Towards a Rights-Sensitive East African Community

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The Case of Ethnic and Racial Minorities

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Abbreviations

ABEK	Alternative Basic Education for Karamoja
ADF	Allied Democratic Forces
ADRA	Adventist Development and Relief Agency
AIDS	Acquired Immune Deficiency Syndrome
APROSOMA	Association pour la Promotion Sociale de la Masse (Associatin for the Social Promotion of the Masses)
ASP	Afro-Shirazi Party
BAN	Batwa Advocacy Network
BBCT	Baruuli-Banyala Cultural Trust
BMUs	Beach Management Units
CARE	Carry American Relief Everywhere
CBD	Convention on Biological Diversity
CBO	Community Based Organisation
CBOs	Community Based Organisations
CCM	Chama cha Mapinduzi
CDC	Constituency Development Committee
CDF	Constituency Development Fund
CEMIRIDE	Centre for Minority Rights Development
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CKRC	Constitution of Kenya Review Commission
CKRP	Constitution of Kenya Review Process
CNDD-FDD	Conseil Natinal pour la Défense de la Démocratie-Forces pour la Défense de la Democratie (National Council for the Defence of Democracy-Forces for the Defence of Democracy)

CoE	Committee of Experts (on Constitution Review)
CSO	Civil Society Organisation
CSOs	Civil Society Organisations
CUF	Civic United Front
DCs	District Commissioners
DfID	Department for International Development (UK)
DFRD	District Focus for Rural Development
DNLP	Draft National Land Policy
EAC	East African Community
EIA	Environmental Impact Assessment
EOC	Equal Opportunities Commission
ESA	Education Standards Agency
FAO	Food and Agriculture Organisation
FGDs	Focus Group Discussions
HBS	Household Budget Survey
HIV	Human Immunodeficiency Virus
HRBA	Human-Rights Based Approach
HRC	Human Rights Council of the United Nations
HUGAFO	Hunter-Gatherers Forum
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
IDPs	Internally Displaced Persons
IEA	Institute of Economic Affairs (IEA)
ILO	International Labour Organisation
IPS	Inter Press Service News Agency
IRIN	Integrated Regional Information Networks
KCK	Kituo cha Katiba
KDLG	Kisoro District Local Government
KRA	Kenya Revenue Authority

LBDA	Lake Basin Development Authority
LC	Local Council
LEGCO	Legislative Council
LRA	Lord's Resistance Army
LSK	Law Society of Kenya
MBIFCT	Mgahinga and Bwindi Impenetrable Forest Conservation Trust
MDAs	Ministries, Departments and Agencies
MDGs	Millennium Development Goals
MGNP	Mgahinga Gorilla National Park
MRC	Minorities Reforms Consortium
MRG	Minority Rights Group
MRND	Mouvement Républicain National pour la Démocratie et le Développement (National Revolutionary Movement for Development)
NARC	National Rainbow Coalition
NCEP	National Civic Education Programme
NEMA	National Environment Management Authority
NEPAD	New Partnership for African Development
NGO	Non-Governmental Organisation
NGOs	Non-Governmental Organisations
ODM-K	Orange Democratic Movement- Kenya
OPDP	Ogiek People's Development Programme
PARMEHUTU	Parti du Mouvement de l'Emancipatio Hutu (Party of the Hutu Emancipatio Movement)
PDC	Parti Democratique Centrist (Centrist Democratic Party)
PASP	Protected Area System Plan
PEAP	Poverty Eradication Action Plan

PHC	Population and Housing Census
PHGEMN	Pastoralists and Hunter Gatherers Ethnic Minorities Network
PRS	Poverty Reduction Strategies
PRSP	Poverty Reduction Strategy Paper
PTG	Pastoralists Thematic Group
PVR	Permanent Voter Register
RCs	Regional Commissioners
RDC	Resident District Commissioner
RGoZ	Revolutionary Government of Zanzibar
SDIP	Social Development Sector Strategic Investment Plan
SID	Society for International Development
SWG	Sector Working Group
UAMSHO	Islamic Mobilisation and Propagation-Zanzibar
UBOS	Uganda Bureau of Statistics
ULA	Uganda Land Alliance
UN	Union Natisnale Rwandaise (Rwandese National Union)
UNAR	United Nations
UNCED	United Nations Conference on Environment and Development
UNDM	UN Declaration on Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
UNDP	United Nations Development Programme
UNEP	United Nations Environmental Programme
UNESCO	United Nations Eductional, Scientific and Cultural Organisation
UNIPROBA	Unissons-nous pour la Promotion de Batwa (Union for the Promotion of the Batwa)
UNHRC	United Nations Human Rights Committee
UOBDU	United Organisation for Batwa Development in

	Uganda
UPE	Universal Primary Education
UPRONA	Union Pour le Progrés National (Union for National Progress)
URAIA	Name adopted for the National Civic Education Programme (NCEP II) It means "Citizenship" in Kiswahili.
URT	United Republic of Tanzania
US	United States
UWA	Uganda Wildlife Authority
WGM	Working Group on Minorities
ZNP	Zanzibar Nationalist Party
ZPPP	Zanzibar and Pemba Peoples' Party

1
Conceptual Framework

Ethnic and Racial Minorities and Movement Towards Political Inclusion in East Africa: Cases of Kenya, Uganda and Tanzania

*Maria Nassali**

Ethnic Minority and Political Participation in East Africa

> [I]n Africa, representative-ness is sometimes measured ethnically rather than electorally. Ethnic arithmetic helps to reassure different groups whether or not they are truly part of the machinery and are among the beneficiaries. A government is deemed to be more or less representative to the extent to which it reflects the ethnic composition of the wider society. …The absence of ethnic representation … is often a bigger political risk than the absence of electoral representativeness at the ballot box. Ethnic arithmetic is often a more compelling imperative than the ballot in the liberal sense.[1]

Introduction

Ethnicity is, a key component of both politics and society because it is the easiest force around which to mobilise.[2] Ethnicity is a phenomenon that has lived with us since time immemorial, yet inadequate attention has been given to address its impact on human rights, governance, social disparities and civil strife.[3] In addition, many studies of African elections confirm that the electorate votes

* CEO FIDA - Uganda. LLD (Pretoria).

1 Mazrui (2001) p. 23.

2 Young (1986 421, Dornboss (1991) p. 53.

3 Bagalaliwo (2007), Opening Statement Regional Workshop to discuss the draft Concept paper on Ethnic and Racial Minorities in East Africa, 30 August, 2007.

according to the criterion of ethnic and political patronage, with the expectation of material rewards.[4] The academic success in emolliating the status of the minorities notwithstanding, the stigma arising from such minority status perseveres.[5] Hence, the study provides a theoretical and analytical underpinning of why ethnicity should be interrogated and how it structures the political trajectory and dispensation. Therefore, this paper provides a conceptual analysis of ethnicity as a critical and complex variable that influences the processes of exclusion and inclusion in political participation through the lens of ethnic minorities.

It reviews the nature and status of the political participation of ethnic and racial minorities in Kenya, Uganda, Tanzania and Zanzibar. It addresses the issue of ethnic minorities within the broad framework of ethnicity with the critical question being: Is ethnicity a problem for democracy or is it a problem of democracy?[6] This theoretical background on ethnic and racial minorities in Kenya, Uganda and Tanzania, as a pilot study that shall inform the evolution of citizenship and identity programming in contemporary East Africa.

The assumption that minorities as citizens would effectively participate in the political processes, either directly or indirectly through their elected representatives, offers a smoke screen to shield their marginalisation, especially where ethnicity is a key political continuum. Cognisant of the difficulties of minorities to win elections due to weak numbers, often the state apparatus is dominated by majority groups. Further, being an ethnic minority often translates into marginalisation at all levels of social-economic and political arenas. Because political power is intimately linked to development, areas inhabited by politically marginalised minority groups are collectively much poorer.[7]

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4 Chweya (2002) p.7.
5 Solway (2004) p.133.
6 Muigai (1995) p.194.
7 Kanyinga (2006) p.367.

Inherent in the struggle for political participation is the fostering of democratic dispensation. Given the rich multi-ethnic composition of African states, compounded by the winner-takes-all electoral processes, minority groups are excluded from power.

In addition, the modern state is interventionist and tilted towards uniformity and the assimilation of minorities into the dominant ethnic identity, which warrants their protection.[8] The fact that ethnic minorities do not participate as a marginalised constituency within East Africa, but in their individual capacity, renders them too weak to influence decision-making in their common ethnic interest.[9] At times, entrance to places of influence is confined to entertaining the powers that be, as is common with the Batwa. Not a single Batwa holds a parliamentary seat nor leadership in the local government.[10]

The question of the political participation of racial minorities is quite complex. In contrast to the legal contractual view of citizenship, citizenship in Africa in reality tends to be interpreted in relation to the personal identification with the goals and the aspirations of the communities.[11] Significantly, citizenship in most African countries is tied to being indigenous as exemplified with the practice of listing tribes that constitute a given country.[12] Further, their citizenship is often doubted as opportunistic to wield economic power. Consequently, citizenship has been withdrawn at whim depending on the political expediencies of the day, as was the case with the 1970s Asian expulsion in Uganda and the deportation of Kenyan Asians on grounds that they were acting unfavourably against the interests of Kenya (to be discussed later).

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8 De Klerk Foundation (2001) p.13.
9 African Commission IP/C (2005) p.109.
10 Hasungule Interview 10 July, 2007.
11 Rothchild (1973) p.186.
12 Tajudeen (2007) p.54.

Lastly, the chapter also comprises the definition of the key terms used, outlines the legal and policy framework, the various formal and informal institutional mechanisms for addressing ethnicity, and the challenges for the political participation of ethnic minorities. In addition, it also explores the role ethnicity has played in contemporary governance in East Africa with highlights on the Asian question, the Buganda question and the Luo-Kikuyu divide, and concludes with proposals on the protection of ethnic and racial minorities.

Understanding Minority /Indigenous Terms

There is no global consensus on the definition of the terms indigenous and minorities. The trend is to outline the key characteristics that constitute these groups. The lack of a definition of who constitutes a minority or is indigenous, has invoked a multitude of varied interpretations. According to Scheinin, the commonly used definition of indigenous populations is the one formulated by the United Nations (UN) Special Rapporteur of the Sub-Commission, Jose R. Martinez Cobo.[13]

> Indigenous communities, peoples and nations are those, which having a historical continuity with the pre-invasion and pre-colonial societies that developed on their own territory, consider themselves distinct from other sectors of society now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity as the basis of their continued social and legal system.[14]

The 2005 African Commission report[15] adopted the four criteria for the identification of indigenous populations of the UN Sub-Commission

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[13] Scheinin (2005) p.5.

[14] UN Doc.E/CN.4/Sub.2/1986/7/Add.4, para. 379.

[15] African Commission Report on Indigenous Populations/Communities (2005) p.93.

on the Prevention of Discrimination and Protection of Minorities, propounded by its chairperson-rapporteur Erica-Irene Daes:[16]

- the occupation and use of a specific territory
- voluntary perpetuation of cultural distinctiveness such as language, religion, spiritual values, modes of production, laws and institutions
- self-identification as well as recognition by other groups as a collectivity
- An experience of subjugation, marginalisation, dispossession, exclusion and discrimination.

Significantly, the African Commission has clarified that within Africa:

> The term indigenous people has broader meaning than 'who came first.' It embraces a broader movement for rights and justice for those left on the margins of development and who are perceived negatively by dominating mainstream development paradigms, whose culture and ways of life are subject to discrimination and contempt and whose very existence is under threat of extinction.[17]

According to the African Commission, the term indigenous applies to communities that comprise hunter-gatherers, pastoralists and small-scale farmers, many of whom are at the verge of extinction. For example, the 'pygmies' of the Great Lakes region, the San and Khoekhoe of southern Africa, the Hadzabe of Tanzania, the Ogiek of Kenya and the Batwa of the Equatorial forests of central Africa and the Great Lakes region of Rwanda, Burundi and Uganda, Democratic Republic of Congo (DRC), Cameroon, the Central African Republic; the Pokot of Kenya and Uganda, the Barabaig of Tanzania, the Maasai of Tanzania and Kenya, the Samburu, Turkana,

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[16] See United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities in Resolution 2 (XXXIV) of 8 September, 1981 which was endorsed by the Commission on Human-rights in Resolution 1982/19 of 10th March, 1982 and authorised by the Economic and Social Council of the United Nations vide Resolution 1982/34 of 7 May, 1982.

[17] African Commission IP/C (2005) p.87.

Rendille, Orma, Borana of Kenya and Ethiopia, the Karamajong of Uganda, the Himba of Namibia, the Tuareg of west and north Africa, the Mbororo of central and west Africa, the Ogoni of Nigeria, and the Berbers of north Africa.[18]

The Sub-Commission Special Rapporteur, Francesco Capotorti, has suggested that the term minority could be taken to refer to:

> A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members- being nationals of the State- possess ethnic, religious or linguistic characteristics differing from those of the rest of the populations and show, if only implicitly, maintain a sense of solidarity, directed towards preserving their culture, tradition, religion or language.[19]

According to Alfredsson, there are three acceptable principles in determining minorities, namely:[20]

a. **Self-determination:** An individual must determine that s/he is a member of a minority and the group must accept the individual's membership;
b. The **numbers:** A minority group constitutes less than one half of the state population. In situations where no group makes up more than 50%, each of the different groups would be entitled to a minority protection;
c. The **Time-element**: A minority must have had a long-term presence in the territory concerned.

The Distinction between Indigenous People and Minorities

The UN Sub-Commission on the promotion and protection of human-rights recognises that there is no clear distinction between indigenous and minority rights. On one hand, Eide argues that the major difference between minority rights and indigenous people

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[18] African Commission IP/C (2005) p.15 -17.

[19] Capotorti (1993), Report of the Human-rights Committee, Part II, UN Doc.A/48/40 (Nov 1 1993) para 11.2.

[20] Alfredsson (2005) p.166.

is that minority rights are formulated as individual rights, whereas indigenous rights are collective rights sought as a people.[21]

While Alfredsson argues that a clear distinction exists in the international human-rights law between minorities and indigenous people in terms of drafting and adoption of different standards and the creation of separate forums and monitoring procedures, he also concedes that there are overlaps and differences between the two.[22] A crucial factor in the definition of indigenous peoples is their original inhabitation of the land and that their life depends on or is closely interwoven with land such as fishing, gathering, herding or hunting.[23] In some cases, the term minority can also refer to an indigenous people or an enthno-cultural group.[24] However, while an indigenous group may qualify as a minority, not all minorities are indigenous.[25]

Hence, Daes suggests that it is more useful to adopt a purpose approach with the key questions being: which category is most consistent with the goals and aspirations of the groups in question and what are the legal consequences for the groups being assigned to one or the other category?[26]

Minorities in East Africa

This paper observes that in East Africa, the definition of minorities is problematic and complex because majorities and minorities are not born, but are made according to specific historical, political and social circumstances.[27] Similarly, what constitutes a minority

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[21] African Commission IP/C (2005) pp.95 –97.
[22] Alfredsson (2005) p.168.
[23] Alfredsson (2005) p.169.
[24] De Klerk Foundation (2001) p.5.
[25] Peter (2007) p.8.
[26] African Commission IP/C (2005) p.95.
[27] Gladney D (1998) p.1.

is not static, but is constantly being "redefined, re-imaged, forged, claimed, reified."[28]

Within East Africa, the term minorities is much more complex than the question of numbers. There are incidents of individual minorities assumption of power. For example, in Uganda, President Museveni is from the Hima lineage of the Banyankole, in Kenya, former President Moi is from the Kalenjin and in Tanzania, Nyerere was from the Zanaki. With the exception of Nyerere, the rest were able to uplift the political status of their communities. In fact, Moi successfully redefined his ethnic background through forging the KAMATUSA ethnic alliance of the Kalenjin, the Maasai, the Turkana and the Samburu.[29] Moreover, it is possible that minorities, if taken together, constitute a majority.[30] Nasongo observes that leadership from a minority tribe is preferred in Tanzania than one from a large tribe because it does not have the numerical weight to dominate other tribes.[31]

A critical determinant of minority status in Africa is the socio-economic marginalisation as defined by ecology or geographical location.[32] The locus of major urban centres, geographical patterns of trade routes (roads) and railways, access to wage employment, distribution of post-primary educational facilities and opportunities, and zones for export production, facilitated the ascension into higher political and social roles of relatively large ethnic communities, while marginalising the minority ones.[33] Thus, some geographical areas such as northern Uganda and the semi-arid areas in Kenya and Pemba in Zanzibar, have been systematically marginalised, warranting both development resources and political voice to emolliate their status.

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[28] Solway (2004) p.137.
[29] Muigai (1995) p.175.
[30] Solway (2004) p.130.
[31] Nasongo (2002) p.216.
[32] Interview Murunga 21 August 2007.
[33] Jonyo (2002) p.91.

Pastoral communities and hunter-gatherers have identified themselves as minorities or indigenous people on the basis of their lifestyle. Border people such as the Somalis in Kenya claim minority status due to their questioned allegiance to national citizenship.[34] In Kenya and Uganda, Asian minorities are included under "others," which term connotes lack of recognition of their identity.

While in the Tanzanian context the World Directory of Minorities gives prominence to two groups only, namely the Barabaig and the Hadzabe, in addition to the Barabaig and the Hadzabe, Peter also identifies the Asians, Maasai, Ndorobo, Iraqw and the Mbulu, as minorities.[35] In Zanzibar, Bakari identifies the Indians, the Asians and the Comorians as numerical minorities.[36] In Uganda, Kabananukye identifies the Batwa, the Dodoth, the Jie, the Labwor, the Ik, the Ny'ngai, the Mening, and the Nyakwai, as minorities. Others are the Karamajong, the Basese, the Madi-Moru, the Madi, the Metu, the Okebu, the Kumam, the Suk, the Kakwa, the Banyole, the Benets, the Piswa, the Kwoti and the Yatui.[37] In Kenya, Yash Ghai identified the pastoral communities, the hunter-gatherers, cross-border communities, particularly the Somalis, as minorities.

