

# WOMEN

*Their Community, Their Rights*



*A Handbook for Paralegal Education*



Education Centre for  
Women in Democracy

HRE/GENDER/1R/14

# **Women: Their Community, Their Rights**

**A Handbook for Paralegal Education**



Compiled by Lara Konditi

Education Centre for Women and Democracy  
1999

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## **A Handbook for Paralegal Education**

**Published by:**  
**Education Centre for Women in Democracy**  
**Ngong' Road**  
**P. O. Box 62714**  
**Nairobi, KENYA**

**First Edition, April 1999**

**Cover Design and Illustrations:**  
**Print Art Communication, Kamburu Drive, off Ngong' Road**

**design and layout by amanya w**

**Printed by:**  
**Print Art Communication**

**Production of this handbook has been made possible through the  
generous support of the Canadian International Development Agency  
Gender Equity Support Project (CIDA-GESP) Kenya.**

**The Education Centre for Women and Democracy (ECWD)** is a non-partisan, not-for-profit organization. Through its non-partisan organizational commitment, which includes women from all parties and provinces, the Centre works co-operatively with interested parties and its own members to address political, social and economic concerns that affect not only women but the nation as a whole. The centre hopes to seek broad participation among grass-roots women to expand knowledge about political activities at all levels by strengthening voter education and by sharpening the focus on issues of national importance. The Centre will be a focal point of co-operation and collaboration with male political figures who support the Centre's policy agenda. Equally important, the Centre seeks dialogue and interaction with women from other countries in order to learn from their experiences, identify models for civic and political activities and join in the global movement to ensure greater political visibility and equal access and participation for women. The Centre hopes to assist women not only to become more active in politics but also to secure leadership positions in political parties, parliament and government.

### **History**

ECWD was founded and registered as an official Kenyan organisation in July 1993. The Centre's mission was crystallized during an international planning conference on women's political participation at Mt. Kenya Safari Club in Nanyuki, Kenya in October 1993. This conference was co-sponsored by the National Democratic Institute for International Affairs.

### **Goals and Objectives**

The Centre's primary objectives are to assist and support women seeking greater political involvement.

- Promoting democratization, human rights and gender relations
- Enhancing awareness about women as mainstream political players through education and information dissemination
- Promoting women's equitable participation in politics and public affairs
- To advocate for women to have equal opportunities of employment and education
- Educating women on issues and policies which disproportionately affect them
- Assisting women who are interested in seeking political office
- Early leaders development for young women (mentoring)

### **Mission Statement**

The Centre will act in a non-partisan manner to assist women who aspire to political office at all levels through research, communications, training and civic education, so that women are able to develop relevant campaigns; provide more effective services to their communities; foster more development; and serve as genuine leaders who participate equally in helping shape and implement Kenya's national policy agenda.

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## Acknowledgments

ECWD would like to thank the following for their contribution to the development of this handbook:

- ECWD Paralegals – Nyanza, Rift Valley and Western Provinces
- Lawyers – Nyanza, Rift Valley, Nairobi, Western Provinces
- Koinange-Ngigi, Julie
- Makoriwa, Sharon
- Musumba, Linda
- Musumba, Winnie
- Mutahi, Njuguna
- Odhiambo, Millie
- Ogutu, Caroline
- Wairimu, Naomi
- Wayeme, Frida

# Introduction

This handbook is intended for paralegals as gender and human rights educators while being simplified enough for community members to use and to remain within the community as a reference guide to addressing issues on women's rights. While this book was written with a focus primarily on women, its contents are also very relevant to the protection of men and children's rights.

The handbook was prepared using information from: materials used for ECWD paralegal training programmes; documents on the legal system of Kenya issued by the Government of Kenya as well as by various non-governmental organisations that have similar programmes; individuals whose professions expose them to paralegal and legal aid activities; and from the experiences of ECWD trained paralegals engaged in active fieldwork in their home communities.

## Background

The ECWD Paralegal Human Rights Monitor Training Programme is a follow-up to the previously implemented Human Rights and Democracy Monitoring Project. Reports from the human rights monitors indicated a great need for the education of grassroots communities on human rights with a view to preventing violations as well as appropriately handling those already committed. The programme mainly focuses on women's human rights and their political empowerment.

Several factors play into the occurrence of human rights violations as seen on a daily basis: for instance, poverty and unemployment may lead individuals to perpetrate violations of others' rights in an unscrupulous effort to improve their own economic situation. Also, traditional and cultural beliefs continue to sanction male domi-

nance and negative attitudes persist towards women who are given a low status and are, in most cases, the victims of violations, both directly and indirectly. There also exists a passive and uninformed citizenry that has no claim-making capacity despite the numerous ills perpetrated against it. Women, particularly, lack awareness regarding rights and potentials – stemming from poor governance and lack of leader accountability. In addition, the local administration, to include police, chiefs, provincial and district officers, show their ignorance of the need to uphold basic human rights by ignoring or misdirecting victims of human rights abuses. Where knowledge on basic human rights is lacking in grassroots communities around Kenya, paralegal human rights monitors can offer a great service and facilitate positive change and communities can begin to be more respectful of others' rights. The process of decreasing human rights violations must be strengthened by way of educating communities. One very effective way of doing so is training and deploying paralegals to their home communities and surrounding areas. These community-based human rights paralegals are trained on basic human rights and equipped with knowledge on how to go about educating their communities on the same as well as how to effectively handle violations in terms of legal procedures.

# Status Of Women In Kenya

**K**enyan women constitute 52% of the country's population and are found mainly in rural areas. Professionally, the majority of Kenyan women occupy lower cadre positions.

The reality of the Kenyan woman's situation can be determined by comparing her duties in the society and how she is rewarded for those duties by the society. For instance, if one morning

all women in the country refused to get out of bed, what would happen? In most homes, the general house duties of the woman would come to a halt such as cooking, cleaning, caring for children, milking of cows. Professions, which are dominated by women, such as nursing, teaching, secretarial duties, would also come to a halt, leading to deaths of patients, no schooling and poor office management. Also, the dead would not be mourned, since women are the main mourners of the dead. Women would also be beaten for not getting up to do their duties.

On the other hand, if men were to do the same, more technical professions would be affected, but no form of violence would be meted on them. Looking more into a man's lifestyle, where there is no woman (whether a relative, wife or girlfriend), his house would be in disarray, with little or no aesthetic appeal. However, when a woman steps in, order is brought about, and the house is turned into a home. In the event of the death of a man's wife, he remarries mainly for the sake of having someone to take care of his children, or for the sake of womanly companionship. In most cases when



widowed, the woman does not remarry, but struggles to make life comfortable for her children by whatever means.

Women are also actively involved in diverse sectors of the community, other than in the home. They feature prominently in church activities, selling of commodities in market places, toiling in farms, in offices and as political leaders. A woman contributes greatly to the development of the society, so much so that she may be over-worked. Her versatility and ability to survive in hardship conditions is a builder to the society's development. The hardship conditions created by having an irresponsible husband who does not provide for the family, or by death, may prompt the woman to start a small income generating activity for the survival and continuance of her family. Women's groups called 'merry-go-rounds', where all members contribute a certain amount monthly, and the sum is then given to one member, is a glimpse at the ingenuity of the woman to develop. The society's regard for the woman, after considering the amount she contributes to the society, shows the actual status of the woman in the country. Despite doing more than and working harder than men, nowhere in the world do women fully enjoy the fruits of their labour. The society does not always appreciate the woman's role, and gives her a lesser status than that of men. This is shown by the different forms of discrimination faced by women in the following examples:

**Discrimination by Education:** It is seen as more profitable to sacrifice the girl child's education in favour of the boy's because when the girl gets married, she moves from her homestead to the man's, and does not therefore benefit her family on a long term basis. Her formal education is stopped at a time when her parents see it fit, usually up to the primary level of schooling. The way she is treated at home also hinders her chances to excel in her educa-

tion. A typical scenario shows both the boy and girl children returning home from school - the girl is expected to help the mother with the household chores, while the boy may start on his homework, as he waits for his supper. The girl gets less time for her necessary rest and study. The girl-child is usually discouraged from taking science subjects in school. Sciences are seen as subjects for boys, and that girls should take subjects in the Arts.

**Discrimination in Employment and Domestic Work:** Traditional beliefs that women should not carry out certain jobs such as mending of roofs, slaughtering of animals, are hindrances to the improvement of the society. A woman has certain roles that a man is not expected to carry out. A man is not expected to be in the kitchen, wash a woman's clothing or actively care for the children. That women are not given jobs that are as well paying as men's jobs, is the cause of women being the greater part of the poor in the society. Free labour is obtained from women. A man does not pay his wife for toiling in the farm, or for doing all the housework. Making her dependent on him, without an income, therefore poorer than him.

In modern settings too, certain jobs are not given to women. The top positions in organisations are often not given to women. Promotion of a woman rarely takes her to the top tier of the organisation. Certain jobs which are frowned upon by men are reserved for women. Secretarial duties and nursing are termed as 'women's jobs'.

**Discrimination in Politics:** The number of women who have been members of the cabinet can be numerated on one hand. The number of women in Parliament is another handful. This is because the society is not confident enough to elect women leaders, despite the fact that 70% of the country's voters are women. This fear is

brought about by traditional customs that a woman can not be a leader, or give sound opinion on any issue, for instance. This was seen when women were left out of the village council of elders. An incompetent man would be elected, rather than a committed woman.

**Discrimination by the Media:** Pictures of half or fully nude women, in the media, bring out women as pleasurable objects, for entertainment and for the service of men. They do not show women as intelligent beings, capable of leadership.

**Discrimination by Language:** In some languages, women and children are referred to using the same word. '*Lagok*' is the word used in the Kalenjin community to refer to a woman or child. The community claims that, like children, women have a short memory, and consequently can be treated as children. Women are not viewed as adults, with the capacity to think like an adult. The woman also regards herself as a child. If a visitor visits the homestead, and the husband is not in, then the wife says that it is only the children who are around. Moreover when a man is introducing his family, he says 'These are my children', the wife inclusive. She is not introduced separately as his wife, but also as his child. If the man sees his wife as one of his children, then it is difficult for him to make decisions with her and not for her. Accepted remarks by the society to portray the female gender as a lesser gender, contribute to the oppression and depression of women. 'Stupid like a woman', 'crying like a woman', are remarks that show the society's attitude towards women.

**Discrimination by Law:** For a woman to change her maiden name to her husband's name the husband has to be physically present. For a woman to include the children in her passport, a letter of consent has to be obtained from the husband. This places women as the husband's property. Inheritance laws give priority to

the men of the home. Rarely does a woman inherit substantial property. This stunts her development and growth as well as her ability to be independent.

**Discrimination in Health:** In many instances, it is believed that a woman does not have a right to her body as it must belong to her husband. When it comes to making important decisions that will affect her health, such as child bearing, or the use of contraception, the man's decision on these matters prevails. In most incidences, husbands are the unfaithful adversaries in a marriage. The husband may infect the wife with the HIV virus leading to the death of his wife, and the loss of a productive life. The wife may also be forced to take care of the husband when he is sick, putting herself at risk of contacting the virus.

**Discrimination in Meals:** Even after making the family meal, the tastiest parts are usually left for men. The women are told they could become infertile if they ate those parts

**Discrimination in Religion:** In most religions, women are not allowed to become priests or pastors.

**Discrimination due to Strength:** Physical abuse, battery and rape are the gross injustices done to women, because they are physically weaker than men.

