

AMPLIFYING VOICES

inaugural issue 2009



TABLE OF CONTENTS

EDITORIAL STATEMENT	05
HOPE AND DISAPPOINTMENT: OPEN SOCIETY IN EAST AFRICA	07
MEDIA AND ACCESS TO INFORMATION	
A Voice for the Voiceless: Koch FM Community Radio	11
Ahead of 2011 general elections, freedom of press is under threat in Uganda	15
NATURAL RESOURCE MANAGEMENT	
The Save Mabira Crusade: Bold Protest Against Environmental Degradation	19
GOVERNANCE AND ACCOUNTABILITY	
“It’s Our Money”: Tracking Government Spending	23
WOMEN’S RIGHTS:	
Discriminated Against From the Cradle to the Grave: A Ray of Hope for Zanzibari Women?	27
HEALTH AND RIGHTS	
HIV is a Virus, Not a Crime	31
MINORITY RIGHTS	
Citizens without Rights? Marginalized Communities in Kenya Demand Equal Rights	35
ACCESS TO JUSTICE	
Quest for Justice for Prisoners Awaiting Trial	39

AMPLIFYING VOICES

inaugural issue 2009

OPEN SOCIETY INITIATIVE FOR EAST AFRICA (OSIEA)

DIRECTOR

Binaifer Nowrojee

EDITOR

Linda Ochiel

ASSOCIATE EDITOR

Rachel Aicher

EDITORIAL ASSISTANT

Achieng Akena

CREATIVE DIRECTOR/ARTIST

Assegid Gessesse

The Open Society Initiative for East 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 East Africa.

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

Nairobi Office: ACS Lenana Road, P O Box 2193-00202 Nairobi, Kenya,
Tel +254-20-3877508, Fax +254-20-3877663

Kampala Office: Buganda Road, Plot 89, Kampala, Uganda,
Tel +256-414251157, Fax + +256-414251097

For more information go to: <http://www.soros.org/initiatives/osiea> or email: info@osiea.org

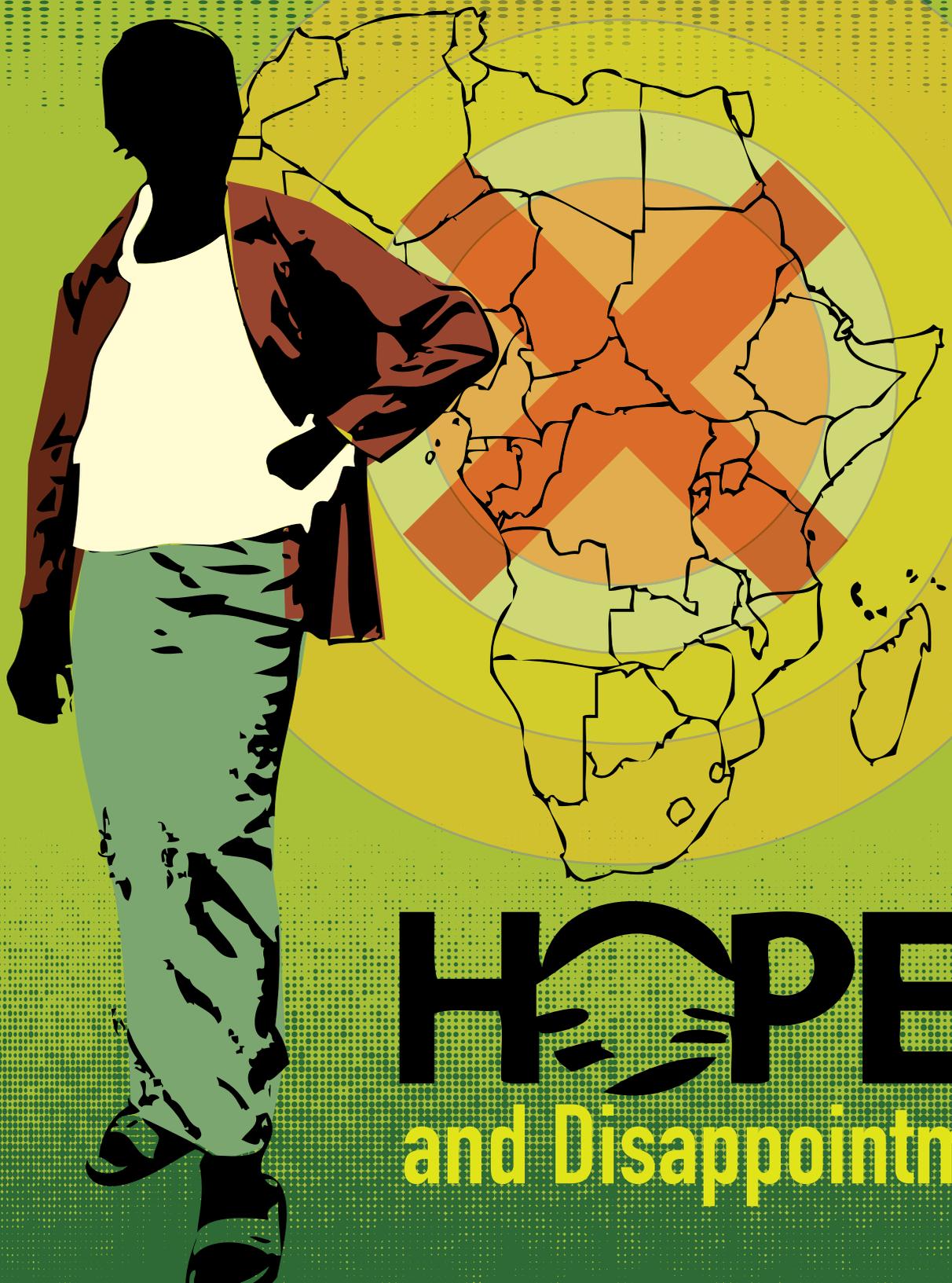
EDITORIAL STATEMENT

This is the inaugural issue of *Amplifying Voices*, a magazine published by the Open Society Initiative for East Africa (OSIEA). OSIEA produces this magazine to inform grantees, partners, and the public of its work to promote democratic principles through increased public participation and the creation of a strong institutionalized rights framework.

OSIEA's objective is to create spaces for open and informed engagement on issues critical to advancing open society principles in East Africa. In each issue, we profile our work and that of our grantees and other partners. We also seek to provide a reliable source of information for policy makers and other actors at the national, regional, and international levels concerning the state and progress of human rights, democratic governance, and the rule of law in East Africa.

The youngest of OSI's foundations in Africa, OSIEA was launched in 2005 to serve as a regional office for grantmaking and advocacy work in East Africa. Since its founding, OSIEA has supported a wide range of programs initiated by civil society and in the pro-democracy movement. Our goal is to amplify and support voices of East Africans championing respect for human rights.

Programs highlighted in this issue of *Amplifying Voices* range from the promotion of independent media through community radio in Kenya to the defense of women's rights in Tanzania. Featured initiatives aim to strengthen democratic governance by promoting transparency and public participation in resource management, protecting the rights of marginalized groups, and increasing accountability through public monitoring of local budgets and spending.



HOPE

and Disappointment

Hope and Disappointment:

Open Society in East Africa

Binaifer Nowrojee, director of the Open Society Initiative for East Africa (OSIEA), examines the social and political environment that guides the foundation's work in the region.

“OSIEA's key role is to amplify the pro-democracy voices in the region and increase their ability to hold governments accountable...”

Binaifer Nowrojee

East Africa is a region where democracy has made significant gains, yet is still not firmly established. The Open Society Initiative for East Africa (OSIEA) is working actively to expand democratic space in Kenya, Uganda, Tanzania, and Sudan.

On the positive side, the region's political environment has become much more open over the past few decades. Kenya, Uganda, and Tanzania have all introduced multiparty politics and created greater space for freedom of expression, association, and assembly. Although conflict and rights abuses in Sudan remain a constant, the peace accord that ended the civil war with Southern Sudan offers a previously unimaginable chance for peace. The creation of a coalition Government of National Unity has for the first time given South Sudanese a voice in deciding their affairs with the possibility of secession in 2011. Continuing peace talks in Northern Uganda suggest that an end to 20 years of brutal conflict may be in sight as well.