The 2004 Bomas Draft Constitution attempted to offer relatively comprehensive criteria for marginalised groups:

a. a group that is disadvantaged by unfair discrimination;
b. by reason of its numbers is unable to participate in social and economic life;
c. a traditional community seeking to preserve its culture and lifestyle,
d. a hunter and gatherer community
e. a pastoralist community whether settled or nomadic which because of its geographical isolation minimally participates in the integrated life of the republic.[38]

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[34] Ghai (2004)p.4.
[35] Peter (2007) pp.14 -15.
[36] Bakari (2001) p.87.
[37] Kabananukye (1997).
[38] Art 306, Bomas Draft Constitution of Kenya, in Makoloo (2004).

Whether by design or accident, the omission of "political life," in this criterion is conspicuous by its absence. This concept paper, while endorsing the above definition of ethnic minorities, addresses the question of political life.

Rather than focus on ethnic minorities, the focus should be placed on marginalisation as a whole because even within majority ethnic groups, the poor, the elderly, the youth, women and migrants, are marginalised. Likewise, minorities are not a homogenous identity. Some individuals may be vulnerable within the minority group identity on the basis of gender, indigeniety, class, to mention but a few. Further marginalisation may accrue from geographical location, age, numbers, ethnicity and religion. Therefore, although this paper acknowledges the special difficulties of ethnic minorities, the paper equally proposes that Kituo cha Katiba (KCK) addresses their issues within the broader framework of citizens' rights and equal participation of all in all spheres of life. Such an approach factors on inclusion and participation in public life on an equal footing rather than be seen to be seeking special rights for groups.

Defining Political Participation

There is a theoretical consensus on the right to political participation by all citizens of a given country, either directly or through a freely chosen representative, to access public office, property and services.[39] In the context of choosing their leaders, ethnic minorities may theoretically be involved in the political dispensation and exercise influence over issues that directly affect their rights as well as hold leaders to account. However, this conception limits political participation to electoral processes.

In the development sector, participation is predominantly technically used to mitigate resistance to projects rather than to ensure that people share in decision-making over matters affecting

[39] African Charter Art 13, Tanzania Art 8 (1)d and Art 21, Uganda Art 38(1)

their lives.[40] This paper, therefore, adopts a broader definition of political participation beyond electioneering to include all activities undertaken by minorities "to promote their own interests as well as to protect themselves against any discrimination or other adverse acts of the majority." [41] In this respect, the expression of political participation and struggle of minorities includes struggles that deal with everyday counter-hegemonic acts such as the "use of minority language, refusal to behave in a subservient manner, assertions of cultural pride, formation of cultural organisations, support of sympathetic political opposition and direct challenge of the constitution policy."[42]

Legal and Policy Framework

Neither the UN Charter, the African Charter on Human and People's Rights (ACHPR) nor the African Union Charter makes reference to minorities. However, it is implied that the adoption of equality and non-discrimination would provide a mantle through which to protect minority/indigenous groups. The Universal Declaration of Human-rights (UDHR) recognises that the inherent dignity and of the equal and inalienable rights of all members of the human family, is a foundation of freedom, justice and peace in the world.

Article 27 of the International Covenant on Civil and Political Rights (ICCPR) includes a provision of the rights of persons belonging to ethnic, linguistic or religious minorities to self-determination. Article 1 of both the ICCPR and the International Covenant on Economic, Social and Cultural Rights *(*ICESCR), proclaim that the right to self-determination belongs to all peoples. However, this does not automatically entail a right of unilateral secession for every

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[40] Nyangabyaki (2003) p.3.
[41] Rothchild (1973) p.358.
[42] Solway (2004) pp.137-8.

group that qualified as a distinct people.[43] Reference to minority and indigenous rights is bound in the international arena.[44]

The willingness to expand the human-rights system beyond the individual centred model to embrace minority groups became more pronounced after the demise of the Cold War in the late 1980s.[45] Further, globalisation has ignited the longing for and safeguarding of identity, and also exposed that the individualistic concept of rights may not protect minority groups.[46] Further, the failure of nation building and the resultant conflicts has prompted the upsurge of ethnic movements that underpins cultural rights as a necessary building bloc for political stability and prosperity.[47]

Using the language of rights, representatives of indigenous groups have successfully lobbied for respect of their culture and identity. This paper notes that although the struggle for political participation of minorities has been fought on all levels of political organisation from the local, national to international, comparatively, more gains have been realised at the international level and the continental level, where ethnic minorities are recognised as a constituency than at the national levels. It is estimated that there are 12-14,000 minority

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[43] Scheinin (2005) p.7.

[44] The Peace of Augsburg in 1555, Treaty of Westphalia of 1648, Treaty of Versailles of 1919. The Atlantic Charter of 1941, the UN Charter of 1945, the UDHR in 1948, the 1948 Convention of Prevention and Punishment of the Crime of Genocide, the International Labour Convention of Indigenous and other Tribal and Semi-Tribal population in independent countries of 1957, the UN Convention on the Elimination of all Forms of Racial Discrimination of 1966 prohibits discrimination on the basis of race, colour, descent, national or ethnic origin, ICCPR Art 27, UNESCO Declaration on Race and Racial Prejudice in 1982, International Labour Organisation 1989, UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, ILO Convention No 107 of 1957, and No 169 of 1989. UNESCSO Convention Against Discrimination in Education.

[45] Lerner (1995) 91, De Klerk Foundation (2001) P.5.

[46] Leuprecht P (2001) pp.118 & 121.

[47] Kayunga (2001) p.37.

and indigenous groups in the world, about 1.5 billion individuals, totalling up to 25% of the world's population.[48]

In 1982, the UN Sub-Commission on the Prevention of Discrimination of Minorities established the Working Groups on indigenous populations which are being attended by more than 1,000 indigenous representatives.[49] In 2000, the Permanent Forum on Indigenous Issues was established under the Economic and Social Council (ECOSOC), a special rapporteur nominated and a UN Voluntary Fund, whose board includes an African representative, was established to support indigenous peoples.[50] In addition, 1993 was declared an international year for the world's indigenous peoples[51] and 9 August the World International Day for indigenous peoples. The fact that a Quiche indigenous woman, Rigobeta Menchu, from Guetamala was the recipient of the Nobel Peace Prize in 1992. underscores the international recognition of the plight of indigenous and minority groups.[52]

In 1992, the UN Declaration on the rights of persons belonging to national or ethnic, religious and linguistics Minorities was adopted.[53] It provided for the right of minorities to enjoy their own culture, language and religion, participate effectively in cultural, religious, social, economic and public life and in decisions on national and regional levels concerning minorities, establish their own associations and establish and maintain free and peaceful contacts with others even across frontiers. However, the declaration is generally weak, with discretionary obligations that give the impression of non-

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[48] Alfredsson (2005) p.164.

[49] African Commission IP/C (2005) 98, Anaya (2001) p.112.

[50] African Commission IP/C (2005) pp.98-99.

[51] UN General Assembly Resolution, 49/214, 23 Dec, 1994.

[52] Peter (2007) p.4.

[53] GA resolution 47/135 of Dec, 1992, Reproduced in Phillips A. and Rosas A.(eds), Universal Minority Rights.

objective standards and lacks an implementation or monitoring procedure.[54]

Similarly, in November, 2006, Namibia objected the adoption of the Declaration of the Rights of Indigenous people because it did not define who an indigenous person is and the apprehension that focus on indigenous rights could create uncertainty and instability in Africa.[55]

At the continental level, at the 28th Ordinary Session of the African Commission in 2001, the resolution for the rights of indigenous groups was passed. Since the 29th Ordinary Session, representatives of ethnic minorities have been attending the African Commission's session, advocating for recognition, respect and human-rights protection and a right to survive as a people.[56] Subsequently, a working group on Indigenous people's rights was formed. Due to the complexity of determining who constitutes an indigenous group, the Working Group adopted the UN principle of self-definition and recognition of the self-identity of people.[57]

Evidently, ambivalence reigns over indigenous and minority rights, necessitating a more lucid examination of what minority rights in the political arena entail. In order to guarantee the existence of the rights of minorities, they have to be constitutionally entrenched in a justifiable bill of rights. However, within East Africa, issues related to minorities are generally addressed through the general provisions that bar discrimination and provide for equality before the law. Neither Kenya nor Tanzania, explicitly mention minorities in their constitutions. The current constitution of Kenya does not define the terms minority and indigenous, but alludes to them under Article 33 (1) in the provision that provides for "special interest' representatives

[54] Alfredsson (1995) pp.81-82.

[55] Valarie Taliman, "Declaration on the Right s of Indigenous People delayed"., Indian Country Today, Feb 2, 2007, www.indiancountry.com.

[56] African Commission IP/C (2005) p.8.

[57] ILO Convention 169/1989, art 1 (2).

in parliament. The Wako draft removed all reference to marginalised groups such as minorities, pastoralists and hunter-gatherers, for the proposed new Kenya constitutional document under the chapters on values and principles of nationhood, bill of rights, representation of the people and devolution of power.[58]

In Uganda, the National Directive Principles recognise the existence of ethnic, religious, ideological, political and cultural diversity. Ethnic origin is included among the bars of discrimination under Article 21 of the Uganda Constitution. Article 32 provides for the rights of the marginalised which implicitly include ethnic minorities. However, the explicit mention of social minorities such as women, the youth and people with disabilities, has inadvertently removed the spotlight from ethnic, racial and other minorities. Further, Article 36 explicitly provides for the right of minorities to participate in decision-making.

Institutional Mechanisms

There are various models and mechanisms that can be used to address ethnicity in an effort to afford equal protection of all persons.

The Indifference-Blind Model

The dominant view in managing ethnicity under the liberal democracy is the "Indifference -Blind model" which calls on the state to be blind to ethnic differences by neither promoting, nor discouraging cultural affiliation and practice. [59] In practice, this obscures inequality. The state has the dual duty of respecting minority rights by not interfering with the enjoyment of rights as well as provide affirmative action in favour of minorities in order to enable them realise de-facto equality, diversity and societal harmony.

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[58] Centre for Minority Rights and Development (CEMIRIDE), 6FZ9WR?OpenDocument, 06 Sept, 2005.

[59] Berman, Eyoh and Kymlicka (2004) pp.15-16.

The Jacobin Republicans or Hegemonic Control Model

Under the Jacobin republicans or hegemonic control model, the state deliberately supports a common culture, which it de-ethnises and promotes as a national one for the equal possession of all citizens. However, such a model involves massive coercion or co-option which fuels resentment. [60] The control model of regulating diversity and containing others within a position of political marginalisation and socio-economic disadvantage, is out-modelled because a successful state requires the active participation of all its citizens in order to earn their allegiance.[61] Tanzania was able to diffuse ethnicity because the Swahili culture and language, could not be appropriated by any ethnic group and Nyerere, the chief architect, was a minority.

In countries where minorities are inassimilable and remain culturally distinct, their members are highly vulnerable.[62] Cultural assimilation extends beyond food and dress, to a conscious effort to forge uniform identity, practices and values for all citizens in the country by minimising particularities of symbols, language and associations.[63] Hopefully, the increased social interaction through education, inter-marriage and migration, promotes the development of a national identity. For example, there are mixed genealogical origins in Zanzibar that delineation of pure racial categories such as Africans, Indians, Arabs or pure ethnic identities in Zanzibar is difficult, even among those Zanzibaris who identify themselves as Shirazi or as of Arab origin.[64] For instance, a study by Tusasirwe finds that urban Kampala is more amenable to minority migrants accessing electoral public offices. Equally, Tom Mboya, a Luo, was able to secure elective office in Nairobi, an area associated with the Kikuyu. In addition, Asians mostly win seats in urban areas such

[60] Berman, Eyoh and Kymlicka (2004) pp.17-18.
[61] Berman, Eyoh and Kymlicka (2004) 14-15, Kayunga (2001) p.10.
[62] Rothchild (1973) p.16.
[63] Rothchild (1973) p.15.
[64] Bakari (2001) pp.4, 67 &77.

as Pradip Karia in Kampala City Council, Sanjay Tanna in Tororo municipality, Najib Balala in Mombasa, and Mvita and Mohammed Sanya, in Zanzibar Stone Town.

Frequently, cultural assimilation is from a position of dominance, where it is the holders of power who determine the conditions under which integration takes place.[65] However, involuntary cultural assimilation is not only disrespectful, but also fosters conflicts. For example, Karume decreed inter-racial marriages in Zanzibar and in September 1970, a Peoples' court sentenced to jail the men who objected to the forced marriages of four Zanzibari girls of Persian origin to African government officials.[66]

Promoting civil society social interaction facilitates a natural evolution of a pan-ethnic culture which is not necessarily defined by ethnic terms.[67] Nonetheless, many civil society associations are already defined along ethnic lines in reality.

The Consociation Democracy Model

This model is commonly known as coalition governments within East Africa and works where no single group can impose hegemony over others. This model guarantees all ethnic groups a share in power at the central level.[68] It is characterised by shared or rotational power such as constitutionally prescribed party systems, bicameral legislature, co-vice president's offices, term-limits, cross-ethnic constituencies and proportional representation for minority groups.[69] However, it runs the risk of sacrificing good government and policy effectiveness, rigidifies ethnic differences, reduces politics to a question of dividing state resources and offices among groups, is quite unstable as parties jostle for the best deals and minority

[65] Rothchild (1973) p.267.
[66] Rothchild (1973) p.303.
[67] Berman, Eyoh and Kymlicka (2004) p.18.
[68] Berman, Eyoh and Kymlicka (2004) p.20.
[69] Glickman (1995b) 403-4, Kayunga (2001) p.9.

groups may be isolated. Proportional representation is the most preferred model because it gives minorities political voice, resulting in the enhancement of public trust in the state, as politics becomes an inclusive process.[70] Although it is criticised for resulting in party fragmentation and large ethnic group divisions, nevertheless, the winner-takes-all electoral model ignores the difficulty of minorities to win in competitive electoral processes.

Federalism

Federalism, regionalism, sub-territorial or decentralisation, diffuse the intensity of political competition for the top and offers territorial minorities a chance to govern in their own home areas.[71] It offers a middle course between separatist and the advocates of a strong unitary state. It also permits members of minority communities to maintain their distinctive identity by exercising effective control over their own political, economic, social and cultural affairs. The proximity to the people yields better political participation. The division of the centres of power dilutes the agitation of political demands at the centre and prevents ethnic potency as a form of mobilisation.[72] It is noteworthy that the failure of the state in Africa is witnessed by both federal and unitary states. [73] Kymlicka contends that federalism only works where the ethnic groups have distinct homelands within which to form a clear majority.[74]

Federalism failed to deliver equity, liberty and prosperity in Africa because the state has not internalised democracy to serve as a neutral arbiter in competing ethnic claims and not because it is a bad concept. [75] Precisely, for federalism to succeed, it must be premised on democratic governance and the willingness of the central

[70] Cohen (1997) p.626.
[71] Glickman (1995b) p.403.
[72] Kayunga (2001) p.9.
[73] Berman, Eyoh and Kymlicka (2004) p.19.
[74] Kymlicka (2004) 68, Kayunga (2001) p.276.
[75] Mutua (2001) pp.319-320.

government to respect ethnicity as a political concept coupled with the sharing of real power and resources. Even if federalism has been a "dirty word", it offers an institutionalisation of diversity of African countries.[76] The multinational federalism model is premised on each ethnic group retaining its distinctiveness and self-government, but working in partnership with others.[77] However, federalism /local governments are criticised for failing to address the internal dynamics of exclusion in political processes.

Decentralisation

Decentralisation refers to the "transfer of legal, administrative and political authority to make decisions and manage public functions from the central governments to the local councils."[78] Decentralisation is advanced on grounds that it fosters greater accountability of the representatives because the individuals are of greater proximity to the electorate; it promotes greater ease of information and the possibility of redressing social injustices.[79] Sometimes, decentralisation offers minorities political voice. For example, Nakasogola is predominantly occupied by the Baruli-Banyala, which are minority tribes of the Baganda.[80] The Maasai control the districts of Ngorogoro, Longido, Monduli, Kiteto, and Kilimanjaro.[81] However, by 1996, only two Batwa had been elected to the local government and moreover at the village council.[82]

On the contrary, decentralisation can also be used selfishly to divide large ethnic groups into tit-bits, thus weakening their bargaining position.[83] It is also trite that new ethnic identities are

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[76] Mazrui (2001) p.21.
[77] Berman, Eyoh and Kymlicka (2004) p.19
[78] Nsibambi (1997) p.333.
[79] Nyangabyaki (2003) p.3.
[80] Nakayi (2007) p.3.
[81] Olenasha July 23 2007.
[82] Kabananukey (1997) p.10.
[83] Kanyunga (2001) p.37.

constituted from large groups with each clamouring for political representation.[84] On the inception of multi-partism, the then Kenyan President, Daniel Arap Moi, created many new districts to enhance his political patronage such as the Suba district, which distinguished the Suba from the Luo.[85] In a comparative study of East Africa, Nyangabyaki finds that decentralisation has mostly been utilised as an administrative tool to control the masses.[86]

In Uganda, decentralisation is entrenched in Chapter 11 of the 1995 Constitution and the Local Government Act 1997 (Amended 2001). A series of studies by the Human-Rights and Peace Centre (HURIPEC) 2007 reveal that decentralisation is void of human-rights and is mostly utilised for administrative convenience in service delivery. Although the law vests both the political and legislative leadership of the district in the district council, there is accumulative usurping of the decision-making powers of local governments through appointments of technical administrators, provision of conditional grants from the central government and the abolition of local taxes. The gradual re-centralisation is detrimental in relation to the wider goals of decentralisation and improvement of human-rights protection.[87]

Similarly, the creation of new districts, currently totalling 112, although defended under the guise of giving minorities political voice and taking services closer to the people, is exposed as a smokescreen that has been used to accentuate the control and hegemony of the Movement party over the masses.[88] Indeed, 59% of respondents in Uganda claimed that they did not have authority over local governments although they appointed them.[89]

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[84] Kayunga (2001) p.45.

[85] Nasongo (2002) p.215

[86] Nyangabyaki (2003) 3, For Tanzania ref Shivji and Peter (2003) pp. 8 and 13, For Uganda refer to HURIPEC series on decentralisation, (2007).

