The recent protocol hitch between vice president Kalonzo Musyoka and prime minister Raila Odinga during the presidential tour of the Rift Valley has left many Kenyans wondering whether we may have got more than we bargained for in the so called power sharing deal. The unsavoury public display of a power struggle between the two left many of us aghast at what that was all about!

True, our media has a knack for sensationalising incidents that are really no-shows. However, the protocol gaffe showed that somebody is not doing his or her work professionally and decided to use this opportunity to create a rift between two perceived centres of power. That is Kenyan politics for you.

We have said in this column before that Kenyans are tired of this cat and mouse games that seem to be fair for our politicians. In fact, contrary to what Kenyans thought, the current marriage is apparently borne out of convenience (like calling for a truce in war) as each antagonist goes back to the drawing board and gathers more arsenal pending the mother of all battles in 2012.

As Africans we must start asking ourselves very hard questions and come up with honest answers. I keep asking myself why is it that most of the rest of the world seem to achieve their

goals while we seem a cursed lot moving from one crisis to another. Why is it that we seem not to have a vision, sailing like a rudderless ship in the high seas? Why is it that we never get anything right – from our economics and politics to social development of our people?

The answer is within each one of us. We simply do not have leaders of vision and citizens of great aspirations. As leaders, we crave to get into positions for sheer self aggrandisement. We never see the bigger picture, nor do we care! Consequently, the poor and ignorant masses keep perennially hoping and dying for their perceived saviours. Only God knows when this cycle of deception will end!

I cannot understand how any leader cannot have the ambition, like the great kings and other rulers overseas we read in history, of seeing his people live in optimum peace and prosperity. Yes; even poverty and its vagaries are a fact of life in Western capitals. But we can only be in acute denial if we claim that those societies are not really living in a different civilisation from ours.

The message is clear. We need to wake up (although many have given up) and smell the *ugali*. Our leaders MUST understand that leadership is not just an avenue for acquiring power and glory. They should by now know that it is the people who have given them this rare opportunity to be first among equals. We demand the best from them and those who cannot live up to this onus should just step aside and let the real leaders stand up to the task.

Stephen Ndegwa  
Managing Editor

# WILL KENYA SURVIVE THE GRAND COALITION?

For the first time in the country's history, Kenya has delved into the uncharted waters of coalition politics. The article takes a critical look at the pros and cons of coalition politics and which way we may be headed with this marriage of convenience.

By Tom Kagwe

In the editorial of the *Sunday Nation*, April 13, 2008 it was unequivocally stated: "The stretching of the cabinet to include 40 ministers to accommodate allies is another inexcusable example of a lack of decisiveness masquerading as inclusiveness. There is no law in the country that states all (ethnic groups) must be represented in the cabinet. Indeed, no (ethnic group) asked for a cabinet position. (Ethnic groups) have been used by the political elite to press their case". This is one of the best ways to summarise the bloated cabinet.

With the calls for a lean and clean cabinet, many had hoped and predicted Kenya could restart the journey towards a democratic Constitution, not to mention settling the long drawn transitional justice and human rights agenda. But by the very mosaic of the cabinet, that is neither clean nor lean, these notions are challenged. It is a coalition cabinet and government, meaning it is not homogenous and, therefore, will have challenges that face other coalition governments the world over.

## Historical facts

Many commentators have argued that this is the second, third or even fourth 'grand coalition'. However, since independence Kenya has never had a chance to form a coalition. The political theory and practice of coalition building states that a coalition is a joint government by two or more parties always formed after elections. The National Rainbow Coalition (Narc) was a political party formed before elections. In 1964, when the Kenya African Union (Kanu) and the Kenya African

Democratic Union (Kadu) 'merged', Kadu was 'swallowed' by Kanu, to pave way for a *de facto* one party state, hence there was no coalition. In 2002 the National Democratic Party 'merged' with Kanu; but since they formed 'New Kanu' the resultant government was not a coalition. In the current political dispensation the coalition government is real and palpable. The coalition has been legislated - within the 10<sup>th</sup> Parliament, through enactment of the National Dialogue and Reconciliation (NDR) accord and through amendments to the Constitution of Kenya (1998).

Coalition governments are formed when no particular party on its own can achieve a majority in parliament. Second, a coalition government might also be created in a time of national crisis so as to give a government political legitimacy. Kenya's grand coalition is mainly informed by the latter - political crisis and internal strife. However, it is worth noting that none of the key parties have a majority in parliament to pass through Bills or even govern.

In his paper, *Coalition Governance Theory: Bargaining, Electoral Connections and the Shadow of the Future*, Arthur Lupia argues that many countries across the world, especially in Europe, have political parties coalescing for the common purpose of running a government. The members jointly share the responsibility of converting a wide range of social demands into a manageable set of State



The principals, Prime Minister Raila Odinga (left) and President Mwai Kibaki.

sanctioned activities. Therefore, President Mwai Kibaki and Prime Minister Raila Odinga must never forget this dictum: the coalition is not about them or the political elite around them. This coalition is about how to translate Kenya's desires, needs and aspirations into tangible goods and services for all citizens.

As Kenya grapples with coalition politics, there is a host of the pros and cons of coalition politics discussed below. Within these discussions, two other issues are:

- a) The role of the 'grand coalition' in stifling or supporting the twin debates of constitutional reform or transitional justice; and
- b) The dynamics of the coalition that

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could lead to its collapse. This commentary illustrates what constitutes a 'new' Kenya, since the NDR Act (2008) is categorical that the grand coalition can only be dissolved when:

- i) A key coalition partner withdraws;
- ii) Following a dissolution of Parliament before the 2012 elections; or
- iii) Through passage of the new Constitution, whichever comes first.

Advantages and disadvantages of coalitions

In 2001, Alastair Endersby, tabulated the pros and cons of coalition governments. Below is an illustration not just of Endersby's work but also that of other scholars. These are given a domestic twist so that members of the grand coalition, and Kenyans in general, learn from what has transpired elsewhere.

Democratic and representative: Coalition governments are said to be more democratic because they represent a much broader public opinion than single party governments. Since in almost all coalitions a majority of citizens voted for the parties which form the government, it is taken that their views and interests are represented in political

It is has been argued that coalitions provide an avenue for good governance because their decisions are made in the interests of a majority of people. However, at its onset, the grand coalition in Kenya has failed the people who had demanded a lean and clean cabinet.

decision making. While the grand coalition comprises mainly of the Orange Democratic Movement (ODM) and Party of National Unity (PNU), there are other parties such as ODM-Kenya and Ford-Kenya. To a considerable extent, the grand coalition depicts the way in which the over nine million Kenyans voted in December 2007 elections.