Nevertheless, continual setbacks threaten to roll back these democratic gains. The rule of law is a thin veneer in all these countries, and impunity remains the norm. Abuse of state power in these nations often goes unchecked, and accountability mechanisms are weak. Corruption remains a major challenge throughout the region. Principles of

democratic governance and public accountability therefore remain high on the agenda of East Africans.

The discovery of oil in Sudan and Uganda has brought with it serious governance concerns. The linkages between resource wealth, poverty, conflict, and corruption—the so-called “resource curse”—are well documented. The promise of oil wealth in East Africa threatens to contribute to opaque and corrupt government policies as well as conflict on the North-South border within Sudan and on the border between Uganda and the Democratic Republic of the Congo.

Electoral mechanisms remain subject to manipulation, and free and fair elections are a major challenge. The fragility of East African states was best illustrated by the near collapse of Kenya following a flawed 2007 election, and is underscored by the ever-present possibility of unexpected crises in the region. Uganda's 2006 election was preceded by a constitutional amendment to lift term limits followed by severe attacks against the political opposition.

Ethnic and regional tensions continue to be exploited politically, often with dire consequences for marginalized groups. Northern Sudan remains subject to tight control by the Bashir-led National Congress Party. Mass atrocities have occurred in

connection with the conflicts in Darfur, Sudan, and Northern Uganda. Accordingly, transitional justice is high on the agenda in Uganda, Sudan, and, most recently, Kenya. Both Uganda and Sudan continue the difficult task of negotiating a rocky path to peace following 20-year internal conflicts that have divided north and south. Human rights violations are still common across East Africa. State security forces are routinely perpetrators of abuses, including torture. Human rights defenders and pro-democracy advocates who speak out on behalf of victims often find themselves targets of government security or militia groups.

Although media organizations have begun to flourish in Kenya, Tanzania and Uganda during the past decade, free speech continues to be circumscribed in a variety of ways. The expansion of radio in particular has significantly transformed the ability of rural populations to receive news. On the flip side, media ownership has often become allied with political patronage, contributing to corruption, self-censorship, and low standards of investigative journalism. Free speech remains greatly circumscribed in Northern Sudan, and a climate of fear and silence prevails. In Uganda, media criticism of the president and his family often results in retaliation.

Health and rights

Health and rights issues concern millions of East Africans. Socially marginalized and stigmatized groups—such as sex workers, men who have sex with men, drug-users and HIV-affected persons—are denied access to most basic health, justice, and social services. The epidemic of HIV/AIDS remains an unprecedented public health emergency in the region, thriving on stigma and human rights

abuses against the most vulnerable East Africans. These socially marginalized groups are vilified and criminalized by the state and public alike, with little attention paid to their plight by national human rights and legal groups.

Regional and international mechanisms of accountability

At the same time, new mechanisms of accountability are being created at the regional and international levels. These efforts could play an important role in checking impunity within East Africa. Tanzania's President Jakaya Kikwete has provided strong leadership and support to these efforts at the regional and international levels. Tanzania has played a leading role in all African Union efforts to bolster democracy in the region (as was evidenced in Kenya and Zimbabwe recently). It has also provided support to international justice mechanisms as host to the International Criminal Tribunal for Rwanda and now to the African Court of Justice.

While still fledgling, the African Union's New Partnership for Africa's Development (NEPAD) and the newly created African Court of Justice are both vehicles for stronger regional oversight. Three out of nine African countries that have completed the partnership's Africa Peer Review Mechanism are in the East African region: Kenya, Uganda, and Rwanda.

At the international level, East Africa provides the largest theater for ongoing international justice interventions by the International Criminal Court and the International Criminal Tribunal for Rwanda. International criminal law can provide a critical check on human rights violators. Uganda, Rwanda, Sudan, and eastern Democratic Republic of the Congo are presently the subject of active international

prosecutions. Engagement and advocacy by civil society activists and African governments to strengthen these regional and international mechanisms in their formative stages will later yield positive democratic gains for Africans. Recent efforts by some African governments to cast international justice simply as a tool of western imperialism serves as a smokescreen to sidestep responsibility for abuses committed against their citizenry.

The role of the Open Society Initiative for East Africa

Through a combination of grantmaking, advocacy, and convening power, OSIEA seeks to make a contribution at numerous levels. With staff from the region who have a long history of working on critical open society issues, we are a locally grounded organization with the potential to support a broad range of powerful initiatives across the region.

OSIEA's key role is to support and amplify the voices of pro-democracy organizations and individuals in the region and to strengthen their capacity to hold their governments accountable. This includes efforts to defend and support rights activists and pro-democracy advocates who come under attack for their work. We are particularly concerned with the rights of minorities or socially marginalized groups, whose rights are often trampled on due to their vulnerable status in society.

We partner with national organizations and institutions on a variety of efforts. OSIEA provides grants to organizations to facilitate their work to promote democratic change. Our ability to be flexible in our funding criteria allows us to respond quickly to changing situations.

Where necessary, OSIEA also helps organizations to become stronger advocates for their cause through organizational development assistance, exposure to comparative expertise, or by linking them with international campaign efforts.

In addition to being a donor, we add our own voice to debates when needed and are prepared to address rights issues that are politically sensitive or unpopular. We speak in our own voice, convene meetings in our own name, and put out publications when we can add value to the debate.

FOR MORE INFORMATION

To learn more about the Open Society Initiative for East Africa's work visit www.soros.org/initiatives/osiea/about

KOCH

FM



A Voice for the Voiceless: Koch FM Community Radio

Nicholas Asego, a reporter with the East African Standard in Nairobi, provides an account of marginalized youth inspiring change through community radio

Nicholas Asego

Though it doesn't look like much from outside, inside the steel shipping container is one of Kenya's first community radio stations. The Korogocho, or "Koch" neighbourhood, is Kenya's third largest slum, located in Nairobi's Eastlands area. It is also home to 101.5 Koch FM, a community radio station owned and run by youth. Their programming serves a population of nearly half a million residents and roughly one thousand households.

Seated behind broadcast equipment is radio presenter Moses Mwithiga Ngugi, a graduate in natural resources management whose passion lies in radio broadcasting. His studio name is Mwalimu, the Swahili word for "teacher." He is the host of the morning show, *The Early Bird*.

"We zero in on issues that relate to human rights and governance," says Mwalimu. During his "Mambo Kombo" (problems) session early in the morning, he concentrates on things that have gone awry in the neighbourhood. Moses tells us of an "Adopt-A-Light" initiative by a street lighting company, which put up street lights in the neighbourhood while the residents were still not able to access electricity.

"They were waiting for the minister of energy to officially launch the initiative, but as they waited many people continued to get attacked by armed gangsters in the dark," he says.

During one of the past shows, the presenter questioned the rationale of waiting for the minister

of energy to launch the project while the residents continued to live in darkness. The next day the streets were lit.

The brainchild of ten young men and women from Korogocho, Koch FM is the envy of many. Listening to music from the station, you would never guess that the presenter is using such rudimentary equipment. Despite the surroundings, the programs are of impeccable quality. More importantly, the station engages with the audience much more than mainstream media does. The community is accorded ample time to ask questions and express their concerns—unlike in mainstream radio.

The idea for Koch FM emerged from a slum beauty contest known as the "Miss Koch Initiative," which aimed to raise school fees for girls from the informal settlement. Following the contest's success, the youth in Korogocho came up with the idea of establishing a media outlet that would help their community participate in local development. With limited resources to set up a commercial radio station, the idea of the community radio station was born. At an early stage, the group received financial and technical support from the Open Society Initiative for East Africa (OSIEA).

The Koch FM concept fits well with OSIEA's mission and vision of supporting efforts to provide access to information, create forums for debate and news in marginalised communities, and encourage the growth of independent media.

The logo for Koch FM is centered in the upper half of the page. It features the word "KOCH" in large, bold, red, sans-serif capital letters, and "FM" in smaller, bold, dark blue, sans-serif capital letters to its right. The background behind the text is a halftone pattern of yellow dots of varying sizes, creating a textured, circular effect.

