

# AMPLIFYING VOICES

inclusion

THE OPEN SOCIETY INITIATIVE  
FOR EASTERN AFRICA

respect  
for  
*human rights*

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# AMPLIFYING VOICES

## THE OPEN SOCIETY INITIATIVE FOR EASTERN AFRICA

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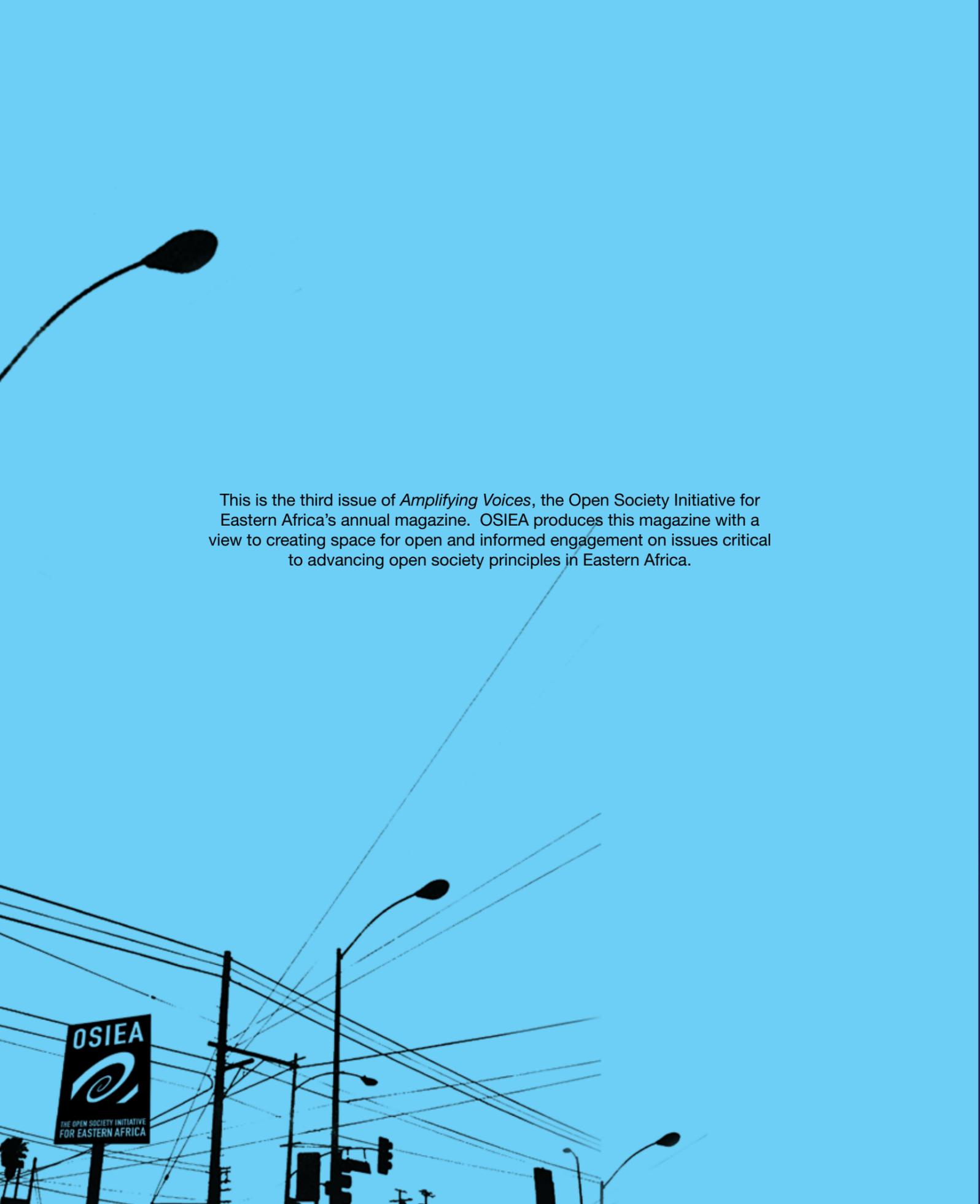
The Open Society Initiative for Eastern Africa (OSIEA) promotes public participation in democratic governance, the rule of law, and respect for human rights by awarding grants, developing programs, and bringing together diverse civil society leaders and groups.

OSIEA plays an active role in encouraging open, informed dialogue about issues of public importance in Eastern Africa.

OSIEA supports work in Kenya, Tanzania, Uganda, Sudan and South Sudan as well as regional organizations whose mandate encompasses Eastern Africa.

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This is the third issue of *Amplifying Voices*, the Open Society Initiative for Eastern Africa's annual magazine. OSIEA produces this magazine with a view to creating space for open and informed engagement on issues critical to advancing open society principles in Eastern Africa.

# Editorial Statement

Crucial to the creation of an open society are principles of equality, diversity, and inclusion. This edition of *Amplifying Voices* examines the meaning and dimensions of these concepts, and the barriers to their realisation in the region.

We live in pluralistic societies made up of people from different backgrounds, beliefs, and lifestyles. But difference is not what divides us. It is our unwillingness to accept and even celebrate those differences.

Through intolerance, we exclude and stigmatize certain people in our societies. We distance ourselves from those that are different – those who do not look, act, or sound like “us.” We judge certain individuals or communities as “lesser”, and therefore not deserving of equal treatment. We erode their ability to participate fully in the social, economic and political life of the society. We make them invisible and render them powerless over decisions that affect their lives. At worst, we find them threatening and countenance serious abuses against those we have deemed to be “the other.”

The basis for exclusion can be connected to a person's gender, ethnicity, religion, nationality, HIV status, or age. It may apply to persons with disabilities, to sexual minorities, or to pastoralists. Anyone who is deemed to deviate from the norms of mainstream society may become subject to blatant or subtle forms of discrimination and marginalization that hinder their access to opportunities, rights, and resources on an equal basis with others. Often the rallying call of ethnic supremacy, culture or religion is used as a cover to strip people of their human rights.

Despite the Convention on the Rights of Persons with Disabilities which was ratified by all of the states in East Africa, a recurring theme throughout the region is the marginalisation of people with physical and intellectual disabilities. Although they constitute half the society, women and girls remain at greater risk of violence, both within and outside the home, and continue to battle for equal access to rights and opportunities. A systematically excluded group throughout the region are the pastoralists, whose nomadic cattle rearing lifestyle challenges modern land tenure policies. Sexual minorities are routinely persecuted through hate speech, torture, and vigilante violence. The fight for citizenship also features strongly in a region where nationality policies often discriminate on the basis of ethnicity or gender.

But there is also a strong counter force across the region. Marginalised communities are taking back their power and working to remove the attitudinal and legal barriers that block their participation as equal members of society. They are engaging in advocacy, legal reform, strategic litigation, and community education initiatives to combat stereotypes, prejudices, and harmful practices.

The voices contained in this issue capture some of the struggles to ensure equal recognition before the law, access to justice, liberty and security of person, freedom from torture or cruel treatment, and respect for privacy. At the Open Society Initiative for Eastern Africa, we support efforts that respect the inherent dignity, diversity, and humanity of all persons.

For us, all persons count equally.

*Binaifer Nowrojee*  
*Executive Director*

# in this issue :

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**Squandering Our Youth**



**Butchering Our Children**



**Still We Rise**



**Karimojong Pastoralists**



**Women In Uganda**



**Locked Away**



**Little People**



**The Struggle For Citizenship  
In South Sudan**



**Zanzibar Women Lawyers**



**Pastoralists Rights In Tanzania**



**Second Class Citizens**



011 | AMPLIFYING VOICES

# YOUTH UNEMPLOYMENT IN KENYA SQUANDERING OUR YOUTH

BY JAKI MBOGO

YOUTH IN KENYA NUMBER ABOUT 9.1 MILLION (SOME 32% OF THE POPULATION), FORMING ABOUT 60% OF THE TOTAL ACTIVE LABOUR FORCE

DANIEL ONYANGO was born and raised in Korogocho, Kenya's fourth largest slum. Currently enrolled in a degree programme at the University of Nairobi and the founder of a community arts based organisation called Hope Raisers, Daniel's achievements so far have been exceptional.

For most of the young people living in Korogocho, even finishing secondary school is a challenge. Even for those who manage to complete their schooling there is no clear benefit to gaining qualifications in a country with few prospects for young people. Corruption, ethnic discrimination, and patronage have found their way into virtually every aspect of society. Getting a job has little to do with qualifications, talent, or how hard they work.

Korogocho is infamously known for being one of Nairobi's most violent and crime-ridden areas with inhuman living conditions and high rates of poverty, illiteracy, and unemployment. Most of the slum's residents are unemployed or casual industrial labourers.

Six years ago, Daniel got together with friends Robert, Isaiah and Simon, in Korogocho and founded Hope Raisers to promote creative arts for young people. The group started by making music, and in 2005, Hope Raisers produced a song challenging the G8 leaders: "Cancel debts, cancel debts, we are the creditors, why do you want us to suffer? Now you are rich men with our resources." Hope Raisers also reclaims the unsafe space around Korogocho through a roller skating club, using pathways that were previously considered no go areas due to gang violence. The Hope Raisers see themselves as role models and the positive image they present of young people brings them respect from the community.

“The streets symbolize the basic interactive space for humanity and by influencing this space we influence a change of perception.”