# Paralegals and Paralegalism

**A** paralegal is a person who has acquired knowledge of the basic laws of the country. S/he is an auxiliary to the law profession and can give a certain amount of legal advice.



1. To be an effective paralegal, one should come from the community where one is practicing his/her skills. The paralegal should live within the community to be accessible to the people.
2. S/he should have intricate knowledge of the culture, beliefs, religion and political setup of that community.
3. S/he must also be able to communicate to the community in a language that is widely understood.
4. A paralegal is also expected to know how to read and write for purposes of recording details of cases and reporting them effectively.
5. S/he should be able to offer advice and counsel individuals on action they may take to solve their cases.
6. A paralegal should offer advice to people and not make decisions for them, especially in cases concerning marriage.
7. S/he should also keep up to date on information which can assist clients solve their cases, including names and contacts of referral organisations and individuals.
8. A paralegal should be able to follow up cases brought to them so as to ensure that they are being handled appropriately, the correct legal procedures are being followed and the case will be solved.

9. A paralegal must maintain confidentiality when dealing with clients' cases.
10. S/he must not charge individuals for the services offered to them. All assistance must be given on a voluntary basis.

## **History of Paralegalism**

The training of paralegals was started in areas of widespread Human Rights Violations (HRV) as a voluntary 'profession'. People were trained to meet the basic legal needs of their communities. This was done because:

- There were not enough lawyers.
- It saved on expenses, as hiring professional lawyers is expensive.
- It simplified the law, The law was explained to paralegals in simple terms, and they in turn did the same to the people.
- It was a mediatory method of resolving conflicts. Before a paralegal advises a 'client' to go to court, he would first try and solve the problem at an initial level.

## **Duties of a Paralegal**

The duties of a paralegal are to: monitor and report human rights violations; attend to clients and give them advice including referral to other individuals or organisations for assistance, offer counseling, take statements; act as a mediator and reconciler between members of the community in order to settle disputes; create legal awareness and educating the community on their rights; form a network with churches, the administration, community groups and NGOs in the area; sensitise the community to issues concerning women's rights.

In order to be an effective communicator as a paralegal one should:

- Put things in writing to avoid distortion of messages.
- Use simple and polite language.
- Use a short chain of communication, especially if it is oral.
- Avoid basing issues on hearsay.

The qualities of a paralegal can be related to parts of the body:

**BRAIN:** for courage, resourcefulness, memory of incidences

**EARS:** to listen to clients and to new developments in the area  
of human rights

**EYES:** for observation

**MOUTH:** to speak, give advice, point out violations, share  
information, interview clients

**HEART:** to be compassionate, humble, sympathetic, tolerant,  
enduring, committed, charitable

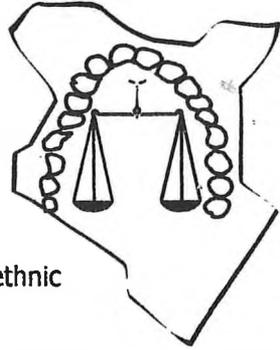
**HANDS:** to write reports and notes

A Paralegal should also be accommodating, friendly and easy to talk to. Her opinion should be objective, neutral and not biased. She should take into consideration the age of the 'client' and gender. She should especially be sensitive to the gender of the person with whom she is dealing. A paralegal must also maintain confidentiality when dealing with cases. It is also important for a paralegal to fully understand the importance of the role they play in preserving and upholding human rights for all. This is a paralegal's Number One Priority. S/he should set a good example within the community.

# The Legal System of Kenya

**K**enyan Law recognises both customary and general law, also referred to as statutory law. Both categories are made up of criminal and civil laws.

- Customary law includes the legal rights and duties of Kenyans living a traditional way of life and varies according to each ethnic group.
- General or statutory law is historically colonial and now refers to laws passed by the Kenyan Parliament. All General laws are written down either as Acts of Parliament (Statute Law) or as decisions reached by judges in the High Court or Court of Appeal. These appear as Case Law Reports.



**Criminal law** outlines what constitutes a crime, how criminal courts operate and how crimes are to be punished. The main laws that deal with criminal matters are the Criminal Procedure Act (Chapter 75 of the Laws of Kenya) and the Penal Code (Chapter 63 of the Laws of Kenya). The State is responsible for the arrest of criminals, arranging criminal trials and providing for their punishment. Criminal courts deal with criminal law.

**Civil law** is used to settle disputes between, for example, neighbours in a community, business people, employers and employees, married couples, and other civilians. This law determines how civic courts operate and what punishments one receives for disobedience. Civil courts deal with civil law.

Kenya's most important law is the **Constitution** which is a set of rules that determine how the country is run. The Constitution allows for Parliament to make, cancel or change laws. It also de-

declares the President as head of state and government and Commander-in-Chief of the Armed Forces. The Constitution further provides for the upholding of fundamental human rights; sets guidelines for citizenship; allows General Elections to be held every five years; outlines the operations of a civil service, police force, Attorney General, Permanent Secretaries and Ambassadors; gives the basis for the Kenyan Financial System; and provides for the courts, the appointment and dismissal of judges.

The courts in Kenya are meant to determine whether certain behaviour is unlawful; if someone has broken the law; and how to put the matter right. Courts are different according to the laws that they deal with; the problems they deal with; and the monetary value of the work they do.

The highest court of the land is the Court of Appeal. Below it comes the High Court followed by the Senior Resident Magistrate and then the District Magistrate Courts 1, 2, and 3.

Cases can be heard and decided on by judges, magistrates or presiding officers, depending on the court in which they are heard. Judgments made in lower court may be challenged in a higher court and finally the Court of Appeal within a given time frame.

The Kenyan law provides for legal assistance in civil and criminal cases in court. A person may receive *pro-deo* assistance where the court appoints a lawyer to defend him/her at the state's expense. However, this is only where the crime committed is murder, robbery, attempted robbery with violence and treason, for which one may be sentenced to death. These cases are only dealt with in the High Court and Court of Appeal.

If an individual wishes to present an appeal and cannot afford to pay the fees required for a Memorandum of Appeal, this person may request to be allowed to appeal as a pauper.

# Marriage Laws In Kenya

There are 4 main types of marriage recognised in Kenya:

- I. Statutory marriage
- II. Customary marriage
- III. Islamic/Mohammedan marriage
- IV. Hindu marriage

A fifth 'marriage' is taken into consideration, but has limiting and specific factors to be considered a marriage. This is referred to as Cohabitation.



## I. Statutory Marriage

The following are the requirements that a marriage must fulfill to be termed a statutory marriage.

- The partners must be single and at least 18 years old. If either of the partners is between the ages of 18 and 16 years, then the parents of that partner have to consent to the marriage.
- The marriage must be registered. It may be registered at the District Officer's office, or in a church. Thereafter the couple is given their marriage certificate.
- The couple must consist of a biological man and a biological woman.
- The marriage is monogamous. It does not allow for either partner to marry more than one partner. In the event that one attempts to be bigamous and is already married under the statutory law, it is an offence, punishable up to 5 years.
- Two witnesses are required for the marriage to be valid.
- It can only be performed by a licensed minister.
- It should be performed in a licensed, public place, with the

doors open and is only valid if done between the hours of 8 a.m and 6 p.m.

- One may not marry a close relative.
- Both parties must be consenting to the marriage.
- Both parties must be of sound mind.
- The marriage may only be dissolved by a court of law or by death.

## **II. Customary Marriage**

This is marriage according to the traditions of the couple. It usually allows for the man to marry more than one wife. The main problem with this sort of marriage arises when the partners are from different tribes. In this case the man's traditions are usually followed. This may create a problem for the woman since members of her community may not recognize her as married, because certain rites present in her customs and lacking in that of the man, have not been performed. Where a dispute is taken to court, the judgement of the court will be based on the customs of the man's tribe only, since it was his traditions that were followed in the marriage.

To prevent such incidences, both partners should ensure that they carry out those specific steps required in their individual communities, for either community to recognize them as married. In case of a court dispute, then both parties' customs are taken into consideration.

The following are examples of certain characteristics of marriage in some Kenyan communities:

**Kipsigis:** The couple's consent to the marriage is sought unlike in many other communities.

**Turkana and Pokot:** The girl is betrothed to the boy from childhood. After marrying her, he can choose his other wives for himself,

or she may do so.

**Kuria:** Cattle rustling would act as a catalyst towards marriage. Since dowry was to be paid in the form of cattle, the man's family would make quick arrangements for his marriage before their cattle were stolen.

**Gusii and Luo:** The girl may be 'kidnapped' by the man's age-mates and taken to his home as part of the marriage ceremonies.

### **III. Islamic/Mohammedan Marriage**

This is a marriage done following Islamic laws. The following are the characteristics of this marriage:

- There is no age limit imposed on the couple. This is however disadvantageous to the girl child as she may be married off at an early age. Luckily the law which prevents a man from having sex with a girl of 14 years or less (statutory rape), restricts Muslims from marrying off their girls at this age.
- A man may marry up to 4 wives.
- A man may marry a non-Muslim, but a woman may not marry a non-Muslim.

Dissolution of marriage under Islamic law may be sought in a Kadhi's court following desertion, lack of provision for the family by the husband, imprisonment of one party for seven or more years, cruelty, or impotence. To divorce his wife, a Muslim man can pronounce Talak three times. The divorce must then be registered and the husband is only obligated to maintain his wife for 90 days after this.

### **IV. Hindu Marriage**

This marriage goes according to the Hindu religion and is similar to statutory marriage. Its basic characteristics are:

- It does not allow for polygamy.
- One may marry a close relation.
- The minimum ages for marriage are 16 and 18 years for the girl and boy respectively.

Grounds for divorce and divorce proceedings in a Hindu marriage are similar to those of a statutory marriage.

## **V. Cohabitation**

This is not a marriage as such, because the individuals have not decided to declare themselves married. They agree to live together as though married. Previously, cohabitation or presumption of marriage was not accepted under Kenya's legal system as a marriage. However, at present, cohabitation, given certain circumstances may now legally be considered a type of marriage. These circumstances may include the following:

- The couple has a child.
- Documentary evidence such as having the child's surname the same as the father's on the birth certificate; an affidavit signed by both parties; the woman's altered maiden name on official documents (passport, identity card) to appear as her partner's name.
- Intention of marriage. The couple buying property together may show this. For instance, the property may be registered under Mr. and Mrs. (man's name).
- The couple should have lived together for a relatively long period of time, minimum 3 years. Breaks or periods of separation due to misunderstandings should not have punctured this time period. However the time period is not specific. It is more beneficial to the parties concerned to have lived together for at least 5 years for

their cohabitation to be viewed as a 'marriage'.

## **Divorce**

This is the legal dissolution of a marriage and may be viewed in a traditional or modern setting in Kenya.

### **Traditional Setting**

Here, divorce was rare. If a problem arose in the marriage, a council of elders would meet from the families of both the man and woman to resolve the conflict. A divorce can also be granted in a District Magistrate's Court. If divorce were necessary, then the bride's family would return the dowry that was paid to them. Witchcraft or infidelity on the wife's part would be grounds for divorce. Other grounds for divorce include cruelty, husband's refusal to maintain his wife and children, incest, desertion, impotence, barrenness, habitual theft. To prevent divorce, most communities would pay dowry over a long period of time. Division of property did not arise. The man would keep everything. Custody of the children would depend on the customs of that community. In most, with the exception of the Luo and Turkana, the wife would leave with the children when she returns to her parents home. If the man kept the children no dowry would be returned.