KOCH FM

The radio station targets youth, cautioning them against criminal activity and encouraging creativity. At Koch FM, young people find opportunities to explore their talents. Local musicians get an opportunity to play songs on the radio, while youth interested in radio broadcasting sharpen their presentation and reporting skills. With employment often scarce and crime commonplace, the station provides a much needed chance for youth to gain experience and make a positive contribution to their community. Many who volunteer would otherwise be idle.

The station broadcasts news in Swahili as well as English to ensure that it can be understood by everyone in the community. Most of the founding members were born and raised in Korogocho. Having lived in the slum all their lives, they understand the lifestyle and community at large, and they initiate programmes that resonate well with their audience. Through

the radio station, youth mobilise the community to engage in development initiatives such as tree planting and street clean-ups. They also encourage people to participate in decision-making forums to influence policy decisions.

Koch FM was inspired by similar projects abroad, such as Radio Favela, founded in 1976 by Misael Avelino Dos Santos in an informal settlement in Belo Horizonte, Brazil's third largest city. Just as Radio Favela was denied a license until 1999 and its founder was repeatedly sent to jail, the youth involved in Korogocho have faced a great deal of resistance. Yet after several brushes with law enforcement officers for broadcasting illegally, the station has now been up and running for the past three years. OSIEA connected the Koch team to another OSIEA grantee, the Kenya Internet and Communications Network (KICTANET), which assisted the new radio station to obtain its broadcasting license from the Communications Commission of Kenya.

“It was extremely challenging for us to obtain a licence for the airwaves,” says Francis Odera, a founding member. “The Communications Commission of Kenya did not trust young slum dwellers—they associate us with crime.”

Odera, now a Reuters scholarship holder and film and television student at the Mohammed Amin Foundation in Nairobi (another OSIEA grantee), urges investors to tap into and nurture talent from informal settlements as a way to reduce crime and provide opportunities for disadvantaged youth.

The public has responded with great enthusiasm. The many calls that come in during live shows reflect a wide listenership. Whenever the station reaches out to the community to promote activities or events, people turn up in large numbers.

“Through the station we can discuss the politics of the day from the common mwananchi (the ordinary person)’s position.”

Mwangi Joseph, Barber

Joseph praised The Early Bird show, adding that “the station has also given upcoming musicians like me an opportunity to be heard.”

At the core of the station’s programming are issues of human rights and governance. To increase

accountability, the station invites experts to speak on issues like social audits of decentralized funds, including the Constituency Development Fund—educating the community on how its oversight role can maximize benefits. The station also includes health programs, with the spotlight on HIV/AIDS. Other programs highlight the success stories of women and girls, aiming to spur other women to rise above their daily challenges and reach their full potential.

For Binaifer Nowrojee, OSIEA director, Koch FM is an endeavor worth supporting. “We believe that in East Africa youth are tremendously important, yet their voices are often not heard—especially when they are coming from disadvantaged economic backgrounds,” she says. “This group of young people had nothing but rudimentary equipment and a will to succeed despite the challenges. We wanted to support their efforts.”

press is under threat in

Uganda



West Budama MP William Oduku said the practice of female genital mutilation (FGM) in Uganda is under threat in the press. He said the practice is being threatened by the government and the international community. He said the practice is being threatened by the government and the international community. He said the practice is being threatened by the government and the international community.

Uganda's women's rights activists are demanding that the government take steps to end the practice. They say the practice is a violation of human rights and is causing physical and psychological harm to women. They say the practice is a violation of human rights and is causing physical and psychological harm to women.

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MPs plead for

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Ahead of 2011 general elections, freedom of press is under threat in Uganda

Linda Ochiel, OSIEA communications officer, discusses the need to protect fundamental freedoms and expand the space for public debate in Uganda, especially during the lead-up to general elections in 2011

Linda Ochiel

Confronted by government secrecy and increasing hostility toward the media, it is time for Ugandans to push back. While Uganda has progressively enjoyed a vibrant print and electronic media, and enacted freedom of information laws, free speech faces serious constraints and access to information is limited. With elections slated for 2011, increasing government control over the press threatens democratic development.

Early this year, the Ugandan government has taken steps to limit press freedom dramatically. It is currently pushing forward legislation that would allow state security agents to intercept mobile, print, and electronic communications, which will severely limit journalists' ability to maintain confidentiality when gathering information. In fact, high ranking politicians want to make it mandatory for journalists to reveal their sources whenever challenged. In 2008, a cabinet subcommittee was formed to rein in the media, with plans to expunge press freedom provisions from the Ugandan constitution under discussion. In 2007, President Museveni accused the media of being "saboteurs."

Journalists in Uganda increasingly find themselves subjected to arrest, violence, and harassment for critical reporting. Over the last decade, robust and critical journalism has rubbed those in power the wrong way. Media houses routinely receive censoring

calls from the President's Office. Outspoken journalists are faced with termination from their work place. Journalists working for independent media regularly have politically motivated criminal charges made against them. While these charges are legally untenable, the state presses ahead to intimidate and discourage journalists, resulting in increased self-censorship.

Reflecting these trends, Uganda's performance in the annual Worldwide Press Freedom Index has worsened. The country ranked 107th out of 173 countries in 2008. In 2007, it ranked 96th out of 169. Uganda continues to maintain restrictive freedom of information laws, including libel, sedition, obscenity, and invasion of privacy. Strict licensing laws target the media and discourage citizen engagement, with jail terms for those who practice journalism without official registration. Uganda's anti-terrorism laws prescribe the death penalty for any journalist who publishes a positive story about an officially designated terrorist organisation.

These abuses cannot be tolerated. Uganda is a signatory to international and regional conventions that guarantee free speech, and these fundamental freedoms are enshrined in its constitution. For example, the "freedom to receive and impart information and ideas" is guaranteed by the Universal Declaration of Human Rights as well as regional human rights



treaties, and includes a right to receive information of public interest held by government authorities. To its credit, Uganda is one of only three countries in Africa that has enacted a freedom of information law. Yet this law has not been implemented on the ground.

For democracy to thrive, citizens must be free to express diverse opinions and participate in the public debate. The media plays a critical role in informing the public and providing a platform for different ideas to be heard.

At a media colloquium hosted by the Open Society Initiative for East Africa (OSIEA) in Kampala in March 2009, over 150 prominent journalists, academics, activists, and human rights experts discussed the need to expand the space for public debate in Uganda. The gathering focused on expanding access to independent and credible information, as well as defending journalists' rights.

This is especially critical in the lead-up to general elections in 2011, during which press freedom is essential to the democratic process. According to the journalists, it is unclear whether the Ugandan media will be able to give political candidates equal access and report relevant issues in a timely, objective manner. If the ruling party feels its power threatened, journalists fear a crackdown.

Uganda's government must recognize that state control of the media is unacceptable and review laws that restrict press freedom. Clauses that conflict with universally recognized human rights standards should be amended. Together, media and civil society groups can hold the government to account and protect their rights.

If the media is to play a meaningful role in promoting democratic governance and truly serve the public

interest, the industry must strive for greater openness. Journalists themselves must demand greater editorial independence and advocate for strong media institutions. In addition, they should establish a professional association to help protect media freedom and provide collective security for journalists threatened by state action. It is critical that the association set higher standards for journalism, rejecting self-censorship and encouraging objective, ethical reporting. Investigative reporting to tackle tough issues needs particular support in Uganda, and journalists would benefit from more training in the use of new technology. A stronger sense of professionalism within the field, as well as support from critical readers in Uganda, can help move this forward.

As gatekeepers of information and news, and as shapers of the dominant socio-political narratives, the media wields tremendous power. It is time for Ugandans to expect more from their journalists, and to demand that their government respect the public's right to freedom of information and expression. Ugandans deserve a media that truly serves the public interest, not a tool of the governing elites.

FOR MORE INFORMATION

To learn more about the Open Society Initiative for East Africa's work visit www.soros.org/initiatives/osiea/about

THE OPEN SOCIETY INITIATIVE FOR EAST AFRICA



OSIEA



THE OPEN SOCIETY INITIATIVE
FOR EAST AFRICA

The Open Society Initiative for East Africa (OSIEA) works to build vibrant and tolerant democracies whose governments are accountable to their citizens. OSIEA places a high priority on protecting and improving the lives of marginalized people and communities.

LIVE!