However, coalition governments have a tendency to be undemocratic, especially when the balance of power is inevitably held by the small parties. Examples include religious-based parties in Israel, the Greens in Germany and France, and the demand of constitutional reforms by the Liberal Democrats in the United Kingdom, all of who put a price before supporting a particular coalition. Secondly, these parties can even use blackmail when their interests are threatened. Thirdly, especially in Israel, religious-based parties have a hold on the coalition by virtue of Judaism and their views on a certain issue finds resonance among the population in the country.

In the grand coalition, PNU has an invariably larger share in the balance of power. That is, while PNU virtually lost to ODM in parliamentary and civic seats, PNU still retains what could be termed 'veto power' since the President (as both head of State and Government) still enjoys the enormous powers provided by the current Constitution. In this context, therefore, the perceived democracy within a coalition set up could be undermined if the processes within the coalition are subject to the whims of an imperial presidency which decides who gets what, why, when and how, including whether to prorogue or dissolve the national assembly among other powers. Consequently, it is paramount for all members of the grand coalition, especially ODM, to remain focused on overhauling the Constitution without which the country cannot effectively get out of the woods.

Dynamic political system: A coalition government is said to create a more honest and dynamic political system, allowing voters a clearer choice come the next elections. Within a grand coalition, political parties are continuously angling to be the voters choice. No wonder the formation of the

cabinet in Kenya was contested as each of the parties, especially ODM and PNU, wanted ministries that the electorate would see tangible results by 2012 the year when the grand coalition is expected to dissolve.

When Narc wrote their manifesto and campaigned on the platform of reforms, the ordinary voter was convinced that the party was honest. But what Kenyans saw with regard to constitutional and legal reforms, and differences within other policy issues, revealed that they were duped into believing the so called Narc dream. Now that the same individuals have come back in a grand coalition, it is clear who stands for what behind the false unity. This gives room for more honesty and Kenyans have a chance to separate the wheat from the chaff, especially when it comes to constitutional overhaul and transitional justice. This does not necessarily mean that there is a homogenous party stand on any of these issues. However, there are those who will decide how their party will work within the coalition - the principals Raila Odinga and Mwai Kibaki.

Chance for good governance: It is has been argued that coalitions provide an avenue for good governance because their decisions are made in the interests of a majority of people. However, at its onset, the grand coalition in Kenya has failed the people who had demanded a lean and clean cabinet. In fact, on the day of announcing the bloated cabinet, the *Sunday Nation* editorial had warned the two principals against entrapments by their leading supporters: "The two leaders must not rely on tribal chieftains and factotums to take their case public...but if Mr Odinga and President Kibaki feel that they cannot serve Kenyans and contain the ambitions of their allies within a cabinet of 24, then they are obviously the wrong leaders for the country because they are not listening to the people, nor are they serving the wishes of the majority but only those of their allies in the political elite".

The grand coalition seems to have started on a wrong footing. And that is why, in the context of who controls what power, the grand coalition has already showed elements that are not typical in majority of coalitions worldwide. That is why a constitutional overhaul is critical

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to ensure that powers of the presidency are substantially reduced (but not taken to a prime minister either) since that will only amount to shifting the imperial presidency and not democratising it. Power must be distributed to other organs of State with the ultimate aim of checking and balancing that power.

Unfortunately, coalition governments are not completely transparent since real decisions about political programmes are made after elections in a process of secretive backroom negotiations from which the public is excluded. Evidently, the formation of the current cabinet was done secretly with no the public involvement. Indeed, on the question of accountability of the grand coalition, it will be much more difficult to hold the principals and others to account.

During elections, each party within the coalition marketed different manifestos which today are being merged to have a single grand coalition manifesto. This undermines accountability of each political party since voters cannot expect individual parties in a coalition to deliver upon their particular party manifesto promises. Accountability also lacks when a coalition government falls. That is, once the coalition breaks, as will happen to the grand coalition, none of the parties would want to be accountable for undelivered promises. Fortunately for the voter, no party can lay claim to any of the achievements made within the grand coalition.

#### Administrative continuity:

Finally, it has been argued that coalition governments have more leeway in providing administrative continuity. For example, the grand coalition has set up a ministry to spearhead Vision 2030. This means that whichever party comes to power after the 2012 elections, most of the members of that future government will have served in the current administration. Therefore, they will have owned, even if partially, Vision 2030 and hence the need to continue towards its realisation after 2012. Most of the ministers in the grand coalition will be part and parcel of the next government after 2012 elections – notwithstanding the national assembly turnover that each election faces.

But coalition governments are still unable to take a long term view of the country and lack a unifying philosophy. At the moment, it is difficult to judge what unifies the grand coalition in Kenya. Perhaps the key unifying theme is resettlement of the internally displaced persons (IDPs) and search for truth and justice. Three bodies have been formed to achieve these - the Truth Justice and Reconciliation Commission, the Independent Review Commission, and the Commission of Inquiry into the Post-Election Violence. Although other commissions have been formed it is these three bodies that will be the litmus test on whether the grand coalition will hold together or disintegrate.

Indeed, long-term planning for majority of coalitions in the world some times requires unpopular decisions in the short-term. For example, the grand coalition aims at achieving truth and justice which might require making some radical decisions soon. If these three bodies find out that some members of the grand coalition are either culpable for human rights violations during the post-election violence, that stolen public land must be redistributed to squatters or even that President Mwai Kibaki was defeated by Raila Odinga, then the grand coalition will definitely face major problems. How it navigates the issues will determine its cohesion or fallout. Some hard decisions will have to be made by the principals. They already failed to have a clean and lean cabinet; what if one of their allies is implicated adversely in one of the three commissions? This is anyone's guess.

Similarly, internal squabbling in coalitions often erodes the confidence of the public in the political system and in their elected representatives. With regard to the grand coalition, there is bound to be querulous factions for three reasons:

- The grand coalition was mediated upon to come together but did not negotiate on their own terms.
- Different perceptions on how to implement and/or interpret the accord are bound to arise as seen recently.
- As already noted, there is a real possibility of disenchantment following revelations by the three commissions.

All these three will be the cream that

covers an already disillusioned public that feels the effect of a bloated cabinet, bloated food prices, bloated fuel prices and so on.