[87] Oloka-Onyango (2007) p.3

[88] Oloka-Onyango (2007) p.6.

[89] HURINET and MS (2006) p.13.

In addition, although in theory citizens can settle everywhere and participate in political affairs, migrants often face difficulties in participating in political processes because they are not considered indigenous to the area.[90] For example, the case of Kibaale district, where the president advised the duly elected chairman Ahebwa Ruremera, an immigrant Mukiga, to step down in favour of George Namyaka, an indigenous Munyoro,[91] was a violation of the principles of free and fair elections.

As enunciated by the African Commission in the *Constitutional Rights Project and Civil Liberties organisation v. Nigeria,*[92] the right to:

> Participate freely in government entails, among other things, the right to vote for the representative of one's choice. An inevitable corollary of this right is that the results of the free expression of the will of the voters are respected, otherwise, the right to vote freely is meaningless.

According to Article 202 of the 1995 Constitution, the president, with the approval of a two-thirds majority, has powers to assume both legislative and executive powers of a district, where the district requests so, during a state of emergency and where it is difficult or impossible for a district to function.[93] Nonetheless, his reversal of the people's electoral decisions sets a dangerous precedent by denying immigrants minorities political voice. In Kayunga, immigrants have kept out of political participation in the interest of harmonious existence among the dominant Baganda.[94] Similarly in Gulu, it is officially maintained that there are no minorities and as such, the Nubians are neither recognised as ethnic minorities, nor represented

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[90] Nyangabyaki (2003) p.2.

[91] See "Kibale LCs Chief quits", *New Vision*, 18 April, 2002, "Kibale fiasco results of new districts syndromem", *Monitor* , 12 April, 2002. "Will Ruremera's promise to resign resolve Kibale Crisis", *The Monitor*, 24 April 2002, "Kibale Agrees on LC Chairman", *The Monitor*, 28 April 2002.

[92] Communication 102/93, 12th Annual Report 1998/1999.

[93] Art 202 of the 1995 Constitution of Uganda.

[94] Tusasirwe (2007) 16, Nakayi (2007) p.21.

in the local government.[95] Similarly, the 1992 ethnic cleansing in the Rift Valley in Kenya was sponsored by politicians in order to drive out non-indigenous ethnic groups that would affect the electoral outcome.[96]

In Kenya, decentralisation is provided for under the 1977 Local Government Act, Cap 265. However, although the local authorities have powers to provide public services, collect taxes and make by-laws, local governments are under the supervision of the central government. In addition, the participation of the people in the local government is discretionary.[97]

In Tanzania, Article 145 provides for local governments and Article 246(1) articulates that the aim of the local government is to enable citizens to exercise power and to participate in the planning and other development activities in the local areas. The Ngorongoro Conservation Act is similar to a local government and the residents have a right to participate in the administration of the semi-governmental organ.[98] However, the Pastoralist Council is purely advisory, with no say over the Authority's legislative activity.[99] In addition, the new Village Land Act does not have special provision due to the perception that minorities should be mainstreamed.[100] Likewise, the Land Commission of 1991-1992 took a very political approach and crafted the debate in terms of the rights of citizens, focusing on all marginalised groups.[101]

Genuine pluralistic democracy and holistic decentralisation provides a solution to minority problems. Such decentralisation goes beyond the juristic constitutional structure to include the

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[95] Tusasirwe (2007) 16, Nakayi (2007) p.21.
[96] Kanyinga (2006) 367, Mutunga (2007) p.32.
[97] Art 86 Local Government Act, Cap 265.
[98] Shivji and Kapinga (1998) p.61.
[99] Shivji and Kapinga (1998) p.61.
[100] Juma Interview 23 July 2003.
[101] Shivji Interview 23 July 2003.

development of an environment that is conducive for social learning and committed to transparent, accountable and distributive justice.[102] In contrast with Uganda and Tanzania, where the law promotes local governments with specific decision-making powers, decentralisation is merely administrative and under the supervision of the central government in Kenya.[103]

Courts

The struggle for minority rights has centred on land issues that are a primary factor in their way of life, survival and identity. [104] Instructively, the struggle for land glaringly reflects the status of political voice or lack of it by minorities. Put differently, the very fact that a key resource of survival and identity is given away without minority participation illuminates the vulnerability and inability of minorities to influence the political dispensation.

Despite the theoretical possibility to institute test cases, courts are generally unsympathetic to the constitutional rights of the minorities of a community and tend to decide cases on technicalities.[105] In the case of *R. v. Bukunda Kilanga and Others,*[106] the government, without consultation of the Barabaig, had decided to resettle them in villages

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[102] Amoo (1997) 24, Leuprecht (2001) p.125.

[103] Nyangabyaki (2003) p.15.

[104] Peter (2007) 17, African Commission IP/C (2005) 22, 25, 26 & 31, In 1998, Batwa were evicted from Nyungwe Forest in Rwanda, Bwindi, Mghinga and Echuya in Uganda in 1991, Kahuzi-Biega Forest in DRC. African Commission, Maasai have been displaced in favour of national parks in Manyara, Tarangire, Ngordoto, Serengeti, Mkomazi in Tanzania, Amboseli, Maasai Mara in Kenya, In Uganda, the Pokot lost land to the Nasolot game reserve, the ancestral land of the Ogiek in Kenya has been declared a national park, the Barabaig in Tanzania have lost land to the National Agricultural and Food Corporation (NAFCO).

[105] Shivji and Kapinga (1998) p.63.

[106] High Court of Tanzania at Singida, High Court Sessional Case No. 168 of 1976 (Unreported). On appeal it is referred to as *Noya Gomusha and Others v. R.* [1980] TLR 19, reproduced in Peter (2007) p.21.

in order to grow wheat on their land. The government used uncouth methods such as confiscation of their cattle and unfair imprisonment, to coerce the Barabaig into the villagisation programme. In the case of *Mulbadaw Village Council and 67 Others v. National Agricultural and Food Corporation* (NAFCO),[107] the Mulbadow village council sued NAFCO for trespass on their land. The trial judge ruled in favour of the village council because the plaintiffs had been occupying the land under a customary title. Unfortunately, in the appeal, *NAFCO v. Mulbadow Village Council and others,*[108] the Court of Appeal reversed the decision of the High Court on ground that the village council had not acquired the land in accordance with the Villages and Ujamaa Villages Act of 1975 and, thus had failed to prove that they were "natives" within the meaning of the law. In the case of *Lekengere Faru Parutu Kamunyu and 52 Others v. Minister for Tourism, Natural Resources and Environment and 3 Others,*[109] despite the fact that the plaintiffs had been occupying the land since the early 1950s, it was held that they were not the original inhabitants and as such, did not have the ancestral customary land title. In *Yoke Gwaku &5 Others v. NAFCO and Another (1988),* although the case was brought by 788 plaintiffs, judgement was entered in respect of only six of whom only three were awarded some residual damages.[110]

Shivji and Kapinga recommend a piecemeal approach to specific instances of breaches of human-rights because the chances of success are greater and would boost the morale of the community.[111] Equally, Peter observes that generally, cases relating to indigenous/minority peoples are lost in favour of the government and secondly the awards

[107] High Court of Tanzania at Arusha, Civil Case No. 10 of 1981 (Unreported), reproduced in Peter (2007) p.24.

[108] [1985] TLR 88 reproduced in Peter (2007) 21, reproduced in Peter (2007) pp.25-26.

[109] Court of Appeal of Tanzania at Arusha, Civil Appeal No. 53 of 1998, reproduced in Peter (2007) pp.32-35.

[110] Shivji and Kapinga (1998) p.65.

[111] Shivji and Kapinga (1998) p.66.

granted are restrictively interpreted to only apply to parties to the case, to the exclusion of others in a similar situation, which negates the whole purpose of public interest litigation.[112] Minority Rights Group (MRG) makes a similar observation in Kenya in particular in view of the individualist rights discourse.[113] The pertinent question is that if minorities cannot influence the decisions on land, a resource upon which their lifestyle and identity hinges, what else can they influence?

The Human-Rights Commission (HRC) and other Bodies

None of the HRCs has a specific programme on ethnic minorities, but target vulnerable groups in general or issues that make people vulnerable such as land. The criteria HRCs use are numbers, lifestyle and access to facilities. The Legal and Human-Rights Centre (LHRC) decried the act of the Commission for Human-Rights and Good Governance (CHRAGG) and leaders of Mbulu district for forcing the Wahadzabe to surrender their village land of Yaeda Chini and Mkono wa Mono to an Arab investor, Tanzania Arabs Emirates.[114] Although, the Commission disassociated itself from the actions of the individual commissioner in a private meeting with LHRC, the Commission neither issued a statement denouncing the commissioners' statement, nor took any action against the commissioner.[115]

In Uganda, Article 32(2) of the 1995 Constitution provides for the establishment of the Equal Opportunity Commission to address imbalances in society. The equal opportunity policy aims at promoting equal opportunities for all people irrespective of gender, age, physical ability, ethnic background, health status or geographical

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[112] Peter (2007) pp.35-37.

[113] Makoloo (2004) p.20.

[114] Legal and Human-rights Centre, Press release: "Forcing the Wahadzabe tribe to accept the investor in their area is Violation of their rights." Ref: LHRC/HRM MON.REP.VOL.IV, 6th July 2007.

[115] Interview Peter, 25 July 2007.

location.[116] Its vision is to ensure that all people participate and benefit from all spheres of political, economic, social and cultural life. [117] However, the policy is yet to become functional.

Political Parties

East Africa has suffered from political repression under the pretext that multi- partism breeds ethnic strife, destroys unity and is selfishly motivated by the capture of power. While it is erroneously argued that multi-party politics fosters ethnic rivalry, the single party systems did not solve ethnic tensions. Instead, single party systems suffocated ethnic rivalry through authoritarian regimes, creating a false sense of unity.[118]

This partially explains why most of the political parties in East Africa are not about interest aggregations.[119] The current multi-partism, particularly in Kenya, has accentuated the plight of ethnic minorities because the major ethnic coalitions can actually afford to ignore them altogether.[120]

The above notwithstanding, Beinin argues that political parties have been most sensitive to ethnic cleavages and conflicts and have tried to design formulas such as internal party primaries, appointments to committees, party membership criteria to emolliate the same.[121] For example, Chama cha Mapinduzi (CCM), the ruling party in Tanzania, is a broad-based party that recruits across many ethnic communities.

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[116] The National Equal Opportunity Policy, 4th Draft, Ministry of Gender, Labour and Social Development, April, 2006.

[117] The National Equal Opportunity Policy, 4th Draft, Ministry of Gender, Labour and Social Development, April, 2006.

[118] Berman, Eyoh and Kymlicka (2004) 11, Muigai (1995) 162-163, Kayunga (2001) 4.

[119] Nyangabyaki (2003) p.5.

[120] Interview Murunga 20 August, 2007, Mutunga (2007).

[121] Beinen (1983) p.111.

Civil Society Associations

All countries provide for the freedom of association.[122] The formation of associations provides a framework for mobilisation and organisation in pursuit of common interests. It also provides an important beginning for political empowerment to organise and advocate for rights and enter into dialogue with governments.[123] However, the fact that within East Africa governments have insisted on an apolitical civil society, limits Civil Society Organisation (CSOs) ability to advance the rights of minorities.

A critique of non-governmental organisations (NGOs) in the Conservation Area in Tanzania reveals that they are nascent, have limited organisational skills and capacities, lack clear focus and suffer resistance by governments, as demonstrated by lengthy registration procedures.[124] For example, the Ngorongoro Pastoralist Development Organisation (NGOPADEO) took a long time to be registered and its founder members were harassed and forbidden to hold meetings.[125] There is also selective registration to eliminate NGOs suspected of deviation from government policies.[126]

Significantly, participation of minorities in the Ngorongoro Conservation Council is motivated more by a one-way channel of top-down communication from the administration to the people than to offer a much greater voice to the residents in the affairs of the council. The council is purely advisory and efforts to give it more decision-making powers were opposed by the Ngorongoro Conservation Area (NCA) lawyer on grounds that the council was not provided for in the ordinance.[127]

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[122] Tanzania Art 20, Uganda Art 29, Kenya Wako Draft Art 52.
[123] African Commission IP/C (2005) p.57.
[124] Shivji and Kapinga (1998) pp.51-52.
[125] Shivji and Kapinga (1998) pp.53-55.
[126] Shivji and Kapinga (1998) pp.53-55.
[127] Shivji and Kapinga (2007) pp.55-57.

In Kenya, only the Centre for Minority Rights Development (CERIMIDE) seems to be working on minority rights in a sustained and substantial manner. In Uganda, the focus of NGOs seems to be oriented towards the welfare of minorities such as addressing their basic needs. However, the MRG has an international project on political rights and empowerment of indigenous communities.[128]

Language

African states have pursued the development of a common identity through the colonial language as the language of state institutions. Conversely, the English language, as a public medium of communication, deprives the governance debate of an authentic African imprint, making constitutionalism both "alien and alienating."[129] Indeed, language humanises political social ideals, making it more accessible to all persons, thus building a nationhood and citizenship, particularly because most values are embedded in the oral tradition and culture.[130] While states have succeeded in avoiding linguistic favouritism at the national level, language has remained intact with most public institutions using vernacular at the local level.[131]

For example, in *Malawi African Association and others v. Mauritania,*[132] it was ruled that Article 17(2) of the African Charter that provides for a right to cultural life, as well as a duty on the state to promote and protect minorities, entitles a community to the use of their language. As such:

> Language is an integral part of the structure of culture; it in fact constitutes its pillar and means of expression par excellence, its usage

[128] Interview Hasangule 10 July, 2007.
[129] Oloka-Onyango (2001) 6, Kalu A (2001) pp.37-38.
[130] Kalu A (2001) pp.37-38.
[131] Berman, Eyoh and Kymlicka (2004) p.16.
[132] (2000) AHRLR 149, (ACHPR 2000).

enriches the individual and enables him to take an active part in the community and in its activities.[133]

Positively, both Tanzania and Kenya recognise Swahili together with English as the official languages.[134]

Challenges of Minorities to Political Participation

This section discusses the major challenges for the enjoyment of the rights of minorities namely: the questions of territorial integrity and the antecedent nation-building struggles of Africa, the issue of political ethnicity as a significant factor of exclusion and inclusion in political nation-building, political discourse and the dominant development paradigm grounded in capitalism and private property.

Nation-Building and Minority Rights

The controversies of nation-building emanate from the Berlin Conference of 1984-85 that created artificial borders based on administrative convenience of the political powers as opposed to existing ethnic boundaries.[135] Subsequently, the Organisation of African Unity (OAU) and the African Union (AU), accepted the existing colonial boundaries (the principle of *uti possidetis)* and adopted the principle of non-violability of the colonial boundaries.[136] Among their key objectives was the promotion of unity and solidarity and territorial integrity.

Consequently, the official position of African governments is that all African people are indigenous to the African continent, requiring no preferential treatment of any person.[137] Further, African countries are cautious to overtly recognise the rights of minorities for fear of enhanced tribalism and divisions among the populace, thwarted

[133] (2000) AHRLR 149, (ACHPR 2000), para 137.
[134] Art 53 of the Constitution of Kenya.
[135] Keller (1983) p.251.
[136] African Commission IP/C (2005) 69, Keller (1983) p.252.
[137] African Commission IP/C (2005) pp.69,12 & 60.

national unity and the fostering of separatist demands which would undermine the continued existence of the principle of territorial integrity.[138] Because ethnicity is predominantly perceived as divisive, it was used to justify monolithic political party states to transform disparate ethnic groups into an integrated nation state.[139]

In addition, the indigenous debate is quite volatile because it can disrupt social cohesion without necessarily empowering marginalised groups. For example, Ochieng argues that only the Maasai are Kenyans and the only true autochthons due to the belief that the Luo migrated from Sudan and the Kikuyu from Mozambique.[140] Similarly, President Museveni has argued that most Baganda are not indigenous to Buganda in Uganda.[141]

Accordingly, minority rights in Africa must be interrogated in the context of nation-building. In contrast to the West, where the majority elite imposed a cohesive sense of nationhood among the masses, most African states do not have majority ethnic groups that form more than 30% of the population.[142] The structured dominance of majority groups denies minorities freedom of participation in the political life.[143]

On the contrary, the denial or suppression of ethnic needs such as identity, recognition, security, dignity and participation in political life, has resulted in conflicts and inequalities in Africa, without achieving nation-building. A study by the Human Rights Network (HURINET) and the Danish Association for International Co-operation (MS), found that 55% had no agreement on common

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[138] African Commission IP/C (2005) 109, Roach S.C (2005) p.22.

[139] Amoo (1997) 4-5, Rothchild and Olurunsola (1983) 5 & 6, Welch (1998) p.110.

[140] Ochieng P (2007), *The East African Magazine*, 25 June-1 July 2007.

[141] Museveni (2002) "Kibaale: Museveni's plan," Press Statement on Kibaale Situation at State House Nakasero on 15 April 2002, reproduced in New Vision, 24 April 2002, p.19.

[142] Kymlicka (2004) p.64.

[143] De Klerk Foundation (2001) p.9.

citizenship and 65% were of the view that cultural differences were not given equal recognition.[144]

In a bid to promote the rights of minorities, the international community expanded the concept of self–determination to include the "right to the people to determine their political destiny and to exercise their popular sovereignty against state authoritarian rule."145 Simply put, the right to self-determination does not exclusively mean the right to independent statehood, but also includes the right to exist and develop according to a group's distinct ethnicity.

In *Kantagese People's Congress Zaire,*[146] the Africa Commission elucidated that:

> Self-determination may be exercised in any of the following ways; independence, self-government, local government, federalism, confederalism, unitarism or any other form of relation that accords with the wishes of the people, but is fully cognisant of other recognised principles such as sovereignty and territorial integrity."[147] In effect, minorities are obliged to "exercise a variant of self-determination that is compatible with the sovereignty of and territorial integrity of the state[148]

Further, the Africa Commission rightly argues that the spirit of the term indigenous is to enable groups/peoples, who feel marginalised, discriminated and subordinated because of the particular culture or ways of life within a state, get recognition and a voice.[149] Thus, the consolidation of national identity and unity should not be pursued at the expense of cultural diversity, respect for human-rights and social justice. Indeed, democracy does not only mean that the view of the

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[144] HURINET and MS (2006) p.12.