SAVE MABIRA CRUSADE

SAVE UGANDA'S FORESTS



Natural Resource Management, Access Rights and Accountability

The Save Mabira Crusade: Bold Protest Against Environmental Degradation

Linda Ochiel, OSIEA communications officer, discusses how Uganda's nascent but growing environmental movement is making the link between natural resources, governance, and accountability.

Linda Ochiel

As the Ugandan government gropes for solutions to devastating electricity and fuel shortages, unemployment, and poor economic development, Uganda's environment is paying the price. Uganda's largest tropical rainforest, Mabira, is one of the most diverse places in Africa. Its remarkable biodiversity is recognized around the world, yet today it is under serious threat.

In early March 2007, Ugandans learned that President Yoweri Museveni had given away part of Mabira Forest to the Mehta group of companies to build a sugar cane processing plant. The company promised they would employ more people, address the prevailing sugar scarcity in Uganda, and contribute more revenue to the country's coffers if given part of the forest. Many Ugandans believe that funds from the sale of public land were used to bolster the previous presidential campaigns.

Yet Mabira Forest is a source of many rivers and is essential for the survival of surrounding communities. It is home to many rare plants and animals and a boost to ecotourism in Uganda. Ecotourism is the second largest source of foreign exchange in Uganda, and Mabira Forest's potential as a tourist destination cannot be overemphasized. The forest also has tremendous cultural importance—especially to the Buganda kingdom.

With Museveni's announcement, Frank Muramuzi's quiet life took a dramatic twist. Muramuzi directs the National Association of Professional Environmentalists (NAPE) in Uganda. NAPE is dedicated to promoting sustainable use and management of natural resources. Upon receiving the disturbing news, Muramuzi mobilized civil society organizations, environmental professionals, community leaders and the public to join a mass campaign against the government's plan. The Save Mabira Crusade was born. The group accused the Ugandan Government of planning to give away the forest reserve land to the businessman Mehta to compensate him for financing President Museveni's election campaign in 2006.

While small in size, NAPE has risen quickly to public prominence due to its brave and strong positions opposing government's efforts to sell off river and forest areas to private investors without regard to public and environmental impact.





Under NAPE's leadership, the Save Mabira Crusade coalition petitioned the Ugandan Parliament to halt the proposed development of Mabira as well as to enforce the Ugandan High Court's ruling on Butamira Forest. Butamira Forest in Jinja was also threatened by plans for sugarcane cultivation, but the High Court issued a ruling in 2004 declaring that the change of land use violated the Ugandan Constitution. To date, however, the court ruling has not been enforced.

Over 15,000 concerned Ugandans signed the petition to save Mabira Forest. For Muramuzi, the campaign has not been easy. He was arrested during a peaceful demonstration in Uganda in April 2007, detained, and later charged with causing a disturbance.

“During the early stages of our hearing, the police used to block us from getting into the courts so that we were absent, probably to compel the magistrate to order our arrest for failing to present ourselves in court,”

Frank Muramuzi , NAPE Uganda

Muramuzi longs for the case to end. “It is very difficult to focus on getting work done with a court case hanging over your head,” he said. Muramuzi had never been arrested before this incident.

According to Muramuzi, depletion of Mabira Forest will reduce the water level of surrounding streams and rivers and change regional rain patterns. This will negatively affect agriculture, cattle farming, and electricity supply, and work to undermine much of Uganda's economy. Other environmentalists note

that since the Ugandan government has cited low water levels in Lake Victoria as the reason behind the country's intermittent electricity crisis, the nation's leaders should know better than to destroy the lake's major source of water.

While there is no clear evidence that the benefits of sugar production will outweigh the ecological and economic costs, members of parliament have chosen to open the forest to development. The parliament's decision to revoke Mabira's protected status seems counterproductive. The forest is one of Uganda's most promising attractions, and in 2007, the government spent billions of shillings to promote the country's tourism industry.

Uganda's annual deforestation rate has climbed tremendously since the end of the 1990s. The country lost an average of 86,400 hectares per year between 2000 and 2005, and 26.3 percent of its forest cover between 1990 and 2005.

NAPE is also working closely with other civil society groups, professionals, and religious leaders to petition the government against construction of large dams. One of their targets is the Bujagali Dam, a controversial project funded by the World Bank and the Development Bank of Africa, as a short-term solution to the power shortages in Uganda. Experts say the project is not sustainable economically and will have many negative environmental consequences in the long term.

In addition, NAPE is spearheading intensive advocacy against impending mining of limestone at Queen Elizabeth National Game Park in western Uganda by a French multinational corporation. The park is a corridor for elephants and other animals crisscrossing Uganda, Rwanda, Burundi, Tanzania, and the Democratic Republic of the Congo. The mining is likely to impede the free movement of these animals and is a threat to biodiversity in the park. The

local community is also concerned that mining will affect the nearby Ramsar Power Generation Site on the shores of Lake George, polluting its waters and threatening surrounding vegetation due to the influx of workers and vehicles in the area.

Since the Ugandan parliament changed the constitution in 2006 to allow Museveni to run for a third term, there has been growing repression against any criticism of the ruling party. The political opposition remains under heavy attack. Environmentalists are concerned that President Museveni continues to consolidate and finance his power through business deals that are harming the environment.

NAPE is part of a nascent, but growing, environmental movement that is effectively making the link between natural resources, access rights, and accountability. The Open Society Initiative for East Africa (OSIEA) is supporting efforts by environmental groups to address transparency and governance issues in Uganda.

The government has recently intensified a drive to spur industrialization in the country. While this is not necessarily a bad thing, it is being promoted with little or no attention to its impact on natural resources, the economy, and society in general. Politics, corruption, and patronage influence many projects and business deals. With the recent discovery of oil, it is likely that Uganda will suffer from further abuse if there is not a robust national movement to address the governance and natural resource questions that are emerging.

FOR MORE INFORMATION

visit www.nape.or.ug

we all

TRACKING GOVERNMENT SPENDING



THE NATIONAL

spend money

“It’s Our Money”: Tracking Government Spending

Wanjiru Gikonyo, the CDF Accountability Project coordinator, describes social audits of public funds in Kenya.

Wanjiru Gikonyo

In one of the poorest areas in Changamwe District, crowds sat in the hot sun, listening intently as community workers assessed local development projects and pointed out where spending did not add up. Their member of parliament had initially declined to attend the meeting, but appeared halfway through to defend himself against charges of corruption and mismanagement, once he heard that crowds were becoming angry about the discrepancies.

Muslims for Human Rights (MUHURI), a Mombasa-based nongovernmental group, collaborated with the Washington-based International Budget partnership, the India-based Mazdoor Kisan Shakti Sangathan (MKSS), and the Open Society Initiative for East Africa (OSIEA) to hold this ground-breaking event in Changamwe, a constituency in Kenya’s coastal province. This pilot training program, known as ‘social audit’, was modeled on the programme used by MKSS in Rajasthan, India, but customized to fit local needs. Civil society partners from over 20 different institutions in Kenya attended the IBP/MKSS led training. The social audit methodology teaches community groups how to track public funds and then to share their findings with the larger community in order to ensure that public funds are spent in a transparent and accountable manner.