### **Modern Setting**

For a couple to be divorced they must have been married for at least 3 years, except in exceptional circumstances. Legal grounds for divorce or separation include cruelty, insanity, desertion and infidelity.

- Cruelty may include physical or verbal abuse, denying the other partner a necessity such as food, or even sex.

- Insanity can be a ground for divorce when it has been proven by a reputable hospital that the person is incurably insane, and that treatment has been sought for at least 5 years.
  - Desertion is when one partner leaves the other and for a period of at least 3 years does not make any contact with his family. The court may assume him/her dead and grant divorce.
  - Infidelity is where one partner is repeatedly unfaithful to the other.
- Judicial separation or divorce can also be granted if the husband commits and is convicted of rape (sexual intercourse with a woman without her consent), sodomy (sexual intercourse with another man) or bestiality (sexual intercourse with an animal).

In a modern divorce situation, property is divided between the two parties. Any property bought by either partner before the marriage is not divided. Custody of the children is decided on the basis of what is best for the children. The man is expected to maintain his wife and children. The wife is maintained until death, or until she remarries. The children are maintained until death. If the man refuses to maintain his family, his property may be auctioned and the money used for maintenance. After a divorce order is given, the marriage is under a 'decree nisi' for 3 months which still allows for reconciliation. After this period, a 'decree absolute' is issued and the divorce made final. Once the divorce proceedings are complete the man or woman can re-marry.

**Custody:** This is the legal guardianship or responsibility to care for children (below the age of 18) given to a husband, wife or third party following a divorce or separation.

**Maintenance:** This is a court order granted to the wife for the husband to provide support for his wife and/or children.

The couple may agree to be separated from each other for a certain period if they do not want a divorce. This may come about

when the two parties feel they cannot live together harmoniously as a couple but do not wish to end the marriage or when they feel that time apart from each other will eventually lead to a positive change in behaviour or attitude of a partner. Separation may also be an option where one's religion does not allow divorce. In the case of separation, their property is not divided, but the man is expected to maintain his family. Custody of the children may be granted to either partner.

In the case of cohabitation, when the couple decide to separate, the woman may seek maintenance for herself and/or children. After the court has taken into consideration the points mentioned previously that allow the court to assume the couple married, then maintenance is granted accordingly. Previously there was a law that required a man to maintain his children born out of wedlock. This law however, did not appeal to parliamentarians, majority of whom are men and it was consequently repealed.

Under cohabitation custody of the children is automatically granted to the mother. The law does not consider the man for custody in this case.

# Laws on Succession and Inheritance

**W**hen a person dies his/her property is divided and/or distributed to members of his/her family through succession or inheritance. Succession and inheritance of property is determined by the deceased's will. However if the death was Intestate (without a will) then the laws of Kenya use the following system of distributing the property of the deceased.

- All movable properties such as cars, furniture, go to the widow/widower.
- When the court divides land, the children's land is given to the mother on Life Interest terms. This means that the mother temporarily holds the land for the children until they reach the age of 18 years, when they can claim their share. The mother can not sell the land, as in actual fact it is not hers. She must have strong reasons for wanting to sell off the land. If anyone tampers with this land during the period she is holding it, on behalf of the children, she can sue the person.
- Other dependents of the deceased may claim a share of the property as they were dependent on the deceased. They have to however prove that they were solely dependent on the deceased and that the deceased wished to support them indefinitely.
- Children of the deceased born out of wedlock can claim a share of his/her property.
- If the deceased left a will (died Testate), then his/her property is divided according to the will and/or the Law of Succession Act. This Act allows for the distribution of the deceased's property (except in the case of a Muslim) where allocation of this property

is not defined within a will. Property of the deceased is then distributed to individuals in this order: surviving spouse, children, father, mother, brothers and sisters, half-brothers and half-sisters or their children, any other relative, the State.

- In the case of Muslims, the deceased's property is distributed according to Islamic law.

## **Wills**

A will is a statement or declaration of one's wishes to the disposal of one's property after one's death. There are two types of wills: written and oral.



### **A Written Will**

- Should be made by an adult (over 18 years) who is of sound mind.
- 2 persons, who are not beneficiaries in the will, should witness and sign it.
- Does not need to be written in legal terms (can even be written in a vernacular language).
- It should be dated, signed or thumb printed on every page by the testator (one who makes the will).
- It cannot 'expire'.
- Can not be revoked by an oral will, but can be changed by another written one. If the testator marries after writing a will, this shall be revoked and s/he must write another one.
- A written will should be kept the testator, the executor, a friend, lawyer, bank or at the High Court Registry.

### **An Oral Will**

- Is oral and not written.

- Is made by an adult of sound mind.
- Is told to two or more persons who will not be beneficiaries of the will and who must always be in agreement on what the deceased's wishes were.
- Expires after 3 months.
- Should be consistent with any written will made.

(However, traditionally oral wills were valid forever, because the person [usually elderly] would divide his/her property before his/her death.)

### **A sample will**

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THIS IS THE WILL OF MR. KILIMO.

I appoint Mr. Baraza as my executor. I give Lucy Mambo my piece of land LR Nairobi 1234567. I give my son John my car registration KIK 999Z.  
I give my wife Mama Kilimo my land LR Nairobi 987654.

Signed:	Mr. J Kilimo	Date 01/01/00
Witnessed:	Mr. M Mbio	Date 01/01/00
Witnessed:	Mrs. E Abiro	Date 01/01/00

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An executor is the person whom the deceased chose to carry out his wishes in his will. The Executor files the will in court and usually seeks the advice of an advocate. If an executor is not mentioned, the public trustee may act as the executor for anyone.

In the event of an intestate death, where no executor is mentioned, the volunteer executor fills out forms of probate and administration which include the property of the deceased, his credits and debts (the 'volunteer executor' may be the surviving spouse, children of the deceased, other beneficiaries, the Public Trustee, creditors).

Letters of probate and administration can be obtained from a court of DC's office. They are then filled and signed and returned to

court for stamping and filing, for a fee. A death certificate must be attached. For property valued at less than Ksh.100,000 these forms should be submitted in a Resident Magistrate's Court otherwise they must be taken to the High Court.

Information of administration is published in the Kenya Gazette for 3 months. After 3 months, if there is a conflict as to the division of property, then the matter can be brought up in court.

An executor might take advantage of the deceased family where there is no will, and include himself as a beneficiary. This is not allowed legally and the issue can be taken up in court. Any dependents left out of a will may also contest this in a court of law.

# Human Rights and the Kenya Constitution

**T**he Constitution is the supreme or highest law and the source of all laws. In the event of a law contradicting the constitution, the constitution overrules that law. It is a statement of the peoples' agreement with the rulers, to give up some of their rights to the rulers to govern them. This is known as the Social Contract Theory. A constitution, which may be written or unwritten, should represent the voice of the citizenry which believes in and upholds it as an agreement that allows citizens rights and limits the powers of the government.

Kenya's Constitution which consists of 127 sections within 11 chapters is implemented by 3 arms of law:

- The Executive: which is made up of the civil service
- The Judiciary: which is the court system.
- The Legislature: which is made up of members of parliament.

The Constitution is a document which all citizens should have access to and must not be considered a 'top secret' government document.

As previously mentioned in the social contract theory, people do not give up all their rights to their rulers. Human rights are some of the rights they do not give up. Human rights are rights automatically accrued to an individual on the basis of being a human. They are universal. That is to say that in whatever part of the world, they are still entitled to that individual right.

Chapter 5 of the Constitution discusses the protection of fundamental rights and freedoms of individuals. Each citizen is entitled to life, liberty, security and the protection of the law; freedom of con-

science, of expression and of assembly and association; and protection for the privacy of home and other property and from deprivation of property without compensation.

Chapter 5 or the Bill of Rights is outlined below:

- Right to Life
- Right to Liberty
- Protection from Slavery and Forced Labour
- Protection from Torture
- Protection of Private Property
- Protection against Arbitrary Search and Entry
- Protection of the Law
- Protection of Freedom of Conscience and Religion
- Protection of Freedom of Expression
- Protection of Freedom of Assembly and Association
- Protection of Freedom of Movement
- Protection from Discrimination

The Constitution thus becomes the embodiment of **our rights**. We are therefore responsible to be fully aware of our **Constitution** and to make sure it is effective in protecting and **upholding our rights**.

Let us look a little more closely at the Constitution, its history and its meaning for us and how we are part of it.

## **Nature of a Constitution**

People form groups or societies for a variety of reasons such as:

**Security:** To protect themselves from natural elements and from their own predatory instincts. Different communities in Kenya constructed walls, fences or other protective boundaries around

a village or group of villages. This need for protection is based on the physical vulnerability of a human being. Without control, the human being can be so selfish that it is harmful to others. A formed group can control any such extreme tendencies.

**Self-fulfillment:** This includes material and spiritual development, intellectual and physical engagement, leisure and social bonding, etc. It includes all the activities a person does to be happy.

**Identity:** This is an expression of one's involved participation in groups to create a sense of belonging and attachment.

All these factors motivate individuals to operate within groups or societies. The promotion of group interest is done through the establishment of the group's identity and membership; goals and objectives; and roles. This can be done through the development of a constitution which expresses the general understanding among members of the group on how they will interact with each other. The constitution may be expressed either in oral or written form, depending on how detailed or complex it is.

## The Kenya Constitution

### Background History

Before 1897 the territory known as Kenya did not exist as one entity. On 12th August 1897 the territory became the protectorate of



the British Monarch. This meant that the people were under the political and military patronage of the King or Queen of England. In 1920 Kenya was made a British Colony. The territory became part of the British Empire. Before the territory was annexed by the British different societies hand or-

ganized themselves under different systems – Constitutions.

The imposition of colonial order was achieved through military force; introduction of new faith; use of English law in the place of customary laws; and the imposition of an economic order that was intended to create wealth for the white colonial settlers. To succeed, the colonial order had to destroy existing constitutional orders of the respective communities.

Indigenous economies were destroyed by making Africans wage labourers through the introduction of taxes such as hut tax, land alienation, the prohibition of cash-crop farming and the quarantine of animals.

Laws were introduced to limit areas into which Africans could move into or about or carry out economic activities, create the administrative System of Chief's DOs, DCs PCs, and limit Africans from organizing themselves.

African societies resisted against the colonial order and sought change. This resistance was accelerated after the Second World War. Three factors combined to bring change under the colonial order: Resistance by local communities e.g. the Nandi Resistance, the Mau Mau Resistance; Weakening of the British Empire by the cost of World War II; Increased climate for self-determination and respect for human rights globally.

In 1954 the first multi-racial Constitution in Kenya – The Lyttelton Constitution was introduced. It established a Council of Ministers of 12 persons as follows; six to be appointed by the governor and six elected representatives: three Europeans, two Asians and one African. This was rejected by African representatives.

In 1958 the Lennox-Boyd Constitution was introduced which increased the number of Africans in the Legislative Council. This was still rejected by the Africans since the Europeans had overall majority in the Council of Ministers and in the Legislative Council. Moreo-

ver certain issues such as re-distribution of land, release of political detainees, repeal of repressive laws, etc had not been addressed. Demand for independence was in the air and the people wanted a constitutional conference.