According to the United Nations Development Program (UNDP), youth in Kenya number about 9.1 million (some 32 percent of the population), forming about 60 percent of the total active labour force. Though the country generally suffers high unemployment rates, youth unemployment rates are catastrophic and present the single largest threat to human and state security and the general well-being of society.

Korogocho is home to an estimated 200,000 people packed into a 1.5 square kilometre in the northeast of Nairobi. Although there is an administration centre for the Area Chief, there is no police station. The police from neighbouring Kariobangi and Ruaraka patrol in Korogocho. The gangs that used to dominate Korogocho are now under better control than they were ten years ago, and many of the remaining gang members have now ‘gone underground’. The community has been working with the police to prevent crime and violence.

All over the world, youth is synonymous with innovation, creativity, progress and hope, but when that hope is stifled it quickly

turns into frustration and anger. Given the extreme poverty and lack of opportunity, criminal gang activity often becomes the easiest prospect. Throughout Kenya militia gangs such as the Mungiki offer a type of ‘family’ and ‘career’ for unemployed youth. The Mungiki is an infamous gang which rules with an iron fist, extorting ‘taxes’ from the local residents, and enforcing their rules with violence and often killings. Mungiki recruits are predominantly young, unemployed, and uneducated men with few prospects. The disguised functions and face of criminal groups often cause blurring of lines between self help and criminal activity.

These gangs also perpetuate and deepen the ethnic divides that threaten Kenya’s social cohesion. The Mungiki is dominated by the Kikuyu community, but there are also other gangs such as the Taliban (no connection to the Islamic group) which is dominated by the Luos, and the Al-shabaab has become popular among Kenyan Somali youth. We must not also lose sight of the factors of globalisation that continue to open markets for gangs, creating linkages between international syndicates and militias. Kenya’s youth gangs offer cheap sources of recruits as they are seen as possessing excellent understanding of the local criminal economy.

It is of concern how gangs are seen as the best prospect for many youth given the potential to destabilise and sometimes even dislocate communities. From running informal taxation rings, adjudicating on justice, to holding monopoly over illegal instruments of violence, these gangs have pushed up urban and rural crime sometimes with occasioning of extreme violence on communities. During the 2008 post-election violence, political groups exploited the poverty and ignorance among the youth and recruited young people to fight for as little as 50 Kenya shillings [less than \$1]. Lack of productive sustainable alternatives continues to frustrate genuine efforts at transformation.

Against this background, small self help efforts such as Hope Raisers offer an alternative by emphasizing youth empowerment. They are not looking for government handouts, but they do want access to basic services such as education, health facilities, and infrastructure, to give them a basis to help themselves. Daniel, Simon, Robert and Isaiah have their sights on exploiting what they term the ‘creative economy’ where they see potential for self-employment through the use of creative arts. This is a sentiment shared by Tom Mboya of Koch FM, a former Open Society

Initiative for Eastern Africa (OSIEA) grantee, who runs the first community radio station in the same neighbourhood. Koch FM has a strong youth leadership and ownership, and the radio is used as a tool for community debate and empowerment. The radio highlights corrupt practices in the area, thereby limiting the Chief’s ability to extort bribes and illegal levies from the community.

For Tom, a big issue is the continued exclusion of youth from national and political matters. While the electoral commission places youth at 62 percent of all registered voters they form but a paltry number of positions of influence. This is not due to a lack of interest in politics and development on the part of the youth. Rather the current political space is monopolized by a small elite of elderly men whose acquisition of wealth is connected to their capture of state power. They actively preclude youth from effective participation. The urban poor in particular are angered by the predatory behaviour of the state, particularly law enforcement agencies that appear to criminalise being young and poor. Therefore the increasing distance of the state from the youth, coupled with the general hopelessness of their lot and the need to find opportunities push youth into the arms of criminal gangs. The move by the state to create enabling

legislation including the outlawing of all criminal groups and gangs and to set up national youth employment and empowerment funds is welcome. However, much more is needed. The continued rise in cost of gang/militia activity to human and state security necessitates a re-orientation of national focus to prevention measures. Unless the gap between state, society and youth narrows, conflict, violence, dependency and hopelessness will continue to create missed opportunities

for youth. Perhaps it is also time we moved from seeing the youth as a burden for the country to an asset for social and economic transformation.

Time is ripe for a national conversation, seeking to make youth inclusion and engagement the agenda for societal transformation.

*Jaki Mbogo is the OSIEA Crime and Criminal Justice Program Officer*



“The streets symbolize the basic interactive space for humanity and by influencing this space we influence a change of perception”

# BUTCHERING OUR CHILDREN

BY MUMBI NGUGI

## MURDERING PERSONS WITH ALBINISM

At the time of writing this article, the mutilated body of a nine-year-old boy, born with albinism, was found on the shores of Lake Tanganyika, on the Tanzania-Burundi Border. He had been kidnapped from his home in Burundi, and sacrificed because of superstition and greed that has festered across the border in Tanzania.

Tanzania, and by extension East Africa, has become associated with the shameful and brutal murders of persons with albinism, so that their bodies could be used for witchcraft purposes. Since 2007, conservative estimates put the number of people with albinism killed at over 60, and organizations of persons with albinism such as the Tanzania Albino Society and the Canadian based NGO *Under the Same Sun*, estimate that the number could be much higher, at over 100.

Countless persons with albinism, mostly children, have been maimed for life, their limbs chopped off to be used in bizarre rituals touted by traditional healers as guaranteed to lead to great wealth.

Isaas, a community-based organization based in Bokoba, Tanzania, has been supporting children with albinism in Mugeza School for the disabled. The children with albinism in this school are survivors of attacks, many of whom have had their limbs cut off by those contracted to procure their body parts by traditional healers. Others are living in fear, unable to have normal lives for fear of being attacked and killed.

Albinism is a genetic condition, inherited from both parents, that leads to one being born without melanin in the skin, hair and

eyes. The lack of melanin in the skin leads to great vulnerability to the damaging effects of the sun. Absence of melanin in the eyes results in low visual acuity and photophobia, leading to poor vision.

While these visible genetic limitations are difficult enough to deal with, it is the social ostracization and discrimination that those born with albinism face that has been at the root of their challenges. Children with albinism are rejected, in many cases by parents. Unable to acquire an education or get employment, many persons with albinism end up working in the informal sector and in the hot sun. Without adequate protection from the sun through the use of sunscreen and long sleeved protective clothing, sun exposure often results in skin cancer. Without access to basic health care, many persons with albinism face an early death from this largely preventable and curable form of cancer. Thus, while albinism in and of itself has no impact on life span and one's ability to lead a normal life, few live beyond their fourth decade.

Superstitions about the condition abound. For example, people with albinism are born when there is an unsuccessful attempt to abort a baby; or when the mother was menstruating; they are children substituted by the devil for the real ones; they do not die but only vanish at some stage in their lives. However, the most insidious of these superstitions is probably the most recent that the use of charms made from the body parts of albinos will lead to great wealth, success in business and in politics. The much publicized 'high value' of the body parts of persons with albinism, claimed to

be in the millions of dollars, has doubtless further served as an incentive for the rise in the murder rate.

In Burundi, the government moved fast, arrested and prosecuted the suspected murderers. Of the 14 murders reported in Burundi, 12 have resulted in arrests and convictions. In Tanzania, while more than 63 murders have been reported, only two cases have resulted in arrests and convictions. The slow, almost reluctant pace of dealing with the problem in Tanzania may be a reflection of a society that does not value the lives and rights of persons with albinism. It may also be indicative of complicity in the brutal trade by law enforcement and the rich and powerful.

The human rights dimensions of this scourge have gone largely unaddressed by human rights organizations. Persons with albinism are denied basic socio-economic rights such as the right to health, education, and employment, and now are denied the most fundamental human right, the right to life. All this is happening in a region that has vibrant local civil society organizations, and many international human rights organizations. Positive obligations on the state and society to persons living with albinism include ensuring access to appropriate education, employment, and health care, in order to facilitate the enjoyment of human rights by those born with albinism.

*Mumbi Ngugi is an Advocate of the High Court of Kenya and Managing Trustee of the Albinism Foundation of East Africa.*



# DIF FER ENT IS AWESOME

In the African setting, giving birth to a child with albinism is considered a punishment from the gods and culture demands the sacrifice of the newborn. Born with albinism, I was lucky to have my life spared. However, I was abandoned by my 20-year-old mother, who could not bear the burden of society's prejudices regarding my condition. I grew up under the loving care of my granny.

## LET THE WORLD SEE BEYOND OUR SKIN COLOUR

As most people in Kenya, she was ignorant about my condition and the special care it requires. With the best of intentions, she would expose me to the sun unaware of the consequences. As a young child, I used to work in the fields without any sunscreen protection. I would go back home full of painful watery blisters which turned into big freckles. To my granny and the community it was more of a relief as they thought I was too white to be African.

At school I stood out. My school mates would call me demeaning names and follow me singing derogatory songs. Often grown-ups used to walk up to me and press my skin. Some would not even touch me believing that if they did they would get my colour. Deep down, I felt really hurt.

All this has also made personal relationships difficult to forge. You fall in love but your family, friends and the society may not like it. They

will say: You are degrading their family. Some men leave you because they can't stand the pressure. Others will just disappear without a word.

Notwithstanding societal rejection and taboo, some persons with albinism have against all odds grown to become professors, lawyers, teachers, doctors and politicians. We are successful in our own right. But most of us have not been able to rise to our full potential because of societal animosity.