Established in 2003, Kenya’s Constituency Development Fund (CDF) is one of several devolved funds in Kenya. Created to promote equitable development at the constituency level, the CDF is well-known in part due to the involvement of members of parliament in the fund’s operations. For the first time in Kenya’s history, the constituency is serving as a unit of development, and considerable resources are being channeled towards building institutional

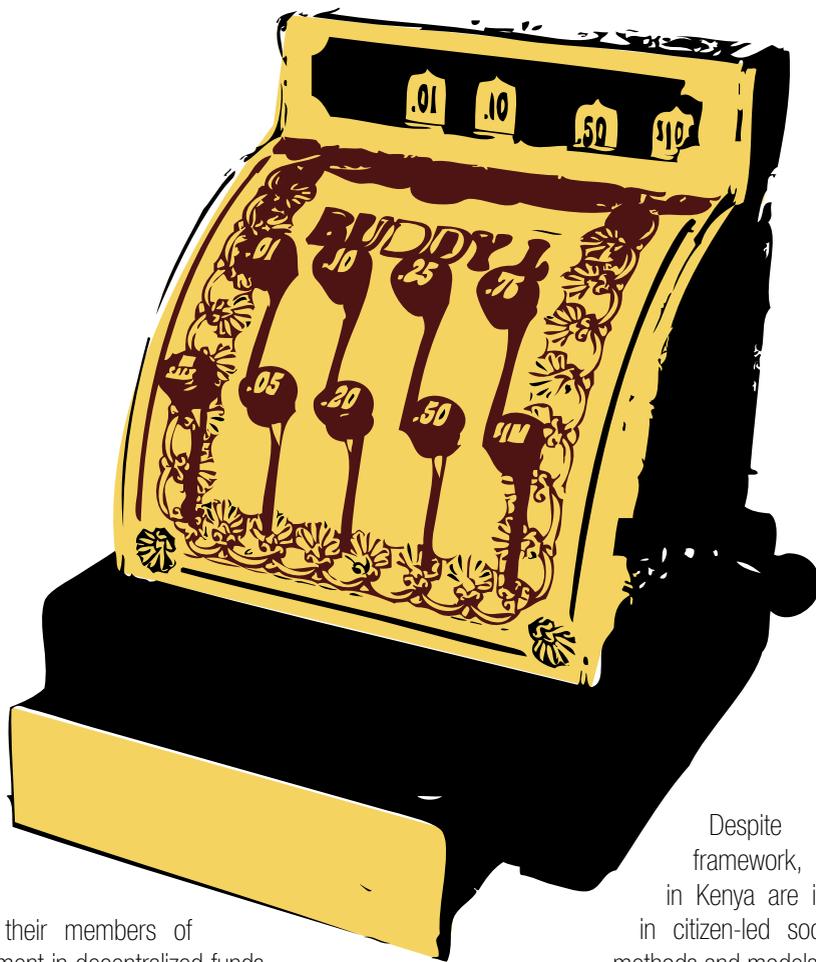
capacity at this level. This presents numerous challenges and lessons for policy development.

The CDF Act of 2003 requires that the government set aside at least 2.5 percent of its ordinary revenue for disbursement under the CDF program. Three quarters of the amount is divided equitably between Kenya’s 210 constituencies, whilst the remaining quarter is divided based on a poverty index to assist poorer constituencies.

The CDF has successfully initiated numerous projects across the country since its introduction. However, the fund’s implementation has been dogged by controversy and acrimony, occasioned by structural weaknesses in its legal framework. For instance, the design of the CDF does not promote integration with existing development structures, resulting in overlap and, in some cases, double funding. The management of the fund is also undemocratic, and there is little accountability. The role of members of parliament in implementation breaches the principle of separation of powers and promotes political partisanship. Furthermore, there is limited compliance with established procedures, and the procurement process is characterized by collusion and abuse.

While envisioned as a participatory fund, in practice, the CDF’s legal and implementation framework have effectively locked many communities out, relegating members of the public to a nominal role. Often, they are easily manipulated to suit corrupt interests of unscrupulous officials.

In response, civil society groups have recognized that social audits can help encourage citizen vigilance and teach citizens that they can demand accountability



from their members of parliament in decentralized funds management.

"A social audit seeks to evaluate how well public resources are being used, to ensure the project is being implemented properly and improve performance," says Karuti Kanyinga, a local consultant. "It aims to empower citizens, promote civil engagement, reduce poverty and ensure effective development and maximum community participation."

Social audits evaluate all aspects of a public project, including its relevance, level of public participation, utilization of funds, quality, and the extent to which official stakeholders have complied with regulations. These efforts aim to ensure that the fund enhances the livelihoods of target beneficiaries around the country.

Despite the flawed CDF framework, civil society groups in Kenya are increasingly investing in citizen-led social audits. Different methods and models are presently in use.

OSIEA, working with local partners such as MUHURI and the CDF Accountability Project, has committed itself to promoting the social audit as a tool for citizen vigilance and oversight of the CDF. Through social audits these organizations train grassroots groups to both understand how the CDF works and to monitor and track expenditures in their constituency. The trainings are conducted in barazas (community meetings) to enable locals to effectively audit the fund's performance. OSIEA has provided support to numerous groups in Kenya to monitor CDF spending.

In the same year, OSIEA undertook yet another ground-breaking project to develop a community handbook to guide and train local groups in conducting CDF social audits. The handbook was

developed with the input of CDF practitioners in the field and spawned the creation of the CDF Accountability Project, which is responsible for distribution of the handbook and promotion of social audit practices through partnerships around the country.

“OSIEA’s community handbook gives the user a deeper understanding of CDF processes and how to undertake effective social audits”

Hussein Khalid, the head of MUHURI.

The handbook introduces a simple but highly effective process for budget monitoring. It contains useful tools and methods to help individuals and groups track CDF expenditures in their area. It also details the various stages of the CDF project cycle and seeks to enhance the user’s understanding of the way the fund works. Over 8,000 copies are presently in use around the country through a wide network of civil society groups undertaking social audit work.

Social audit as a basis for advocacy

Social audits empower the community to move away from mere speculation and suspicion and instead gather real evidence. Each social audit cycle culminates in a public accountability forum, where the community presents its findings to local officials, citing errors and irregularities and demanding change. Cases of fraud must be reported to the authorities.

OSIEA and its partners recognize that social audits are an extremely valuable tool. If used consistently and properly, they will strengthen CDF advocacy efforts to enhance transparency and accountability, and provide a springboard for meaningful policy and legislative change.

One of the cornerstones of future CDF advocacy work is the passage of a strong and comprehensive Freedom of Information Law, the entrenchment of an effective citizen participation framework in local governance, and the enforcement of sound accountability practices and processes. Whereas these challenges are clearly manifest in CDF operations, they are also widespread in Kenya’s local governance sector as a whole. Thus, effective social audit work focused on the CDF offers an important avenue for long-term transformation of Kenya’s decentralization sector to improve local conditions and ensure democracy, transparency, and effectiveness.

FOR MORE INFORMATION

To learn more about social audit work in Kenya, visit www.muhuri.org, www.soros.org or www.cdfproject.org



Women's Rights

Discriminated Against From the Cradle to the Grave: A Ray of Hope for Zanzibari Women?

“Women in Zanzibar face cradle to grave discrimination. Traditional practices are misused to justify domestic violence, marital rape, and deny divorced women child custody rights.”

Linda Ochiel

Safia Abass, a mother of three, is a practicing insurance lawyer on the small Tanzanian island of Zanzibar. Outraged by the discrimination against women that is entrenched in Zanzibar's legal system—governed both by civil law and Islamic law—she decided to take action. Although there are only a few women lawyers on the island, Safia joined forces with several others to set up the Zanzibar Association of Female Lawyers (ZAFELA) four years ago. Volunteering their time and energy, the women of ZAFELA are steadily working to ensure equal protection under the law for Zanzibari women. The Open Society Initiative for East Africa (OSIEA) supports their efforts to strengthen ZAFELA and to work for the eradication of laws that discriminate against women.

ZAFELA gives legal aid, counsels women, and encourages local communities in Zanzibar to respect women's rights. In 2005, ZAFELA, in partnership with the Tanzania Media Women's Association (TAMWA) and the Ministry of Youth, Women, and Children's Development, successfully lobbied the government of Zanzibar to repeal the Spinsters, Widows, and Divorcees Protection Act that criminalized pregnancy out of wedlock.

Even though the government of Tanzania is a signatory to international and regional conventions committing it to protect and promote women's rights,

high incidences of discrimination and widespread violations of women's rights persist in Zanzibar, a semiautonomous island. Compounding the problem are a number of traditional and religious practices that entrench abuse of women's rights and limit their access to education, property, inheritance, employment, and custody rights.

“Women in Zanzibar face cradle to grave discrimination,” says Safia, who currently heads ZAFELA. “Traditional practices are misused to justify domestic violence, marital rape, and deny divorced women child custody rights—among other forms of abuses,” she adds.

Zanzibar is an Islamic community whose structures and value systems are guided by sharia (Islamic) law. Matters concerning marriage, marital disputes, and childcare, among other family grievances, are dealt with under Islamic law courts. Established in the 1830s, the courts are presided over by Islamic judges. Religious provisions regarding inheritance, marriage, and land in Zanzibar do not favor women. Similarly, women's access to certain employment opportunities is restricted and work is divided along gender lines.