The first constitutional conference was held at Lancaster House, London, and resulted in a new Constitution (the MacLeod Constitution) which provided for a majority of Africans in the Legislative Council of Ministers.

The first multi-racial elections were held in February 1961. KANU won but refused to form Government until Kenyatta was released. KADU then formed a Government.

The second Constitution Conference was held in 1962. This brought an internal self-government but the Queen retained control over legislation and on matters such as defence, internal security and foreign relations. The country was also divided into regions (majimbo).

In June 1963, the first internal-self Government took office. In December the country became independent as a dominion but not as a republic. The Queen was still the Head of State. The Prime Minister was head of government. In 1964, Parliament amended the Constitution to make Kenya a Republic. The Majimbo system weakened, more power was given to the President and the basis for the establishment of a single party system was set. After independence, colonial repressive laws remained and so did the colonial administrative system. Little was done to change the colonial style of government. Government policy was now based on developing the country economically and issues of governance were said to divide the people and they were therefore anti-development.

## **Weaknesses of the Constitution**

The present Constitution has several weaknesses. For instance, it fails to address the injustice of the colonial state; it concentrates too much power in the presidency; and does not say to what extent power should be applied.

The Kenya Constitution says little about the society that suffered 75 years of colonial order, experienced racial intolerance and was divided along many social lines, and whose people lived in poverty. It also does not refer to the Kenyan people in its preamble, as do the Constitutions of many other nations. It is part of Constitution's duty to capture values of the group it binds. This is the socialisation of the Constitution.

Reading the Constitution or knowing its contents is also useful; however people should be able to understand and accept the basic values of the Constitution. Constitutional development must therefore seek the public's views on how Kenyans wish to be governed. The people must be part of constitution making. This is their right as citizens.

## **Changing the Constitution**

### **How and Why a Constitution is made**

Consider the Social Foundation: Making a Constitution is not a legal process but rather a social process. It is through this process that it can be called a legitimate constitution. The Constitution is made through the will of the people. That is why it is at times referred to as supreme. All laws are made under the authority of this Constitution. Parliament, the courts, the Presidency etc are all created by the Constitution – they cannot create it.

People make a Constitution for themselves:

- a. When they become a new state through independence from a colonial power eg. Kenya 1963 or independence after secession e.g. Eritrea after 1985
- b. When they emerge from an oppressive type of Government e.g. South Africa after apartheid
- c. When a previous Constitution breaks down through military coup e.g. Uganda.
- d. When the countries unite into one e.g. West Germany and East Germany.

Constitution making therefore follows social changes and the old systems cease to function or to serve the goals of the society. Kenya is making a new Constitution to make a clear break with its single-party past.

## **Making a New Constitution**

In making a Constitution, two principles should be maintained:

- 1 Popular Participation** where citizens are able to comment on matters they think have gone wrong and suggest ways of redressing them. It is the duty and right of the citizens to collectively agree on the contents of a Constitution. The Constitution belongs to the people.
- 2 Openness** during the process of making the Constitution. The public, media, interest groups, etc. should monitor the progress of Constitution making.

During this process, it is critical that the citizen participates and watches over the process or else the country will end up with another Constitution that serves the interests of a few. For instance, the Kenyan citizen should:

- a. Participate in the election of representatives e.g for the District

- Forum either as an elector or as a candidate.
- b. Present his or her views to the District Forum or Commission.
  - c. Keep abreast of developments in the process through reading, listening to broadcasts, discussing matters with colleagues, neighbours and friends.
  - d. Join an organization such as a Church group, a women's group, a youth group, or a community-based organisation to develop a common stand with others and to promote this stand in the community and the country.
  - e. Link-up with other groups in different parts of the country such as human rights organisations, political parties, etc and promote one's views.
  - f. Lobby local leaders, such as councillors, MPs, party officials etc to advance the interests of the local community.
  - g. Organize discussion forums to explain communal interests.

## **Challenges to the Change Process**

Social change is always difficult to carry out. Mistakes are made and powerful groups always attempt to move the change towards a direction that favours them. Constitutional reform may face problems such as:

**Poverty** where citizens are not able to participate in public affairs because they are primarily concerned with getting their immediate needs for survival. In this vulnerable condition citizens are easily oppressed and marginalised.

**Public Finance** where due to corruption and mismanagement the Government is broke and cannot fully support the process of Constitution making.

**Political Instability** which would derail the Constitution making process by creating uncertainty or turmoil. General lawlessness in the country also creates insecurity which in turn causes fear, making people withdraw to their private corners and not to address public concerns.

**Logistics** such as poor communication, transportation, systematisation of documents and records transcription of contributions, meeting of schedules and deadlines could challenge a poorly administered process.

## **Emerging Issues in Constitutional Reform**

Several issues can be raised in public discussion on constitutional reform including:

1. Land-ownership and distribution
2. Majimbo
3. Ethnicity
4. Local Government System
5. Human Rights
6. Distribution of power among state organs
7. Corruption
8. Foreign Affairs
9. Succession and Amnesty
10. Electoral issues
11. Minority issues
12. Economy issues

## **Why you should Participate in Constitutional Change**

People participate in any event or activity for either of two reasons: Altruism or charity— that is for the promotion of general good irrespective of personal gain or for self-interest.

There are three reasons why you should participate out of self-interest.

**Your Life is in it:** Bad governments kill through direct action such as through the police and court system and indirectly by failing to prevent crime.

Also, when governments collapse such as in Somalia, Rwanda, Congo, etc. civilian life is put to suffering and death.

**Your Money is in it:** Through taxes- income tax on consumer goods and services; Through borrowings made on your behalf by government and which you shall repay – you and your children.

**Your Betterment is in it:** Government controls vast resources including power on behalf of citizens. Citizens should monitor government conduct and participate in public affairs to promote their own well-being.

# Human Rights Violations: Practical Approaches

In the event of seeing a human right being violated, what should one do?

1. Keep a notebook
2. Record details such as:
  - date, time and place of the incident;
  - the weather (might explain the situation further, e.g. the victim slid and could not escape as quickly);
  - cause of the incident
  - Names and addresses of possible witnesses.
  - Weapons in sight.
  - Action taken by the authorities.
3. Make keen observations. Use all senses. Listen to what the people around are saying.
4. Publicize incidences
5. Maintain security: One should keep their records in a secure place, away from curious readers or physical damage. In the event that another authority needs to refer to one's notes, a paralegal should give the person a copy and not his original copy. When an incident occurs, the paralegal should not approach the scene with his notebook and start taking notes. This may arouse suspicion especially with the administrative authorities of the area. Understand the situation first to know how to best go about your work.
6. Win people over: The paralegal should try and win people to his side. In the event that something happens to him, then he has

adequate support. Paralegals should also liaise with local authorities in their communities so as to facilitate the education of people in the area. They can also write letters to the administrative authorities requesting for some sort of action to be taken.

## Rape

This refers to forcing an individual to have sex without their consent.

What to do in the case of rape:

- Do not bathe: You must preserve any evidence that may be used to press charges against the rapist. Put the clothes you were wearing in a paper bag for evidence, if you must change them.
- See a doctor immediately: A doctor examining you will check for vaginal bruises, tears, other injuries, and the presence of semen and issue a report which is used by the police in following up the case. A doctor will also be able to recommend any emergency contraceptives to prevent pregnancy as well as advise you on the necessity of treatment for any STD that may have been passed on to you.
- Report the incident to the Police right away: Record a statement and make sure that record of the incident is put in the Occurrence Book at the police station. Take the case number down for your own follow-up purposes. Obtain a P3 form which will be used by the doctor who examines and treats you. It is also through the police that you can press charges against the rapist. It would be best to go to the police with a friend or relative.



- Visit a counsellor or close friend or relative to discuss this incident so that you may begin to deal with the emotional and mental pain you are experiencing.
- When the rapist is apprehended and the case is due to be heard you may request that it is heard in the Magistrate's Chambers for privacy. This will allow you to narrate the whole story without public embarrassment.
- If someone you know has been raped you can support her by listening to her, believing her, accompanying her to the police, doctor and counsellor. Do not blame her for being raped. It is never a woman's fault for being sexually assaulted. The fault is always in the assaulter/rapist and they must take responsibility for their actions.

## Arrest

When a person is arrested and taken to the police station the following events should take place:



- a search of the arrested person;
- a list of his/her belongings recorded, signed for and stored;
- name, address and reason for arrest recorded in Occurrence Book (used at all police stations and police posts);
- the suspect's statement is recorded and signed;
- the arrested person is put in a cell with members of the same sex; finger prints and photographs of the arrested are taken;
- the arrested may be required to stand in an identification parade.

- The arrested person has a right to having his/her lawyer present during these procedures.
- An arrested person should be taken to court or released within a 24-hour period (working day) or may be held up to 14 days if s/he is being held for a capital offence which includes murder, treason, robbery with violence or attempted robbery with violence.
- An arrested person is also entitled to bail where s/he is not being held for a capital offence.
- While in police custody the arrested person can: make a telephone call to a friend or relative or lawyer; receive visitors between 6 a.m. and 6 p.m.; receive medical care and/or access to a personal doctor.

## Understanding Land Issues in Kenya

Land and Land ownership is governed by a land tenure system which establishes land and property rights, and the conditions upon which these rights are held and enjoyed. The law used to govern this system is found in legislations. There is also the communal land tenure which deals with traditional or customary land rights. There are three categories of land in Kenya:

- Government Land
- Private Land
- Trust Land



Under the Trust Land Act, "Trust lands" refer to those previously known as "Native Reserves" or "Special Areas". Once Trust Land is pronounced and registered into individual holdings, it ceases to be Trust Land

## **Who owns Trust Lands?**

These are owned by the people born within and occupying land in the specified regions. They therefore acquire the right to occupy, use, control, access, inherit and possess the Trust Land by simple virtue of her/his being a resident there. The Trust Land Act also gives the right of occupation to the pastoralist community who move from place to place in search of pasture. This same right of occupation exempts the nomadic communities from the execution of the law on Trespass and Unlawful Occupation (The Act therefore has rules to control and regulate the movement).

## **Women and Land Rights**

While women in Kenya usually have the **"use rights"** to land because of their usual position either as wives, mothers, or other relation in their communities, they rarely have the **"transfer rights"**. Transfer rights of title-deed holders are recognized and protected legally, whereas use rights of non title-deed holders are usually unenforceable. Women have been discriminated against in the allocation of land and land ownership in Kenya.

- While married women have traditional use of land, in cases of divorce or separation, the woman often loses access to land and most other assets.
- Pastoral women are often ignored in addressing the issue of women and land rights. In the past, purely traditional pastoral systems allocated to women the role of mainly looking after small stock. Pastoral women, like their agricultural counterparts have to fight with the issues of biased ownership and control of key factors of production.
- It is notable that in general, women have better access to urban land which has few traditional and customary burdens on it than rural land.

The Law of Succession Act which came into force in the early 80's provides for both female and male children to inherit property of a person who dies without making a will. However, a widow's right to her deceased husband's land is terminated if she re-marries.