I am determined to put a halt to the sufferings of my peers. Working with *Positive Exposure Kenya*, we use photography as a means of creating awareness and changing perceptions, social attitudes and behaviour towards albinism.

Let the world see beyond our skin colour.

*Jayne Waitheera is a teacher and a social entrepreneur working as the coordinator of Positive Exposure Kenya*

# STILL WE RISE

LGBTI Community Mobilization  
By Nguru Karugu

**O**verall, the situation for sexual minorities in East Africa is a difficult one, preventing them from exercising their basic human rights. In each country no matter how diverse their religion, culture, or traditional beliefs, a common denominator is prejudice against lesbian, gay, bisexual, transgender and intersex (LGBTI) people in all spheres of life.

Arbitrary arrests and detention, harassment by security forces, blackmail and extortion, sexual and other abuse by the police, denial of the right to association, expulsion from schools and discrimination in employment and housing are some of the violations LGBTI persons continue to suffer in their daily lives. Despite the extent of violations, these abuses are rarely reported due to the likelihood of stigmatization and harassment by law enforcement agents. As a result, serious human rights violations against the LGBTI community remain under-reported and undocumented.

Despite this extremely homophobic and transphobic environment, a nascent and determined LGBTI community is emerging that is beginning to challenge the hostility and demand their rights as citizens of the region.

William (not a real name) described how a militia gang came to his home one afternoon in one of Nairobi's neighborhoods. The gang members kidnapped William and his friend and took them to an unfinished building site where they were stripped naked and beaten with construction posts embedded with nails. The thugs had compiled a hit list of names of suspected homosexuals and they threatened to kill William and his friend unless they each paid them Kenya Shillings 550,000 [approximately US\$6,500]. After several hours of beatings, and attempted negotiations by William, a passer by finally alerted the police, who arrested the gang members.

Cases of extortion by members of the public and the police are a common phenomenon. For the most part individuals pay for fear of the consequences of being called a sexual minority. However, as an indication of the changing times, William decided to prosecute his attackers. William—an organizer of a community health group that works with men having sex with men (MSM), including sex workers, around HIV/AIDS concerns—said he had had enough. William showed up in court alone and identified his attackers. Despite pleas from their families for forgiveness he demanded they face the full extent of the law. The suspects are now in custody and their case is awaiting a hearing. William is represented by a lawyer hired by the Gay and Lesbian Coalition of Kenya (GALCK) in conjunction with the Kenya Human Rights Commission. William was forced to find money and move to a different part of the city for fear of further attacks and retaliation for the court action. He however has no regrets and appears in court whenever his case is up for mention. William insists that he is a proud gay man and he has not done anything wrong to warrant these types of attacks and hopefully his action will stop others from doing the same.

The LGBTI community in East Africa like other parts of the world is not homogenous. Transgender, transsexual and intersex people, have a very different experience to lesbians, gays and bisexuals. There is little or no understanding in the entire East African region about what it means to be transgender. There is a common misconception that transgender women are men 'dressing as women' or that they are simply gay. This is not the case, as being transgender is about gender identity and not about sexuality. Even medical personnel are not properly trained to deal with this issue. A few years ago, a transgender person who was suffering from acute depression went to a clinical officer to ask

for a referral to a psychiatrist. The clinical officer, quoting from the bible rather than a medical text, advised that the problem was caused because the patient was not living by God's word and that she should not sleep with other men. She left at that point, and did not seek further help until a year later after experiencing suicidal thoughts. As a result of this and many other negative experiences, a group of transgender individuals have formed the first transgender and intersex advocacy group in Kenya. The organization is spearheading education and advocacy activities and slowly challenging national policies that affect the lives of the transgender and intersex community.

In 2009 in Uganda, a draconian Anti-Homosexuality bill was proposed, also known as the Bahati bill after the Member of Parliament who tabled it. To the offences already contained in the penal code, it proposed to add a slew of new ones including homosexuality, aggravated homosexuality (which carried the death penalty), the promotion of homosexuality, and failure to report homosexuals to the state. Further, article 18 of the bill would have required the "nullification of ratified international treaties that are inconsistent with it."

The Civil Society Coalition on Human Rights and Constitutional Law has made representations to the Ugandan Parliamentary Committee charged with reviewing the Anti-Homosexuality Bill on the grounds that it violates provisions of international human rights law and the Ugandan constitution. The coalition is made up of Ugandan gay rights activists and civil society allies that oppose the hate speech, discrimination and violence directed at sexual minorities by Ugandan politicians, churches, and the media. Twice, this controversial bill has lapsed without being passed when the parliamentary session closed.

Denying people fundamental human rights can mean the difference between life or death. The African Centre for Treatment and Rehabilitation of Torture Victims (ACTV) based in Uganda has provided medical services to persons who have been tortured by state security forces on suspicion of being homosexual.

In 2009, Brian Pande, a 21-year-old gay Ugandan man, and Fred Wasukira, a transgender person, were arrested as suspected homosexuals. They were held in police cells for 11 days before being charged with having 'carnal knowledge against the order of nature'. Sexual Minorities Uganda (SMUG) organized legal aid and court bail for the two accused, but they were unable to process Brian's case due to lack of documents. Brian was badly beaten by the police while in custody and upon his release died shortly after 'of unknown causes' in hospital while awaiting trial. It is widely believed that his death is connected to the injuries sustained to his head while in police custody.

In recognition of the rights to privacy, human dignity, and protection from inhuman treatment, a Kampala court ordered the Ugandan magazine, *The Rolling Stone*, to compensate individuals affected by a headline story in which the faces, names, residences and other personal details of alleged homosexuals ran alongside the headline "Hang Them." The January 2011 High Court judgment also restrained the paper and its employees from any further publication of such articles inciting violence against gay people. Sadly, the injunction did not come soon enough for David Kato—a prominent Ugandan gay rights activist whose photo was featured—found bludgeoned to death in his home near Kampala in February 2011. Kato's death was a huge loss to the human rights community in East Africa.

The virulent campaign seeking to strip the LGBTI community of basic human rights through hate speech, discrimination and violence emanates heavily from some Christian religious quarters, with strong support from US based evangelical churches and religious leaders. Three American evangelicals: Scott Lively, Caleb Lee Brundidge, and Don Schmierer, held a three-day conference on homosexuality in Kampala, Uganda in March 2009. A video from the conference reveals that Lively believes gay people to be behind the Nazi holocaust and shows him defining gay people as child molesters (<http://www.youtube.com/watch?v=amVnWtpR1is>). Such religious extremism, misinformation, and intolerance for others is thankfully offset by other more constructive religious efforts in the region to promote tolerance, understanding and inclusion. In Uganda, the United Religions Initiative (URI) Great Lakes Chapter, an Open Society Initiative for Eastern Africa (OSIEA) grantee, is piloting a project to promote inter-religious dialogue to promote social cohesion and peace.

These few examples are an indication that LGBTI individuals and groups are beginning to lay claim to their rights as citizens, and that a brave and determined movement seems to be in the offing in East Africa. Equally encouraging is the June 2011 resolution adopted by the United Nations Human Rights Council expressing grave concern and mandating a global study to document the serious acts of violence and discrimination on the basis of sexual orientation and gender identity.

*Nguru Karugu is Executive Director of Public Health Innovations focusing on public health and human rights concerns affecting sexual and gender minorities*

“*The Karimojong pastoralists who occupy the area have literacy and life expectancy levels that rank starkly below the national average, with most living below the poverty line*”

# Karimojong

# Pastoralists

021 | AMPLIFYING VOICES

By Lochomin Peter Fred

## The Fallacy of Transforming Karimojong Pastoralists

Karamoja remains one of the least developed regions in Uganda, despite several attempts by the Ugandan state and humanitarian agencies to transform the arid, undeveloped area. The Karimojong pastoralists, who occupy the area, have literacy and life expectancy levels that rank starkly below the national average, with most living below the poverty line. These indicators of underdevelopment arise from the long history of marginalisation and exclusion from decision-making processes. The situation has been compounded by the fact that interventions in the region seek to change the mode of living of this pastoralist community without offering any viable alternative to livestock keeping.

The Karimojong pastoralists still live according to their ancestral traditions which revolve around cattle rearing. It is normally the men who take the cattle to graze in either a seasonal grazing area or a grazing reserve, while the women and children stay in a temporary home to tend the household. Due

to the varying seasons in the region, cattle need to be moved during the dry season to wetter pastures to ensure that they have an adequate diet and to maximise their reproduction. During colonial times, the Karimojong land was divided to form the international borders of Uganda, Kenya and Ethiopia. These artificial boundaries cut across the normal grazing routes of the Karimojong, and have since caused conflict across the borders, involving frequent cattle raids and violence.

To the outside world, violence and cattle raiding have become synonymous with the Karimojong, but this insecurity is not a part of the Karimojong's culture. Before their land was divided under colonial rule, the pastoralists frequently raided each others cattle. This was a cultural practice in which raids and counter-raids ultimately resulted in a reasonably even distribution of cattle. This kind of cattle raiding involved spears instead of guns. The guns have come into the region as a result of conflict in the

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neighbouring Somalia, Kenya and Sudan. These days cattle raids are far more violent and the cattle are taken off for sale rather than being moved to a different village. Ekasikout Apaaloculur, at a public meeting for pastoralists in Kangole, described how he was forced to abandon his home due to insecurity in his village where the youth were on a rampage, killing and engaging in rape and robbery. *“My home has become a den of thugs and is not safe for anyone.”*

The response by the state and the development agencies in the region has been to attempt to ‘civilise’ the pastoralists, seeing the solution to the insecurity as development along modern lines. Most times there is little attention given to understanding the unique needs of the Karimojong. Since 1911, Karimojong have always been left out of policy making, planning, and implementation processes. The immediate post independent Uganda governments did not do much to break the chain of bad policing practices which continued to sideline pastoralists and other minority communities in Karamoja from development, hence compromising pastoral productivity.