In Zanzibar, women may marry at the age of 15 or by special order of the court at 14 years of age. Under the Tanzanian penal code, a girl under 12 may

women's rights

be married according to traditional practices as long as the marriage is not consummated until

she reaches 12 years of age. Estimates indicate that approximately 22.5 percent of young women between the ages of 15 and 19 are married. Divorce rates are high, while domestic violence, trafficking in women and children, forced labor, and sexual exploitation are on the increase. Zanzibar's laws do not recognize marital rape.

"While sex with girls under the age of 14 is an offence, young girls may be forced to marry as permissible by law in order to bypass rape penalties—creating legalized forms of rape," says Safia.

With a population of approximately one million residents, Zanzibar has one of the highest divorce rates in the region. Divorce is permitted in Islam as a last resort when all other avenues of dispute resolution

have been exhausted. Divorced women face great difficulty due to loss of the security of marriage—particularly with harsh laws that deny them custody of children and restrict employment opportunities. Under sharia law, children belong to and take the names of their fathers. Laws grant custody of any child above seven years of age to his or her father.

Mwanaisha Ali Khamis is now 33 and a mother of ten children. She was married at 13 years of age in Pemba Island and later moved to Stone Town in Zanzibar. Her husband of 20 years recently divorced her by simply making the dreaded divorce pronouncement: "talaka, talaka, talaka" ("divorce, divorce, divorce"). The husband took away her children. Khamis, a regular visitor to ZAFELA offices,

wants her children back. Without child maintenance, she has no means of supporting her children but says the younger ones need her desperately.

The story of Mwanamusa Ali, a 20-year-old girl from mainland Tanzania, clearly illustrates the effects of the social and sexual inequalities facing women and girls in Zanzibar. She first arrived in Stone Town at the age of 16 to work as a housekeeper for a wealthy family. She was reportedly raped and sexually abused by the employer for many months, culminating in a pregnancy out of wedlock. Mwanamusa ran back to mainland Tanzania to avoid being sent to jail for the pregnancy. To avoid family embarrassment, her employer opted to marry her quietly only to divorce her after a few months when his wife learned of the marriage. Mwanamusa is now seeking legal representation from ZAFELA to secure child support.

Women get the short end of the stick when it comes to marital rights as well. Although men may unilaterally proclaim talaka, women do not have the same dispensation. Mariamu Salehe, 41, desperately wants to end her 23 years of marriage. A mother of four girls, Mariamu is seeking financial and legal assistance from ZAFELA to file a case with the Islamic court to obtain a divorce following her husband's conversion to Christianity. Marriages between Muslim women and Christian men are forbidden. Mariamu says her future and that of her four daughters is in jeopardy, as she cannot remain

married to a non-Muslim in the Zanzibari community. Her husband has refused to grant her a divorce.

ZAFELA faces many challenges. Often, opponents and religious conservatives claim that women who press for such change are motivated by the "heretical" corrupting influence of "Westernization." Despite these negative perceptions, ZAFELA is charging ahead. The biggest obstacles they face include limited funding and lack of cooperation from the wider society. Yet for the women of Zanzibar, ZAFELA is a ray of hope.

FOR MORE INFORMATION

For more information on the situation of women in Zanzibar visit: www.ippmedia.com and www.dailynews.habarileo.co.tz

HIV is a Virus Not a Crime



HIV is a Virus, Not a Crime

“Criminalizing HIV transmission or exposure will ultimately discourage women from seeking the information and assistance they need for fear that they will face legal penalties down the road.”

Anne Gathumbi, health and rights program manager for East Africa analyzes the likely consequences of criminalizing HIV for women in Kenya.

Anne Gathumbi

As the Kenyan response to HIV/AIDS gains momentum, new challenges are emerging concerning human rights for populations most at risk. Women, orphans, sexual minorities, sex workers, injecting drug users, and people living with HIV/AIDS are experiencing discrimination that shuts them off from HIV services, denies them access to prevention information, and subjects them to abuse in the workplace. Challenges include mandatory pre-marital testing by faith-based organizations, compulsory testing for pregnant women, incarceration of injecting drug users, and dispossession of property for widows and orphans. Many find their health insurance cancelled upon disclosure of their HIV status. Inequalities in access to treatment and lack of comprehensive social protection mechanisms are especially acute for children orphaned by HIV/AIDS and grandmothers taking care of them. Orphaned children are often forced to drop out of school once it is known that they are HIV positive.

The enactment of the HIV/AIDS Prevention and Control Act in Kenya was expected to alleviate some of these problems by offering legal protection against discrimination for people living with HIV/AIDS. However, it has taken over two years for the minister responsible for matters relating to HIV/AIDS to make the law operational. While the law was passed and

received presidential assent in 2006, it only came into effect in March of 2009. It took intensive advocacy by civil society groups for the minister to make the law operational.

The Open Society Initiative for East Africa (OSIEA) and Open Society Initiative's Law and Health Initiative (LAHI), supported local nongovernmental organizations to engage in advocacy to bring HIV/AIDS law into force. OSIEA and LAHI supported the Kenya Ethical and Legal Issues Network (KELIN) to convene a meeting between Kenya's three ministers responsible for matters of health and HIV, and the Attorney General to clarify which one of them had the mandate to make the law operational. Kenya's Ministry of Health was divided into two ministries in 2008 to accommodate the coalition government arrangement, hence lack of clarity on what the Ministry was responsible for HIV/AIDS matters. OSIEA and LAHI also supported the AIDS Law Project, a local nongovernmental organization, to file a case in court seeking orders to compel the minister in charge of HIV/AIDS to enforce the Act.

While it contains some very progressive measures, the act also has provisions that are likely to erode the public health gains made over the years in fighting HIV/AIDS. One of the most problematic elements in

the law is the criminalization of willful transmission of HIV/AIDS. Although this particular provision was exempted from being applied when the law was enforced in March, it still remains in the statute and could still be invoked in future at the behest of the health minister. Advocacy to repeal the section should continue. The provision might appear harmless, but a closer analysis reveals serious human rights and public health implications, as well as concerns from a women's rights perspective.

Instead of providing justice to women, applying criminal law to HIV transmission will most likely be used to prosecute women more often than men. Experience in Africa has shown that women are more likely to be blamed by their intimate partners and by their communities for "bringing HIV into the home," and this often results in eviction, ostracism, and loss of property and inheritance. This is especially true insofar as apportionment of blame is still an important part of both customary and formal legal systems in East and Southern Africa in relation to divorce and inheritance. Criminal laws would only provide another tool to further aggravate the situation.

Documented evidence shows that women are more likely to know their status because they engage with the health system more frequently, for example during pregnancy—particularly as governments move toward provider-initiated HIV testing and counseling in pre-natal settings. Women are also more receptive to public health campaigns calling for voluntary testing.

To avoid the risk of being prosecuted for exposing their partner to HIV, women who test HIV-positive would have to protect their partner by disclosing their HIV status, refusing to have sex, or insisting on condom use. However, given their second class status, for many women these are not realistic options. Each of them carries the risk of violence, eviction, disinheritance, loss of their children, and other severe abuses. The combination of

more routine forms of testing (particularly during pregnancy) and criminalization of HIV transmission or exposure thus gives women an impossible choice: either risk violence by trying to protect their partner, or risk prosecution by failing to do so. More disturbingly, the law criminalizing HIV transmission or exposure will ultimately discourage women who suspect they may have contracted the virus from seeking the information and assistance they need for fear that they will face legal penalties down the road.

In addition, certain provisions of the Kenyan law are drafted broadly enough to capture women who transmit HIV to a child during pregnancy or breastfeeding. For millions of women living with HIV/AIDS—and often denied access to family planning, reproductive health, or medicines that prevent mother-to-child transmission of the virus—this effectively makes pregnancy by HIV-positive women a criminal offense. There are many more effective ways to prevent mother-to-child transmission of HIV, beginning with preventive programs targeted at pregnancy-age women, diminishing unwanted pregnancies among HIV-positive women, and providing effective medication to HIV-positive women to prevent mother-to-child transmission.