#### Dynamics of the grand coalition

First, the grand coalition will most likely face a landslide when implementing Bills in the national assembly, as was seen in the first Bill (the Accord) and also in the constitutional amendments. Unless the above dynamics play against the grand coalition, there is possibility of the 10<sup>th</sup> Parliament being the most historic in terms of passage of Bills. While the ninth Parliament passed only 67 bills in its five-year tenure, the 10<sup>th</sup> could do five times more.

Second, however, the relationship between the PM and vice president has not been sorted out. The PM shall

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# THE HUMAN RIGHTS RECORD IN KENYA

Our writer traces the history of human rights abuse in Kenya and attempts to identify the major culprits.

By Katiba News correspondent

The history of human rights issues in Kenya is traceable alongside the history of the development of the political system that the country inherited from colonial rule over four decades ago to the structure that exists today.

From the perspective of an observer of the development of the political system that has metamorphosed from single party dictatorship to a multi-party democracy, the structures that promote and protect human rights should have grown commensurately.

But from the point of view of a well established network of human rights civil society groups both in the country and internationally, Kenya is far from achieving what would be acclaimed human rights standards comparable to those of the developed democracies that the country is modelled on.

Indeed, some of the authoritative human rights watchdogs like the Kenya National Commission on Human Rights (KNCHR) and Kenya Human Rights Commission (KHRC) contend that the human rights record for the country has retrogressed rather than progressed alongside the democratic steps achieved over the years.

KNCHR and other civil society human rights groups in this category appear to agree on the fact that while democracy has opened up space in areas like freedom of expression and association, Kenyans are still held captive by other direct and indirect forms of human rights violations by the State.

Areas identified by human rights watchers as still glaring forms of abuse in



The police battle it out with protesters during the post election violence that rocked the country this year.

Kenya include extra-judicial execution of criminal suspects, torture, insecurity, poverty, discrimination of women, minorities and disadvantaged groups, and a whole range of other rights, some of which Kenyans do not even consider violations.

Authorities on human rights in the country offer many factors that have hindered the development of a refined human rights system. Some of the causes and sources of a persistent trend of blatant human rights abuse in Kenya are rooted in negative aspects in the history of a political system that has held on to some unchanged characteristics of the former days of dictatorship.

Authorities on human rights trace some of the trends marring the practice of human rights today to Kenya's Independence government that inherited the systems of a brutal colonial authority that had abused human rights

with impunity.

The nation's founder President, Jomo Kenyatta, inherited absolute authority from the colonial Governor which bestowed almost monarchical powers on him. When he took over as leader of independent Kenya, Kenyatta had just shortly been released from a long imprisonment alongside some of his colleagues in the independence struggle, most who would join him in the Government.

A United Nations human rights report on Africa once traced the blatant abuse of rights and excesses of African dictatorships to the absolute authority conferred on the leaders who steered their countries to independence. Elated at achieving independence under an African President and coming from

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colonial rule where they had been brutally suppressed, Kenyans did not notice the excesses with which the new government wielded authority.

Political competition was suppressed with single party dictatorship imposed and no opposition tolerated. In a short span Kenyatta would fall out with some of his closest allies in the struggle when they tried to oppose the way he was steering the country. In cases that have never been resolved to date, some outstanding politicians who took the line of open dissent were summarily executed while others politically persecuted. Three of those imprisoned with Kenyatta before independence, Achieng Oneko, Bildad Kaggia and Kungu Karumba tasted the wrath of the State for opposing Kenyatta, with the latter disappearing without trace.

Kenyatta roughly handled early proponents of a multi-party democracy, changing the Constitution to fit his whims and detaining without trial even his former close allies in the independence struggle. Early detainees included political doyens like the late Jaramogi Oginga Odinga and the late Achieng Oneko.

Impunity was openly condoned by the State with perpetrators of capital crimes let off the hook free of charge. Vibrant politicians like Pio Gama Pinto, Tom Mboya and J.M. Kariuki were assassinated in incidents that the State showed little will to follow conclusively, and which were all clearly perpetrated by politicians close to the powers of the day. Human rights experts say the Kenyatta Government perpetrated or condoned many other forms of human rights abuse in addition to the physical harm on political dissenters.

Some regions of the country like northern Kenya were largely ignored in development, leaving them without access to essential amenities like education facilities and other infrastructure, effects of which continue to be felt to date. Discrimination is reported by human rights watchers to have extended widely to areas like civil service employment, political appointments and land allocation among others. There were no human rights to

Poverty is the greatest human rights violation as it is structural, systemic and the State is directly responsible. But because of people's lack of education and ignorance, they are unable to see how the State's of choice of politics, bad economic policies and negative ideology can cause widespread suffering....

..Looking at all this broad category in Kenya one can see the status of human rights is not as desirable as it should be for a country at our stage of democratic growth

...The public ought to understand that the State is a potential abuser of the rights of people and simultaneously provider of services essential to justice and to the protection of life and property...

talk about during Kenyatta's rule -he was like a king with a grip on every sector of society.

By the time retired President Daniel arap Moi took over power in 1978, the stage had been set for blatant human rights abuse by the State. For instance, freedom of expression had been curtailed to extents that may sound comical today. In fact, former attorney general, Charles Njonjo, had made a verbal declaration in Parliament that made it treasonable not only to speak about, but also to imagine the death of the President. Human rights lawyer Haroun Ndubi says that opposition to such excesses by the State was not possible during those times since such abuses were the trend in most African States, including Eastern Europe.

Njonjo would subsequently orchestrate the enactment of the now defunct Section 2(A) in Parliament, making Kenya a de jure one party State ruled solely by the Kenya African National Union. The suppression culminated in the abortive 1982 coup which only served to give Moi the authority to employ what is regarded as the most blatant era of human rights abuse in independent Kenya's history.

Arbitrary arrests of suspected political dissidents and detention without trial became the norm. Hundreds of real and perceived dissidents were arrested, tortured and even murdered. In a cruel twist of fate Njonjo later became a recipient of his own medicine when in 1984 he was subjected to an embarrassing probe for allegedly plotting to overthrow Moi.

Eventually, Moi read the signs of the time in 1991 when the wave of democratic change started blowing towards Africa from former Eastern Europe and tried to loosen the grip of his dictatorial powers by erasing the infamous Section 2(A). However, he still managed to hold onto to power for 10 years into the multi-party era and watched as increased democratic space increased and weakened State excesses.

Moi would finally exit the scene in 2002 with his plan for his chosen successor, Uhuru Kenyatta, scuttled by a growing pro-democracy wave led by a united opposition under the National Rainbow Coalition. But human rights activists say

There is blatant abuse of the socio-economic rights, which Kenyans have ignorantly lived with. These relate to the fundamental rights to life. For example, the political leadership engages in grand corruption which leads to inflation, lack of medicine in hospitals and lack of infrastructure resulting in death, starvation, ignorance and poverty.