It is imperative that all stakeholders participate and contribute to programs that concern them. It should be noted that lack

of specialized institutions to inform and advise on issues of pastoralists has resulted in pastoral communities being seen as the problem rather than people with specialized development needs. Therefore, the recurrent practice is that the solution must come from the outside and so they are forced to resettle, to be ‘educated’, to de-stock, and to grow crops and are restricted to moving to neighbouring areas and national parks. Thus all forms of life among the Karimojong are artificially transformed.

Much of the land inhabited by the pastoralists is customary land, as provided for under the Uganda Land Act 1998. This means that the land is owned collectively by the clan, and the clan is responsible for governing ownership, use and inheritance amongst its members. According to a report by SOS Sahel UK, the Ugandan government is seeking to pacify the Karamoja region with a view to promoting foreign investment. In its attempt to disarm the pastoralists, it is riding rough shod over basic human rights. There are reports that a foreign bio fuel feedstock company is already in negotiations with the government to acquire pastoralist land for private agricultural use. The Karimojong do not want to see a repeat performance of the Ugandan government’s forced disarmament programme of 2005 which came under criticism from human

rights organisations, including the UN Office of the High Commissioner for Human Rights (OHCHR), due to the human rights violations committed by the military during this time.

To change the approach of exclusion and non participation of Karimojong communities in development programmes, Refugee Law Project (RLP) established a Research and Advocacy Office in Karamoja region. This office aims to conduct and disseminate research that accurately reflects the complex reality of life in Karamoja. In addition, it aims to provide avenues for local populations to voice their concerns to policy and decision makers. The project works to shift how the Karamoja region is perceived nationally and abroad, and seeks to promote a rights-based approach to any present and future interventions. A rights-based approach would involve putting the human rights of the pastoralists at the forefront of any development programs.

“We are at the receiving end, just like a dumping ground for all; so and so comes, dumps on us, so and so comes, does the same, what do we do my son? We have become a harvesting ground for the so called NGOs, they come here, they deceive us and eat away what is meant for us; we are never made part of the projects they bring.

Most times names of people/households are registered but we get nothing in return; I do not think this is likely to end soon, I appeal to our leaders to protect us from this exploitation” Mzee Lopunoole Zachariya elder at a Kraal near Nakapiripirit Town (July 2010)

The RLP, Changing the Lens (‘CTL’), is premised on the recognition that the Karamoja region and its indigenous population have been marginalized throughout Uganda’s colonial and post-independence history. That marginalization has resulted not only in economic deprivation, but also in the broad perception of Karamoja as a backward place apart requiring different forms of administration until it can “catch up” to the rest of the country. All too often, special development programs, including those promoting disarmament and a sedentary lifestyle, have been constructed in a fashion that undermines the civil, political, and socio-economic rights of the affected populations and engenders resistance and distrust that the state has the best interests of this community at heart.

*Lochomin Peter Fred is Research and Advocacy Coordinator for the Refugee Law Project, Faculty of Law, Makerere University based in Karamoja*



*Whenever we visit our Health Centre II for services, we never access the three health workers reportedly assigned to the unit. Instead, prescription and treatment—including injections—are done by the watchman and porter as though they are trained health workers . . . To make it worse, the opening of the health centre depends on their mood. If they are a little happy, that day the earliest is 10:00am, otherwise they open at mid day and close at 3:00pm. Sometimes they penalize us for walking in after 2:00pm. In that case, we always have to fetch water at least twice for the health workers before we access their services . . .*

*Atim Leah Perpetua, 38 year-old Northern Ugandan woman, expresses her concerns about Abunga Health Centre II at a community dialogue (March, 2010)*

## Women Build A Critical Mass For Change by Eunice Apio

Abunga Health Centre II, just like 142 other health centres with similar conditions, is located in the war-torn area of Lango, northern Uganda. This area is emerging from the devastation orchestrated by the rebel Lord's Resistance Army, which plundered and ravaged northern Uganda for over twenty years. In the aftermath of the war, displaced communities are returning to their home areas to find little or no infrastructure or public services.

Women face incredible burdens to rebuild the fabric of their broken and destroyed families and communities, both physically and psychologically. High rates of male alcoholism, unemployment, and domestic violence are prevalent. Yet, against the odds, women continue to pick up the pieces and rebuild their fragile lives. They shoulder incredible burdens to grow food, fetch water from long distances, and ensure that their children go to school. Living in dire poverty, they receive little or no visible assistance from the state.

Atim's area is populated by an estimated 1,751,050 people, according to the most recent (2002) census data from the Uganda Bureau of Statistics. Of those, 51 percent are females over the age of 15 years.

The destitute health sector is just one example of where the state is falling short in its obligations. The situation is worsened by apathy on

the part of the general public in Uganda which ignores the situation in the north; impunity by local government functionaries who fail to deliver public services; and the chronic failure by central government to deliver beyond rhetoric about the rebuilding of northern Uganda.

Consequently, the ordinary Northern Ugandan woman is facing a three-edged tragedy: post conflict-related vulnerabilities, extreme poverty (the Northern Uganda poverty index was placed at 64 percent compared to 34 percent national average by the Ugandan Economic Policy Research Centre and the Ugandan Bureau of Statistics in 2003) and complete disempowerment.

The government has announced a major Peace, Recovery and Development Program (PRDP) which represents a commitment to stabilize and recover Northern Uganda in the next three years through a set of coherent programs in one organizing framework. All stakeholders including development partners are expected to align their programs in the region to this framework. Post conflict reconstruction efforts have imbibed billions of dollars already. Unfortunately, there is currently little or nothing to show for it on the ground, mainly due to gross mismanagement of funds at managerial levels, the impunity that tirelessly feeds it, and an unquestioning citizenry.

## THE WOMEN TAKE CHARGE

Facilitation for Peace and Development (FAPAD), a non-governmental group based in the Lango region, is actively involved in facilitating empowerment of post conflict communities in line with the PRDP, which also fits within the United Nations Security Council Resolution 1325 on Women, Peace and Security. With support from the Open Society Initiative for Eastern Africa (OSIEA) and the Open Society Foundations' International Women's Program, FAPAD uses the PRDP framework as an opening that can be deliberately harnessed to promote women's economic empowerment and participation in the region's recovery.

This story of change has already started. At the outset, these women discovered that they were largely ill-equipped with skills and information for effective engagement as citizens and drivers for good governance. They are now cognizant that change begins with them. They must create and broaden space for meaningful decision-making at all levels in order to count. Thus, in August 2009, 800 rural women pioneered a deliberate civic empowerment intervention in 20 clusters throughout the region. One year later, these rural women are effectively organizing more women to join them and demand to be heard in decision-making spaces so they can contribute effectively to the recovery of the region.

Through education, dialogues, petitions, and peaceful demonstrations, these rural women have already started to reverse the situation in Abunga Health Centre II among others. There is a growing group of them that monitor compliance of health workers with public service delivery standards and demand for improvement in the health centres. They also carry out close monitoring of primary schools attended by their children to check teacher absenteeism and demand for financial accountability. Furthermore, the women are actively involved in the monitoring and tracking of poverty meant for their areas, including for the construction of roads, schools and water sources. The women have also developed 'home-grown' solutions to respond sustainably to other social priority issues such as domestic violence, which unfortunately remains one of the most prevalent forms of rights violation in the region.

What is left is to consolidate these gains and replicate them further so we can quickly multiply the figures to 800,000 enthusiastic strong-willed women working for concrete change in Lango region.

*Eunice Apio is the Director of Facilitation for Peace and Development (FAPAD) based in Northern Uganda.*



# LOCKED AWAY:

By Emma Day

## AUTISM IN KENYA

In many homes throughout Kenya, children are locked away, hidden from society, and often even tied to furniture to prevent them from escaping. These are children with autism, who like other children born with intellectual disabilities in Kenya, are generally not understood by their families and communities, resulting in fear, stigma, and discrimination.

There is very little awareness regarding intellectual disabilities in Kenya, and traditional beliefs prevail that autistic behaviour is a sign of witchcraft or a curse, or is simply the result of bad parenting. Autism is a developmental disorder that begins at birth, and can be characterized by a lack of interest in socializing, challenges with verbal communication, strong impulses, and bizarre or repetitive behaviours.

The Kenya Association for the Intellectually Handicapped (KAIH) reports that in parts of Nyanza in Western Kenya there is a traditional practice whereby the bodies of people who die in circumstances that they believe are 'unclean', are given a 'cleansing ceremony'. This ceremony often involves forcing a person with an intellectual disability to have sex with the corpse.

People with intellectual disabilities in Kenya are still struggling to access basic human rights such as access to education and health care services. They are marginalised in society, and denied the right to full citizenship and control over the decisions that affect their lives. Under the Convention on the Rights of People with Disabilities (CRPD), which has been ratified by Kenya, the intellectually disabled are entitled to the full spectrum of human rights afforded to people without disabilities.