Women will continue to be disadvantaged so long as the protection that women enjoy within the existing customary tenure agreements is not translated into equivalent rights under modern law

### **Recommendations**

- Men should be encouraged to register joint titles to their property (i.e in the names of both husband and wives). This should be the case even in polygamous households.
- Civic groups and other organizations should lobby for equal rights in the Constitution for man and wife, sons and daughters, especially in matters that pertain to succession.
- There should be equal representation of men and women on Land Boards, and Land Boards should be required to be sensitive to the needs of those family members whose names are not on the Title Deeds.
- Laws should be declared to require the consent of family members, including wives and daughters, during land transfers.
- The promised Land Use Commission (LUC) to look into the issue of land reform in the country should be constituted.
- Further research should be done on the issue of women's access to credit.

The government should be lobbied so that it can adopt an affirmative policy that will involve women in the political process

# Squatters

## Who is a Squatter?

A squatter is a person with no legal rights to the land on which s/he resides, cultivates and uses for grazing.

The squatter community in Kenya began to emerge with the advent of colonialism. Before then, there were no landless people, since land ownership was determined by the users, and boundaries only marked by warfare and usage. When the colonialists came, they assumed that all land that had not been settled on was free, thus they took it. The Africans were pushed from the most fertile lands. Since the settlers still needed cheap labour for their new-found farms, the Africans were encouraged to be "squatters" in exchange for small pieces of land to farm. When the Europeans could no longer handle the large numbers of squatters on their farms, they urged the colonial government to set aside "reserves" for the Africans.

This squatter problem could have been solved at independence had the new government given the land back to the original owners. Children born of squatters are bound to be squatters.

Some of the reasons that have led to the present landlessness are:

### I. Political/Economic Factors

As far as the aim of the colonialists coming to Kenya was for economic gain, they used political influence to achieve their goals.

- Land Alienation by Force: The land was taken forcefully from Kenyan owners without compensation, and cleared for European occupation
- Provisions of Labour: The Kenyans were turned into wage-labourers to meet the high-labour demand on the European farms.
- Taxation: Restrictions on farming were imposed so as to reduce

the independence of the Africans. This taxation was introduced to force the Africans to seek wage-paying employment on the European farms.

- Use of Law: The Europeans disregarded the African traditional usage of land, and instead imposed a different land tenure system, suitable only to them.

At independence in 1963, there was no deliberate effort to address the land question. Sound laws on land were not enacted; instead most of the colonial laws were adopted and put under different titles: for instance, "Crown Lands" became "government land" and reserves became "Trust Lands".

The aspects of the land law and policy are bound to render many Kenyans squatters. The disadvantaged or the landless are not catered for, neither are they recognized. These laws and their application, just like the colonial government, continue to create squatters.

- Corruption: This is whereby powerful people in the government, and other well-connected individuals allocate themselves government land or even land already occupied. Economic power is put before basic human rights.

## **II. Cultural Factors**

- Customs Discriminatory Against Women: In most communities, women never owned land directly due to the communal and customary ownership of land. The customary law vests ownership in land, allowing women only use of the land. Therefore, the women who suffer landlessness are divorced, separated or unmarried. They cannot even attain land through inheritance, for it is usually men who inherit land. Their existence has virtually been taken for granted by the government and society at large.
- Disinheritance of Men: The sensitivity of land issues within families

is caused by the fact that in polygamous families, very few children would actually inherit land, the rest either remaining with none, or inheriting very useless pieces of land. The number of squatters to emerge from that large family would be high.

- **Head of the household decision making:** The head of the house is usually the man, who makes all decisions about land. Therefore, he is the title-holder and all decisions, including unscrupulous or unwise decisions, are left to him.

### **Problems Faced By Squatters**

Insecurity, poor housing, lack of infrastructure, non-compensation for damages, low level of rights awareness, manipulation by politicians and lack of access to credit facilities.

### **Rights Of A Squatter**

According to the Indian Transfer of Property Act, a squatter has the right to stay on the piece of land he/she has occupied if he/ she has stayed there for 12 years with quiet and peaceful enjoyment, if the owner is aware that you are there. If the owner is not aware that you are there, the 12 years start from the time they find out that you are there, and they don't do anything about it. Otherwise, the owner of the land has the right to evict the squatter.

## **Labour Laws in Kenya**

**Industrial Relations:** This refers to all matters that arise in the day to day relationship between employers and their employees at the work place.



The scope of industrial relations include 3 distinct areas: personnel management, collective bargaining and labour legislation.

These areas of specialisation have two basic questions in common: conditions under which work is done and how its proceeds are divided; and many countries usually involve government participation in these matters.

### **Trade Union History In Kenya**

In Kenya, the history of trade unions goes back to the period of WWII in 1945 when the British Labour Party was predominantly influenced by the Trade Union Congress which is like the Central Organization of Trade Unions in Kenya. The British Government decided as a matter of policy to promote trade unions in the colonies, Kenya included, and consequently appointed British unionists as labour officers to come and organise workers' trade unions. This culminated in the formation of the Kenya Federation of Labour (an alternative to the then banned Kenya African Union). This move was unpopular with colonial employers, who in turn formed the Federation of Kenya Employers (FKE) as a counter to KFL.

In 1962, the number of trade unions was at 53 while employers organisations had decreased to 19. It was now clear that the movement was there to stay and it is not therefore surprising that the Minister for Labour convened a conference which produced the **Industrial Relations Charter**. This is the underlying document on which legislation on labour management relations has been based. The document outlined the responsibility of the government, employers and workers in the management of industrial relations. It laid down, broadly, the machinery for consultation between management and trade unions. In summary, it reads as follows:

1. The Government shall ensure speedy settlement of disputes at all stages
2. It will undertake to enter into joint consultation with FKE and the Central Organisation of Trade Unions (COTU) on a tripartite basis

on all matters affecting employment policy through established boards.

3. The Government in cooperation with FKE and COTU will encourage conditions which will progressively achieve industrial trade unionism.
4. The Registrar of Trade Unions to scrutinise the Constitution to avoid overlapping.
5. The Permanent Secretary's recommendation to the Registrar of Trade Unions must have the Minister's approval.
6. COTU/FKE recommendations to be accompanied by resolutions from their respective boards.
7. The Government must display the Charter and also take necessary action in the event of contravention of the Charter.

## **Labour Legislation: Labour Laws And Inter-Related Acts**

### **The Trade Dispute Act**

- a. Based on the Industrial Relations Charter, the Trade Dispute Act, enacted in 1964, lays down in detail the machinery that would govern settlement of trade disputes.
- b. In order to strengthen the trade union movement, the 'check-off' system for the collection of trade union dues was introduced. This would enable the unions to concentrate on the development of unions without financial instabilities.
- c. The Act enabled employers/unions to negotiate on negotiable and non-negotiable issues, procedures and machinery at local and national levels. It also laid down procedures of reporting trade disputes to the Minister for Labour.

## **Dispute Procedures under the Trade Dispute Act**

### **Works Committees**

- These were established to resolve day-to-day problems at the work place
- Management is represented by departmental heads/managers
- Employees are represented by shop stewards/union branch officials such as branch secretaries
- Employers and employees coming together under these committees allowed for less hostility and suspicion.
- Every firm or group of firms established a Joint Industrial Council(JIC) with the relevant union to look into disputes at the industrial level.

### **Tripartite Committee**

Once the union reports the existence of a trade dispute under Section 4 of the Trade Dispute Act (Cap 234 of Labour Laws) to the Minister for Labour, s/he in turn consults the above committee which is set up on a tripartite basis to include COTU, FKE and the Government. The duty of the committee is to advise on how issues in disputes should be handled.

The Minister can choose to resolve the dispute by appointing a conciliator or an investigator.

- a. Board of Inquiry:** This is the machinery reserved for serious disputes of national interest. The Board has powers to summon witnesses. Findings are submitted to the Minister for Labour who is free to publish a report in full or in part. Findings are expected to help the parties reach a settlement.
- b. Industrial Court:** Although most of the trade disputes were settled through the above machinery, it was inevitable to establish

an arbitration court to cater for any dispute which may not be settled or resolved by the parties or where either party did not accept the Minister's recommendation. The Industrial Court contributes tremendously in labour management relations in this country. Its awards are **final** and **binding**.

### **What about employees who are non-union members?**

The Government, through the Ministry of Labour, bears the responsibility of representing non-unionised employees. These employees' grievances are handled at the District Labour offices under a form called LD 64.

Employees of foreign missions are also handled through the same procedure.

Disputes handled under the above procedure can also be taken to a law court depending on the nature of the dispute.

Labour officers/inspectors are empowered by the Employment Act to prosecute employers who violate the labour laws.

### **The Employment Act (Cap 226) and The Regulation of Wages and Conditions of Employment (Cap 229)**

These are Acts of Parliament enacted to enable the Ministry of Labour to enforce the minimum standards of employment such as:

1. Minimum wages
2. Minimum leave
3. Minimum maternity leave
4. Minimum amount compensable during incapacity
5. Minimum hours of work

The Acts also deal with penalties of any party which contravenes any condition outlined in the Acts.

### **Workmen's Compensation Act (Cap 236)**

This is an Act of Parliament enacted to cater for employees who are injured while in employment, within the vicinity of employment of while travelling on duty. This Act is mainly enforced by the Ministry of Labour officials, including labour officers and inspectors.

An injured employee is empowered to make a complaint or file a civil suit through a lawyer to the Court of Law, for compensation on the account of injuries sustained while working.

### **The Trade Unions Act (Cap 233)**

This is an Act of Parliament enacted to provide for staff associations, employees' organisations and employers' associations, for the registration and control of trade unions and for connected purposes.

### **The Factories and Other Places of Work Act (Cap 514)**

An Act of Parliament enacted to make provision for the health, safety and welfare of persons employed in factories and other work places. This Act is enforced by trained officers from the Ministry of Labour called safety and health officers.

### **Casual Employment**

A Casual employee is defined by Cap 226 of the Laws of Kenya as an individual, the terms of whose engagement provide for his/her payment at the end of each day, and who is not engaged for a longer period than twenty-four hours at a time.

Many employers in Kenya opt for this type of employment for their employees mainly to attain maximum production with cheap labour.

Employees who are under this contract of service are not entitled to benefits like NSSF, NHIF, leave, notice, etc.

## Labour Laws Affecting Children

The laws relating to children are to be found in two pieces of the Labour Legislation: **The Employment Act** which is the principal Act and the **Regulation of Wages and Conditions of Employment Act**.

The Employment Act defines a child as an individual male or female who has not attained the age of **16** years. The International Labour Organisation (ILO) has set the minimum working age at the age of **15** years.

## Purpose of Child Labour Legislation

The work done by children is subject to certain restrictions designed to safeguard their health and moral welfare and to assist them receive an education and vocational training to give them a good start



in the future. It **is** important to note that children **5 to 15** years of age are expected to be at school and otherwise engaged in activities that are beneficial to their health and development, including play.

If children of this age are engaged directly or indirectly 'in employment or other work that deprive them of their childhood, affects their physical, moral, psychological and emotional wellbeing, as well as denying them education, that is child labour and it is prohibited.

**N.B:** Child labour is about the overworking and even exploitation of children at the expense of their health and education.

## Characteristics of Child Labour

Children labourers are generally from marginalised communities. These are communities with less resources, poor education, etc. They are normally from single parents, particularly widowed mothers. They are also school dropouts because of:

1. Lack of school fees

2. Unwanted pregnancies
3. The whole family is poor (poverty)
4. Discrimination in the family e. g girl child
5. Marginalized groups

Child Labour Areas may include: Coffee plantations, salt harvesting firms, urban domestic settings, fish farms, forests, tea plantations, quarries or mines, beaches, sisal plantations.