[145] Roach S.C (2005) p.25.

[146] 8th Activity report 1994-95 Annex VI in Heyns and Killander (2006) p.137.

[147] 8th Activity report 1994-95 Annex VI in Heyns and Killander (2006) 137, para 4.

[148] 8th Activity report 1994-95 Annex VI in Heyns and Killander (2006) 137, para 6.

[149] African Commission IP/C (2005) p.102.

majority must prevail, but also entails a deliberate effort on the part of the majority to respect the rights of the minority and address the structural impediments to the minority's realisation of equality.

Ethnicity and Political Participation

In order to understand the implications of ethnicity to the minority's political participation, the following section proceeds from a definition of ethnicity.

The term "ethnicity" is derived from the Greek word for "ethnos" or "ethnikos" which means nation: a group characterised by common descent.[150] Defining ethnicity is an analytical simplification because ethnicity rarely exists in its pure form, but involves multiple and fluid identities which are influenced by a multitude of factors such as naming, nature of work, self-identification, distinction, residence and state policies. Ethnicity relates to a "group identification of certain people with some characteristics held in common such as race, language, religion, common history and culture.[151] Ethnicity also refers to the groups' subjective consciousness of common historical origins and mobilisation for unified social, political and economic goals.[152]

Ethnicity is a dynamic concept, continuously being reconstructed, reproduced and amended in social, economic and political interactions and in reflection of the changing configurations of political power.[153] For example, the identified ethnic groups in Uganda have increased from 22 in 1959 to 48 in 1994, 56 in 1995 and 65 in the 2006 constitutional amendment. In contrast, Tanzania makes no formal reference to ethnic groups.

Jonyo distinguished between ethnicity as an organisational form and ethnicity as a process. [154] Ethnicity as an organisational form

[150] Jonyo (2002) p.87.
[151] Bakari (2001) p.4.
[152] Glickman (1995a) 290, Muigai (1995) p.161.
[153] Glickman (1995a) 290, Furia (1995) p.13.
[154] Jonyo (2002) p.87.

is defined by distinct boundaries embracing a community with distinctly coherent cultural values, institutions and distinct language. Similarly, Kayunga identifies the following components of ethnicity: A subjective belief in a shared common history, a geographical entity, cultural emblems, distinctiveness and recognition by others of the group's identification.[155]

As a process, ethnicity is conceptualised at two levels: the intra-group (moral ethnicity) and inter-group relations (political tribalism). Moral ethnicity refers to the relationship within an ethnic group based on mutual socio-economic obligation and support, particularly in times of vulnerability.[156] Political tribalism is the external dimension of ethnicity which addresses the relationship between an ethnic group and the state or between two or more ethnic groups in the competition for control of the state's wealth and power.[157]

Moral and political ethnicity are not necessarily separate, but fluid aspects of the same coin. Accordingly, moral ethnicity gets converted into political tribalism when ethnic groups compete for state power and use their position to advance their ethnic social obligations. In other words, the political elite are expected to promote the interests of their primary community serving as spokespersons, delivering collective benefits such as roads, schools, health and providing personal contacts to the state.[158] For ordinary people, contact with the colonial state contained an element of danger and uncertainty that they needed inter-mediation through the powerful political patrons to protect them from abuse as well as enable them to access state resources.[159]

[155] Kayunga (2001) p.7.

[156] Berman, Eyoh and Kymlicka (2004) 4, Jonyo (2002) 87, Berman (2004) p.46.

[157] Berman, Eyoh and Kymlicka (2004) 5, Jonyo (2002) 87, Berman (2004) p.46.

[158] Berman, Eyoh and Kymlicka (2004) 11-12, Berman (2004) p.48.

[159] Berman, Eyoh and Kymlicka (2004) 5 & 8, Berman (2004) p.45.

African ethnicities are not "atavistic, primordial survivals of archaic primitive cultures", but rather an outcome of Africa's encounter with capitalism and nation-building.[160] The question of the role of ethnicity in politics is a highly contested one. On one hand, it is contended that the political elite combine self and ethnic interests to manipulate ethnic loyalty as the cheapest and more reliable strategy to acquire and consolidate power.[161] In contrast to the common pitfall that addresses political ethnicity as a coax or instrument by the elite against the less gullible masses suffering from a herd mentality, Berman, Eyoh, Kymlicka, Amoo and Mutunga, contend that cognisant that ethnic pluralism is and will remain a fundamental characteristic of African modernity, it must be recognised and incorporated within any project of democratic nation-building.[162] Indeed, the fact that ethnic ties provide a primary source of identity and security is much more meaningful to a person than national ties.[163] Despite the inter-ethnic relationships being in-egalitarian, conservative and hierarchical, simultaneously, ethnicity offers bonds of solidarity, security, reciprocity and protection during vulnerability.[164]

Under liberal democracy, it is expected that political institutions will be neutral and act in the collective interests guided by principle and policy irrespective of ethnicity, class, race, sex to mention but a few.[165] In practice, there is circumvention of laws, inconsistent application of policies and staffing of public offices with persons from one's ethnic group, which breeds inequalities and compels people to retreat to their ethnic identities. Hence, politicised ethnic

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[160] Berman, Eyoh and Kymlicka (2004) 3, Muigai (2004) p.200.
[161] Falola (2004) pp.150 & 159.
[162] Berman, Eyoh and Kymlicka (2004) 3, Amoo (1997) 10, Mutunga (2007).
[163] Amoo (1997) pp.17-18.
[164] Berman, Eyoh and Kymlicka (2004) pp.4 –5, Glickman and Furia (1995) p.27.
[165] Berman (2004) p.42.

consciousness is frequently represented as a fall back position in the absence of a democratic functioning state.[166] The state, as constituted at independence, was a compromise of ethnic claims to power and resources because to most people, the focus of political obligations and loyalty remained the ethnic group.[167] Instructively, access to state power to date is a conduit to distribution of national resources.[168] Further, while the state may be neutral, with its language and symbols not tied to any particular tribe, access to the state has remained ethnicised through ethnic parties and networks.[169] Ethnic differences, competitiveness and diversity, have never inherently, in themselves, created social havoc, but the problems arise out of undemocratic governments characterised by ethnic privatisation.[170] Ethnic privatisation occurs when ethnic representative-ness is abandoned and particular ethnic groups monopolise or disproportionately control the state.[171]

Economic Development and Minority Rights

It is noteworthy that the issues of minorities have primarily been addressed in the realm of cultural and economic needs, but also through a welfarist approach rather than through a rights framework. While African states recognise the need for minorities to enjoy basic facilities such as education, health and the right to speak their language and practice their culture, there is a desire to deculturalise and assimilate them into the dominant cultures.[172] In addition, many development projects perceive minorities as victims and beneficiaries,

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[166] Solway (2004) pp.129 –130.
[167] Muigai (2004) p.200.
[168] Amoo (1997) 4-5, Rothchild and Olurunsola (1983) 5 & 6, Welch (1998) p.110.
[169] Kymlicka (2004) p.66.
[170] Bakari (2001) 62, Glickman and Furia (2004) p.4.
[171] Mazrui (2001) p.24.
[172] Pityana (2002) p.234.

than active citizens that must participate in the decision-making affecting their lives.

The marginality of minorities is further illuminated by the characterisation of their lifestyle as primitive and in need of civilisation.[173] Their rights are often overridden in the interest of economic development and nation-building, oblivious of their own preferred way of life. Consequently, the crucial issue is not special rights of groups, but rather the marginalisation and discrimination of particular groups because of their culture such as dispossession of land upon which they derive their survival, development and identity, in favour of developments such as dams, parks and mining, without due consultation and participation in determining the alternatives or compensation given.

While the Caracas Declaration seeks local participation in the protection of the national parks, this is yet to be achieved. Evidence suggests that decisions are taken on behalf of the minorities.[174]

Minority group customary land rights are in contradiction with the dominant land use propagated by international financial institutions such as the International Bank for Reconstruction and Development (IBRD) and the International Monetary Fund (IMF) to commoditise land and avail it as collateral for loans.[175]

Equally, Olenasha argues that the Maasai are neither few, nor the original occupants of the land they occupy. Thus, their marginalisation emanates from their occupation which is considered unviable and an unprofitable use of land resources. Further, that it is their mobility which makes it difficult to integrate them in districts where they do not constitute large numbers, given that although they average one million, they live in more than ten regions: Arusha, Manyara, Kilimanjaro, Morogoro, Tanga, Iringa, Mbeya, Coastal,

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[173] Peter (2007) p.1.

[174] Kabananukye (1997) 23, Shivji and Kapinga (1998).

[175] Peter (2007) p.19.

Dodoma and Lindi.[176] The Endorois of the central Rift Valley districts of Baringo, Koibatek and Nakuru, had their land gazetted in 1973 to create the Lake Bogoria Game Reserve.[177]

Contemporary Relevance of Ethnicity and Political Participation

Tanzania

Tanzania has succeeded in managing the cultural distinctiveness of its 120 ethnic groups and forged a common uniform national identity, values and practices. Hence, the question that unanimously preceded any discussion to ethnic minorities in Tanzania during the field study was: "Who are they?" Numerous factors coalesced to yield a Tanzanian identity: First, none of the estimated 120 tribes can seize, control and claim influence by virtue of numbers alone. The Sukuma, which is the largest tribe, constitutes about 14% of the population, the Chagga and Haya about 6% each.[178] In addition, Nyerere abolished the council of chiefs in 1961. In relation, the acceptance of Swahili as a national language fostered political communication and enabled the transfer of civil servants to different areas, thus promoting formal inter-ethnic contacts. [179] This was enhanced by the Ujaama villagisation programme which facilitated ethnic interaction and bred a national consciousness. By 1976, 91% of rural populations were under the Ujaama villages.[180] In addition, Tanganyika African National Union (TANU) campaigned against multi-racialism, or special representation and separate seats for Europeans, Asians, Africans, tribes, race or religion, in the crucial

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[176] Interview Olenasha July 23, 2003.

[177] http://www.witness.org/index.php?option=com_content&task=view&id=511&Itemid=44.

[178] Glickman (1995a) pp.291-192.

[179] Glickman (1995a) pp.291-192.

[180] Keller (1983) 270, Shivji and Peter (2003).

1958 elections.[181] On the other hand, the one-party state system that permitted internal competition for electoral seats mitigated against ethnic chauvinism and dictatorship.[182] Equally, the legal requirement that political parties must have at least 200 members from 10 regions all over Tanzania minimises chances of ethnic-based parties.[183] Lastly, the broad-based Africanisation programme for the public service targeted all ethnic groups. Those who dominate the public service such as the Chagga, Haya, Sukuma and the Nyakusa, do so not on the account of ethnic preferential treatment, but access to mission education during the colonial era.[184]

The building of Tanzania as a nation-state is the sum-total of the above. Unsurprisingly, Tanzania is comaparatively more intolerant than Kenya to minority and indigenous rights probably due to Tanzania's expended efforts to national culture and language.[185] However, despite the aforementioned achievements regarding the status of minorities, it does not mean there is no ethnic mobilisation for politics in Tanzania. In fact, the economic decline in the 1980s is rekindling mobilisation on ethnicity through tribal trust and tribal associations.[186] Nonetheless, ethnicity remains a weak base for politics.[187] Paradoxically, the nation-state was built at the cost of minority people. For example, all cases of villagisation and reallocation were preceded by excessive use of force, assault, harassment, brutality, torture, cruel and other inhuman and degrading treatment by state institutions such as the police, security and the infamous field force unit, and are addressed as civil cases instead of criminal cases.[188]

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[181] Glickman (1995a) 293, Beinen (1983) p.114.
[182] Glickman (1995) p.289.
[183] Nasongo (2002) p.217.
[184] Glickman (1995a) p.292.
[185] African Commission IP/C (2005) p.39.
[186] Glickman (1995a) 295, Peter (2004) Xenophobia paper.
[187] Beinen (1983) 114, Glickman (1995a) p.289.
[188] Peter (2007) pp.35-37.

In the past decade, isolated campaigns to de-Tanzanise or dis-indigenise (coming from the other side of Lake Tanganyika) prominent persons such as Jenerali Ulimwengu, who is alleged to be a Rwandese, Mkapa a Mozambican and Kambona from Malawi, occasionally sprout.[189]

Kenya Ethnicity and Political Participation

The British method of indirect rule, engineered by Lord Lugard to rule colonies through their native authorities and institutions, was applied in Kenya and Uganda and reinforced African ethnic identities and consciousness rather than nationhood.[190] Put differently, the separate administration of different ethnic groups, which had little contact with each other, augmented ethnic consciousness as a primary tool of political organisation and activity.[191]

Although dominated by the Kikuyu, the formation of the Kenya Africa Union (KAU) in 1944 was the first attempt to form a truly national organisation that cut across ethnic lines, but was soon proscribed in 1953.[192] Up till 1959, only provincial parties, whose boundaries coincided with native reserves, were permitted to operate.[193] Both the Kenya African National Union (KANU) and Kenya African Democratic Union (KADU) were formed in 1960 with KANU representing the large ethnic groups of Kikuyu, Embu, Meru, Kamba, Luo and the Kisii, who collectively constituted 60% of the populations, while KADU, formed with considerable European financial and administrative assistance, represented several minority ethnic groups, a majority of whom were pastoralists.[194]

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[189] Ochieng P (2007) "Mkapa's brush with bad karma," *The East African Magazine*, 25 June- 1 July 2007.

[190] Mazrui (1983) 28, Rothchild (1973) p.62.

[191] Muigai (1995) 163 –164, Jonyo (2002) 90, Muigai (2004) 201, Kanyinga (2006) 353, Kanyeihamba (2002) p.31.

[192] Muigai (1995) pp.165-166.

[193] Muigai (1995) p.166.

[194] Muigai (1995) p.166, Jonyo (2002) p.93.

The majimbo or regional constitution, designed to protect the smaller tribes in Kenya against the dominant Kikuyu-Luo alliance, was replaced after independence.[195] On independence, each ethnic group was afforded a parliamentary constituency of its own which resulted in minority groups securing more seats than the numerically large groups.[196] Although efforts to ensure more balanced representation were made in the 1969 elections, minority groups were relatively well represented on the whole than the numerically large groups. For example, the Somali, who comprise under 2% of the population, have between 5-8% of the total parliamentary seats and the Maasai, Turkana and Samburu, with a combined population of about 3.5%, have about 7% of the total number of parliamentary seats.[197] In the 1992 multi-party elections, the Kalenjin had the majority seats with 36 seats, while the Kikuyu had 35, the Luhya 23, the Luo 19 and the Kamba 17 seats.[198] This ethnic formula is also reflected in the cabinet positions.[199] These facts infer that a political minority is not exclusively determined by ethnic numbers, but by marginalisation.

On the introduction of multi partism in Kenya in 1992, the constitutional amendment barred independent candidates (s.34) and required the president to secure 25% of the vote in a minimum of five provinces (s.5). With hindsight, the amendment did not cure the ethnic political mobilisation character of Kenyan politics, but inadvertently made it difficult for the politically marginalised groups to compete for voice and participation. However, the opening up of political space set loose ethnicity, political mobilisation and ethnic coalitions. Political parties in Kenya are more ethnic-based in terms of membership and voting patterns.[200] KANU is associated mainly with

[195] Beinen (1983) p.106, Londsdale (2004) p.85.
[196] Kanyinga (2006) p.370.
[197] Kanyinga (2006) p.372.
[198] Kanyinga (2006) p.372.
[199] Kanyinga (2006) p.373.
[200] Nasongo (2002) 211; Kanyinga (2006) p.357.

the Kalenjin, Maasai, Sumburu and the Turkana; the Democratic Party (DP) and Forum for the Restoration of Democracy (Ford) Asili with the Kikuyu; Ford with the Luhyia, the Social Democratic Party (SDP) with the Kamba and the National Development Party (NDP), with the Luo.[201]

Therefore, ethnicity presents itself as the most natural basis of political organisation because Kenya's predominantly rural community and the administrative and constituency boundaries were created on ethnic territories. [202] Because none of the 40 ethnic groups can dominate the other, building ethnic coalitions has become an established practice. The largest groups, the Kikuyu 21%, the Luhyia 14%, the Luo 12 %, the Kamba 11% and the Kalenjin 12%, collectively comprise 70 % of the country's population.[203] The Kalenjin are made up of the Kipsigis 4%, the Nandi 2%, the Elgeyo 1.2%, the Maraket 0.8%, the Pokot 0.9%, the Sabaot 0.3% and the Tugen 1.3%. [204]

In addition, it is important to note that the key characteristic of the ethnic alliances was that they were formed by the elite at the top and the masses re-aligned themselves at the bottom as was the case with the Kenyatta-Odinga connections, symbolising the Kikuyo-Luo nationalist alliances, which formed the basis of KANU and the Kenyatta and Moi alliance between the Kalenjin groups of the Nandi, the Kipsigis, the Tugen, the Elgeyo, and the Marakwet in 1967.[205]

The National Alliance Party of Kenya (NAK) was an alliance of oppositional parties to counter the KANU-NDP alliance. There was also the Kenya People's Coalition composed of Ford and people of the Kisii led by Nyachae and other smaller parties.

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[201] Jonyo (2002) p.97.
[202] Muigai (1995) pp.161-162.
[203] 1989 Population Census.
[204] 1962 Census quoted in Kanyinga (2006) p.354.
[205] Muigai (1995) p.168.

The amalgamation of NAK and the Liberal Democratic Party (LDP) gave birth to the National Rainbow Coalition (NARC) with an informal understanding of collective leadership through the summit that comprised the big ethnic five. The NARC summit membership comprised Mwai Kibaki, a Kikuyu; Raila Odinga, a Luo; Kijana Wamalwa and Moody Awori, both luhyas, Kipruto Kirwa, a Kalenjin; and Charity Ngilu and Kalonzo Musyoka, both Kambas.