Brian is 24 years old and he has autism. After leaving primary school Brian went for vocational training where he was taught the basics of using a computer, but he did not receive any certificate. After that he went for an 'attachment' in a computer shop for three months, but he was not given anything meaningful to do and he spent most of his time playing computer games and dusting. The attachment led to employment in an electronic shop near Brian's home where he was hired to do radio repairs and he was told that he would be given training. This job did not work out well as the other staff ganged up on Brian and isolated him, and he was never given any training. Instead Brian was expected to either clean the office, or sit and occupy himself. Brian left the job and now he spends two days a week at KAIH learning office skills, and the rest of the time he sits at home

alone watching TV and listening to music. Brian would like to work in a hospital or a laboratory in the future, but he does not see any hope in that because he feels that people do not understand the way he is. He resents being so dependent on his mother for everything, and he longs for more independence.

For Felicity Ngungu whose grandson is autistic, there was no information available regarding autism or any kind of developmental disability when her grandson was born 28 years ago. When she first noticed that her grandson was behaving differently to other children she took him to several doctors, all of whom told her that he was mentally retarded, and she should take him to a mental institution. Felicity managed to find out about autism through a visiting professor from the United Kingdom and from relatives in America, and with this information she established the Autism Society of Kenya (ASK). ASK now receives support from the Open Society Initiative for Eastern Africa (OSIEA) and OSI's Mental Health Initiative. ASK provides support to families of children with autism, and helps them to access assessment and diagnostic services. Through her work with ASK, Felicity managed to obtain funding for a special unit for children with autism at City

Primary School in Nairobi. Generally even where children with intellectual disabilities have been integrated into the mainstream school system, they will not graduate from Standard 8 with a certificate like the other children. When they reach Standard 8 they are told to go home during exam time and are denied the right to sit the same examinations as their peers because the schools do not want to lower their grade average for the year. Without a certificate, it is impossible to progress to secondary school.

Poverty and intellectual disability are *chanda na pete*; they go hand in hand. Disability can create poverty in families due to expense of medication, transport fares, and caregivers' time. Disabilities generally become worse without resources, creating a cycle of poverty and increased disability. For people with disabilities the costs associated with accessing education are very high, and often families do not see the value in educating a child with disabilities. It is common that a child with disabilities is the last one in the family to go to school or to be bought clothing because the other siblings will be given priority.

Both ASK and KAIH, another OSIEA grantee, report that access to health services

is the most difficult issue for anyone with an intellectual disability, including people with autism. Health personnel are not sensitive to these issues. Medical professionals routinely tell parents to take their children with autism to mental institutions because 'they are mad'. KAIH carried out a survey which showed that most people with intellectual disabilities die before they reach the age of 30. Often doctors disregard treatable physical symptoms in people with intellectual disabilities, which leads to unnecessary progression of disease, and in the worst case scenario, death. During a needs assessment of 122 people with intellectual disabilities carried out by KAIH, 50 people were found to have untreated sexually transmitted diseases. One girl was pregnant and HIV positive and was not aware of either condition. Generally society and the professionals who come into contact with people with disabilities perceive them not to be sexually active. This assumption is somewhat ironic, given the high prevalence of sexual abuse amongst children with developmental disabilities.

A coalition of health and human rights organisations, including the Open Society Foundations, is launching the Campaign to Stop Torture in Health Care. The kind of contact that people with intellectual

disabilities in Kenya invariably have with health facilities is often characterised by insults including allegations of 'madness', forced institutionalisation, or denial of treatment. This amounts to cruel, inhuman and degrading treatment, and in some cases, torture. Visit [www.stoptortureinhealthcare.org](http://www.stoptortureinhealthcare.org) for more information and to take action to end abuses in health care.

People with autism in Kenya, like other people with developmental disabilities, remain at the very margins of society. Kenya's new 2010 Constitution represents an opportunity to be harnessed by advocates and activists to promote their rights. Thanks to the dedicated advocacy of organizations such as ASK and KAIH, attitudes are slowly beginning to change. The Kenya National Commission on Human Rights, the state rights body, launched the Disability Focal Point in January 2011, a project that includes advocacy related to people with disabilities. In spite of this, there is a long way to go before people with disabilities come anywhere close to achieving equality in Kenya.

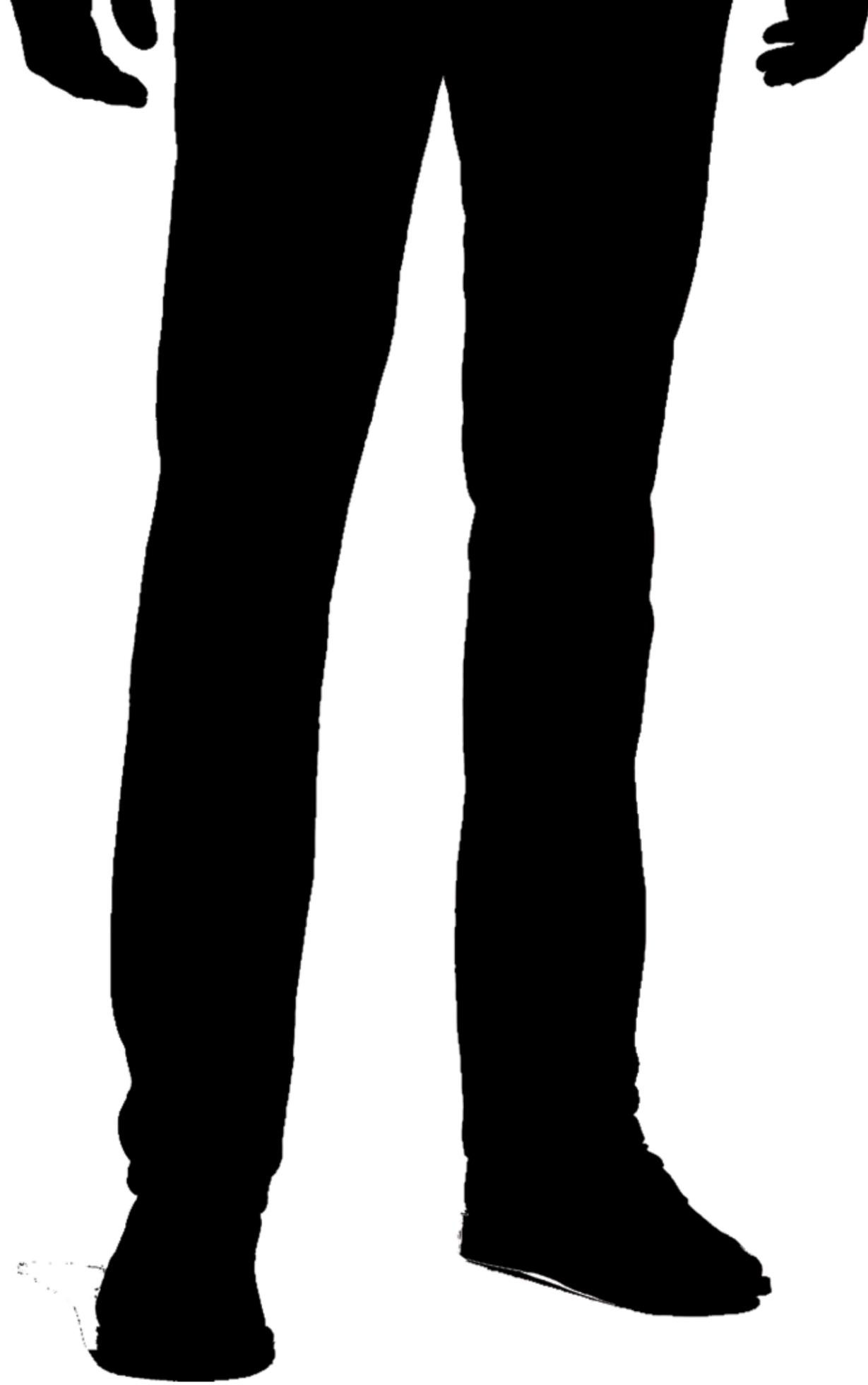
*Emma Day is a freelance lawyer based in Nairobi, Kenya*



*People with intellectual disabilities in Kenya are still struggling to access basic human rights such as access to education and health care services.*



encouraging informed  
dialogue on  
*public debate*



# LITTLE PEOPLE

Dwarfism refers to a group of conditions characterized by shorter than normal skeletal growth (height below 4 feet 10 inches). There are over two hundred conditions that can lead to dwarfism, each with its own distinct features.

RISING VOICES: DWARFISM | BY ANNET NAKVEYUNE

Dwarfism is a highly misunderstood condition with numerous social, medical and environmental challenges for those individuals affected with it. Dwarfism refers to a group of conditions characterized by shorter than normal skeletal growth (height below 4 feet 10 inches). There are over two hundred conditions that can lead to dwarfism, each with its own distinct features. The characteristic these types of dwarfism have in common is a significantly short adult height compared to the average.

For individuals affected with dwarfism, commonly referred to as little people, discrimination starts at home. They experience rejection by their immediate families especially from fathers and paternal relatives. Mothers are invariably blamed and abandoned when a dwarf child is born in a family.