Proponents of the criminalization of intentional HIV transmission argue that this provision is intended to protect women. However, criminalization is not a sure way of protecting women from coercive or violent behavior, such as rape, that can transmit HIV. Indeed, many countries that already have strong antirape laws fail to enforce them. Instead of additional, ineffective HIV-specific laws that will be used against them, women have a human right to the timely, effective, and aggressive prosecution of all forms of gender-based violence. It is ironic and tragic that countries that fail to effectively prosecute gender-based violence are proposing HIV-specific criminal laws as a way of appearing sensitive to the needs of women.

Applying criminal law to HIV transmission could also discourage people from getting tested and finding out their HIV status, as lack of knowledge of one's status could become perceived as the best defense in a criminal lawsuit. This interferes with the delivery of health care and frustrates efforts to encourage people to come forward for testing, thereby eroding public health gains made so far.

Other consequences of applying criminal law to HIV transmission include creating a false sense of security. Placing responsibility exclusively on people living with HIV for transmitting the virus dilutes the public health message that everyone should practice safer behaviors, regardless of their HIV status, and that sexual health is a shared responsibility between sexual partners. People may wrongly assume their partner is HIV negative because they have not disclosed, and thus not take measures to protect themselves from HIV infection. This may also create distrust in relationships between HIV-positive people and their care providers, and impede the provision of quality treatment and care for fear that their HIV status may be used against them in the criminal justice system. In addition, such a law is likely to promote fear and stigma, reinforcing stereotypes that people living with HIV are dangerous criminals, rather than people endowed with dignity and human rights.

There are better ways to punish behavior that truly is blameworthy. A frequent reason advanced by policy makers for criminalizing HIV transmission or exposure is that people who transmit HIV under certain circumstances deserve to be punished, because their behavior is morally wrong and harmful. Indeed, criminal law is society's principal means of punishing morally blameworthy behavior. The application of criminal law, however, requires the presence of a "guilty mind" or acting with the purpose to harm another person. The use of criminal sanctions cannot be justified when an HIV-positive person does not

know their status, takes risk-reducing measures (such as using a condom), or has consensual sex with someone who is aware of their HIV status.

In those cases where the application of criminal law may be appropriate, existing laws that are not specific to HIV are sufficient to punish those who act with the purpose of transmitting the virus. For example, laws against sexual assault, endangerment, and criminal negligence can be applied to HIV transmission or exposure.

Instead of passing more criminal laws, legislators should remove legal barriers to women's equality and pass laws to protect women's rights to be free from violence and discrimination, remove barriers to condoms, provide comprehensive sex education, ensure effective drug dependence treatment for injecting drug users, and promote other evidence-based strategies designed to reduce HIV risk. The government should also enact comprehensive anti-discrimination laws. It should review practices that criminalize and discourage HIV treatment or prevention services for vulnerable groups such as sex workers and men who have sex with men. Most importantly, it must involve community voices and scientific experts in the lawmaking process to ensure that HIV legislation is based on the best evidence available, rather than misguided fears and stigma.

FOR MORE INFORMATION

10 Reasons to Oppose the Criminalization of HIV Exposure is a campaign booklet produced by the Open Society Institute and other leading human rights and HIV/AIDS organizations such as AIDS Rights Alliance (ARASA). To learn more about the campaign visit: www.soros.org

Citizens without Rights



Marginalized communities in the region have been marginalized for a long period of time. Many are not recognized as distinct ethnic communities. These communities are not recognized. These communities lack representation in the state and suffer political and social exclusion. Officially recognize only 42 communities. Excluding of at least 28 other marginalized communities of the Non-recognition of political, economic and social equality has serious consequences. Despite the recognition of only 42 communities, the remaining 28 other marginalized communities are the Nchamur...

Citizens without Rights?

Marginalized Communities in Kenya Demand Equal Rights.

Linda Ochiel, OSIEA communications officer, reflects on the foundation's efforts to advocate for the rights and recognition of minority communities in Kenya

Linda Ochiel

Minority communities in Kenya have been marginalized for a long period of time. Many are not recognized as distinct ethnic communities by the Kenyan Government. These communities lack proper representation in decision-making structures of the state and suffer political, economic, and social exclusion. Official census records recognize only 42 tribes in Kenya, leading to the exclusion of at least 28 other marginalized communities. Non-recognition of minority communities has serious consequences on citizenship rights as well as access to social services.

Marginalized communities include the hunter-gatherers and pastoralists who live mostly in the arid and semi-arid lands, such as the Ilchamus, Ogiek, Waata, Yaaku, Boni, Malakote, and Munyoyaya; communities that reside along border areas such as the Somali, Galje'el, Borana, Gabra, Konso, and Sakuye; and the Nubians, most of whom live in Kibera, an informal settlement in Nairobi.

The Open Society Initiative for East Africa (OSIEA) supported the Centre for Minority Rights Development (CEMIRIDE), a non governmental organization based in Nairobi, to create awareness and advocate for the citizenship and land rights of minority and indigenous communities in Kenya. Since its establishment in 2000, CEMIRIDE has devoted its resources, time, and energy into conducting research, advocating for

policy review, conducting public interest litigation, and creating awareness against discrimination of minority and indigenous communities.

For a number of these communities, accessing citizenship documents like national identification cards is a nightmare. While issuance of an identity card is a right, minority groups have to undergo a rigorous vetting process unlike other Kenyans, and are required to produce their grandparents' identification documents. The process of vetting minority communities is discriminatory and violates the constitutional guarantees of equal treatment. Many ethnically marginalized communities have to wait for many years to get an identity card. In some cases they never.

Abdalla Hussein, 60, lost his identity card a few years back and obtained a replacement after a legal battle that lasted three and a half years. As a Kenyan of Nubian descent, Hussein was required to produce his grandparents' birth certificate to obtain a replacement, though before Kenya's independence in 1963, births were not registered.

His was not an isolated case. Many Kenyans from these minority communities cannot open a bank account, buy, sell or even sue those who infringe on their rights. For lack of official identity documents, they cannot exercise their democratic rights to vote or access many social or health services.

Salim Ahmed, a Kenyan of Somali descent, was denied a passport to travel to Uganda with his college's rugby team. While the documents of team members were processed without much fuss, he could not be issued even with a temporary pass to Uganda because of ethnic identity. Ahmed cannot pursue further studies abroad or secure employment out of the country. As a Kenyan of Somali descent, he is required to present his grandparents' birth certificates as proof of genuine Kenyan citizenship—documents that he does not have.

Until 1991, North Eastern Province where Kenyans of Somali descent reside was governed under emergency laws. The Somali community was required to carry separate identification papers, or 'pink cards', to make anyone from this community easily identifiable to security forces. While most of these laws have been repealed, discrimination of minority communities continues.

The Galje'el, who live along Kenya's coast, were declared non-Kenyan in 1989, following a screening exercise conducted by government security forces. The exercise was conducted to establish groups' loyalty to the then Government, and to verify the nationality of Kenyans of Somali descent. The Galje'el originally came from Kenya's North Eastern Province, where most Somali communities reside. During the screening, the government confiscated 56 identification documents belonging to members of the community. Since then, the group has grown in size to approximately 4,000 people. Most members of this community have been denied national identification documents. The Government of Kenya has yet to publicize the findings of the Yusuf Haji

Task Force Report that documented the citizenship screening exercise that led to the confiscation of Galje'els' identity cards, two decades ago.

In 2006, OSIEA supported Truth Be Told (TBT), a nongovernmental organization based in the North Eastern Province to conduct a survey and provide evidence for effective policy change. Their efforts aimed to put pressure on the Kenyan Government to disband a special vetting committee set up specifically to vet applicants from the North Eastern Province, and minority groups from Kenya's borders with other countries.

The minority groups face harassment from Kenyan police, who demand frequent bribes and threaten them with arrest.

Minority communities also grapple with violations of land ownership rights. The Ogiek, an indigenous community residing in Kenya's Mau forest, have always regarded the forest as their land. However, the previous regime set this region aside as state land. The community has since been evicted from the forest, and their lives as hunter gatherers have been disrupted. In another example, the Galje'el were displaced from their ancestral land in Danisa "C" in Kenya's Coast Province ten years ago. The community became squatters in Ngumu forest and could face eviction.