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that although a lot has changed in opening up democratic space over the last five years as opposed to the Kenyatta and Moi eras, there is still a long way to go on the human rights front.

"Some of the human rights excesses that were perpetrated by the State during the single party dictatorship are still being condoned," says Hassan Omar, a commissioner with the KNCHR.

Ndubi lists the still persistent categories of human rights abuse in Kenya in two broad categories; the social economic rights and the civil political rights.

"Looking at all this broad category in Kenya one can see the status of human rights is not as desirable as it should be for a country at our stage of democratic growth," says Ndubi.

The lawyer says the civil political rights, as contained in Chapter 5 of the Constitution regarding human rights, is the most abused by the State. For instance, the police are still executing people in what is popularly known as extra judicial killings. People have disappeared without trace while the government appears not interested in taking any legal action. Ndubi says although there is improvement in

general political expression since the country went multi-party, the brutal suppression of groups like *Mungiki* reverse many gains made in human rights.

Ndubi says there is blatant abuse of the socio-economic rights, which Kenyans have ignorantly lived with. These relate to the fundamental rights to life. For example, the political leadership engages in grand corruption which leads to inflation, lack of medicine in hospitals and lack of infrastructure resulting in death, starvation, ignorance and poverty.

"Poverty is the greatest human rights violation as it is structural, systemic and the State is directly responsible. But because of people's lack of education and ignorance, they are unable to see how the State's of choice of politics, bad economic policies and negative ideology can cause widespread suffering," he says.

Ndubi points out that the current bloated power sharing cabinet is an economically devastating strategy that will only increase poverty. Successive UN reports on Kenya's level of poverty show that more than 60 percent of Kenyans live on less than a dollar a day.

In a media commentary, renowned human rights activist and executive

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# HUMAN RIGHTS: For whom and by who?

By Katiba News correspondent

Naturally, human rights emerge from the very fact that people are human and are born with those rights. In 1993, the World Conference on Human Rights held in Vienna agreed that human rights are "universal, interdependent and indivisible": universal since they cut across the globe regardless of different cultures or people's.

Human rights are interdependent since people cannot enjoy political and civil rights if they do not have access to food, education and housing. Rights are indivisible since none of the three

'generations' (civil, socio-economic or group rights) can be separated from the other and, therefore, must be protected, promoted and enhanced concurrently.

To guide these basic principles, the origin of human rights law is traceable as captured by Prof. Makau Mutua in the paper, *Standard Setting in Human Rights: Critique and Prognosis*: "International human rights law originated in liberal theory and philosophy... In liberal theory, individual rights act as a bar against the despotic proclivities of the State. It is on this theoretical foundation that international human rights law rises.

Thus, the modern State is the primary guarantor of human rights, while it is at the same time the basic target for international human rights law". Traditionally, the regime of human rights treats the *culprit* of human rights violations as the *guarantor* of the same.

Human rights law is founded on many treaties including the United Nations Charter of 1945, the Universal Declaration of Human Rights (UDHR) of 1948 or the numerous conventions that include general rights as well human rights for specific groups. The latter

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# LAND REFORMS IN POST INDEPENDENT KENYA

This is the second part of the three-part series on the land question in the country. Our writer focuses on how the land issue unfolded in the years after independence and how this has impacted on the status quo.

By Michael Nderitu

Throughout history, popular discontent with land related institutions has been one of the most common factors that provoke revolutionary movements and other social upheavals. Land reform initiatives are advocated as an effort to eradicate food insecurity and rural poverty. The philosophical underpinning of land reform is utilitarian, which means the greatest good for the greatest number and a simple belief that justice requires a policy of redistribution of 'land to the tiller'.

These notions are in conflict with the prevailing notions of right to property. Land reform must, therefore, respond to the question of balance between the role of government and the individual rights. These questions relate to the

legitimacy of individual land ownership, legitimacy of historical land rights, right to property and its equation to the right to prompt, adequate compensation in case of expropriation, the meaning of fair land reform, the institutions and process of adjudicating land disputes and the internal and external policies that affect land reform.

Land resettlement programmes at independence: 1963-2002

In the first 10 to 15 years after independence, the Government was preoccupied with the settlement of Africans on high potential land alienated by White settlers in the early years of the Century. The programme covered 1.25 million acres and was implemented by a large staff. It absorbed money reserved for agricultural development.

The million-acre scheme involved 34,000 families in 135 new settlements formerly occupied by White settlers. The programme was funded by the Government as well as the United Kingdom and other donors. The schemes were implemented by the Settlement Fund Trustees through land buying companies.

The 1954 Swynnerton plan was being implemented in the 'tribal areas' or reserves with an area totalling 33 million acres. The Africans in the reserves were largely engaged in subsistence agriculture. The plan was expected to create a stable class of relatively wealthy African farmers on private land through a process of land adjudication, consolidation and registration. The programme was initiated in Central province as a response to insurrection and extended to all other tribal areas.

The plan included facilitation for growing cash crops and use of new farming techniques. The effect of these measures was the transformation of land into a commodity that could be owned by clans, families and individuals and which could be sold without reference to traditional norms. The new land tenure system gave rise to a class of landless people and exclusion of women from land ownership. Land reform downplayed the status of women as the actual utilisers of the land. The system was designed for a sedentary mode of agriculture and marginalised pastoralist communities which lost access to key land resources during droughts.

During the constitutional negotiations for Kenya's independence in 1960-1962



Families displaced from their land during the post election violence.

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at Lancaster House in the UK, persons present who included representatives of the British Government, nationalist movements, the settler community and minority groups agreed that a provision would be entrenched in the Constitution to protect private property. The State would not expropriate or compulsorily acquire private property unless such acquisition was in the interest of the public or promotion of public benefit and, if the acquisition took place, adequate and prompt compensation would be paid to the registered owner.

An agricultural land bank would be established to provide credit on soft terms to the new settlers as start up capital for profitable agricultural ventures. Africans would also be provided with long term loans to purchase large scale farms not targeted for resettlement. Such farms would be operated commercially as single large scale units.

The land allocation phenomena did not take root in the 1960s and 1970s though there were isolated cases of land allocation through presidential decree. In the 1980s and 1990s, what began on a small scale became the norm. Public land was suddenly made available for allocation for whatever purpose. Such allocations were made to persons of the choice of the president and his cronies. The allocations picked up at the time of elections. The targeted land include public parks, forests, roads and road reserves, playgrounds, national parks and national reserves and public toilets.