The combination of the politics of ethnic group identities, the winner-takes-all electoral system and the association of the presidency as a property of the incumbent's ethnic community and alliances rather than a national office, strips ethnic minorities of political voice and renders them politically invisible**.** Following the 2002 elections in Kenya, there were 48 MPs out of 210 from minority or indigenous communities.[206]

To substantiate the above, the Kikuyu constituted 30% of cabinet, and dominated in commerce, agriculture, which translated into a proprietary attitude towards the state between 1969 and 1978.[207] Kenyatta formed the Kaimbu-Gatunda group, a government within a government,[208] and Moi forged a KAMATUSA identity comprising the Kalenjin, Maasai, Sumburu, Turkana.[209] In seeking to consolidate his power, Moi wound up all tribal associations in 1980.[210] Between 1978-1982, Moi recast the state in his own image under the guise of creating opportunities for the "minority tribes" through district focus plans that targeted the allocation of development funds to districts instead of through comprehensive national priorities, institutionalised quota systems in the academic sector, public service, armed forces, the police and the provincial administration as well as

[206] Makoloo (2004) p.6.
[207] Muigai (1995) p.172.
[208] Muigai (2004) p.213.
[209] Kanyinga (2006) p.376.
[210] Rothchild and Olurunsola (1983) p.7.

developed Eldoret as an alternative capital for the Rift Valley.[211] It is underscored that such domination of the state by an ethnic identity was only tenable under authoritarian states characterised by single party rule and excessive powers.

Hence, the crux of the problem is not ethnicity, but the failure of the state to represent the collective interests of all ethnic groups. There is also a pattern of having the ethnic groups of the presidency assuming majority seats in parliament and the cabinet.

The Kikuyu-Luo Tensions

The Luo-Kikuyu relationship illustrates the fragility of the ethnic coalitions as a basis of political engagement, particularly given the ability of the major partner to sideline another in such an informal political understanding. Unless such political calculations are integrated into the constitution, they remain an unfair political tool. At the time of independence, the Luo, led by Jaramogi Odinga, allied with the Kikuyu through Kenyatta. However, on securing independence, the Luo became excluded from political power on the resignation of Jaramogi Oginga Odinga as vice president in 1966 and the assassination of Tom Mboya in 1969 by a Kikuyu assassin.[212] On the opening up of multi-partism, it is alleged that Ford Kenya was split due to generational and priority differences and emphatically because the Kikuyu could not accept Jaramogi Odinga as president and preferred Matiba.[213] Lack of trust between the Kikuyu and the Luo continues to shape most of the political events in Kenya, including the 2005 constitutional referendum and the 2007 general elections, which resulted in ethnic cleansing.[214] The NARC coalition disintegrated due to ethno-regional lines, particularly the failure to honour the memorandum of understanding that would have resulted

[211] Muigai (1995) pp.174-175.
[212] Jonyo (2002) p.95, Muigai (2004) p.213, Muigai (1995) pp.170-171,
[213] Muigai (1995) p.182.
[214] Kanyinga (2006) p.356.

in a Kikuyu president and a Luo executive prime minister.[215] After the referendum, they were locked out of cabinet as a community.

Ethnicity in Uganda and the Buganda Question

Buganda was generously privileged and afforded a degree of autonomy for serving as colonial collaborators of direct rule between 1894- 1919.[216] For example, in the 1900 Buganda agreement, the British officially declared the Banyala-Baruli as Baganda irrespective of the fact that they had about 129 clans distinct from Buganda.[217] Under direct rule, all ethnic groups, with the exception of Buganda, were stripped of their political rights in order to pacify them in creating Uganda as a state. Concomitantly, Buganda's cultural and administrative practices became the standard model for the rest of the country.[218] Indirect rule, administered through the native authority, was introduced between 1919 and 1962 because it was cheaper and ensured the enforcement of government policy under the guise of custom and tradition.[219]

The 1959 Wilde report recommended a common roll without any special representation, including "non-indigenous" residents. However, the non-indigenous communities did not have automatic right to citizenship, nor land.[220]

Given that throughout the colonial period the colonial government related to Buganda as an autonomous collective political entity, it is not surprising that Buganda sought a separate status in the negotiation of independence. Obote sought to minimise inter-ethnic tensions by accepting a federal relationship with Buganda, concurred on indirect Buganda Lukiko elections of its representative to the central legislature, agreed to form a coalition between his

[215] Kanyinga (2006) p.376.
[216] Kanyeihamba (2002) p.31, Kayunga (20021) p.23.
[217] Nakayi (2007) p.20.
[218] Kayunga (2001) pp.24-25, Kayunga (2001) p.29.
[219] Mamdani (1996).
[220] Kanyeihamba (2002) pp.34-35.

predominantly northern and western supported Uganda People's Congress (UPC) and Buganda's Kabaka Yekka (KY) and the appointment of Mutesa II as president of Uganda.[221] Yash Ghai remarks that as such, the 1962 Constitution was an attempt to "… to achieve the impossible," due its unworkable compromises, institutionalised inequalities and attempts at isolating a part of the country (Buganda) from the mainstream of national politics.[222]

The 1962 Constitution provided for a three-tiered federalism in which Buganda was a government within a government, the kingdoms of Ankole, Bunyoro and Toro and the territory of Busoga, were granted semi-federal status with higher autonomy than the rest of the districts. [223] The privileged position of Buganda reinforced its separatist agitation and cemented the political and cultural sub-nationalism of the Baganda.[224] The 1966 abrogation of the independence constitution through military might was done under the rubric of nation-building, defined by the abolition of the kingdoms, and Uganda was declared a republic with centralised bureaucratic structures. Obote divided Buganda into four districts: East Mengo, West Mengo, Masaka and Mubende, weakening it as a cultural unit. Paradoxically, the more Buganda felt persecuted, the more Buganda's ethnic solidarity and consciousness was augmented.

Museveni used constitutional change as an instrument of cultural engineering in seeking to depoliticise kingship and make it a mere cultural symbol.[225] In 1993, Museveni restored the traditionl institutions[226] on grounds that he was righting historical wrongs. Cultural institutions were entrenched in the Constitution under

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[221] Rothchild (1973) p.11.
[222] Ghai Yash Pal (1968), p.191.
[223] Oloka-Onyango (2007) p.7.
[224] Kanyeihamba, Beinen (1983) p.106.
[225] Mazrui (2001) p.20.
[226] The Constitutional Amendment Statute (Restoration of Assets) Statute

Article 37. The restoration of the Kabaka as a cultural head had a multiplier effect for more political autonomy and powers by other ethnic groups characterised by the wave of reinstatement of kings and traditional chiefs such as the Kyabazinga of Busoga, the Rwot of West Nile, the Emorimor of Teso, to mention but a few, as well as the reawakening of demands of more autonomous status of minorities within kingdoms such as the Rwenzururu of Toro, the Koki and Baruli of Buganda and the non-Baganda areas within Buganda such as Sembabule, originally in Masaka district.[227] This has bred new ethnic tensions.

Buganda has decried such arguments as intended to fragment its existence and as a form of patronage for support to the Movement party. Minorities sought to carve out a separate identity from bigger nationalities under which they had hitherto been subsumed such as the Baruli against the Baganda, the Basongola and the Batagwenda against the Batoro and the Bafumbira against the Banyarwanda.[228] In contrast, the bigger tribes were against unnecessary splits of existing nationalities. According to President Museveni,[229] most Baganda are not indigenous to Buganda; that the indigenous tribes of Buganda that existed in the pre-Baganda days were the Baruli, Banyama (Bugerere), Baparajoku in Bulemezi, Banyole in Buwekula. He argues that a lot of non-Baganda areas were incorporated into Buganda such as Bugerere, Buruli, Ssingo, Buwekula, Mawogola, Kabula and Kooki, which were captured by Kabaka Jjunju in 1780.

Despite its illegal character, the Buganda Lukiiko is recognised to represent a strong political constituency by even the state and has insistently campaigned for *federo*. Oloka-Onyango distinguished between "Federo or Fedulo" and federalism: Federalism refers to

[227] Kabananukye (1998) pp.11-19.

[228] Barya (2000) p.25.

[229] Museveni (2002) "Kibale: Museveni's plan," Press Statement on Kibale Situation at State House Nakasero on 15 April, 2002, reproduced in *New Vision*, 24 April, 2002, p.19.

largely independent governments standing on equal footing with the centre and with decision-making powers about the public sector, while "federo refers to Buganda's demand for special status as it existed at independence in 1962. [230] Federo is a compound issue comprised of request for *Mailo* (freehold) land, demand for a political monarch and a federal system of government epitomised by the recreation of Buganda kingdom as enshrined under the 1962 Constitution.[231] The compromise of a regional tier under the 2006 constitutional amendment is yet to be adopted.

In an attempt to compare and distinguish federalism and decentralisation, Kulubya outlines the strengths and shortfalls of decentralisation and federalism: [232] She observes that both federalism and decentralisation promote unity, ensure equitable distribution of resources and empower the people. However, arguments against decentralisation include fragmentation because the districts are too small and too many to run effectively, it promotes patronage and interference by local leaders and also defaces cultural identity. On the other hand, arguments against federalism include enhanced tribalism, unequal development and resource distribution, enhancement of favouritism and the apprehension of Buganda's size.

The National Resistance Movement (NRM) and Ethnic Politics

On coming to power in 1986, President Museveni justified the Movement "no-party" system of government as a conduit to deliver national unity, reconciliation, stability and reconstruction. Accordingly, the Movement system premised on a 'broad-based, individual merit and inclusive' government. Kayunga observes that the NRM is dominated by three ethnic groups, namely the

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[230] Oloka-Onyango (2007) p.7.

[231] Kayunga (2001) pp.272-273.

[232] Kulubya S (2001), "Buganda repeats federo calls", *New Vision*, 12 Aug, 2001, p.31.

Baganda, the Banyankole and the Banyarwanda. [233] Despite its narrow ethnic base, the NRM employed the rhetoric of secular anti-ethnic political lines and legislated against sectarianism,[234] making it a crime to degrade, revile, expose hatred to any person on account of their religion, tribe, ethnic or religious origin. As tritely observed by Kayunga, this anti-sectarain law was in itself sectarian because it was motivated by the protection of a section of Ugandan Rwandese, but not all Ugandans.[235] In spite of efforts for ethno-region balancing in the decision-making and "lucrative" public bodies, the cabinet, Uganda Revenue Authority (URA), the Civil Aviation Authority (CAA) and the National Social Security Fund(NSSF), are dominated by the Banyankole and the Baganda. It is noteworthy that although both the Baganda and Banyankole constitute only 24.3%[236] of the population, they occupied 51% of the cabinet in 1999.[237] More alarming is that since 1986, only 19 ethnic tribes (33.9%) have ever been represented in the cabinet.[238] In spite of the cross ethnic representation of political parties, there is still regional inclination of the political parties. For example, 40% of the supporters and leaders of NRM are from western Uganda, 28% of the Forum for Democratic Change (FDC) from western Uganda; 48% of DP from the central region and 46% of UPC from northern Uganda.[239]

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[233] Kayunga (2001) pp.37-38.
[234] Anti Sectarian Act of 1997.
[235] Kayunga (2001) p.41.
[236] 1991 Population and Housing Census (National Summary) Uganda Report, April 1994, p.8.
[237] Kayunga (2001) p.42.
[238] Kayunga (2001) p.42.
[239] HURINET and MS (2006) p.viii.

Racial Minorities and the Asian Question in East Africa

Race denotes a people distinguished by significant genealogical or hereditary physical traits.[240] The question of race is largely shaped by the colonial history. The question of racial minorities is more accentuated in Kenya and Uganda because both were under the British Protectorate. As previously discussed, Tanzania to a large degree succeeded in building a national identity immediately after independence. While acknowledging that racial minorities are a diverse category, this concept paper focussed on Asians. At the same time, it further acknowledges that Asians are not a homogenous, but a heterogeneous community distinguished by nationalities, caste, and sects. Initially invited to build the Kenya-Uganda railway, the Asians became junior civil servants and petty traders and prospered into an economic force.[241] Kenyan's colonial society was racially compartmentalised, functionally stratified and was held together by the British military power. As a result, an artificial geographical entity that comprised a three-tier structure with Europeans, Asians and Africans, in descending order of importance, was created.[242] During the colonial period, Asians dominated the civil service and the commercial sector and had political power as members of parliament and of the cabinet.

Kenya

In 1909, an Asian representative attended the Legislative Council (LEGCO), while the first African representative, Eliud Mathu, was nominated in 1944.[243] In fact, Asians have had more than one member of parliament (MP) at any one time in Kenya.[244] It was

[240] Bakari (2001) p.4.
[241] Muigai (1995) 164, Peter (2007)p.8.
[242] Rothchild (1973) p.317.
[243] Rothchild (1973) p.65.
[244] Muigai (1995) p.194.

not until the Lyttelton Constitution in March 1954 that each of the races participated meaningfully in the running of the country, albeit with inequities in power and numbers.[245] The African elected leaders rejected the proposed multi-racialism of the Lyttelton Constitution in favour of African nationalism.[246] The 1960 Lancaster House Conference marked a turning point by placing the main responsibility for political decision-making into African hands.[247] The Asian community aligned itself with the Africans and supported the common role based on universal adult suffrage.[248]

The independence Constitution had put safeguards for the protection of minorities such as entrenchment of the Bill of Rights, regions, and tribal authorities, senate and a rigid procedure for the amendment of the constitution.[249] However, the August 1966 deportation of two Kenyan Asians for disloyalty and disaffectionate behaviour to Kenya, symbolised the vulnerability of the "paper" citizenship which rendered the deportee stateless.[250] Hence, the exodus of European and Asian communities coupled with the capital flight of 25 million pounds between towards the end of 1967 and early 1968.[251] For exemplification, in the 1962 consensus, Europeans comprised 0.7% of the population and Asians 2%[252] in contrast with 1969 when the Europeans dropped to 0.4% and Indians dropped to 1.3 %. [253] Again, by 1969, the civil service neared complete Africanisation and schools enrolled a majority of African students.[254]

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[245] Rothchild (1973) p.106.
[246] Muigai (2004) p.208.
[247] Rothchild (1973) p.103.
[248] Rothchild (1973) p.114.
[249] Rothchild (1973) p.141.
[250] Rothchild (1973) pp.330-331.
[251] Rothchild (1973) p.50
[252] Kenya Population Census 1962, Vol III, Nairobi, Ministry of Economic Planning and Development 1966.
[253]' Rothchild (1973) p.31.
[254] Rothchild (1973) p.288.

Uganda

In Uganda, the first Asian of Indian origin to the LegCo was nominated in 1926.[255] The "native" was considered too primitive to represent the native interest and as such, they were represented by a European. The first Africans, namely Kawalya-Kaggwa, Nyangabyaki and Zirabamuzale, were elected in 1945.[256] Although there was mobilisation of Africans under the cooperative and trade unions movements in the colonial era, these were not necessarily anti-Asian, but rather sought the participation in the coffee and cotton industry and in commerce.[257]

During the discussion of the Citizenship Bill in 1962, the proposal that Gujarat and Urdu be included among the prescribed languages was obliterated by Munabi, as a resistance by the Indians to "associate themselves with Africans in the correct spirit of the word association."[258] The then attorney general,(AG) Godfrey Lukongwa Binaisa, further underlined that:

> Asians must identify themselves with the people they were living with by showing that they belong to them. He opined that "if you are in Mbarara, a little knowledge of the Runyankole cannot do any harm at all or a little knowledge of Luganda if you are resident in Buganda.[259]

Nevertheless, it was apparent that the intention of offering citizenship to the Asians was economic rather than political. Then parliamentary secretary to the ministry of economic planning, Shaban Nkutu, underscored that Uganda needed investments and the economy was in the hands of non-citizens.[260] The above notwithstanding, citizenship was cautiously granted that by independence only 11,000 out of 25,000 Asians had been granted citizenship.[261]

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[255] Kanyeihamba (2002) p.16.
[256] Kanyeihamba (2002) p.24.
[257] Walubiri (2001) p.88.
[258] The Uganda National Assembly of 1962, Sept 18, p. 258.
[259] The Uganda National Assembly of 1962, Sept 18, p. 263.
[260] The Uganda National Assembly of 1962, Sept 18, p. 261.
[261] Barya (2000) pp.15 & 19.

Before 1972, Asians comprised less than 1% of Uganda's population.[262] The mass expulsion of Asians in 1972 greatly shaped their lack of participation in the political discourse, particularly on account of their weak numerical strength, which was estimated at less than 2,000. Albeit unplanned, Amin placed the Asian question at the fore front of the political agenda by questioning the dominance of Asians within the broad discourse of social justice and genuine independence.[263]

Similarly, citizenship was among the most controversial issues even during the Constituent Assembly, particularly due to the implication of citizen's rights, role, the usurpation of political and economic powers and the influence of "foreigners" to the Ugandan state, particularly the Sudanese during Amin and the Rwandese refugees in the National Resistance Army (NRA).[264]

To date, the number of Asians has multiplied from 5,000 in 1986 to over 20,000.[265] The anti-Mabira give-away movement targeted the Sugar Corporation of Uganda Limited (SCOUL) owned by the Mehta family. To Mamdani, Mabira reflected the increasingly unaccountable president and an arrogant tycoon from a racialised minority.[266] The preferential treatment of all Asians as investors is invoking xenophobia among the rest of Ugandans. In responding to the Asians, President Museveni is on record: "Who is the friend of the economy in Uganda? Is it KACITA, which is importing, or is it Mehta, who is producing sugar for Uganda, and others who

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[262] Kuper J. (undated) "The Goan Community in Kampala," in the Institute of Commonwealth Studies Papers, Expulsion of a Minority: Essays on Ugandan Asians, CBR.

[263] Mamdani M (2007) "The Asian Question Again: A Reflection," *New Vision*, 29 April, 2007 p.21.

[264] Barya (2000) p.3.

[265] Mamdani M (2007) "The Asian Question Again: A Reflection," *New Vision*, 29 April, 2007 p. 21.