Perhaps surprisingly at the time of writing, all the mothers who are little people at Little People of Uganda (LPU) had children with

average height men. Jennifer says that men produce children with little people, but they do not want to marry: *“Our relationships only happen in the dark. They deny children they produce with us because of fear of ridicule and harassment by their families and peers.”* For those whose fathers “accept” them, little people still face challenges of finding sincere acceptance and integration into their families. For example, for one member, whenever his father was asked how many children he has, he would say: *“I would be having five but one of them is invalid.”* This means that this person was treated as less of a human being by his own father. Zziwa who is a little person spent all his childhood confined in a cage because his father feared to be ridiculed by neighbors and peers over his abnormal son.

Because of misconceptions and stigma, the majority of little people are not taken to school. Parents not only doubt the intellectual potential of their dwarf children but also believe they cannot get professional

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Our relationships only happen in the dark. They deny children they produce with us because of fear of ridicule and harassment by their families and peers

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jobs. This is linked to a widely held belief that dwarfs have personality disorders and are only good for entertainment, and indeed that is where the majority are employed. Little people are often told to their face by prospective employers that they cannot do the work physically or they cannot earn respect from clients and partners. Children affected with dwarfism are not spared; they are used as clowns in the circus. In addition, some mainstream schools refuse to enroll little people, advising parents to take them to special needs schools. However, just like adult dwarfs, children affected with dwarfism do not generally require special treatment. What they need is some reasonable accommodation to enable them to adapt to a society mainly designed for average-height people. For example in school they can be provided with step-stools to enable them to access books from library shelves, and reach toilets etc.

Budalah failed to continue with school due to numbness in his legs caused by the size of the chairs: *“The result was that when I stood up, I would fall and children would get scared saying I am epileptic. They would shun me”*. Just like other disability groups, little people have challenges of accessibility to buildings and transport systems, especially buses. This limits them from exercising their full potential. A recent study carried out by the LPU found that most local

government by laws in Uganda that relate to education, transport, libraries, and health do not have any provisions related to the reasonable accommodation of people living with disabilities. Under the Convention on the Rights of Persons with Disabilities the Ugandan government has a duty to ensure equal access to these services for people living with disabilities, including little people.

In Ugandan society, little people are treated as “public property” and everybody feels they have the liberty to comment, ridicule, insult, or assault a little person. It is not uncommon to find people crowding, laughing and calling names when a little person is passing by. A member of LPU was forced to quit his job as a merchandise hawkker because people would crowd around him, stare, laugh, and shout names. Furthermore, although persons with disabilities in general terms have gained recognition in Uganda, little people are discriminated against even within the disability community. It should be emphasized that like other people in society, little people need to be respected and loved. They need to be recognized as one of the minority disability groups.

The abuse can often be physical as well as verbal. Sexual abuse is common amongst little people who are seen as easy targets

because of their small physical size and because they are often not taken seriously by society. Nakayiwa was repeatedly sexually abused by boys and men because she could not defend herself: *“They would waylay me when my guardian sent me to the well to fetch water or when I went to collect firewood. They would undress me saying they want to ascertain whether I look like other women. They would rape me and run away. My guardian would not listen to me when I told her about what I was going through.”*

Little people also face danger to their lives, particularly at an early age, as it is not uncommon for families to kill babies born with dwarfism. Budalah had a secret relationship with his girlfriend of average height, and his girlfriend fell pregnant. When the girl’s mother found out that Budalah was the father she strangled the baby and married off the girl to a man of average height. A similar sentiment was expressed to Kaggwa when his two sisters died, and his aunt told him: *“how I wish it was you Kaggwa who died because you are useless and just a disgrace to the family but instead God has taken the normal and useful children”*.

Like many people living with disabilities, little people often find obstacles to their access to health care. Medically, there are a number of complications associated with

the different forms of dwarfism, for example, for a condition like achondroplasia, which is the most common form of dwarfism, additional symptoms include sleep apnea, ear infections and hearing difficulties, hydrocephalus, kyphosis in children, spinal stenosis, back pain, loss of grip etc. These challenges mainly require specialized care, which is very limited, or for some, non-existent. In addition, available medical services are not accessible to little people. Expectant mothers face challenges when accessing antenatal services. Putting adjustable beds or at least availing stepstools in hospitals can help little people to access proper medical services. Encouraging specialized training and research on dwarfism will improve the health status of little people. Under the disability convention, little people have the right to equal access to the same standard of health care services as others.

In reality dwarfism is only a disability because of society’s response to the condition. Little people are capable of living full and valuable lives and have a great deal to contribute to society, but they require reasonable accommodation and social adjustment to do so.

*Annet Nakyeyune is the Founder and Director of Little People of Uganda*

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**Little people also face danger to their lives, particularly at an early age, as it is not uncommon for families to kill babies born with dwarfism**

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I am from Northern Bahar al-Ghazal ... We are seven people at home. My life is miserable because there is no work and no money. I feel lost. The people where I live are hesitant and scared. They don't know till now what to do because there is no decision from the government. They are afraid because there are many problems which will face them in South Sudan. We would like the Government of Sudan and the Government of South Sudan to explain our status and if we should go or not. I don't feel secure. I think that we may not have security whether we go or stay because there are many problems in South Sudan and the people here [in North Sudan] may not accept the result of separation.

- A South Sudanese man living in Mandela camp in Khartoum

## THE STRUGGLE FOR CITIZENSHIP IN SUDAN

BY JOANNA OYEDIRAN

In January 2011 the people of South Sudan voted in overwhelming numbers for secession. On July 9, 2011, the Republic of South Sudan, carved out of the Republic of Sudan, came into existence. What will be the legal status of the estimated 1.5 million Southerners, many of whom fled to the North during the long-running civil war, as well as the thousands of Northerners who live in South Sudan?

What criteria will be used to determine whether Sudanese citizens retain the nationality of the Republic of Sudan or become citizens of the new state of South Sudan?

Despite months of negotiations, the Government of Sudan and the Sudan People's Liberation Movement failed to agree what to do about citizenship by July 9. The parties were therefore unable to give clear messages to those affected about their future legal status so that they could make informed decisions. By July 9, many Southerners who had been living in the North had already moved south, often enduring harsh conditions on their journey. At the start of May this year, relief agencies believed that nearly 300,000 Southerners had returned to South Sudan since the autumn of 2010. They estimate that as many as 800,000 Southerners will return south in 2011. According to the United Nations High Commission for Refugees (UNHCR), many returnees say that their main reason for moving to the South at this time is because of concerns about their citizenship status if they remain in the North. Returnees frequently refer to the words of the Government of Sudan Minister of Information, Kamal Obeid, who stated on national

radio last year, "They [the southerners] will not enjoy citizenship rights, jobs or benefits, they will not be allowed to buy or sell in Khartoum market and they will not be treated in hospitals ... We will not even give them a needle in the hospital." Admittedly other Sudanese government officials have indicated that Southerners will be protected, but these statements have not erased the fear generated by the minister's threats.

Every country has a sovereign right to decide the terms for nationality. However a state does not have *carte blanche*. International human rights law requires states firstly to guarantee that the criteria for determining citizenship are not discriminatory, including on the basis of ethnicity and sex, and secondly, to do everything possible to avoid people becoming stateless. Although it may be the gut feeling of many Sudanese that citizenship in the two successor states of Sudan and South Sudan should be conferred on those seen as having ancestral links to either the North or the South, it is only a minority of African states which base their criteria for citizenship on ethnicity. In international law the preferred option would be to confer on a person the nationality of the state where he is habitually resident.

Unable to agree on citizenship by July 9, the parties are resorting to unilateral measures. In June 2011, the South Sudan Legislative Assembly passed the Nationality Law. The law states that a person shall be considered a South Sudanese national by birth at the time the law comes into force if s/he a) has a parent, grandparent or great grandparent born in South Sudan on the male or female line; or b) belongs to one of South Sudan's indigenous tribal communities



This separation is it geographical separation or human separation?

- A South Sudanese man living in Mandela camp, Khartoum, North Sudan

(undefined); or c) was domiciled in South Sudan from the date of Sudan's independence or d) acquired or maintained the status of a South Sudanese national by uninterrupted domicile. It is a major achievement that the law does not discriminate between men and women in relation to acquisition or bestowal of nationality. Although ethnicity is one basis for acquisition of South Sudan citizenship, the law is quite generous in defining who is a citizen by birth and includes domicile as a basis. As for Sudan, at the time of going to press the situation was unclear, but over the past months, statements by Sudanese government officials suggest that Sudan is considering stripping people deemed to be South Sudanese nationals of their Sudanese citizenship, even though the interim constitution of Sudan allows Sudanese citizens to hold dual nationality. Such a move would be discriminatory and opens the doors wide for some people who fall between the cracks to end up stateless.

Beyond international law, there are many reasons why an inclusive definition of citizenship in both Sudan and South Sudan would be a healthy option. A state's definition of how and on whom it bestows citizenship reflects the core values of that state. A state which privileges ethnicity in defining citizenship risks becoming a place where ethnicity is privileged in the allocation of resources and power. A state with a more inclusive approach where those people who have a strong connection to the state, regardless of their ancestors' place of origin, can be citizens may find it easier to transmit these values into the domain of wealth-sharing and power-sharing.