### **Labour Standards**

- i. Employment of young persons shall be under a verbal contract
- ii. No person shall employ a child gainfully or otherwise 'in any' industrial undertaking. Industrial undertakings have the following meaning:
  - (a) Mines or Quarries
  - (b) Any factory within the meaning of the factories act
  - (c) Any construction or demolition works
  - (d) Transport of passengers and goods by road, rail or waterway
- iii. No person shall employ any child without the prior written permission of an authorised officer. The permit must be renewed annually.
- iv. Every person authorized to employ more than 10 children on a permanent basis shall designate a person to be approved in writing by the Labour Commissioner to be responsible for the welfare of the children.
- v. Subject to certain provisions no juvenile shall be employed between the hours of 6.30 p.m. and 6.30 am.
- vi. Every employer of a juvenile shall keep and maintain a register with the following particulars of every juvenile.
  - (a) Age or date of birth

- (b) Date of entry into and leaving such employment
  - (c) Such other particulars as may be prescribed
- vii. An authorized officer may require any juvenile in employment to be medically examined at any time during the period of his employment.
- viii. A Labour officer may by notice in writing served upon the employer terminate or cancel any contract of employment entered into between a juvenile and an employer.
- ix. No person under the age of 16 years shall be required to work for more than 6 hours in a day. The weekly rest day of a person under the age of 16 years shall not be deferred.

**Wages:** The law provides for a statutory minimum wage to be paid to employees below 18 years. In addition wages should be paid promptly when due.

**Penalties:** The Employment Act has instituted the following penalties for offenders:

- a) Any person who knowingly employs a juvenile in an industrial undertaking shall be guilty of an offence and liable to a fine not exceeding Shs. 1,000 or in the case of a second or subsequent offence Shs 2,000.
- b) In case of death or injury of a juvenile - in addition to the penalty he shall be liable to a fine not six (6) months imprisonment.

In its efforts to fight the growth of child labour, the Government of Kenya signed the Rights of the Child Convention, which became an international law in 1990. It also ratified in 1979, the ILO Convention NO. 138 on the minimum age of admission

### **Domestic Employees**

These are employees working for an employer at his/her home. In

Kenya, there are thousands of domestic workers, most of whom are women and children (usually young girls). Domestic employees are isolated and thus vulnerable to exploitation. They may also suffer because of their weaker position in the labour market. These workers often work for long hours with very low wages. They are also exposed to all kinds of risks of injury.

Most domestic workers in Kenya do not know their rights and some work under very difficult conditions. Young girls may be exposed to all sorts of abuses by their employers such as physical or sexual abuse.

Domestic employees are covered by the wage regulations which outlines their minimum wages and other conditions of employment and also by the employment acts. However, domestic workers are rarely assisted. Trade unions also do not have access to domestic workers and thus represent only a minimal number of them.

### **Labour Laws & Women**

Women represent a large number of workers within Kenya's workforce today. However, much remains to be done before they receive equal rights with men. Most women workers are graded in low-paying occupations especially in industries and therefore are blocked from being promoted to responsible positions particularly in decision-making posts.

In addition to working outside their households, women are charged with the responsibility of looking after their families. This means that women work more hours than most men. In Kenya, research has revealed that women are still excluded from performing certain duties which they would otherwise comfortably perform.

The Government is yet to review the current labour laws especially on the sections regarding women workers. Women also do not have equal access to training or possibilities of upgrading their

skills on the jobs they perform therefore their men counterparts excel and leave them behind.

Cap 226 clearly defines where women should not work. Women are prohibited to work between the hours of 6.30p.m. and 6.30a.m. in an industrial undertaking. Women are also not required to work in mines or any underground work. The law on maternity leave should also be reviewed. It is discriminatory for women to forfeit their annual leave when they take maternity leave. Some employers are known to terminate contracts of service after women take the maternity leave.

Conclusively, labour laws do not protect women adequately.

## **HIV/AIDS and The Law**

Some provisions of the Penal Code may be used to penalize the behaviour of people who are infected with HIV or AIDS. A section of



the Penal Code makes it an offense for any person to unlawfully or negligently undertake any act that the person knows or has reason to believe to be likely to spread the infection of any disease dangerous to life

This provision may be applied to any range of activities that promote the spread of HIV infection, including, for example, risky sexual behaviour, sharing of used hypodermic needles, or improper disposal of medical waste. People who therefore know themselves to be infected with HIV but nevertheless engage in unprotected sex, and thereby transmit the HIV virus to another could conceivably also be charged with manslaughter or murder. However, since the time lag between infection with HIV and subsequent death due to AIDS-related illnesses is typically longer than one year, conviction for murder or manslaughter under these circumstances may be pre-

cluded by a section of the Penal Code that states that "a person is not deemed to have killed another if the death of that person does not take place within a year and a day of the cause of death."

In Kenya, AIDS is a "notifiable infectious disease", a designation that requires certain activities to be reported to authorities. Furthermore, both AIDS and HIV have been deemed "infectious diseases" pursuant to the Public Health Act, therefore empowering medical officers to undertake actions such as entering and inspecting premises in which the inhabitants may have been exposed to an "infectious disease" and examining anyone at that site. A medical officer may also remove a person to a hospital or to another place of isolation and detain the person there until he or she is determined to no longer constitute a danger to the public.

## **Tenancy & Tenants' Rights**

One is qualified to be a tenant if:

- they live in a residential house;
- the house does not belong to them; and
- they pay rent to another person.

One is a protected tenant if one's standard rent is Ksh 2,500 per month or less, and lives in a 'controlled house' which is a house protected by the Rent Restriction Act. All matters relating to the rights of protected tenants are dealt with by the Rent Restriction Tribunal set up under this Act.

One is not a protected tenant if:

- their landlord is the Government of Kenya, Kenya Railways, Kenya Ports Authority, Kenya Posts and Telecommunications Corporation, or any local authority. If they leave employment they must vacate the house and not claim protection.

- the Tribunal raises the rent to more than Kshs 2,500.

### **Rights and Duties as a Tenant**

All dealings with protected tenants, as well as all rights of protected tenants are regulated by the Rent Restriction Act. Without a written order of the Tribunal, which must be shown to you by the Landlord/Landlady on request, the Landlord/Landlady CANNOT:

- a) Increase your rent. However, under the two following instances, he/she can increase rent without the permission of the Tribunal:
  - where rates are paid by the landlord/landlady, including water, electricity and conservancy charges have gone up, then he/she can raise the rent by the same amount
  - where the landlord/landlady has spent money on the installation or improvement of a drainage or sewerage system, the construction or improvement of a road or street, the improvement or alteration of the structure of the house but not on redecoration or repairs (in the above cases, the landlord/landlady can increase the rent by a yearly rate of not more than 10% of the amount used.)
- b) Lock you out of your house or take away your property and sell it to recover rent owed. The tenant should hold personal responsibility to pay rent in time and in advance. Generally, rent should be paid before the 5th day of the month.

There are a number of things which the Landlord/ Landlady can/cannot do: He/she

- SHOULD give you a Rent Book in which all payments are recorded and signed for.
- CAN apply to the Tribunal for permission to levy distress ( i.e. to take away your goods and sell them to recover rent owed) if the tenant does not pay rent within the proper time. The law allows

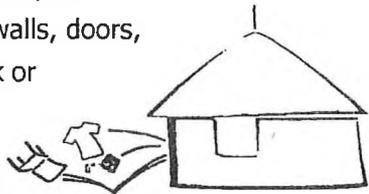
you a period of 10 days within which to pay rent due in order to recover your goods from the landlord/landlady.

- CANNOT levy distress at night or on a Sunday
- CANNOT take some things away from your house including things delivered to you in the course of your business, your clothes, bedding, or your tools of trade.
- MUST choose between applying for your eviction and taking and selling your goods to recover rent owed.

There are a number of things which you can/cannot do as a tenant.

You:

- CAN sublet the house you live in to somebody else. This can only be done with the written consent of the landlord/landlady, with a copy of the consent taken to the Tribunal. You can only sublet for 6 months, but the landlord/landlady or Tribunal can allow you a further 3 months.
- CAN be evicted if you are responsible for the deterioration of the house through neglect. You are responsible for the maintenance of the internal walls, doors, windows, light fittings, paint work or ceiling.
- CAN be evicted if you have overcrowded the house to such an extent that the large number of people pose a danger to the house or neighbours, or if you and other people living with you are a nuisance to your neighbours
- CAN file a case in court against a tenant who is a nuisance.
- CANNOT change the house into business premises. You can be evicted in such a case. This also applies to using the house for illegal or immoral purposes.



A tenant has the right to live quietly, peacefully and without interference from the landlord/landlady or their agent. This means that the landlord/landlady SHOULD NOT visit your house during the daytime or at night without giving you adequate notice.

# Filing Cases in Court

**W**hen one wants to file a case in court against a second party, there are certain guidelines to be followed:



1. Decide what damages to sue for.

Criminal Matters are handled by the State, and you are defended by a Public Defender.

One must do the following:

- a) Report the matter to the police
- b) Obtain a P-3 form
- c) A police doctor should fill certain forms
- d) The forms must be signed and returned to the police

Civil Matters, such as land issues are handled by civil lawyers, or one can defend themselves. One should:

- a) Prepare a Pleadings
  - b) File pleadings in the courthouse with the Registry for the hearing date
2. Know how much loss you have suffered. Attempt to quantify the loss
  3. Make every attempt to appear in court for the Mention Date and Hearing Dates, even if a lawyer is representing you.
  4. Have constant communication with the lawyer, and ask questions about issues you are not clear about

# Community Organization: Planning & Running Local Meetings

## Communication Skills

**C**ommunication is a process of passing a message from one source to another through a channel. The main elements in this process include: the participants; the message; the channel; and the effect. Communication can either be right or wrong and this



will depend on the way either of the elements functions. The purposes of communication are to:

- pass on or receive information from others
- make others aware of our feelings, ideas, attitudes
- satisfy a social or personal duty
- get certain things that we desire

## There are five main Communication Approaches

### A. Participatory Approach

This is where the community participates in the education you deliver. This approach:

- originates from and is designed to meet the interest of the community
- is directed to quality life improvement with the acquisition of the knowledge

- involves the full participation of the community in decision-making process
- community responsibility in the provision of education

This approach evolves around the immediate needs of a community and it involves the following:

1. Identification of the people you want to target i.e. the beneficiaries of the communication package. Are they individuals, families, men, women, youth, the whole community.
2. Develop some contact with the beneficiaries you have identified. This is more so if you already have an existing forum within the community e.g. a church/youth/women group member, a professional, clan member etc.
3. Identification of an appropriate method/forum of collecting and delivering information. Do you want to use the existing church network, women/youth groups etc.
4. Identification of the social problems experienced in the said community.
5. Identification of the legal nature of problems and prioritising of these problems.
6. Evaluation of the process of communication

Participatory Approach to Community Education can take the form of a chief's baraza, group forum, adult education forum, proverbs to pass messages, songs, drama.

## **B. Networking**

This can be done with other NGOs working within your community as most of them have an economic orientation and can therefore be used in an integrated approach. One may also form a network with religious organisations which already command respect and are found all over the country were in the most remote areas.

## **C. Advocacy**

This is a campaign set at targeted action in support of a cause or issue, to influence others, to influence change.