The Government has identified the land question as one developmental challenge which needs to be resolved. In this respect, the Government established a Commission of Inquiry to probe into ethnic clashes that rocked the country in 1991 to 1993, and in 1997. The Commission, named after the presiding Judge as the Akiwumi Commission on Ethnic Clashes generated a report which was released on orders of the High Court in 2000. In 1998, the Government set up another commission of inquiry to conduct hearings and make recommendations on land reform. The Commission was chaired by former attorney general

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Charles Njonjo.

On coming to power in 2003, the National Rainbow Coalition government set up the Commission of Inquiry on Illegal and Irregular Allocation of Land. The commission identified public land that had been appropriated for private purposes from independence up to 2002. The illegal land awards were made to a raft of former ministers, MPs, judges, civil servants and military officers. The report recommended that the large majority of the awards be revoked. There was systematic breach of procedures designed to protect the public interest to serve private and political ends. However, despite the existence of land reform commissions, the Government has not implemented land tenure reforms decisively.

The Commission of Inquiry on Illegal and Irregular Allocations of Land in Kenya

The Commission was made up of 20 prominent citizens, lawyers and civil servants drawn from ministries related to land issues. It was chaired by lawyer Paul Ndung'u. Its mandate was to inquire into unlawful land allocations; ascertaining beneficiaries; identifying public officials involved in the illegal allocations and making recommendations for appropriate measures for the restoration of illegally allocated lands to their proper purpose; for the prevention of future allocations and; for appropriate criminal prosecutions.

The commission noted in its report that land retains a focal point in Kenya's history. It was the basis upon which the struggle for independence was waged. It has traditionally dictated the pulse of nationhood. It continues to command a pivotal position in the country's social, economic, political and legal relations. Fundamental to the present importance of land is the rapid growth of the population. The total population has grown from about eight million at independence in 1963 to over 33 million at present.

Twenty percent of the population lives in the drier 80 percent of the land mass. Therefore, access to land is critical to sustainable livelihoods and welfare. The

# SAFEGUARDING AFFIRMATIVE ACTION IN THE KENYAN CONSTITUTION

The issue of empowerment for the less advantaged members of society, especially women representation in both the public and private sectors, is an issue that has been discussed since the constitutional review process started in the country. And, although there has been general consensus that there is need for clear legislation on women empowerment in the Constitution, not much has been done. Our writer takes an over view.

By Deloitte Bukusa

The popular term "affirmative action" means positive steps taken to increase the representation of women and minorities in areas of employment, education and business from which they have been historically excluded. When those steps involve *preferential* selection - selection on the basis of race, gender or ethnicity - affirmative action generates intense controversy. It also describes the policies aimed at a historically social and political non-dominant group (typically minority or women of all races) intended to promote access to vital amenities such as education or employment. Motivation for affirmative action is a desire to redress the effects of past and current discrimination that is regarded as unfair, and to encourage public institutions such as universities, hospitals and police forces to be more representative of the population.

## Origin

The origin of affirmative action can be traced to the civil rights programmes enacted to help African Americans become full citizens of the United States of America. Amendments such as the 13th to the American Constitution made slavery illegal; the 14th guaranteed equal protection under the law; the 15<sup>th</sup> forbid racial discrimination in access to voting. The 1866 Civil Rights Act guaranteed every citizen "the same right to make and enforce contracts ... as is enjoyed by white citizens ...". In 1896, the Supreme Court's decision in *Plessy vs Ferguson* upheld a "separate, but equal" doctrine that proved to be anything but equal for African Americans.

The decision marked the end of the



KNCHR chairman Maina Kiai (right) and Nobel Peace laureate Ms Wangari Mathai (centre). The role of women in leadership cannot be overemphasised.

post-Civil War reconstruction era as Jim Crow laws spread across the South. In 1941, President Franklin D. Roosevelt signed Executive Order 8802 which outlawed segregationist hiring policies by defense-related industries which held federal contracts. Roosevelt's signing of this order was a direct result of efforts by Black trade union leader, A. Philip Randolph. In 1953, President Harry S. Truman's Committee on Government Contract Compliance urged the Bureau of Employment Security "to act positively and affirmatively to implement the policy of non-discrimination...."

The 1954 Supreme Court decision in

*Brown vs Board of Education* overturned *Plessy v. Ferguson*. The actual phrase "affirmative action" was first used in President John F. Kennedy's 1961 Executive Order 10925 which requires federal contractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, creed, colour or national origin." The same language was later used in Lyndon Johnson's 1965 Executive Order 11246.

In 1967, Johnson expanded the Executive Order to include affirmative

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action requirements to benefit women. Other equal protection laws passed to make discrimination illegal were the 1964 Civil Rights Act, Title II and VII, which forbid racial discrimination in "public accommodations", and race and sex discrimination in employment respectively. The 1965 Voting Rights Act was adopted after Congress found "that racial discrimination in voting was an insidious and pervasive evil which had been perpetuated in certain parts of the country through unremitting and ingenious defiance of the Constitution".

Much of the opposition to affirmative action is based on the grounds of so-called "reverse discrimination and unwarranted preferences". In fact, less than 2 percent of the 91,000 employment discrimination cases pending before the Equal Employment Opportunities Commission are reverse discrimination cases under the law as written in Executive Orders.

On attainment of independence in Kenya, women began to assert themselves socially, politically and economically albeit slowly. This is attributed to African Customs coupled with some religious convictions that a man is the head of the family and takes priority in all areas of life. At the time, parliamentary representation by women was very low. The first parliament, 1963 to 1969, had no woman representative until Hon Grace Ogot, MP for Kisumu Town made it - although she had made history as Kisumu Mayor in 1965. This was the first time (and three times thereafter) for a lady to head a local authority in Kenya and in East Africa as a whole. Ms. Jemimah Gichaga (now deceased) was the first nominated lady MP.

These two women shared benches with 156 men in Parliament until Dr Julia Ojiambo, Nyiva Mwendwa, Chelagat Mutai and Eddah Gachukia joined them in the fourth and fifth Parliament, raising the number to nine women in the eighth parliament and doubling in the ninth. Out of 222 members of parliament we had nine elected and nine nominated women. Today Kenya has the lowest number of women MPs compared to

other EA countries and has no national policy on gender. For example, Rwanda has 48.8 percent of seats reserved for women in parliament. An attempt by Beth Mugo in 2002 to present an affirmative Action Bill was shot down by the Kenyan parliament.