Joanna Oyediran is an OSIEA Program Manager

A photograph of a wooden door set in a stone wall. The door is made of vertical wooden planks and is slightly ajar. The wall is made of rough, textured stone. A white text box is overlaid on the right side of the image, containing the text "expanding access to information".

expanding access to  
*information*



# ZANZIBAR WOMEN LAWYERS

## AN EMERGING FORCE

BY EMMA DAY

Squeezed into a small room in the Attorney General's office sit four Zanzibari women lawyers who work as state attorneys by day, and volunteer for Zanzibar Female Lawyers Association (ZAFELA) in their free time. Hamisa, Fatma, Amsa and Chai are young lawyers. They are graduates of the University of Zanzibar which only opened its doors to law students ten years ago. Before the university came to the Tanzanian island, there were only three women lawyers in Zanzibar, but now there are in the region of seventy, and these women are demanding change.

Over 90 percent of Zanzibaris are Muslim, and the legal system in Zanzibar is split between the secular courts and the Muslim

Kadhi courts. In cases of family law, Zanzibaris take their claims to the Kadhi courts. The Kadhi courts have jurisdiction where both parties profess to be Muslim, and they deal exclusively with matters such as matrimonial disputes, child custody, maintenance issues, and inheritance. Appeals from this office go to the Kadhi Appeal Office and then the High Court of Zanzibar.

Women who seek justice in the Kadhi courts, like in any legal system, find limitations since some judges interpret the Koran in ways that do not recognize women's equality before the law. ZAFELA helps the numerous women who come through their doors to demystify the process

and to ensure that the rights of their women clients are enforced.

Fatma was 16 years old when she got married to a violent and abusive man 19 years her senior. Now aged 19 Fatma filed for divorce last year. He refused to grant her a divorce and he took custody of their two year old child. Fatma took her case to the Kadhi district court where she was granted a divorce and won custody of her child. But her husband appealed and the Kadhi appeal court told her that she must return the dowry her husband paid to her father before she can be granted a divorce, and she must return to the district court to obtain custody of her child. Fatma says that she will pay back the dowry, but only if her husband

agrees to comply with his legal duty to pay maintenance. She has not seen her daughter since her husband took her away over a year ago. ZAFELA is helping Fatma to appeal to the High Court.

Because the university only came to Zanzibar in the past decade, none of the practicing magistrates or Kadhis in the primary courts of both the secular and Muslim systems have had any formal legal training. In fact, many of the Kadhis have had no schooling. They have studied the Koran in depth, but do not have much knowledge on secular legal principles.

Perversely, lawyers are not permitted to appear in the primary courts in either legal system, perhaps because they have more legal knowledge than the presiding magistrate or Kadhi. The lawyers at ZAFELA must work behind the scenes to advise their clients about how to most effectively represent themselves. It is possible to hire a paralegal instead of a lawyer. A paralegal is someone with some limited legal knowledge, but presumably not enough to pose a challenge to the judge. It is only in the higher courts that the lawyers are allowed to represent their clients themselves.

Hamisa says that it is difficult to use the judgements from the primary Kadhi courts because there are few or no details of the issues presented or the reasoning for the decision. The Kadhi courts are officially required to apply the civil procedure rules, but this does not happen in practice due to lack of training. This makes it challenging for ZAFELA to represent their clients when they are not allowed into the court room to hear the issues raised or the rationale for the decision, and no written decisions are provided afterwards. ZAFELA is currently reviewing the Kadhis Court Act and is making a recommendation that the Kadhis should be required to have at least a first

degree in law, including Islamic Sharia law. The law does not currently allow women to be Kadhis, but Jamila, ZAFELA's coordinator, says that this is just a matter of Koranic interpretation. There is no specific section in the Koran which prohibits women from being Kadhis, but it is men who have chosen to interpret it this way. There are female Kadhis in many other countries such as Palestine, Indonesia and Malaysia.

**Jamila is clear that culture and religion are being confused in the interpretation of Islamic law**

In the judicial system, the Kadhi must look first to the Koran, and if he does not find his answer there he must look to the Prophet Mohammed's teachings in the Hadith. If he still cannot find a clear solution he can consult a Shia scholar who can help to apply Islamic reasoning. In Zanzibar all of the Shia scholars are also men, and they are of the old school generation. One of the female lawyers said that the Koran doesn't actually say that you have to wear a head scarf; rather it says that you must cover your chest, and it also does not say that only men

can be Kadhis; it says that men must be the 'leaders'. But the men say that the Koran also says that women are not supposed to raise their voices in public or question the Shia scholars (who are all men) so the argument stops there. Jamila is emphatic that Islam is fundamentally an equitable religion, and that progress is possible for women without removing anything from their religion.

The progress being made by ZAFELA is tangible. Eight years ago when Jamila was at university gender issues were not included as part of her legal studies. Law students now take courses in gender equality and they also study the Kadhis system and critique it in class. ZAFELA have managed to establish themselves as stakeholders in women and children's legal issues in Zanzibar, so that now whenever legal changes that affect women and children are introduced ZAFELA are consulted by both government and civil society, and their voices are included in the debate. In April 2011 ZAFELA aired two hour-long shows on live Zanzibar TV, telling the public about their research on the Kadhi system, and encouraging debate. The public was able to call in to discuss the issues. Jamila said that although this was a very positive dialogue, there were still callers who accused ZAFELA of being against Islam, telling them that as women they should not be questioning their male leaders, and that to do so is to question Islam itself.

Public debate is where change begins, and it represents substantial progress to have women leading public discussion on this issue. The lawyers at ZAFELA are hopeful that the Kadhi system, as well as Zanzibari society, will become more receptive to providing women full access to justice within the next few years.

*Emma Day is a freelance lawyer based in Nairobi, Kenya*

# PASTORALISTS RIGHTS

IN TANZANIA by Emma Day

THE GRAZING LANDS OF THE PASTORALISTS ARE INCREASINGLY VIEWED AS A HIGHLY PROFITABLE PUBLIC RESOURCE THAT CAN BE USED FOR TOURISM AND FOREIGN INVESTMENT REVENUES. THE CONCEPT OF COMMUNAL LAND OWNERSHIP HAS BEEN UNDER THREAT SINCE THE INTRODUCTION OF LAND TENURE POLICIES

In Tanzania, there are approximately 1.5 million pastoralists spread among five pastoral groups and communities, with the Maasai being the largest and most well known. Pastoralists have always travelled with their cattle, using different pastures on a rotational basis depending on the season, which guarantees the cattle access to seasonal water holes, and also allows the land to recover between grazing periods. When the cattle are limited to one area, they become vulnerable to drought and diseases.

The concept of communal land ownership has been under threat since the introduction of land tenure policies inherited from the British colonial period. Land tenure laws continue to struggle to effectively protect the pastoralist way of life. The result is a confusing patchwork of land laws in most East African countries that are often disregarded in practice.

With population growth, land pressures, foreign investment, and land laws that favour

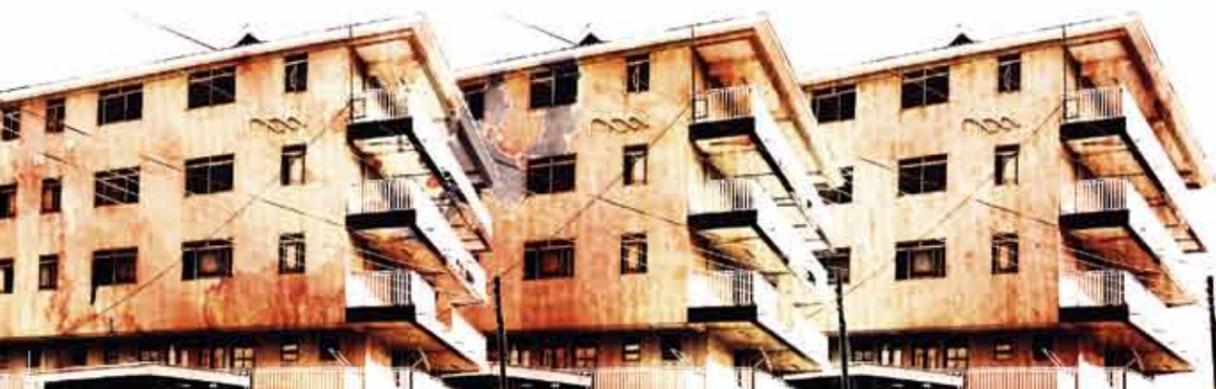
title deeds over communal land, pastoralists have found their way of life under attack by governments and the general public in East Africa. For a long time, East African government policies tended to overlook or even disparage the pastoralist way of life. This was driven in part by adherence to a long-discredited ecological theory that claimed that the pastoralist lifestyle was damaging to the environment and advocated for the resettling of pastoralists in static villages in the name of conservationism.

In Tanzania, 28 percent of the land is protected under different categories, and most of this is originally pastoralist land. The highest category of protection afforded by the law is to national parks, and ten out of fourteen of Tanzania's national parks, most of which were created during colonial times, were originally pastoralist land.

However, the grazing lands of the pastoralists are increasingly viewed as a highly profitable public resource that can be used for tourism

and foreign investment revenues. For the government there is a lot of money to be made by evicting the pastoralists from their land so that it can be turned into nature reserves for tourists, or allocated to private investors in exchange for a fee. Paradoxically, Tanzania relies heavily on pastoralist and agro-pastoralist herds for most of its meat and milk. The contribution of pastoralist herds to the national economy is unparalleled, accounting for over 40 percent of the national GDP.