To advocate for any issue,

- there is need to build support over that issue and this is only possible after you have defined your mission by conveying what you are doing, stressing on long and short term goals and trying to meet the needs of your community.
- You should have also decided and established your goals and objectives by listing all goals of your campaign and identifying specific landmarks which you hope to identify on the way to that ultimate goal.
- Outline activities to fulfill your campaign by being realistic, specifying participants, budgeting, identifying resources like staff, facilities and reputation, identifying your opponents and problems

After this, recruit others for support to think like you and support your cause/issue.

Successful advocacy campaigns are a result of the many people you recruit on your side. They are collaborative efforts that bring together resources, time, energy and talents of many different people or organisations - who can then reach out to others who are in agreement with your goals and in so doing build a group for support.

Your area of operation in advocacy starts with you and the people working with you. Success begins with an understanding that everyone involved is committed to its goals. While there might be disagreements over what you will actually do to meet these goals, everyone involved in the work should agree on what it is you eventually want to achieve.

## **D. Lobbying**

This is trying to persuade people to think or act your way, through other people. The media, parliament, community can be lobbied on issues important to them.

## **E. Report Writing**

A report is a compilation of the most important aspects of an event or a process used for purposes of simply keeping record or communicating to others.

A report may be given orally or in writing this will depend on performance, circulation and distribution.

To write or report on anything will depend on:

- the nature of the event
- the person making the report - can they speak or write
- the person to whom the report is being sent - can they hear or read and how far are they from the sender
- the language
- the resources available

## **Report Writing: Questions to ask yourself**

### **1. Before writing:**

- what is the purpose of writing the report
- what is being written and for whom
- are there limitations

### **2. As you write:**

- what do you want to write about
- how do you organise this information

- what language and technique do you use
- what other features do you use - photos, graphics etc.

### **3. When you finish:**

- is the writing good
- is it readable and understandable
- is it short and simple
- is it informative

## **Basic Principles of Communication**

1. Prepare properly in advance before meeting the audience
2. Know your audience and their entry point/behaviour
3. Understand the environment you are to work in
4. Guard against approaches that divide you with the community
5. Encourage dialogue by making learning participatory.
6. Share responsibility/experience
7. Use appropriate language
8. Be sensitive to economic, political and cultural belief, activities and attitudes
9. Understand and be committed to the objectives and expectations
10. Form focused group discussions
11. Encourage role play, drama, song, dance
12. Use real life experiences for demonstrations to link theory to practice
13. Use audio-visuals if they are useful and relevant e.g. cassette recorders, films, videos, radio, posters, photos.
14. Visit institutions and homes and see how people live

15. Do not become an 'expert' or the 'only one' with knowledge on everything and the one in authority.
16. Ensure that you have empowered the community and the participants at the end of your workshop effectively.

## Being a Good Listener

### Take this listening quiz

Listed below are 15 statements that relate to one's ability to listen to others. Rate each item by placing a dot in the appropriate box. Be very honest with yourself in answering. (Additional copies at back of book for practice)

Element	Never	Seldom	Sometimes	Often	Always
1. Do I listen for feelings, attitudes, perceptions and values as well as before?					
2. Do I try to listen for what is not said?					
3. Do I avoid interrupting the person who is speaking to me?					
4. Do I actually pay attention to who is speaking as opposed to pretending?					
5. Do I refrain from 'turning people out' because I don't like them, disagree with them, find them dull etc.?					
6. Do I work hard to avoid being distracted from what is said by the speaker's style, mannerisms, clothing, voice quality, voice pace etc.?					
7. Do I make certain that a person's status has no bearing on how well I listen to him/her?					
8. Do I avoid letting my expectations (hearing what I want to hear) determine or influence my listening behaviour?					
9. Do I try to read the non-verbal gestures of the speaker such as body posture, eye contact, facial expression, mood, tone of voice?					
10. Do I work hard at overcoming distractions (sounds, noises, movement, outside scenes etc.) that may interfere with good listening?					
11. Do I tend to try and follow speakers who may be difficult to understand, slow in speech or who repeat themselves or express themselves poorly?					
12. As a listener, do I use non-verbal communication such as smiles, eye contact, head nods etc. to indicate that I wish to hear more?					
13. Do I tend to restate or rephrase the other person's statements when necessary so that s/he knows that I understood?					
14. If I have not understood, do I tell the speaker this and ask them to explain what they said again?					
15. Do I avoid framing my response to what is being said while the other person is still speaking?					

When you have rated all the items, draw lines to connect the dots. This will give you a profile of your capabilities as a listener. The more your profile leans to the right, the more capable you are as a listener.

## **Group Awareness Activities**

One may use different approaches to reach a group with a message. This would depend on the type of group to which one is speaking. The approach used at a women's group meeting with 20 members will be different from that used at a baraza of 100, mostly men. One may also be present as an 'onlooker' of sorts or one may have been invited to address the group as the main speaker. This would then call for a different approach as well.

### **Possible Approaches**

- lecture on one topic or on several topics depending on time and relevance
- drama
- question and answer
- real live case study to raise questions for discussion
- informal discussion e.g at social gatherings
- individuals - one on one
- door-to-door
- have central place where people can approach you (make your services known first)
- arrange group meetings according to age or sex to address issues relevant to everyone
- using an intermediary to solve cases

## **Materials**

- 'lesson plan' (which could be this handbook)
- handouts: pamphlets, flyers, posters, booklets
- song/drama

## **Target group**

- Decide who you would like to reach and if it is in your capacity to reach them e.g. small local group, several groups, individuals, local authorities, friends, relatives, large public gatherings, educational institutions.
- What level will this be done at? Local community, location, division, district, constituency, village, sub-location, etc.
- Sit down and map out the area you can serve so as to decide on effective strategies you can use to reach that particular group. It is best to start out with areas that are familiar to yourself and where you can get a good reception. Then you can begin to move further out as you become more comfortable with your position.
- Once you 'leave' a certain area or group, material should be left behind that people can refer to in your absence. They should then be able to contact you if they need questions answered or further clarifications. They should also be able to know which authorities or assistance organisations they can get in touch with for follow up to cases they may have. That way you are enabling individual members of the community to handle and prevent human rights violations at a very early stage. This is very empowering for a community. This can be particularly so for women who suffer most consequences of human rights violations in our country today.

## **Networking**

To facilitate transmission of a message as well as to reach more

people with information, you need to establish links with other individuals who can assist you to pass on this message. These may be other paralegals, community educators, local leaders, group chairs, church group leaders organisations that carry out similar work. In most cases you will have come into contact with some of these individuals who are based in your community. If you have not approached them before, arrange to meet with them, perhaps on an individual basis. Introduce yourself, the work you do and the service you offer. Indicate in which way you could assist one another in passing on the message that you have and improving the conditions of the greater community. In certain areas of the country a direct approach is necessary in carrying out your work; in others, it may be best to approach individuals with caution so as not to have your plans thwarted before you can even begin. Based on previous interactions with leaders and authorities in your area, use your discretion when going about your work as a paralegal.

### **Mobilisation**

How do you carry out your duties with limited resources?

- Paralegals may request group leaders to arrange for a meal or assist with transport to and from a meeting which the paralegal addresses.
- Paralegals may also try to gather funds to purchase a bicycle to enable him/her to move around to more areas and save on transport costs.
- While a paralegal's duty is voluntary and it is illegal for him/her to charge anyone for their services, it may become difficult to reach and assist clients with no source of income for this purpose. Paralegals must then use their ingenuity to be effective in dealing with cases. For instance, instead of the paralegal paying for any

expenses that will be incurred, the 'client' should pay for them such as providing stationery and postage for letters regarding the case.

## **Planning and Facilitating Group Awareness Activities**

**Who** are you going to address and how many? Have they invited you or have you asked to speak to a group?

**When** are you going to meet with a group during their regular meeting time or arrange a special session at another time? How long is your presentation or how much time have you been given? Have you prepared your presentation for that period. Will it say all you want it to say in the given time? Have you made provisions for running out of time, e.g. handouts that you can leave behind, or tentatively arrange a continuation or follow up meeting?

**Why** did you choose this group and what is the relevance of your topics to them? What are you planning to say to them? Always have an objective i.e. know exactly what you are trying to achieve in specific terms.

**Where** will this be – at your home, at someone else's home, in a school building, at a church, at a women's group, under a tree, at a baraza, in an office. You will have to adapt your presentation to suit your surroundings. For example you may not usually be able to use visual aids if you are discussing issues in the market place or in the shamba or at water drawing point.

**How** will you present your message – lecture, informal discussion, drama, question and answer, handing out literature. Will you discuss one particular issue or several issues at a time? Do you know how to link one issue to another to make the discussion

flow and make sense? How do you ensure feedback from the group? Allow them to pose questions although this should be done in a manner which allows you to keep on track with the direction of the topic. Sometimes it's more effective to have questions at the end of the presentation so as not to take things off topic. You can also break once in a while to ask one person to put in their own words what you have just said so as to find out if they are understanding you.

Groups of paralegals may also arrange to address a large group meeting. Paralegals are therefore available to support and assist each other in situations where it would have been difficult to effectively reach many people on the given day. Paralegals are encouraged to form groups or associations with each other for the purpose of support, to advise each other where needed and to offer new solutions to problems one may be facing in the field. It is important, therefore, to keep in contact with other paralegals, whether they work in nearby areas or further away in other districts or provinces.

### **Approaching Individuals**

When dealing with individuals your approach becomes relevant to their own needs and their response to what you have to say. Naturally it is easier to speak with friends and relatives and others with whom you have already established a rapport and have an open channel of communication. Here you may directly present yourself and your message which may most often be through an informal discussion. When you are approaching individuals with whom you are not acquainted you should:

- Introduce yourself and state where you're from
- Indicate that you are a paralegal and say what, in general, a paralegal does

- State what information you can provide and what assistance you are able to offer
- Find out how you can assist the individual or how you can cooperate (usually in the case of authorities in the area.)
- Be friendly
- Be a good listener

### **Paralegal Work Schedule**

It is understood that paralegals offer their services on a voluntary basis. However, it is also realized that paralegals have other work or domestic commitments that do not allow them to pursue paralegal-related activities on a full-time basis. It is therefore important that paralegals plan their schedules and manage their time well in order to fit in paralegal work with normal daily activities and responsibilities. For example, one paralegal sets aside two days within a week to meet with individuals and assist with specific cases. The community is aware of the paralegal's schedule and also knows exactly where she may be found on the given days. The paralegal is able then to carry out other duties during the rest of the week and deals with 'emergency' cases when she can avail herself. Another paralegal sets aside the weekend to address groups and meet with individuals. In many cases though, one's normal duties and paralegal work can be linked where one may come across a situation in the workplace or the home where paralegal advice is needed.

# Identification of Potential Risks and Other Problems: How To Handle Them

- Dealing with suspicion from those you present your message to or others in the community: Understand the situation of each person or group that you address to determine an entry point. It is not necessary to be forceful to communicate.



Be calm and diplomatic in your approach so as not to make others defensive but to be open to hear what you have to say. However, one must not be shy or timid or afraid to stand up or the truth and to pursue justice. One must be firm in dealing with issues of human rights.