[266] Mamdani M (2007) "The Asian Question Again: A Reflection," *New Vision*, 29 April, 2007 p.21.

produce?"267 Likewise, because Asians invested $15 million in Uganda in 2006, focus was on the fact that racism hurt business, not that it was an outright violation of rights.[268]

To this end, Mamdani calls for the determination of the Asian question in a non-racial and inclusive manner, that makes a distinction between the Uganda citizens and the "rockets" who have no sense of belonging to Uganda, but engage in temporary speculation, only to whisk off resources to the global North.[269] Mabira was not a collective endorsement of the Asians.[270] Indians have, therefore, sought to be recognised as a Ugandan tribe, arguing that they have been in Uganda since the cut off date of 1926 and also pressed for the adoption of the dual citizenship law. Although there are numerous Asian associations, they mostly address religious and social welfare issues and in an apolitical manner.

Tanzania

Tanzania's success in forging a national identity diluted the issue of minority identities. Even in Zanzibar, where the racial card is waved towards elections, the existence of racial political mobilisation is contested. On one hand, Nasongo argues that the dichotomy between Africans and Arabs is reflected in the party formations. [271] On the other hand, Bakari and Sheriff contend that tribalism is not a problem because Zanzibaris are united by Kiswahili, there is a high degree of inter-ethnic marriage and inter-class mobility, 95% are Muslim and the revolution of January 1964 ended the domination

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[267] Indians want to become a tribe, *Daily Monitor*, 25 April 2002.

[268] "Racism will affect investement: Says UIA boss", *Sunday Monitor*, 15 April 2002, Racism is a sign of backwardness and deters growth, *Sunday Monitor*, 15 April 2007.

[269] Mutunga (2007) p.34, Mamdani (2007).

[270] "Indian Community Bitter with Mehta over Mabira", 15 April, 2002,

[271] Nasongo (2002) p.200.

by racial minorities and between 1964 and 1985, the Revolutionary Council repressed any form of political mobilisation. [272]

Even during the struggle for independence, although political parties were considered ethnic institutions, they all had a multi-ethnic membership.[273] While it is not unusual to brand non-African Zanzibaris as "non-patriotic, foreigners who are not entitled to rule,"[274] cultural distinction has never provided a basis for political mobilisation nor representation of group interests.[275] Neither has there been regional mobilisation such as WaPemba or WaNgujja.[276] Pemba has never expressed interest in autonomy or self-government under the federal structure, even during the bitterest moments.[277] Rather, the hostilities between the two islands are due to the marginalisation of Pemba and are exaggerated during elections as a political myth to weaken the unity of Zanzibar.[278] The question of being indigenous is a political myth because Zanzibar, being an island, infers that everybody is a migrant. Moreover, the Arabs settled in Zanzibar as early as 760.[279]

A mission by KCK found out that the issue of citizenship lurks beneath the surface of some of the political tensions in Zanzibar. Further, by 2003, there had never been a president, a chief justice, a speaker from Pemba. In addition, the army, the Police, prisons, *Jeshi la Kujenga Uchumi* (JKU) and *Kikosi Cha Kazula Magendo* (KCKM), are allegedly hesitant to employ a person of Arab origin.[280] Unsurprisingly, the ruling CCM party did not win a single seat in

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[272] Sheriff A (2000) I, Bakari (2000) p.87.
[273] Bakari (2001) pp.78-79.
[274] Bakari (2001) p.77.
[275] Bakari (2001) p.87.
[276] Bakari (2001) pp.78-79.
[277] Bakari (2001) p.82.
[278] Bakari (2001) p.80, Oloka-Onyango and Nassali (2003) p.61.
[279] Othman Interview 27 August 2007.
[280] Oloka-Onyango and Nassali (2003) p.62.

Pemba in the 2005 elections. Thus, while Pemba has political voice in parliament, it does not control the government.[281]

In 1968, a decree required Comorians to be become naturalised.[282] However, the persecution is not applied to all "non-indigenous" communities as demonstrated by the fact that former presidents of Zanzibar hail from without such as Karume from Malawi; Jumbe from Bwagamoyo; Ali Hassan Mwinyi is a Zomoro born in Kisasawe, Tanzania.[283]

In summary, there are neither policies nor programmes for Asian citizens to participate in politics as a constituency throughout East Africa. While a few Asians are actually active and hold political offices, they do so in their individual capacity and not as representatives of the Asian community.[284] In the post-independent era, Asians in East Africa have disengaged from overt and direct partisan political activity, but contributed to political parties and public causes and often purchase more than one party card.[285]

The reluctance of African leaders to share political power with Asians was predominantly informed by the fear that it would further bolster the already dominant economic power of Asians.[286] Although resentment of privilege is virtually universal, it intensifies when privilege is identified with racial exclusiveness.[287] Despite being economically privileged, East African Asians are politically disadvantaged. Often their political protection is bought at exorbitant prices in the form of electoral contributions and on subtle

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[281] Sherif interview 26 July, 2007.

[282] Oloka-Onyango and Nassali (2003) p.58.

[283] Bakari (2001) p.80.

[284] Examples are few. In Uganda: Sanjay Tanna MP for Tororo Municipality, Late Jay Tanna Youth MP, Pradit-Kharia, local councillor Kampala Central, Rajini Tailor, Kabaka's minister for economic planning and investment in Buganda government.

[285] Rothchild (1973) p.127.

[286] Rothchild (1973) pp.130-131.

[287] Rothchild (1973) pp.173 &176 & 294.

understanding that they remain functional to the political needs of the ruling party, which further politically marginalises them.

Way Forward

The dilemma for Africa is how ethnicity can co-exist with universal citizenship, national identity and strong democratic institutions.[288] Conceptualised as a manager of the political organisation of society, the state is expected to play a neutral role in addressing issues of ethnicity and minority protection by promoting fair recruitment in the socio-economic and political aspects of public life as well as distribution of resources.[289] Furthermore, it is the consent of the citizens to common rules that provides the state with legitimacy to regulate the interaction with and among ethnic groups. Consequently, the state must earn public trust by demonstrating its ability to work in the collective interest of all ethnic groups, particularly the most vulnerable. This is partially due to the fact that traditional political institutions are inherently hierarchical, patriarchal, and authoritarian that minorities and migrant groups may be excluded from political participation.

Ethnic politics is not simply a process of manipulation of mindless masses by clever elites, but also one of calculated ethnic interests.[290] Ethnicity is a dynamic, modern and legitimate outcome of internal political processes for competition of power and resources.[291] Cognisant that ethnicity will remain a major basis of political mobilisation and perhaps the easiest, the challenge is not to ignore it because it would prompt conflicts and render democracy a nullity. Ethnicity must be harnessed to ensure diversity and inclusiveness in the democratic political life.[292] The problem is not ethnicity, but how it is managed by the state. The association of the state with narrow

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[288] Berman, Eyoh and Kymlicka (2004) p.9.
[289] Rothchild and Olurunsola (1983) p.2.
[290] Muigai (1995) 194, Glickman (1995b), pp.387-388.
[291] Berman, Eyoh and Kymlicka (2004) pp.317-318.
[292] Muigai (1995) p.194.

ethnic/racial interests remains a dominant challenge, particularly within East Africa, and a stumbling block for minority political rights. Thus, the importance of developing a culture of issue-oriented politics would replace ethnicity as a dominant political factor.

In the final analysis, failure to define and agree on constitutional rules that regulate ethnicity as a crucial variable of the political discourse, makes remedies ad-hoc and discretionary to the detriment of ethnic and racial minorities. Therefore, constitutional or legislative recognition is important because it constitutes a formal guarantee of continued protection to enable minorities claim their rights and ensure effective participation in the structures of government. For example, in South Africa, Section 185 of the Constitution establishes the Commission for the Protection of Rights of Cultural, Religious and Linguistic Communities, and Section 9(3) provides for affirmative action on the basis of historical discrimination on account of race, gender, sex, religion, belief, culture, language, ethnic and social origin. The state is obliged to advance and protect indigenous languages, including the Khoe, Nama and San, under Article 6.

Acknowledging that East Africa is a multi-racial and multi-ethnic region would enable the honest and realistic address of the imbalance in resource ownership and distribution among classes, racial/ethnic communities and generations and gender, in order to combat ethnic chauvinism and privatisation of the state.[293]

Balancing nation-building with minority rights and respect for ethnic pluralism, diversity and openness, is a key element for the advancement of the political participation of ethnic minorities. It is crucial to recognise ethnicity as part of a plural society in order to direct ethnic competition in a manner that does not lock out minorities in the political trajectory. Although it is complex to eradicate ethnic favouritism, all citizens should feel secure and respected and protected by the state at the minimum, irrespective

[293] Mutunga (2007) 33-34, Makollo (2004) summary.

of their ethnicity. This would promote the ability of all citizens to associate with the state as a neutral and principled promoter of collective interest, ultimately resulting in a national identity.[294] To paraphrase Hadden, in order to ensure "effective participation, it is necessary to have representation in the structures of governance, proportional representation, reservation of seats, encouragement of national or regional parties to select candidates from minority communities, formal and informal provision of appointment to non-elective public offices, devolution of power to local councils, participation in the army, the police and other law enforcement agencies."[295]

"Our civilisation will be judged by the way in which it treats its minorities." Mahatma Gandhi.

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[294] Berman, Eyoh and Kymlicka (2004) 13, Kabananukye (1997) p.3.
[295] Hadden (2005) p.180.

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Ethnic and Racial Minorities and Movement Towards Political Inclusion in East Africa: Cases of Burundi, Rwanda and Zanzibar

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Introduction

The main objective of this project by KCK is to develop a comprehensive concept paper which provides the basis for country researches in Burundi, Rwanda and Zanzibar, on inclusion of ethnic and racial minorities in political decision processes in East Africa. Such inclusion is expected to strengthen and consolidate democratic participation. This is a continuation of a similar concept paper on Kenya, Tanzania and Uganda, already developed. This concept paper is, therefore, intended to document information and data on existing legal and policy frameworks as well as practical realities relating to the participation of ethnic and racial minorities in political decision-making in the three countries of East Africa, taking into account the challenges and opportunities. The end result is to strengthen the political participation of ethnic and racial minorities in East Africa.

The concept paper has been guided by a number of terms of reference provided by KCK. The most important areas of the terms of reference include, first, reviewing legal and policy frameworks on ethnic and racial participation in the three countries. Second, is determining the extent of participation of the ethnic and racial minorities in political processes. Third, is to identify the roles of governments and other institutions in the promotion of the participation of ethnic and racial minorities in political decision- making processes, and hence in the strengthening and consolidation of democracy. Fourth is to determine the extent to which ethnicity and racialism have played a role in contemporary governance in the three countries and East Africa as a whole.

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The methodology used in the collection of data and information for the concept paper has mainly been through secondary and primary sources.

Conceptualisation of Ethnicity, Racialism and Minorities and their Contemporary Situation in East Africa

Ethnicity

Any meaningful examination and discussion on ethnic minorities in East Africa requires a clear understanding of the concept of ethnicity and its historical development. Scholars on African societies have described ethnicity through two different perspectives (Mpangala, 2000:4-9). One perspective views ethnicity in terms of scientific historical evolution of societies from lower levels to higher levels of development.

At the lowest level, groups of societies with similar primordial characteristics were commonly perceived as tribes. The concept of tribe was first used by the Romans to describe non-Roman peoples who they regarded as characterised by very low level of development compared to the Romans. An ethnic group is perceived to be of a level of development higher than a tribe. A nation is at a much more higher level than an ethnic group.

The second perspective on defining ethnicity has been through a rejection of perception of colonial anthropologists on African societies which viewed them as tribes (Ibrahim and Pereira, 1993:1). According to these anthropologists, tribes were uncivilised "African communities requiring colonial civilising mission". Thus, the concept of tribe had a negative connotation of viewing African societies as primitive and barbaric. Thus, post-colonial scholars on African societies linked the concept of tribe or tribalism to forces of imperialism and colonialism. Thus, in rejecting the concept of tribalism, these scholars began to emphasise the concept of ethnicity,

viewing African societies not as tribes, but as ethnic groups or communities.

A better understanding of the nature and character of ethnicity and ethnic groups or communities arises out of looking at it in its historical perspective. In the case of East Africa and Africa in general, the historical perspective is through experiences of pre-colonial societies, colonialism and post-independence periods. Coquery-Vidrovitch (1983) emphasises changes in the nature and character of ethnicity through the three historical periods. The changes portrayed ethnicity as having features above primordial characteristics of ethnicity. Such primordial characteristics, which sometimes are referred to as objective features of ethnicity, include language, culture, tradition, customs, religion and social organisation (Hettne, 1993: 125). The changing characteristics of ethnicity, which are also referred to as subjective features, include political, economic ideological and state and other changing historical relationships.

It has to be noted, however, that an understanding of the objective and subjective characteristics and features of ethnicity through changing historical conditions is very important for the understanding of the nature and character of ethnic groups and ethnicity in East Africa and hence ethnic minorities. Nnoli (1989) also points out that the changing nature of ethnicity arises out of a combination of objective and subjective factors. He, therefore, views ethnicity as a complex phenomenon which is not immutable as it can alter its form, place and role in the life of society. Ethnicity does not exist in a pure form as new elements may appear in its content as it is always closely associated with political, economic, juridical, religious and other social views. In fact, even some of the objective characteristics may change over time.

Racialism

It has been argued that in terms of primordial characteristics, racialism is not different from ethnicity (Mpangala, 1992). However,

in East Africa and Africa in general, due to experiences of slave trade, "legitimate" trade, colonialism and apartheid, racialism has greatly been identified with colour differences in terms of black, asiatic and white. These colour lines have also been identified with class divisions. For example, throughout the colonial period in East Africa, the whites constituted the upper ruling and commercial class; the Asians as a class of middle traders; and the blacks constituting the lower class of workers and peasants. The apartheid systems in South Africa not only consolidated these racial and class relation, but also deepened processes of colour segregation, marginalisation and exploitation.

The Concept of Ethnic and Racial Minorities

It is also important to try to have an understanding of the concept of minorities. In an international effort to fight for the rights of minorities, the concept has been debated and developed over the years. One of the earliest conceptions was made by the Permanent Court of International Justice on Greco-Bulgarian communities in 1930 as follows:

> "Minorities are a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by their identity of race, religion, language and traditions, maintaining their own form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other"

In 1954, the United Nations Sub-commission on the Prevention of Discrimination and Protection of Minorities described minorities as those non-dominant groups in a population which possess and wish to preserve ethnic, religious and linguistic traditions or characteristics markedly different from those of the rest of the population (Peter, C. M., 2009:4). The same Sub-commission in 1985 described a minority as:

> "A group of citizens of a state, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with each other, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law".

These definitions appear to be not very much different with that of Francesco Capotorti (1977) in his study on the rights of persons belonging to ethnic, religious and linguistic minorities. His description also emphasises the four important characteristics of a minority group. First, it is a group which is numerically inferior to the rest of the population of a state. Second, the group is in a non-dominant position within the state or society. Third, members of the group possess primordial characteristics such as language, ethnic traditions and religion, which differ from the rest of the population. Fourth, the group has a tendency of preserving its culture and has collective will to survive.

The above conceptions of a minority group are general, but when we apply them to the specific situation of East Africa or even the Great Lakes region, we find that such groups concern nomadic or settled pastoralist communities, hunters and gatherers, geographically and economically isolated communities, and traditional communities seeking to preserve their culture and lifestyles. Very often, such communities are unable to participate in political, economic and the social life of their societies. They are disadvantaged through unfair discrimination.

Although the above conceptions have mainly emphasised minorities in terms of their small numbers of members as we shall see in this paper, historical background situations in Burundi, Rwanda and Zanzibar, the discriminated, segregated and marginalised communities, can be the majority in terms of numbers. What matters is political and economic power relations of a particular time. The question of having separate culture and language does not also apply in these countries. This means that the various characteristics of

minority groups in the above conceptions cannot just be generalised for all situations.

Contemporary Situation of Ethnicity and Racialism in East Africa

In East Africa, the post-independence period has been characterised by both the legacy of colonialism and changes in the nature and character of ethnicity and racialism. As far as ethnicity is concerned, the legacy has mainly been in form of high levels of ethnic consciousness developed through colonial ideology and socio-economic relations and the splitting of ethnic groups into new ones. For example, the split of the Burundi and Rwanda pre-colonial ethnic groups into Tutsi, Hutu and Twa ethnic groups, has continued during the post-independence period and has been a source of serious political problems. Due to the nature and character of post-independence politics, changes have in most cases been in form of processes of ethnisation of politics which have greatly characterised the contemporary nature of ethnic relations in most East African countries (Oyugi, 1998). The end product of the process of ethnisation of politics has been aspects of exclusion and marginalisation of ethnic minorities and even ethnic majorities in political power relations.

As far as racialism is concerned, the post-independence period has seen drastic changes in terms of racial relations. The political power structure with whites at the top, Asians in the middle and Africans at the bottom has drastically been dismantled with Africans who were at the bottom, coming at the top of political power. However, the Africans have greatly been polarised between the few political elites who are also growing economically strong on one hand and the majority poor workers, peasants and the lumpen proletariat. In some of the East African countries, particularly in Kenya, the few whites are still enjoying some social and economic privileges. The majority of Asians continue to occupy the position of a merchant class, but facing the tendency of political marginalisation and exclusion.

The above observations indicate that the contemporary situation in East Africa in terms of ethnic and racial relations is somehow complex, particularly when it comes to determining ethnic and racial minorities, who are excluded from political decision processes. As we examine the individual situations in Burundi, Rwanda and Zanzibar, we shall discover that exclusion and marginalisation do not always go with minorities. It may also involve the minority, who are politically and economically powerful, excluding and marginalising the weak majority groups.

Ethnic and Racial Relations: The Case of Burundi and Rwanda

Colonial Period

During the pre-colonial period, Burundi and Rwanda were among a number of centralised kingdoms in the interlacustrine region. Mafeje (1991) identified ten kingdoms, which included Bunyoro, Toro, Ankore, Busoga, Buganda, Buhaya, Buzinza, Buha, Rwanda, and Burundi. With the exception of Buganda and Busoga kingdoms, which were established through internal evolution of Bantu societies, the rest of the kingdoms were a product of interaction between the Hima and Bito pastoralists and Bantu agriculturists through the Chwezi, Bito and Hinda dynasties. The first kingdom to be established was the Empire of Bunyoro Kitara during the 15th century AD (Mafeje, ibid.).