In 1992, the government allocated land in the Loliondo region to a hunting company operated by the Ortello Business Corporation. In flagrant disregard for the livelihoods of the pastoralist people who have lived on the land for centuries, the communities were subjected to forced evictions and terrorised by law enforcement authorities. Homes were burned down and livestock forcibly removed from the area and sent to very dry areas during the dry season without grass and water, causing massive death. With time, the pastoralists of



Loliondo have gradually returned unofficially to their land and are starting to rebuild their lives. But the future is uncertain.

The Pastoralists Indigenous Non-Governmental Organisations (PINGOS) forum is a membership platform of approximately forty pastoralists and hunter gatherers NGOs. The organization seeks to expose and widely disseminate information on human rights abuses carried out against pastoralist communities. The PINGOS forum works closely with the Land Rights Research and Resources Institute (LARRI / Haki Ardhi), a Dar es Salaam based nongovernmental organization (NGO). The two organizations in partnership with the Legal and Human Rights Centre (LHRC), the Ngorongoro NGO Network and the Registered Trustees of Ujamaa have recently filed a constitutional case in the High Court of Tanzania seeking an order to stop the government and the Ortello Business Corporation from carrying out further evictions and human rights violations in Loliondo. The aim of the court case is to establish that the land belongs to the pastoralists. At the time this article was written, the verdict remained uncertain since the Tanzanian courts do not have a history of defending pastoralists. Private investment is regarded as a public interest in Tanzania, therefore land whether belonging to a pastoralist or a peasant can be acquired on such a basis, and the judges have generally not chosen to interpret the law in the pastoralists' favour.

The evictions in Loliondo are only part of a catalogue of evictions of pastoralists from

their land in the past few years since President Kikwete came into power. Through the highly publicized "Land Bank" system, vast tracts of pastoralist land have been given away in this manner to be turned into nature reserves for tourists, or allocated to private investors for various development projects.

Between October 2006 and May 2007 the government forcibly evicted pastoralists in the Mbarali area after their land was gazetted as a conservation area. During the evictions people were beaten, families were separated, leaving children, women and the elderly without protection and food. Many pastoralists were robbed of their cattle, and incurred heavy fines for alleged environmental damage. The authorities started capturing livestock from pastoralists and held them in confined areas, fining owners before their livestock were released. Government authorities in Mbarali district created a system whereby pastoralists were forced to sell livestock at the lowest prices, way below market rates. Corrupt government officers took advantage of the lower prices to buy livestock, and demanded bribes from pastoralists at different livestock check points. The pastoralists resisted the move for eviction by filing a case with the High Court of Tanzania, a case still to be ruled on.

According to the PINGOS forum, the Tanzanian Parks Authority (TANAPA), a government agency, was reported to have set aside several million dollars for the compensation of victims of the Mbarali evictions. However, most of this money was siphoned off by corrupt bureaucrats and

never benefited the affected pastoralists. The organization is urging the Prevention of Corruption Bureau (PCB) to take purposeful steps to investigate allegations of corrupt practices in the implementation of the eviction process in Mbarali.

Haki Ardhi and PINGOS also plan to implement a project to build the capacity of the pastoralist communities to document and respond to the human rights abuses they have suffered. Pastoralists across various communities will participate in guided dialogues during which they will be given information regarding human rights and the law. It is hoped that the project will empower the pastoralist communities with the knowledge and skills to organize themselves to successfully make demands of their local government representatives. Haki Ardhi and PINGOS also plan to lobby the government to improve existing laws and policies which currently restrict the pastoralists' land rights. According to Haki Ardhi, the community empowerment approach is critical because change needs to come from those affected.

The organizations view the ongoing public debate on a new Tanzanian constitution as a window of opportunity. It is hoped that through an inclusive constitutional review process, parliamentarians will be able to draft a new constitution containing improved provisions on land rights that will explicitly protect the rights of pastoralist communities.

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eradicating discrimination  
and stigma against socially  
*marginalized groups*

# SECOND CLASS CITIZENS

BY EMMA DAY

## THE NUBIANS

Zam Obed has lived her whole life in Kibera, Nairobi's largest informal settlement. Being Nubian, she is a descendant of a Muslim community from the Nuba mountains of central Sudan, who were brought to Kenya by the British to serve in the colonial armed forces. Following their demobilisation, the British made no provisions to repatriate the Nubians to Sudan, or to formalise their rights to land in Kenya. Instead the Nubians were allocated 4,197 acres of land in the Kibera area of Nairobi, where they were permitted to live, but without any formal rights to citizenship. This is where over 100,000 Nubians remain to this day, although their land has since been reduced to less than 400 acres of predominantly slum area. The government does not recognise the Nubians' rights to their ancestral land in Kibera, viewing them as squatters on government land.

Zam says that the land issues suffered by the Nubians in Kenya stem from their problems with identity. Under the Registration of Persons Act every Kenyan citizen must apply for a national identity card when they turn 18, or otherwise face a criminal penalty. For most Kenyans this is a straightforward process, but Nubians must go before a vetting committee consisting of the local chief, the Divisional Officer, the National Security Intelligence Service, the Criminal Investigations Department, and a panel of local elders, who will decide whether to accept the application. Most Nubians are entitled to Kenyan citizenship under the Constitution, because like Zam, the majority were born in Kenya as were their parents and grandparents. The presumption that

Nubians are not citizens is unfounded and discriminatory. According to a recent study by the Open Society Justice Initiative (OSJI), 37 percent of Nubians in Kenya have no documentation at all and others obtained documentation only after significant effort. Zam was lucky because her father knew someone at the District Office, and therefore she passed the vetting process and obtained her card quickly.

Apart from the symbolic importance of the national ID card as an indication of citizenship, the restrictions faced by Nubians in accessing these documents are cutting them off from active participation in society as Kenyans. The ID card is a passport to the full spectrum of rights enjoyed by other Kenyans including employment, education, the right to vote, to open a bank account, to travel, to purchase property and to work in the police or the armed forces. It also affords protection against police harassment and arbitrary arrest. In short the ID card equals citizenship, and without it the Nubians are rendered effectively stateless, in violation of international law.

In spite of her father's connections, Zam was not so lucky when she applied for her passport. In 1997, in recognition of her academic success, Zam was awarded the opportunity of a lifetime; a scholarship to study at a university in the U.S. Excited about her future prospects, Zam immediately applied for a passport, but after waiting for several months she received a letter saying that she did not qualify to be a Kenyan, but no reasons were given. Zam then received another letter



saying she needed to provide proof of her citizenship in the form of her birth certificate, her national ID card, and her two school leaving certificates. Zam sent off all of the information and after another month she called to follow up because she was becoming nervous that she might miss the deadline to take up her scholarship. She was told that unfortunately her file had been lost and she would need to apply again. Demoralised, Zam gave up on her passport application.

In 1999, Zam's friend advised her to knock on the door of the principal immigration officer. Her friend was a tribesman of the officer and was able to get her into his office. The officer was taken aback by Zam's courage in coming to his office. He made one phone call, and within seven minutes Zam's file, which she had been told was lost, miraculously appeared on his desk, and he referred Zam to his deputy to help her. The deputy sent her to the officer in charge of 'Muslims and Aliens', who gave Zam an onerous list of 17 documents to produce. Somehow Zam managed to gather the requested documents and she returned the next day, to the officer's astonishment. The deputy officer had no choice but to issue her with a passport on July 30, 1999. The success was bitter-sweet for Zam as she had obtained the coveted passport, which according to OSJI only 2 percent of Nubians possess, but her scholarship offer had expired on July 20, 1999.

Speaking to Zam you immediately get a sense of the strength of her character. Now aged 39 and the mother of two children, Zam has never left Kenya, having lost out on the travel and educational opportunities offered to her in her youth. Zam's hopes are now strong for her children's future, and there are signs that things are changing in Kenya for Nubians of her children's generation. In a landmark ruling issued on March 25, 2011, the African Committee of Experts on the Rights and Welfare of the Child in *Nubian Minors v. Kenya*, stated that Kenya is in violation of the rights of Nubian children to non-discrimination, nationality and protection against statelessness. The case was brought by the Nubian children through their counsel, OSJI and the Institute for Human Rights and Development in Africa (IHRDA). This is the first time ever for the Committee to make a finding against a State in relation to children's rights, which makes this an even more significant success for the Nubian community.

In January 2011 Muslims for Human Rights (MUHURI), an Open Society Initiative for Eastern Africa (OSIEA) grantee, brought a petition, together with Abdulhaleem El-Busaidy, against the local administration in Mombasa, challenging the use of a leaked government circular which directs that Muslims, Arabs and Asians must produce their grandparents' birth certificates and religious

certificates before being issued with an ID card. El-Busaidy was denied an ID card in 2010 because he could not produce his grandfather's birth certificate as required by the circular. The first stage of the case was successful and in January 2011 conservatory orders were issued by the High Court of Kenya at Mombasa, restraining the National Registration Bureau from applying the discriminatory elements of the circular, and these orders were confirmed by the Court in February 2011 on the grounds that such ethnic and religious discrimination violates Kenya's new 2010 Constitution.

The full hearing of the Mombasa case may now be postponed pending the outcome of the report of the Taskforce on Citizenship. The Taskforce has been charged with coming up with a new law on citizenship which is in conformity with the spirit and the letter of the new constitution, and which specifically addresses statelessness amongst other issues. This litigation is part of the ongoing advocacy work being done to convince the Taskforce to address the discrimination being suffered by Nubians such as Zam in Kenya.

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