With support from OSIEA and Open Society Justice Initiative (OSJI), CEMIRIDE has successfully prosecuted cases against the government on behalf of the Nubian over discrimination in citizenship rights; Ogiek, and Endorois communities land access, and

other resources. This includes a case filed before Kenya's constitutional court in Nairobi to seek redress for discrimination against the Nubians. The Nubian community in Kenya is descended from soldiers transported forcibly from Sudan by the British colonial government a century ago. Although over 100,000 Nubians have lived in Kenya for decades, they remain stateless. Following failure by the Kenyan courts to constitute a bench to hear the case, the community has brought its case before the African Commission on Human and Peoples' Rights.

The minority communities also face political marginalization. The 2006 report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous and minority people documents minorities' limited access to political rights. Politics in Kenya is based on ethnicity. According to the report, most members of parliament are elected by their kinsmen, and leaders from minority groups seldom make it to the finish line. Politicians often use their positions to benefit their ethnic communities, leading to further marginalization of minority groups.

The main consequence of political marginalization is poverty. Minorities have unequal access to development resources and seldom receive public sector jobs. This is particularly serious with relation to the Constituency Development Funds. Since 2003, 2.5 percent of government revenues are allocated to each constituency through this fund annually, but it is difficult for smaller communities who are not represented by a member of parliament to access to these development resources and social services.

After a successful public awareness program by CEMIRIDE, minority communities are petitioning the Kenyan government to ensure that the 2009 national census will identify them and provide disaggregated data in order to highlight their specific needs and inform public policy. As part of the electoral reforms proposed following the 2007 general election, groups are demanding that the Independent Electoral Review Commission move quickly to redefine existing districts and constituencies in order to ensure more effective representation of smaller indigenous and minority communities.

FOR MORE INFORMATION

To learn more about minority rights visit:

www.soros.org

www.omct.org or www.aitpn.org

See the 2006 report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous and minority people

Quest for **JUSTICE**



Access to Justice

Quest for Justice: Prisoners Awaiting Trial in Kenya

“I knew I would never get justice—so I resigned myself to my fate”

Ahmed Ali Salim

Linda Ochiel

When the gates of Shimo la Tewa prison clanged shut, Ahmed Ali Salim said goodbye to freedom for the rest of his life. Charged with eight counts of motor vehicle theft and sent to prison while awaiting trial, Ahmed knew his family would never be able to afford the cost of securing his freedom.

Like many Kenyans, Salim had no confidence in the country's judicial system. The painful tales of people rotting in prison for 15 years before finally going to court preoccupied him from the moment of his arrest to when he was loaded into the overcrowded prison truck to Shimo la Tewa. Aware of corruption, brutality, and lack of legal counsel, he had no hope.

Every person has the right to a fair trial under the Kenyan constitution, which guarantees access to legal representation and a hearing within a reasonable time by an independent and impartial court. Yet this is not how most people experience the Kenyan justice system. The Government of Kenya seldom provides legal representation for accused persons unless they are being tried for a capital offence. Corruption in the judiciary and the police departments, as well as lack of representation, means that once taken into custody, many people have no way out. In court they are forced to defend themselves, but they have no training or resources to even make their own case.

This situation has prompted a Mombasa-based nongovernmental organization, Muslims for Human Rights (MUHURI), to partner with Shimo la Tewa

Maximum Security Prison to equip remand prisoners (people detained while awaiting trial) with basic legal knowledge and skills to actively participate in their own defense. The Open Society Initiative for East Africa (OSIEA) supported the project.

Shimo la Tewa is Kenya's third largest prison for men, women, and juveniles. The men's facility has approximately 2,400 inmates and it is one of five maximum security prisons in Kenya.

A major challenge to prison reform is endemic overcrowding. A significant number of prisoners would otherwise be out on bail had they received legal representation or known more about their rights. However, lawyers are expensive and inaccessible. Once arrested, people often suffer long periods of pre-trial incarceration, enduring dehumanizing prison conditions and denied access to justice.

With support from OSIEA, MUHURI was able to hire and train four paralegals stationed at the prison. MUHURI is using role play to give accused persons the skills and confidence to adequately represent themselves in court. The paralegals hold two mock court sessions every week in the men's and women's prison areas to coach the accused on basic laws and familiarize them with court processes and procedures.

“A huge percentage of the inmates at Shimo la Tewa and other prisons across the country are petty

offenders who are eligible for bail,” said Hussein Khalid, MUHURI programme coordinator. “Complex court procedures, coupled with lack of legal aid from the government, breakdown in communication and lack of cooperation between criminal justice actors, and the inability to meet high bail demands, keep inmates from accessing justice.”

The criminal justice system in Kenya—like many across the world—often holds accused lawbreakers, including petty offenders and minors, at the expense of the state. Considering the low levels of legal literacy and high legal fees, MUHURI sees training inmates to adequately represent themselves in a court of law and secure their freedom as one way to decongest prisons.

When an accused person arrives at Shimo la Tewa prison, he or she is received by paralegals who conduct a counseling session, record case details, follow up with the prosecution and the police, and alert families of the inmate's arrest.

“When you are arrested by the police for any offence in Kenya, you are rarely given an opportunity to inform close family members of your arrest, and sometimes you could be reported missing, only for your family to discover later that you are in police custody,” said prisoner Syabonga Nkosi. “MUHURI's initiative to trace our families and inform them of our whereabouts is crucial—especially for petty offenders whose relatives are then likely to raise bail to get them out of jail.”

Nkosi, a South African citizen, was arrested and charged for possessing illegal drugs. Because of pretrial assistance from MUHURI in following up on his case with the courts and the prosecution, Nkosi's case was concluded within seven months.

Criminal justice actors across the board can be blamed for prisoners' mistreatment. While the police are accused of indiscriminate arrests, torture, incompetence, and other violations of human rights, the judiciary is often criticized for unwarranted delays in determining cases, failure to apply alternative sentencing like community service orders for petty offenders, and reluctance to grant release of accused persons and offer pretrial detainees reasonable bail or bond terms. Both branches of the law are accused of corruption that leads to miscarriage of justice and the retention of petty offenders and innocent people in prison.

Seeking to encourage criminal justice actors to make the system more efficient, MUHURI is facilitating greater collaboration across institutions. In June 2008, MUHURI hosted a colloquium with various law enforcement and judicial representatives from Kenya's coastal province to discuss their challenges and concerns with the criminal justice system.

“This initiative has yielded positive results,” said Shimo la Tewa's warden, Wanini Kireri, the first woman commandant of a maximum security prison in Kenya.

“Cases are being investigated faster by the police, the courts are handling matters more expeditiously, and petty offenders are being given affordable bails or sentenced to community service orders—thereby reducing the prison's population.”

Wanini Kireri, warden, Shimo la Tewa Prison

Prison officials credit the program with helping reduce overcrowding significantly by assisting pretrial detainees to seek and receive release on bail. The rated capacity of the prison is 800; in the first year of the paralegal program, the population size shrank from 4,000 to 2,300.

Chief warden Kireri deserves credit for opening up the prison to MUHURI and for her commitment to access justice for prisoners under her watch. Kireri's pursuit of progressive policies has earned her a number of awards, including the prestigious Annual Human Rights and Democracy Award from the Kenya National Commission on Human Rights, (KNCHR), in the Urekebishaji (Best Prisons/Prisons Officer) category

"Had it not been for Wanini's proactive approach and willingness to implement reforms, this initiative would not be successful," said MUHURI program coordinator Khalid.

MUHURI also engages in criminal justice policy review and general penal reform. It provides much needed human rights training to prison officers at Shimo la Tewa, equipping them with knowledge of basic human rights to enhance the protection and promotion of both their rights and that of the prisoners. Kenyan prison reform efforts often fail to engage prison officers altogether or focus only on prison headquarters in Nairobi, so MUHURI has a tremendous impact at the local level.

The initiative has assisted hundreds of prisoners. Some have been acquitted for lack of evidence, while others were offered bail or received reduced sentences and affordable fines.

FOR MORE INFORMATION

To learn more about the Open Society Initiative for East Africa's work visit:

www.soros.org/initiatives/osiea/about
or www.muhuri.org





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