Burundi and Rwanda kingdoms, like Ankole and Toro, were offshoots of Bunyoro Kingdom. Ethnic relations in these kingdoms were such that each kingdom constituted a single ethnic group with single linguistic and cultural characteristics (Mamdani, 1995). However, the kingdoms were characteristised by class relations. While in Bunyoro, Toro and Ankore members of the ruling class were known as Bahima, in Burundi and Rwanda, they came to be known as Batutsi. These were also economically wealthy as they

monopolised a pastoral economy which by then was a symbol of wealth and prestige. The ruled subjects in Burundi and Rwanda were known as the Bahutu and Batwa, while in the former kingdoms, they were known as the Bairu. The Bahutu and Bairu were the majority agriculturists and the Batwa, who were a small minority, mainly played the role of house servants and hunting wild animals for their survival.

It has to be noted, however, that at the political level, the Bahutu and Batwa were greatly excluded and marginalised because political power was a monopoly of the Batusi ruling clans. It has been pointed out that the class and political relations between the Batutsi and Bahutu was not static. With time, some Bahutu became pastoralists and wealthy and were elevated to the rank of Batusi. By the 19thcentury the kings of Burundi and Rwanda (*Baami*) began to appoint Hutu people in, lower levels of the administrative system (Lema, 1993:53). This means that some measures of political inclusion began to be realised, though the Batwa continued to be completely excluded. In some interlacustrine kingdoms such as the Hinda kingdoms of Buhaya, Buzinza and Buha, the process of transformation of relations between the Hinda and the Bairu reached higher levels due to processes of assimilation than in the kingdoms of Burundi and Rwanda (Mafeje, op.cit.).

In Rwanda and Burundi, not much can be said on racial relations as people of other races began to get into contact with the people of these societies during the 19thcentury through long distance trade from the East African coast. It was mainly Arabs who carried out trade in ivory and slaves. We are not sure the extent to which the Burundi and Rwanda rulers were engaged in selling their subjects to the Arab slave traders. But it is a known historical fact that ivory and slave traders from the East African coast carried out their activities in the interior of Mainland Tanzania, Kenya, Uganda, Rwanda, Burundi and the eastern parts of the DRC, particularly

the Katanga area. The spread of the Kiswahili language in all these parts an indication of this fact.

Ethnic and Racial Relations during the Colonial Period

It is an accepted fact by historians and other social scientists that colonialism in Africa played a central role in the rise of ethnicity and racialism. Although, as we have observed above, ethnic groups and ethnic relations emerged and grew during the pre-colonial period, its higher levels of consolidation and consciousness took place under colonial conditions. Under colonialism, ethnicity and racialism were facilitated by the colonial and imperialist ideology of "racism" and "civilising mission" (Buttner 1981). This was an ideology used by all colonial states to facilitate colonial domination, oppression and exploitation. It was an ideology which divided people not only according to their races, but also according to their ethnic groups and made them play different roles in the systems of colonial administration and colonial economy.

Structures and consciousness of racialism and ethnicity were greatly facilitated by systems of education. Colonial education was designed in such a way that it was provided differently to different racial and ethnic groups. For example, according to racial groups, whites were given the type of education to prepare them as colonial rulers and administrators; Asians as traders and lower levels of administration; and Africans as chiefs, messengers, labourers and peasant producers. Among the Africans, different types of education and even education priorities and levels, were given to different ethnic groups, given their different roles.

In Burundi and Rwanda, for example, the German and later on the Belgian colonialists, provided segragative education to different ethnic groups. The Tutsi were provided with greater accessibility to education facilities and were guaranteed with what was regarded as superior type of education so that they could better play the role of chiefs and other positions in the colonial administration. The

Hutu, on the other hand, were given what was regarded as inferior education in order to prepare them for positions in agricultural production and manual labour. Even within the inferior type of education, accessibility was low such that the majority had no access to formal education. Accessibility was almost completely denied to the Batwa groups who mainly worked as servants and hunters.

In Burundi and Rwanda, ethnicity was more consolidated than in other colonies of East Africa. While the Tutsi increasingly became conscious about their superior position, the Hutu and Twa became more and more conscious about their marginalisation and segregation. The colonialists described the Tutsi as more intelligent, and able administrators with unique physical characteristics compared to the Hutu and Twa.

The end result was the splitting of the Barundi and Banyarwanda ethnicities into three groups, that is, the Tusti, the Hutu and the Twa. This point has been emphasised by Newbury (1998):

> This type of education in Rwanda and Burundi played a big role in the process of ethnic splitting whereby the Banyarwanda and the Banyarundi, who entered colonialism as single ethnic groups came out of it as different ethnic groups, that is, the Tusti and the Hutu. The system of education not only produced a privileged Tutsi elite and an underprivileged Hutu elite, but also facilitated the growth of consciousness of both the Tutsi and Hutu as separate and distinct ethnic groups-one of hermitic origin and the other of Bantu origin.

As far as racial relations are concerned, the situation during the colonial period in Burundi and Rwanda was not very much different from other colonies in East Africa. There were three main racial groups, that is, the majority Africans and the minority Asians and whites. The whites mainly constituted the Belgian colonial administrators of the central government. Asians mainly comprised Indian traders and shopkeepers. The education system was also categorised according to the three racial groups.

Ethnic and Racial Relations during the Post-Independence Period

The Period of Struggles for Independence

Both in Burundi and Rwanda, the post-independence period has been characterised by periodic ethnic conflicts mainly between the Tutsi and the Hutu. The conflicts have been mainly due to the struggles for political power and control of social and economic resources. In fact, the conflictual ethnic relations began during the struggles for national independence between the 1950s and 1962, when independence was achieved in both countries. On the whole, developments during the struggles for independence and the post-independence period in Burundi and Rwanda have been greatly characterised by what has been referred to as ethnisation of politics (Oyugi, 1998).

In Rwanda, the nationalist political parties, which began to be established in 1957, were all ethnic-based parties. In 1957, two Hutu–based nationalist political parties were established and these were the Mouvement Social Muhutu (MSM) and the Association pour la Promotion Sociale de la the Masse (APROSOMA). In 1959, the MSM was transformed by its leader, Grégoire Kayibanda, into the Rwandese Democratic Movements /Parti du Movement de I 'Emancipation Hutu (MDR-PARMEHUTU). In 1959, two Tutsi-based nationalist movements were established and these were the Union Nationale Rwandaise Rwandese National Union (UNAR) and the Rwandese Democratic Union (RADER) (Prunier, 1995: 48-53).

Although the ethnic-based nationalist movements were intended to fight for Rwanda's independence, they intensified the state of conflictual relations between the Tutsi and the Hutu to the extent that in November, 1959, a civil war erupted between the two ethnic groups and within two weeks, around 300 people were killed. The civil war ended by having communal elections which were organised

by the Belgian colonial government between 26 June and 30 July, 1960. The results of the elections were such that the majority candidates who won came from Hutu-based parties such that out of 229 canditates, the Tutsi won in only 19 communes; the rest were taken by the Hutu (Prunier, ibid.). The elected councillors completely stripped the Tutsi of their political power and now political power was in the hands of the Hutu. The Hutu came to regard that as a political "revolution" against the Tutsi, who for a long period and particularly throughout the German and Belgian colonial period, dominated and oppressed the Hutu. Thus, when independence was granted in 1962, political power was taken by the Hutu party under Grégoire Kayibanda as first president.

In Burundi, during the struggle for independence, the first political party that was founded during the 1950s was a progressive and non-ethnic nationalist party known as the Union pour le Progrés National (UPRONA). It was under the leadership of a progressive nationalist, Prince Louis Rwagasore, who made efforts to unite all the people of Burundi regardless of their ethnic belonging in order to establish a united nation at independence (Ndarubagiye, 1995: 27-32). Unfortunately, reactionary forces plotted the assignation of Rwagasore soon after he was elected first Prime Minister during the elections of September, 1961.

However, despite UPRONA being a non-ethnic political party and movement, tendencies of establishing ethnic-based parties also began. The Belgians were threatened by UPRONA and, therefore, sponsored the establishment of a Hutu-based party, known as the People's Party (PP), with the promise that independence would be achieved with power in the hands of the Hutu as was the case with Rwanda. A Tutsi-based party was also established which was known as the Parti Democratique Centtrist (Centrist Démocratic Party (PDC) (Mpangala, 2000:75). When efforts to bring the PP to a position of influence and derail the position of UPRONA failed, the

Belgians joined hands with the PDC in plotting the assassination of Rwagasore.

The assassination of Rwagasore created a leadership vacuum and the ethnisation of politics began. Struggles for power between the Tutsi and the Hutu began and grew faster after independence in July, 1962. The period between 1962 and 1966 was a period of intense conflicts between the Tutsi and the Hutu and UPRONA degenerated into an ethnic based party, notably a Tutsi-based party. Many politicians including three prime ministers and the speaker of the national assembly lost, their lives during this period. In 1966, the Tutsi carried out a military coup, King or *Mwami* Mwambutsa IV who was the head of state was overthrown and a Tutsi-dominated republican military government was established.

The Period under Republican Governments

Given the above developments, we find that from 1966 in Burundi, and from 1962 in Rwanda, there were two similar, but at the same time different political conditions. Similar conditions were that in both countries, there was growth of ethnised politics and antagonistic ethnic relations, whereby one ethnic group used its position of political power to dominate, oppress, marginalise and exclude other ethic groups. Different conditions were that the dominant and oppressing ethnic groups were different. In Burundi, it was the minority Tutsi who oppressed the majority Hutu and minority Twa, while in Rwanda, it was the majority Hutu who oppressed the minority Tutsi and Twa. Although up to 1990 there were changes of governments through military coups in both countries, these did not change the ethnic-political and socio-economic relations. The military coups in Burundi took place in 1976 and 1987, but were coups of one Tutsi group overthrowing another Tutsi group, thus perpetuating the power of the Tutsi. In Rwanda, the military coup took place in 1973, other a Hutu military group overthrew a Hutu civilian government of Kayibanda, thus perpertuating the power of the Hutu.

The ethnic-based regimes of both Burundi and Rwanda exercised politics of exclusion, oppression and marginalisation, in the control of socio-economic benefits and state resources. In his lecture delivered at the Nigeria War College, Abuja, on 16 September, 2002, Paul Kagame, the president of the Republic of Rwanda, summarised the situation in the two countries as well as the Great Lakes region as follows:

> Bad government and inequitable distribution of the public good have characterised the region since independence. The oligarchies that emerged immediately after independence were usually from the same ethnic groups, clans and in some cases, from the same families. They monopolised power and the assets of the young states and in so doing, encouraged the development of corruption, hegemony and exclusion of certain members of their society.
>
> The first Republic of Rwanda excluded the Batutsi from all the activities and benefits of the state after massacring hundreds of thousands of their kin and sending the rest into exile. The leaders concentrated all political and economic power in the hands of the Bahutu from the south. With the 1973 coup came a new team, composed of the Bahutu from the north. They maintained the exclusion of the Batutsi and in turn persecuted the Bahutu from the south who they had just overthrown.
>
> In Burundi, all the three post-independence presidents were Batutsi and came from the same region-Bururi. During their reign, Bururi monopolised power and the army to the detriment of the other regions.

Kagame's presentation provides a clear picture of how the Hutu in Rwanda oppressed and excluded the Tutsi and how the Tutsi in Burundi oppressed and excluded the Hutu. However, in both cases, the very minority Twa were oppressed and excluded. These situations resulted in periodic conflicts and massacres. Burundi experienced the massacres of 1969, 1972 and 1988. The 1972 massacres of the Hutu by the Tutsi army and militias were the

worst as more than 300,000 people were killed. In Rwanda, the government of Habyarimana, which took over power during the military coup of 1973, intensified its domination, oppression, marginalisation and exclusion of the Tutsi to the extent that in 1990, through his Mouvement Répiblicain National pour la Démocratie et le Développement (MRND), Habyarimana's political party, an ethnic ratio system policy was developed (Amaza, 1995: 18). This policy meant segregating, marginalising and excluding the Tutsi and the Twa in the provision of social services and employment opportunities. The policy culminated in issuing ten commandments which prescribed clearly how the Hutu should segregate the Tutsi in all political, economic, social and cultural walks of life both within and outside Rwanda.

These conditions resulted in new developments in both Burundi and Rwanda from 1990. In Burundi after the massacres of 1988, a democratisation movement began, culminating into the introduction of a multi-party political system in 1992. The democratisation process brought a new hope to the people of Burundi that the establishment of a democratic system would put to an end ethnised politics and systems of domination, oppression, marginalisation, segregation and exclusion. Unfortunately, the multi-party democratic elections of 1993, in which a Hutu-based political party, Front for Democracy in Burundi (FRODEBU) won, were followed by coup attempts by the Tutsi-dominated army, culminating in the assassination of the democratically elected President, Melichior Ndadaye, in October 1993 (Reyntjens, 1993). The assassination of Ndadaye was followed by bloodshed through massive killings and massacres between the Hutu and Tutsi militias, such that within a short period, more than 150,000 people lost their lives. The massacres were followed by a civil war, whereby some Hutu parties decided to go into the bush and fight. The civil war continued for more than ten years. The new hope for Burundi to end politics of exclusion and conflicts was brought about by conflict resolution processes.

In Rwanda, the response to this background situation and, particularly to the Habyarimana regime, was twofold. One was the outbreak of the civil war in October, 1990 and the other was the democratisation movement which also began late 1990. The civil war was between the Rwandan Patriotic Front (RPF) and the government of Habyarimana. The RPF was a military organisation of the Rwandan refugees in Uganda who had developed the intension of liberating Rwanda from the dictatorship of Habyarimana's regime. The civil war continued up to June, 1992 when a ceasefire was declared and in July 1992, peace negations between the RPF and the Habyarimana's government began in Arusha (Premier, op.cit).

The outbreak of the civil war, to a large extent, stimulated the beginning of the democratisation movement. In November, 1990 in his speech, Habyarimana showed his intention to allow a multi-party political system. From November, 1990 to April 1991 a number of opposition political parties were founded. On 28 April, 1991, the ruling party, the MRND, officially declared to allow a multi-party political system (Premier, 1995: 125–126). On 10 June, 1991, a new constitution that allowed a multi-party political system was proclaimed.

The two parallel developments, that is, the civil war culminating into peace negotiations and the democratisation process, had not been able to bring the needed change of a new society by the outbreak of the genocide of early April, 1994. The peace agreement arising out of the peace negotiations was signed on 4 August, 1993 in Arusha. This agreement, whose content brought hope of building a new liberated society in Rwanda through its transition period culminating into democratic elections, could not be implemented between August, 1993 and early April, 1994. The result was the outbreak of the genocide that was sparked by the death of Habyarimana through an aircraft shoot-down.

The Current Situation

It has to be noted, however, that the current situation of ethnic relations in Burundi and Rwanda is such that one can say it is undergoing a transition period from relations of exclusion, marginalisation and segregation, to inclusion, harmony and equality. In the next section, we shall see the efforts and measures being taken in the two countries.

Despite the efforts being taken, the current situation still shows a considerable level of exclusion, marginalisation and segregation of ethnic and racial minorities, socially, economically and politically. The most affected are the Batwa communities.

In both Burundi and Rwanda, the Batwa continue to occupy the position of a despised people within the societies of the two countries. They are greatly segregated against in social activities such as marriage and burial ceremonies. Access to education and health services is still problematic, although the situation is better in Burundi than in Rwanda. In Rwanda, it is claimed that 99% of Batwa women are illiterate. During the genocide in 1994, 10% of the Batwa were killed, but they are not recognised that they were part of the genocide victims.

Economically, the Batwa constitute the poorest people in the two countries. They do not own land and, thus, do not carry out agricultural and livestock keeping activities like the Hutu and the Tutsi. Their traditional hunting activities have been abolished by the governments on the pretext of environmental protection and wildlife preservation for tourism. They survive on begging, working for low wages as servants and humanitarian assistance from the government and from local and international NGO's, in the case of Burundi. In Rwanda, for example, 30% of the Batwa are beggars.

At the political level, the Batwa are still largely excluded and marginalised. During elections, they have, little chance of getting elected as councillors and MPs, even if they are members of

political parties. They have little chance of getting employment in government administration and other state institutions such as in the defence and security forces. In Burundi, it is clearly stipulated in the constitution that in the armed forces, the numbers should be 50% Hutu and 50% Tatsi. The Batwa are completely excluded. Likewise, in state institutions, the numbers should be 67% Hutu and 33% Tutsi, and no Batwa.

It has been pointed out that to some extent, this situation of exclusion and marginalisation also concerns the Tutsi and the Hutu. Despite the efforts and measures to de-ethnise politics, the ruling parties in both countries are still said to be ethnic-based. In Burundi, the ruling party is Counseil National Pour to Défense de la Democratie-Forces pour la Défence de la Démocratie (CNDD FDD), which is still Hutu-dominated, although it is trying its level best to move out of that situation. It is said that although the president proffers to include members of all ethnic groups to be appointed and to occupy high positions in the government, hardliners within the party put pressure on him such that all such positions should be held by those who fought in the bush during the civil war. This means that to a large extent, the Tutsi are excluded and marginalised in holding such positions. In Rwanda, the ruling party, the RPF, is to a large extent still Tutsi-dominated, thus excluding and marginalising the majority Hutu in key and high state positions. It has to be noted, however, that change cannot be accomplished within a short period. It requires a transition period. Thus, Burundi and Rwanda are in a transition period towards inclusive politics.

Ethnic and Racial Relations: The Case of Zanzibar

Introductory Remarks

Ethnic and racial relations in Zanzibar from the pre-colonial to the post-independence periods, are to a considerable extent different from those in Burundi and Rwanda. While in the latter countries

the predominant relation was ethnic, in Zanzibar the predominant relation was racial. This is because Zanzibar is part of the history of the East African coast, which has had trading contacts with other races for more than two thousand years. In this section, we shall trace the ethnic and racial relations in Zanzibar during two main periods. The first period constitutes the pre-colonial and colonial periods, and the second period constitutes the post-independence period.