The development, defence and contest of preferential affirmative action has proceeded along two paths. On one hand, it has been through legal and administrative means such as courts, Legislature and the Executive departments of government making and applying rules requiring affirmative action. The other has been the path of public debate where the practice of preferential treatment has spawned vast literature for and against the action. More often than not the two paths have failed to make adequate contact with no proper anchorage in any existing legal basis or practice.

#### Government efforts

In 1996, Charity Ngilu moved a motion for the implementation of the Beijing Platform for Action. The much hyped Constitutional Amendment Bill 2007 which sought to have 50 women nominated to parliament failed to sail though. In last year's budget, the Government allocated and disbursed Kshs 3 billion in a fund set up specifically for women development. However, this was seen as an election gimmick targeting women votes.

In the coalition government set up under the National Dialogue and Reconciliation (NDR) Act 2008, the Party of National Unity (PNU) proposed a ministry catering for Women and Children's Development while the Orange Democratic Party (ODM) proposed a ministry for Gender and Social Services. Both proposals were compromised with the naming of the grand coalition cabinet. PNU's proposal of having 44 ministers was to satisfy the interest of affiliate parties and other groups like the youth and women.

On the other hand ODM opposed the move and insisted on 34 ministries and also resisted the move to split the proposed Ministry of Gender and Social Services into Women and Children, Development, and Sports, which in itself

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....Ultimately, gender equity can be achieved through (free primary and secondary) education), and creation of awareness by non governmental organisations and civil society groups. Affirmative action should be undertaken in all social, political and economic sectors and not just in politics. Key areas such as education, sports and the industrial sector also require affirmative action.....



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'supervise and coordinate' all ministries of government which means that any person heading a ministry will report to the PM. It is not clear how the VP - who happens to be the principal assistant to the President - will work with the PM and/or report to him. In the past, the Leader of Government Business has been the VP but as things stand now, the PM is better suited to play this role in the august house. The grand coalition has to resolve this quickly before other issues come to the fore.

Thirdly, Parliament has a vacancy of eight seats. Querulous politics is bound to start when writs are issued. Another litmus test awaits the grand coalition when the respective parties field candidates in the forthcoming by-elections. Fourth and related to the by-elections relates to the Electoral Commission of Kenya (ECK). The Kriegler Commission could perhaps radically recommend that ECK be

reconstituted, particularly on the number and mode of appointment of commissioners. If the grand coalition enacts the Inter-Parties Parliamentary Group (IPPG) principles in the Constitution, then part of the problem will be solved as each party will nominate their representatives to the ECK. If this does not happen, the problems that faced ECK in 2007 will face the grand coalition. One of the principals, President Mwai Kibaki, still has a free hand to name new commissioners which could lead to outcries. What if the Kriegler Commission decides on some kind of soft option that does not require reconstituting the commission? Will parties within the coalition still trust the ECK to conduct free and fair by-elections?

#### Conclusion

Kenya is on the verge of settling two key issues: a constitutional overhaul and the human rights agenda encompassed in the envisioned transitional justice. The

question is whether the political elite will live up to Kenyans expectations or this is another political charade aimed at hoodwinking the people. Therefore, Kenyans must continually demand accountability from these leaders since we are dealing with the same players - only circumstances have changed.

Consequently, it is paramount that Kenyans ensure that the grand coalition is not dissolved either until the 2012 elections or until the enactment of a new constitutional dispensation. This way, Kenyans will have benefited from a structural and systematic overhaul of the current constitutional order. The grand coalition is a small price to pay. **KN**

The writer is a senior programmes officer with the Kenya Human Rights Commission (KHRC). The views expressed in this article are the author's own and do not reflect those of KHRC.

**Public land in municipalities should be sold by public auction for commercial or residential use, unless the President prescribes otherwise. No officer, including the President, has authority to allocate public land that has been set aside for a public purpose, for example, national parks, forests, play areas and road bypasses. Large portions of Kenya's forests were allocated for commercial exploitation with the result that the forest cover has diminished from 30 percent in 1900 to 3 percent in 1963, and 1.7 percent today.**

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practice of illegal allocations increased dramatically in the 1980's and 1990's. The Commission noted that land was no longer allocated for development purposes but as political reward and for speculation purposes. The so called land grabbing became part and parcel of official grand corruption through which land meant for public purposes ... has been acquired by individuals and corporations.

Land in Kenya can be categorised into three types. Government land comprises unalienated land - that which has not been leased or allocated, and alienated land - that which has been leased to a private individual or corporation, or which has been reserved for use by a government department or corporation of institution, or which has been set aside for another public purpose. Trust land is held by county councils on behalf of local communities, groups, families and individuals in accordance with applicable customary law until it is registered under any registration statute, following which it is transformed into private land and becomes the sole property of an individual or groups in favour of whom it is registered.

Private land is land which is registered in accordance with the laws that provide for registration of title, and is registered in the name of the individual, corporation and may be created from government land or trust land through registration and compliance with all necessary procedures.

Under the law, it is only the President who has the right to allocate unalienated government land, although he can delegate limited powers to the Commissioner of Lands. The President must exercise this power in strict regard of public interest. Public land in municipalities should be sold by public auction for commercial or residential use, unless the President prescribes otherwise. No officer, including the President, has authority to allocate public land that has been set aside for a public purpose, for example, national parks, forests, play areas and road bypasses. Large portions of Kenya's forests were allocated for commercial exploitation with the result that the forest cover has diminished from 30 percent in 1900 to 3 percent in 1963, and 1.7 percent today. It is recommended that a country maintains its forest cover at a minimum of 10 percent to ensure ecological and environmental sustainability.

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director of International Centre for Policy and Conflict, Ndung'u Wainaina, says the most glaring and painful human rights abuse is the extra judicial killing of crime suspects by police. He cites the killings of *Mungiki* suspects by police last year as a severe violation of human rights by the State.

"The public ought to understand that the State is a potential abuser of the rights of people and simultaneously provider of services essential to justice and to the protection of life and property," says Wainaina.

He says there ought to be an effective justice mechanism which ensures the rule of law is followed and human rights maintained in dealing with crime suspects. The Kenya police was also widely accused early this year for gross human rights violations during the December 2007 post election crisis.

In a report released in March this year Human Rights Watch of New York and other rights groups accused the police of extra-judicial killings and reluctance to quell the violence in some areas. The report stated that police response to demonstrators involved the use of

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include group rights of women guaranteed as Convention on Elimination of Discrimination against Women (CEDAW) and the rights of children under the Convention on the Rights of the Child (CRC).