- Threats to one's security or life: Report the matter directly and immediately to the police and/or local administration; take precautionary measures to guard your safety such as telling one or two other people where you will be at all times.
- Being overwhelmed by many cases: Remember a paralegal cannot solve all cases and deal with everyone's problems. It is important to pace oneself and assist or offer advice only as much as you can manage. Do not feel responsible for taking the whole community's legal issues. Do only what you can. You can also set up a network with other people to assist you in handling more cases. Also, remember that as you create awareness within the community, people will begin to know how to pursue their own cases as well as assist others. Show people how to defend their own rights.

# Evaluation

**I**n order to know if you are being effective in your work as a paralegal, it is important to evaluate your own approach as well as the community's understanding of issues and general progress.

An evaluation exercise can consider the following:

- How is the community's life better?
- What changes, positive or negative, have occurred within the community as a result of your activities?
- How has the leadership changed?
- Was your approach effective?
- What problems did you face and how did you solve them?
- What issues were important to people in the community and which were not important?
- Did you base your approach on the interests and needs of your audience?
- Did your audience fully understand the message you were putting across?
- Were you successful in reaching your goals and objectives for this activity?
- What might you do differently next time you have a similar activity?
- In which area can you improve your approach or the results you have?
- Are you able to report briefly and simply on your activity to any interested party in an effective manner?



# Case Studies

## Sample Case 1: Paralegal, Homa Bay District

**Description of Situation:** Atieno is separated from her husband Opiyo, They have had many quarrels and she has suffered beatings and frustrations and has now chosen to move out of the home, only coming back occasionally. The husband is a herbalist but his mental state borders on insanity and he does queer things. In the process, their children have not gone to school and two have fallen into bad company and have had brushes with the law. Atieno has suffered both physically and psychologically and is desperate.



**Action taken by Paralegal:** I always listen sympathetically to her tribulations, advise and encourage her. I have linked her to a pastor who prays for her. This has lifted her spirits. She has started a small scale business to sustain herself and her children. The pastor does regular counselling for her and her perception of life is improving. She does not want to divorce the man and prefers to stay away from him. On occasions when her sons have landed into problems, I have given advice and helped secure their release from the cells. I have also advised her sons to keep away from trouble and one is now in another town doing casual work. Other family members have been supportive of Atieno. I talked to her brothers-in-law who visit her often and offer financial assistance.

**Case referred to:** The area church pastor and elder who have been helpful.

**Results:** Atieno is stabilising and now concentrates on her small business instead of going from one relative to another and having no fixed abode. She has rented a room for herself now.

**Further action needed:** She needs further counselling and has requested for financial assistance. We are planning a funds drive to boost her finances for her business.

**Follow-up:** I am in constant contact with her to review her case from time to time. Although her husband is hostile and unapproachable she continues to come and see me for advice.

## **Sample Case 2: Paralegal, Nyamira District**

**Description of Situation:** When I was on my way back home I found very many people at the shopping centre. There I found out that a young man had raped an eight year old girl. I went to verify the incident and found the little girl bleeding seriously and no one helping her but beating the man. I talked softly to them and they stopped. We took the man to the nearby police station and then took the girl to a hospital where I identified myself as a paralegal and we found an understanding doctor who attended to us. The girl was treated and released. We then returned to the police station where the young man was placed in the police cells to await appearance in court. The girl's parents took me aside and asked why the police officers were cooperating with me when I had not bribed them. I explained that I am a paralegal working within the area to help people when their human rights are violated. Later, I attended the court hearing where full evidence was given and the man was jailed for seven years with two strokes of the cane. The girl's parents are very happy and have gone around telling people of their rights.

### **Sample Case 3: Paralegal, Siaya District**

**Description of situation:** A woman approached me for advice and explained to me that following the death of her husband she feared being inherited by a brother-in-law and now needed assistance in handling the issue of this customary practice. I advised her to see the clan elder who is also her father-in-law and she did. On the day of the burial, this elder told the family and other mourners that his daughter-in-law shall not be inherited as per Luo custom. Any brothers-in-law could, however, offer assistance towards the upkeep of the children. Two priests at the funeral supported this move and the issue was solved before them that day. The widow is now free to take care of her family without any interference from any in-laws. She is also involved in a local widow's association which offers care to other widows.

# Referral Organisations



Paralegals can contact the following organisations or institutions to assist in handling cases in their communities:

- African Network for the Prevention and Protection Against Child Abuse and Neglect (ANPPCAN) Box 71420 Nairobi Tel 726794, 722496 Fax 721999
- Amani Counselling Centre Box 41738 Nairobi Tel 602672/3
- Central Organization of Trade Unions (COTU) Digo Road, Box 13000 Nairobi Tel 761375/6/7
- Centre for Law & Research International (CLARION) Box 46991 Nairobi Tel 47088, 571614 Fax 571857
- Child Welfare Society of Kenya Tel 603301 Nairobi
- Children's Department -Jogoo House 1st Fl. Tel 228411 Ext.30040 Nairobi
- Children's Department offices in all Districts
- Children's Legal Action Network (CLAN); Hughes Bldg. 5th Fl. P. O. Box 42062, Tel 226163, 220596, Fax 213940 Nairobi
- Coalition on Violence Against Women (COVAW) Box 7631 Nairobi Tel. 712423 Fax 716840
- Crisis Pregnancy Ministries Box 66633 Nairobi Tel 445997, 713521
- East African Standard Newspapers Box 30080 Nairobi Tel 540280/1/2/3/4/5/6/7; Kisumu Box 788 Tel 40605; Mombasa Box 90210 Tel 313185; Nakuru Box 2445 Tel 214289.

- FIDA Box 46324 Nairobi Tel 717169, 718370, 711853
- FIDA Kisumu Tel 035 43710
- Kangemi Women Empowerment Centre Box 30581 Nairobi, Tel 630232
- Kenya AIDS NGOs Consortium Box 69866 Nairobi Tel 714837
- Kenya Aids Society Box 76618 Nairobi Tel 766677, 760370
- Kenya Female Advisory Board Box 6025 Nairobi. Tel 035 44502  
Kisumu
- Kenya Human Rights Commission (KHRC) Box 55235 Tel.  
574998/9, 576063/4/5/6
- Kenya National Union of Teachers (KNUT) Box 30407 Nairobi Tel  
334674, 220387, 223509, 223849 Fax 222701
- Kenya Union of Domestic, Hotels, Educational Institutions,  
Hospitals and Allied Workers (KUDHEIHA) Box 41763 Nairobi Tel  
221191, 336638, 340228 Fax 212308
- Kituo cha Sheria Box 7483 Nairobi Tel 712414, 712428 Fax  
712508
- Maria House Women's Centre Box 50504 Nairobi Tel 761699,  
765131
- Ministry of Health - Kenya National Aids & STD Control  
Programme Box 19361 Nairobi
- Ministry of Labour Box 40326 Nairobi Tel 729800; Central  
Province Box 90 Nyeri Tel 2211; Coast Box 90361 Mombasa Tel  
313166; Nyanza Box 1209 Kisumu Tel 44310; Western Box 835  
Kakamega Tel 30036; Rift Valley Box 31 Nakuru Tel 45544;  
Eastern Box 984 Embu Tel 20169.
- Nation Newspapers Box 49010 Nairobi Tel 221222, 337710;  
Mombasa Box 80708 Tel 224122; Kisumu Box 947 Tel 21230;

Eldoret Box 63019 Tel 63007; Nakuru Box 613 Tel 45116; Nyeri Box 75 Tel 4120.

- NCKK Gender Desk Box 45009 Nairobi Tel 215560, 217760 Fax 224463
- People Newspaper Box 48647 Nairobi Tel 254166/8, 253415 Fax 253344
- Public Law Institute (PLI) Box 52011 Nairobi Tel 565967, 574287 Fax 574286
- Rehabilitation Centre for Victims of Violence Box 61312 Nairobi Tel 890891
- Stop Rape Foundation Box 49993 Nairobi Tel 254924
- The Association of People with Aids in Kenya (TAPWAK) Box 30583 Nairobi Tel 603420
- Women's Network Centre Box 88739 Mombasa Tel 011 225835
- Women's Rights Awareness Programme P. O. Box 38612 Nairobi Tel 245196, 245726
- Nearest Police Station or Police Post
- Local Administration authorities
- Local church, mosque or temple

# Bibliography

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2. Public Law Institute "The Pocket Constitution of Kenya" prepared by O. Ooko-Ombaka and Maina Kiai, 1998. 2nd Edition.
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4. 'What the Constitution Means To You' prepared by Christopher Mulei and Collins Odote, published by the Citizens' Coalition for Constitutional Change, 1997
5. 'The Women's Guide to Law' published by the Federation of Women Lawyers (FIDA-Kenya), 1998.
6. 'Organizing for Social Change: A Manual for Activists in the 1990s' compiled by Kim Bobo, Jackie Kendall and Steve Max. Published by the Midwest Academy, 1991.
7. 'FIDA Taita Taveta Project' pamphlet by the Federation of Women Lawyers (FIDA-Kenya)
8. 'Teaching Ourselves Our Rights: A Manual for Community Trainers, Volume 1 & Volume 2' published by the Legal Resources Foundation (Kenya) 1995,1997.
9. 'Manuals on Participatory Training: Manual Two – Training of Development Workers' by Anne Dodge. Published by the German Foundation for International Development Education Science and Documentation Center, 1994.
10. 'Women of the World-Laws and Policies Affecting their Reproductive Lives. Anglophone Africa', 1997 The Centre for

Reproductive Law and Policy, Inc and FIDA-K

11. 'Behind the Curtain: A study on Squatters, Slums and Slum Dwellers' published by the Kenya Human Rights Commission, 1996
12. "Are you a Protected Tenant?" published by Kituo Cha Sheria, Kenya

## Being a Good Listener

### Take this listening quiz

Listed below are 15 statements that relate to one's ability to listen to others. Rate each item by placing a dot in the appropriate box. Be very honest with yourself in answering. (Additional copies at back of book for practice)

Element	Never	Seldom	Sometimes	Often	Always
1. Do I listen for feelings, attitudes, perceptions and values as well as before?					
2. Do I try to listen for what is not said?					
3. Do I avoid interrupting the person who is speaking to me?					
4. Do I actually pay attention to who is speaking as opposed to pretending?					
5. Do I refrain from turning people off because I don't like them, disagree with them, find them dull etc.?					
6. Do I work hard to avoid being distracted from what is said by the speaker's style, mannerisms, clothing, voice quality, voice pace etc.?					
7. Do I make certain that a person's status has no bearing on how well I listen to him/her?					
8. Do I avoid letting my expectations (hearing what I want to hear) determine or influence my listening behaviour?					
9. Do I try to read the non-verbal gestures of the speaker such as body posture, eye contact, facial expression, mood, tone of voice?					
10. Do I work hard at overcoming distractions (sounds, noises, movement, outside scenes etc.) that may interfere with good listening?					
11. Do I tend to try and follow speakers who may be difficult to understand, slow in speech or who repeat themselves or express themselves poorly?					
12. As a listener, do I use non-verbal communication such as smiles, eye contact, head nods etc. to indicate that I wish to hear more?					
13. Do I tend to restate or rephrase the other person's statements when necessary so that s/he knows that I understood?					
14. If I have not understood, do I tell the speaker this and ask them to explain what they said again?					
15. Do I avoid framing my response to what is being said while the other person is still speaking?					

When you have rated all the items, draw lines to connect the dots. This will give you a profile of your capabilities as a listener. The more your profile leans to the right, the more capable you are as a listener.

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