The entrenchment of these rights within national Constitutions differs between countries. There are basically two types of countries. First, those that immediately domesticate international agreements once they ratify them. That is, by ratifying them internationally, the countries automatically domesticate those treaties as part of their national laws. Secondly, there are countries that sign internationally but seek to domesticate them by debating and passing them at national parliaments. Kenya belongs to the latter category. In this regard, the applicability and relevance of these human rights at a national level depends on:

- a) Whether the countries have signed and ratified them;
- b) Whether they have domesticated

excessive force leading to hundreds of deaths.

Apart from excesses by police, the State is accused of failure to offer security and let be people die in ethnic clashes.

According to Omar of KNCHR, other rights abuses rampant in the country include discrimination on religious and gender grounds. Muslims are discriminated against on religious grounds as many are arrested and harassed on suspicion of involvement in terrorism.

In addition, Wainaina says future efforts being made at promoting lasting peace in post election violence should also focus on the plight of women as they still remain a violated lot whose plight has largely been ignored by successive governments.

Ndubi says other rights of Kenyans violated include children rights, consumer rights, trade union rights, rights for people with disabilities including those living with HIV/AIDS. He says the country is yet to achieve a perfect human rights state. Lately, politics and ethnicity seem to have undermined that evolution.

them; and

c) The political will to follow through this domestication.

Kenya has had a poor record in all the three categories, hence the applicability and relevance of international treaties within our borders is wanting. Nonetheless, crusaders of human rights in Kenya have taken advocacy a notch higher by constantly reminding government that it is obligated by international law to respect, protect and promote all human rights.

#### Our Constitution

The Constitution of Kenya (1969) as amended (2008) provides for the *Protection of Fundamental Rights and Freedoms of the Individual* in Part V, from Sections 70 to 86. Protection includes: protection from discrimination; from slavery and forced labor; from torture; from arbitrary search or entry. Rights include: the right to life; to a fair trial/due process; to own property and so on. Freedoms include freedom of

On December 10, 2007 the International Human Rights day, the KHRC launched a collation of views from across the country of some of the most urgent human rights needs Kenyans would like to see the government implement. KHRC executive director Ms Muthoni Wanyeki said top on the agenda was access to education, security, road infrastructure, free media and affordable healthcare.

Other demands were security, respect and protection of people's rights to participate in governance, and the right to decide what projects to be prioritised by the government.

Ndubi calls on fellow human rights activists to heighten the campaign to achieve better results.

"There is need for multiplicity of organisations and individuals to keep the human rights agenda permanently alive," says the human rights lawyer. **KN**

The writer is a senior editor and writer with the *East African Standard*.

conscience, expression, assembly and association, and movement. All these are, however, first 'generation' civil rights. Unfortunately, there are claw-backs or exceptions and that is why some observers have termed Part V as a *Bill of Exceptions* rather than a Bill of Rights.

Further, the scope of protection is limited in terms of those protected in the range of the rights since second and third 'generation' rights are not included and, lastly, in the range of those bound by the duties associated with those rights. It is discernible too that there is no form of directive principles of State policy to ensure that Kenyans meet their basic needs - hence all human rights.

As Kenyans clamour for a new Constitution, there have been three basic tenets that inform the review of this *Bill of Exceptions*. First, to ensure that a new Constitution provides for all three 'generations' without adversarial claw-backs. Secondly, to include directive principles of State policy to ensure that those rights are realised. Thirdly, to

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outlines the priority the grand coalition of the day has for women. What carried the day was the appointment of a lady minister in the gender and children docket. The battle for women representation has also to been fought at the parliamentary committees such as in the House Business committee since the 10<sup>th</sup> parliament now has more women representatives. Hon. James Orendo is on record for having raised the issue that women had been short changed in naming the 20 MPs to the business committee. It is notable that in the coalition government we only have seven women Ministers (out of 40) and eight Permanent Secretaries (out of 72) which is just close to the 30 percent as envisaged by the President and the largest number since independence. There are still a few women in the provincial administration.

#### Conclusion

Lack of a clause on affirmative action in the NDR Act was the first blow to the affirmative efforts already in place, and as stipulated in the manifestos of the three major parties (PNU, ODM and ODM-Kenya) which are yet to harmonised as Kenyans wait for a comprehensive constitutional review. The Act did not mention gender although women activists made small insertions in the draft to read that, "Each member of the coalition entitled to nominate to any office under the Act

shall observe the principle of gender parity and, where there is sufficient number of the other gender in the National Assembly, to ensure that at least one-third (1/3) of those nominated are of the other gender".

The 21 women in the 10<sup>th</sup> parliament have shattered culturally biased myths by felling several seasoned male counterparts. As the President clearly articulated in the State opening of Parliament, it would not be difficult to ensure that the cabinet, elective positions, public appointments and new employment opportunities comprise 30 percent women which is one of the goals of Vision 2030. A lot of gender friendly laws are also expected. The flame and significance of affirmative action can be realised once the two principals, President Kibaki and the PM Raila Odinga, exercise their powers and goodwill in supporting affirmative action by appointing qualified women as ministers, assistant ministers, permanent secretaries, ambassadors and top civil servants. In fact, former South African first lady, Ms Graca Machel, lamented on the absence of women in negotiations during the mediation process by posing, "*Where have the women been since independence?*" Indeed, both PNU and ODM failed to name a woman as deputy prime minister as ethnicity and portfolio balance seemed to have carried the day.

The ninth parliament enacted a record 17 Bills into law including the Marriage Bill 2007 which gives more right to women; Family Protection Bill 2007 which seeks to allow the courts intervention in cases of domestic violence. The Equal Opportunity Bill 2007 and Matrimonial Properties Act 2007 are in the final stages and will be forwarded to the attorney general for publishing and introduction to parliament. These favour both women and children. This is in a sharp contrast to the last two decades where only the Sexual offences Act 2006 and the Gender Development Act 2003 were passed.

Ultimately, gender equity can be achieved through (free primary and secondary) education), and creation of awareness by non governmental organisations and civil society groups. Affirmative action should be undertaken in all social, political and economic sectors and not just in politics. Key areas such as education, sports and the industrial sector also require affirmative action. In order for affirmative action to succeed, the government must empower the disadvantaged through special funds, education and constitutional protection. **KN**

The writer is an advocate of the High Court based in Mombasa.

In summary, the Commission came up with the following findings:

- Over 200,000 illegal titles were created between 1963 and 2002, 98 percent of them being issued from 1986 to 2002. The attempt to build an office complex at Uhuru Park in Nairobi in 1990 by the Kenya Times Media Trust, owned by the then ruling party Kanu and the parcelling out of the Karura forest in the outskirts of Nairobi to private individuals stand out as typical and glaring cases of land grabbing. Both allocations were resisted by the public and condemned locally and internationally.
- Illegal allocations were done on the order of the presidents,

commissioners of land, other senior government officials and well connected politicians and businessmen.

- Beneficiaries of illegal allocations were politicians, ministers, senior civil servants, businessmen, churches and mosques.
- Most beneficiaries of the allocations sold the land soon after the allocation to State corporations at highly inflated prices. The National Social Security Fund, a state corporation, purchased land worth Kshs 30 billion between 1990 and 1995.

In 2006, the President stated that the Government would repossess all land in the coastal strip that was owned by absentee land lords. This directive was

approved by the Cabinet.

The Government has carried out evictions from forests, for example in the Mau Escarpment in 2005 and Mount Kenya forest in 1990. Such evictions have been characterised by violence, lack of a resettlement programme and failure to make allowance for forest traditional dwellers like the Ogiek and the Dorobo. The mode of execution violates the rights of the victims. It is, therefore, important for the Government to formulate guidelines that will define how the evictions should be carried out. **KN**

In the third and final instalment of this series on land we will look at what the future holds for land tenureship in Kenya and how this perennial crisis can be resolved once and for all.



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ensure that Kenya speedily domesticates the international conventions it has ratified and that the country reports to international committees on time.

Illustratively, while Kenya ratified the UN Convention on Economic and Social-Cultural Rights (UNESCR) in 1976, the government is reporting to the relevant committee this year, 32 years after ratification. But it is important to note that the country is currently drafting a National Policy and Action Plan on Human Rights (NAP) to ensure that the future is better than the present. However, this must be accompanied by a democratic and robust Constitution.

Violators of human rights in Kenya  
The violators of human rights in Kenya range from State to non-State actors. The police in Kenya have been labeled as the worst human rights violators for the following reasons. First, they possess a mentality of suppression and pacification, usually accompanied by broad and sweeping powers. Secondly, they are not accountable to the laws of Kenya and are rarely arrested and charged for such violations. Thirdly, there exists no effective oversight mechanism to ensure that this impunity is reined. These three make the police the 'mercenaries of the State', hired to commit human rights

violations with impunity!

Over the years, even during colonialism, the police have been used by the government in power to wreck havoc to those who oppose government, be they 'ordinary' Kenyans or other formal or informal institutions. In the post-election crisis, the police were accused of human rights violations in several parts of the country through use of excessive violence, torture, arbitrary arrests and even extrajudicial killings. Indeed, in the name of 'State security' the police have raided private enterprises and media houses.

Other than the police, other State actors such as the provincial administration, particularly chiefs, have ran amok over the years. Principally, there can be no excuse to violate human rights in the name of State security, as has been done in the 'war against terror', unless that State security is defined and agreed upon by a broad consensus of stakeholders in the security docket, not just the police.

Other than State actors, Kenyans in general seem too alienated from respecting and protecting human rights. In the post-election crisis, many Kenyans turned against each other and committed all manner of violations. Indeed, contrary to the notion that States

are the violators of human rights, people killed, tortured, burnt houses, displaced others from their land and dispossessed them of their rightfully-owned property.

While there have been numerous workshops, seminars and fora aimed at creating awareness on human rights, it seems all these has been skin deep. Indeed, one would question the 'humanness' of the people who committed the above atrocities against fellow humans. Consequently, there is need for human rights advocates to rethink the current strategy on human rights training.

Human rights are for all people and must be respected, protected and promoted by all for the benefit of each other. In this regard, while State actors are mirrored as the main violators of human rights, especially through the unchecked police force, Kenyans are also culpable for violating the rights of others. While the human rights regime has a plethora of treaties and conventions, their relevance and applicability depend on individual countries. Ideally, the human rights ideology is founded on the belief that all people are born with rights, but seemingly it has become difficult for States to guarantee all rights. **KN**

Human rights are interdependent since people cannot enjoy political and civil rights if they do not have access to food, education and housing. Rights are indivisible since none of the three 'generations' (civil, socio-economic or group rights) can be separated from the other and, therefore, must be protected, promoted and enhanced concurrently..... pg 8

The entrenchment of these rights within national Constitutions differs between countries. There are basically two types of countries..... pg 14

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# THE KONRAD ADENAUER FOUNDATION IN KENYA

**K**onrad-Adenauer-Stiftung is a German political Foundation which was founded in 1955. The Foundation is named after the first Federal Chancellor, Prime Minister and Head of Federal Government of the then West Germany after World War II. Konrad Adenauer set the pace for peace, economic and social welfare and democratic development in Germany.

The ideals that guided its formation are also closely linked to our work in Germany as well as abroad. For 50 years, the Foundation has followed the principles of democracy, rule of law, human rights, sustainable development and social market economy.

In Kenya, the Foundation has been operating since 1974. The Foundation's work in this country is guided by the understanding that democracy and good governance should not only be viewed from a national level, but also the participation of people in political decisions as well as political progress from the grass roots level.

## Our aims

Our main focus is to build and strengthen the institutions that are instrumental in sustaining democracy. This includes:

- ? Securing of the constitutional state and of free and fair elections;
- ? Protection of human rights;
- ? Supporting the development of stable and democratic political parties of the Centre;
- ? Decentralisation and delegation of power to lower levels;
- ? Further integration both inside (marginalised regions in the North/North Eastern parts) and outside the country (EAC, NEPAD); and
- ? Development of an active civil society participating in the political, social and economic

development of the country.

## Our programmes

Among other activities we currently support:

Working with political parties to identify their aims and chart their development so that democratic institutions, including fair political competition and a parliamentary system, are regarded as the cornerstones for the future development in Kenya.

Dialogue and capacity building for young leaders for the development of the country. Therefore, we organise and arrange workshops and seminars in which we help young leaders to clarify their aims and strategies.

Reform of local governance and strengthening the activities of residents' associations. These voluntary associations of citizens seek to educate their members on their political rights and of opportunities for participation in local politics. They provide a bridge between the ordinary citizen and local authorities, and monitor the latter's activities with special focus on the utilisation of devolved funds.

Introduction of civic education to schools and colleges. We train teachers of history and government in civic education. In addition, we participate in the composition of a new curriculum on civic education.

Our principle is: *Dialogue and Partnership for Freedom, Democracy and Justice.*

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MEDIA  
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*Promoting  
Democracy and  
Good Governance  
through the  
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