The Pre-Colonial and Colonial Periods

The African people of the East African coast are said to have began to get into trading contacts with the outside world from about 1,000 years BC. From the 2nd century BC to the 5th century AD they began to trade mainly with the Romans and the Greeks during the time of the Roman Empire as well as the Arab societies in the Middle East (Mpangala, 1992). Through Arab traders, East Africa exported ivory to the Romans and Greeks, and food items and mangrove poles, to the Middle East. The people of East Africa imported iron tools, weapons and luxury items. Due to the fall of the Roman Empire during the 5th century AD, trade with the Romans and Greeks declined and new trade links with India and China, were established up to the 8th century AD. In addition to ivory, exports to China and India included leopard skins, tortoise shells and so on.

From the 8th century AD to the 15th century AD, the pattern of trade greatly changed. During this period, trade in gold from Zimbabwe, came to dominate the exports from the East African coast. From Zimbabwe gold was brought to East Africa through the port of Sofala in Mozambique. This trade greatly increased the economic prosperity of the East African coast, resulting in the emergence and growth of the city states of the East African coast, notably Kilwa, Zanzibar, Mombasa, Mogadishu, Pate and Lamu. The prosperity of this trade attracted many Shirazi Arabs from the area of present Iran to come and settle in the city states and in the Islands of Zanzibar, that is, Unguja and Pemba. The Swahili language

and culture grew, which included the religion of Islam brought by the Shirazi people. Racial relations, which included intermarriages between Africans and the Shirazi, began.

The 16th and 17thcenturies AD was a period of Portuguese occupation of the East African coast after conquering the sultanates of the East African coast. During this period, the prosperity of trade greatly declined because the Portuguese exported gold from Zimbabwe direct to Europe from Sofala (Sultan, 1968). From the middle of the 17thcentury AD, the Swahili people, supported by Oman Arabs, began fighting against the Portuguese. By the end of the 17thcentury AD, the Portuguese were driven out of the East African coast north of the Ruvuma River. This was a racial conflict between the whites, on one hand, and the Swahili people and Oman Arabs, on the other.

However, with the departure of the Portuguese the Oman Arabs extended their political hegemony from Oman to the East African coast between the 18th and the 19thcenturies AD. The Sultan of Oman became also the Sultan of the East African coast, including Zanzibar. At first, Mombasa was made the headquarters of the Oman rule in East Africa, but soon it was shifted to Zanzibar. During this period, prosperity of trade was revived and the main items of export from the East African coast were ivory and slaves. During this period, many Oman Arabs came to East Africa to carry out this trade. Trade routes from the East African coast went into the interior as far as Katanga in the eastern parts of Congo, where ivory and slaves were obtained.

By the beginning of the 19thcentury AD, Zanzibar had grown as an internationally recognised centre of trade. The prosperity of Zanzibar became greater with the introduction of cloves production. Cloves began to be planted in 1812 in Unguja and by 1928, the Sultan himself established plantations and encouraged many Oman Arabs to come to Zanzibar to carry out the production of cloves. The prosperity of trade in ivory and slaves, and the production and

export of cloves, made Sultan Seyyid Said, the ruler of Oman and Zanzibar, shift his capital from Muscat in Oman to Zanzibar in 1832 (Oloka-Onyango and Nassali, 2003:9). In addition to many Oman Arabs coming to Zanzibar, this period also attracted many Indians from India to come to Zanzibar, where they played the role of small traders and money lenders, in the economy of Zanzibar and the East African coast.

The slave trade that grew during the 18th and 19thcenturies AD and the establishment of clove plantations during the 19thcentury AD, under the political hegemony of the Sultan of Oman resulted in the growth and consolidation of racial relations based on the slave, mode of production in Zanzibar. Some of the African slaves who were brought to the Zanzibar slave market from the interior of east and central Africa, were exported abroad, while others were bought within Zanzibar to work on the clove and other plantations. Thus, the master-slave relationship took a racial form between Arabs and Africans (ESAURP, 2004: 22-26).

In 1890, Zanzibar became a British protectorate. The British took charge of political and administrative matters, while the Sultan remained the symbolic head of state (Oloka-Onyango and Nassali, op.cit). British colonialism lasted from 1890 to 1963. During this period, racial relations changed in terms of abolition of slavery, thus the slaves now transformed into wage labourers. The minority Arabs continued to occupy the position of landlords and traders, while the Africans, many of whom continued to come from the Mainland, constituted the class of labourers. Indians continued to play the role of small traders and many also worked in the lower ranks of the colonial civil service. Another prominent racial group was that of the Shirazi who are a product of many centuries of intermarriages between the Shirazi from Iran and the indigenous Africans of Zanzibar. Their position in the colonial economy was that of small peasant producers of cloves and food crops (ESAURP, op.cit).

Due to the colonial policy of divide-and-rule, racial differences were greatly emphasised during this period. One indication is that most CSOs, which were established after the First World War up to the 1940s were in form of racial organisations. For example, the Shirazi association was formed 1939 in Pemba. Other racial associations included the Arab Association, the African Association and the Indian Association. Later, the Indian Association was split on religious lines to establish religious associations such as the Indian Muslim Association. The second indication is that in 1948, the British colonialists carried out a census which determined that the number of Arabs was 17%, Africans of Mainland origin 19%, and the Shirazi about 60%. Yet, another indication is that when the legislative council was established between 1926 and 1946, Africans and Shirazis were not nominated as representatives, only Europeans, Arabs and Indians got nominated. The first African was nominated in 1946.

Racial relations of domination and exploitation created the foundation for racial antagonism which came clearly on the surface during the struggles for independence between the 1950s and 1963. Nationalist political parties were formed along racial lines. In fact, some of the political parties were borne out of the racial CSOs. Thus, the nationalist political parties included the Zanzibar Nationalist Party (ZNP) founded in 1955, which was Arab-dominated. It has to be noted, however, that the original founders were Africans or Shirazis who had been detained by colonial authorities because they refused the Government order to carry out a cattle dipping exercise. But later, it came to be dominated by Arab elites. The Afro-Shirazi Party (ASP), formed in 1957, was African and Shirazi-dominated and the Zanzibar and Pemba People Party (ZPPP) formed in1959 was Shirazi-dominated. The UMMA Party was the only one that appeared non-racial and this was formed in 1963.

Sheriff (1991) observed that the political parties not only represented the interests of racial groups, but also the interests of classes. The ZNP represented the interests of the Arab landlord class; the ASP represented the interests of the African workers; and the ZPPP represented the interests of the Shirazi peasants. Racial lines coincided with class lines.

Thus, racial interests coinciding with class interests resulted in fierce antagonism during elections during the struggle for independence.

Political independence was viewed by political parties either as a means of liberation or as a means of maintaining and perpetuating political and socio-economic power. During the first elections of 1957, ASP won five out of six seats of the elected members of the Legislative Council. One seat was won by an Indian CSO. The ZNP won no seat (ZEMOG, 1995). Other elections were carried out in January, 1961, June, 1961 and July, 1963. Although in all these elections the ASP won majority votes, it was the coalition between ZNP and ZPPP which won the seats. All these elections were characterised by violence and bloodshed. It is asserted that the clashes of the 1963 elections resulted in the death of more than 60 people (ZEMOG).

The elections of July, 1963 were crucial as to which political party would take over power at independence. Although ASP won 54% of the votes the coalition between ZNP and ZPPP won more seats .as result, the British granted independence on 10 December, 1963 to the Arab and Shirazi-dominated parties (ESAURP, op.cit:27). ASP felt that its victory had been denied due to the manipulation by the British colonial power in order to give power to the Arabs, particularly given the fact that the Sultan was made head of state of independent Zanzibar. That also meant that political and socio-economic relations of domination and exploitation had not changed. That necessitated ASP to carry out the Zanzibar Revolution of 12 January, 1964.

The Post-Revolution Period

When the revolution took place, the independence government, with the Sultan as the head of state, had lasted for only one month. The revolution was expected to bring drastic political and socio-economic changes in terms of racial relations. The first step was to abolish political parties and, thus ASP, which carried out the revolution, remained the only party. Thus, a one-party political system was adopted. ASP was, therefore, expected to transform from being an African-dominated party into a multi-racial party. Furthermore, the revolution was also expected to transform the Zanzibar society from class and racial relations of domination, oppression and exploitation, into a society of racial harmony devoid of one racial group dominating and exploiting other racial groups.

In order to achieve these goals, a number of steps were taken. One, which we have already pointed out, was the abolition of racial-based political parties and CSOs. The independence Constitution was also dissolved. The major means of production, particularly land, were nationalised. Nationalised land was distributed to small-holder peasants. Efforts were made to lift the standards of living of the poor people by providing them with modern housing, education and health services (ESAURP, op.cit). In 1964, the Union between Tanganyika and Zanzibar to form the United Republic of Tanzania was an added advantage. Although the Union was propelled by security concerns for Zanzibar, the influence of the Government of Tanganyika and its ruling party, the TANU, could not be avoided. The most relevant issue for Zanzibar was the non-racial ideology and practice of TANU and its government. The merger of ASP and TANU into Chama Cha Mapinduzi (CCM) in 1977 was even a greater advantage.

However, despite these steps and measures to change the Zanzibar society, there were some shortcomings which could hinder the attainment of those goals. First the independence constitution that

was revoked was not replaced by another constitution until 1979. Zanzibar was governed under presidential decrees: Decree No. 5/1964 and Decree No. 6/1964, which emphasised the rule-of-law, equality, reconciliation and the unity of the Zanzibar people (Oloka-Onyango and Nassali, op.cit:10-11). Second, President Sheik Abeid Amani Karume had too many powers. Such powers brought tendencies of dictatorship and racial segregation soon after the revolution. In order to create racial balance, segregation was realised at the level of secondary education, where a racial quarter system was established, thus greatly segregating Arabs and Indians. Such segregation was practised also in the civil service. Nationalisation of business greatly deprived Indian traders of their business enterprises, thus many had to leave for Mainland Tanzania. There were also efforts to abolish racial identity and the measures taken resulted in racial oppression. However, these dictatorial and segragative tendencies were abandoned with time. Third, elections were not held until 1980, the Revolutionary Council, which was established soon after the revolution, was the main law-making and policy decision-making body (ESAURP, op.cit: 26-28). There developed tendencies of dictatorship. Fourth, the racial groups, notably the Arabs and, to some extent, the Indians, whose political and socio-economic positions were deprived by the revolution, maintained attitudes of bitterness.

Despite the shortcomings, the period of the one party system, that is, 1964 to 1992 realised considerable achievements in terms of racial relations. ASP transformed into a multi-racial political party; its membership and even leadership positions in the party and the government were to a considerable extent multi-racial. Tendencies of dictatorship, which was an immediate post-revolution feature, were gradually changed. The first post-revolution constitution was established in 1979 which, among other things, established the provision of elections and the House of Representatives as a law-making body composed of elected representatives. Thus, presidential

and parliamentary elections were held in 1980 (Lwehabura and Mpangala, 2005). An elections law was passed in 1984.

It has to be noted that despite the positive achievements, there were some complaints that were connected with the elections. Among the complaints was the political and economic marginalisation of the people of the Pemba Island. Since the revolution, all presidents came from Unguja. The people of Pemba expected that the elections of 1985 and 1990 would have produced a president from their area because Pemba produced a strong candidate in the name of Seif Shariff Hamad. In 1985, CCM did not nominate him as the presidential candidate although he contested. In 1988, the then President, Abdul Wakil, expelled him from the position of chief minister and all other party leadership positions. That was interpreted as a strategy to prevent him from contesting as a presidential candidate during the 1990 elections. Furthermore, besides denying them the chance to produce a Zanzibar president, the people of Pemba were also marginalised in terms of positions in the government and also in terms of social and economic development (Lwehabura and Mpangala, ibid.).

It is worth pointing out that the complaints of the people of Pemba began soon after the revolution. It is said that the regional and district commissioners, who were posited there by the Revolutionary Government during the first eight years after the revolution, greatly oppressed the people of Pemba. Nationalisation of the marketing of cloves by the government resulted in the complaint that despite good prices on the world market, the Wapemba peasants were getting very low prices, thus raising the belief that they were exploited by the government. As we shall see later, even during the period of multi-party politics, Pemba has become a stronghold of the opposition. This has facilitated greater marginalisation of the island.

Tanzania declared a multi-party political system in July, 1992. One of the important principles governing the multi-party political system is that all the registered political parties should have a union

character, that is, with membership and branches in both Mainland Tanzania and Zanzibar. During multi-party elections, the people of Zanzibar vote for the Union president, the Zanzibar president, representatives of the Union Parliament and those of the House of Representatives in Zanzibar. They also vote for ward councillors. Since the adoption of the multi-party system, three periodic general elections have been held, that is, in 1995, 2000 and 2005. In 2003, there was also a by-election in Pemba for representatives of the House of Representatives, which had fallen vacant during the 2000 elections.

One obvious fact is that all the three multi-party general elections in Zanzibar were characterised by political conflicts between two rival political parties, that is, the ruling CCM and the opposition party, the Civic United Front (CUF). The centre of the problem was that CUF had been complaining and accusing CCM of robbing its victory, particularly, the presidential elections victory. This was because the elections were conducted in such a way that they were not free and fair. The ruling party used its position as an incumbent party to rig and carry out all sorts of manipulations in order to win the elections.

The complaints and accusations of CUF on the elections not being free and fair and hence denying the party its victory, have to a large extent been certified by both local and international observers and monitors. On the elections of 1995, there were reports that the voting processes went on well, but problems appeared in the process of vote counting votes and announcement of the results, particularly results of the presidential candidates. It appears that CUF presidential candidate had won, but the Zanzibar Electoral Commission (ZEC) manipulated the results in favour of CCM candidate (ZEMOG, 1995). This resulted in a serious political conflict between the CCM and CUF. During the 2000 elections, the situation was worse. Both the local and international observers

reported that the elections were not free and fair. In fact one of the local observers, the Tanzania Elections Monitoring Committee (TEMCO), regarded it as an aborted election (TEMCO 2,000). This resulted in another serious conflict between CCM and CUF to the extent that in January, 2001, it erupted into violence in which more than 31 people were killed, many injured and more than 2,000 became refugees in Kenya (ESAURP, op.cit.).

On the elections of 2005, some observers reported that the elections were free and fair, while others said they were not free and fair. But even those who said the elections were free and fair pointed out that there were a number of problems and shortcomings. On its part, CUF still accused CCM of manipulating the elections consequently CUF did not to accept the results and did not recognise the President and his government. Thus, the conflict between CCM and CUF has continued since the 2005 elections.

It is obvious that the nature of the elections and the conflicts arising out of them, are an indication of political marginalisation, segregation and lack of a democratic multi-party system. Various studies have been carried out and they have come out with various explanations. Some people have taken the reasons as being purely political due to struggles and competition for political power, arising out of lack of democratic institutions and legal frameworks. Others have tended to link these problems to the old conflicting racial relations, particularly, during the struggle for independence. They see the CCM as a child of the pre-revolution ASP and CUF as a child of the coalition of ZNP and ZPPP.

CUF itself is refuting this explanation that it is a child of the old ZNP and ZPPP, arguing that it is a completely new party with its membership being a mixture of people from all racial groups. Even many of the members of its leadership came from CCM. The CUF further sees the tendency of denying it its victory as part of the old tendency of the 1980s of political and economic marginalisation of Pemba and denying it chance to produce a president. On its part,

in order to justify its tendency of clinging to power CCM has been emphasising the explanation that CUF has historical links with ZNP and ZPPP and that it is anti-revolution. Once CUF gets into the position of power, it is likely to restore the pre-revolution class and racial relations of domination, oppression and exploitation. This means that further serious research is required to determine the actual causes and which legal, political and socio-economic measures ought to be taken.

Movement Towards Inclusion of Ethnic and Racial Minorities In Burundi, Rwanda and Zanzibar

Introductory Remarks

The background history on ethnic and racial relations presented and discussed on the three countries has provided us with an understanding of four important aspects. First, that exclusion in the three countries has a long historical background from the pre-colonial, colonial and post-independence periods. Second, exclusion has not only been carried out in terms of ethnic and racial minorities, but also in terms of ethnic and racial majorities and at the level of regionalism. Third, that political exclusion has often resulted in social, economic and cultural exclusion, marginalisation and exploitation. Fourth, political exclusion has often been a source conflicts, instability and even poverty.

The four above aspects lead us to the conclusion that political exclusion is an evil in societies and countries. It needs to be eradicated in order to build democratic, just and peaceful societies characterised by equitable socio-economic development. In this last section of the concept paper, we shall, therefore, try to examine the legal policy and other measures which have been taken to fight against political exclusion in Burundi, Rwanda and Zanzibar.

Measures being Taken in the Three Countries

Burundi

In Burundi, the most important measures have been the Burundi Peace Negotiations (BPN), the Transition Period (TP), the democratic elections at the end of the transition period and the post-elections policies and strategies. BPN took place in Arusha from June, 1998 to August, 2000. The Burundi Peace Agreement was signed on 28 August, 2000 with a ceremony that was attended by several heads of state.

The importance of BPN, as far as solving the problem of ethnic exclusion is concerned, was within two aspects. One was that the 19 negotiating parties, which included 17 political parties, the government and the national assembly, comprised of the Barundi who got a chance of carrying out long discussions concerning the future of their country. The second aspect was that the Peace Agreement or the Peace Protocol contained aspects that were intended to build a new Burundi society which was not only democratic and peaceful, but also devoid of ethnic segregation, marginalisation and antagonism. Four important areas of the content of the protocol included the nature and causes of conflicts in Burundi, the establishment of peace and security, the post-conflict social and economic reconstruction and, even much more important, was the building of democracy and good governance (Mpangala and Mwansasu (eds), 2004).

The transition period, which began in November, 2001 and ended up in June, 2005, was a crucial period for the implementation of the BPA. It was a period when transitional institutions such as the government, the national assembly, the senate and the armed and security forces, were established. These transitional institutions were expected to carry out the building of the new society of Burundi without tendencies of political exclusion. The transition period was followed by democratic elections in 2005 which began with elections at the level of the communes, parliamentary elections and

finally presidential elections, which not only marked the end of the transition period, but also the beginning of a new era. Policies and strategies of the new government and its various institutions were important for the movement towards inclusion in Burundi.

The most encouraging aspect in Burundi, in terms of the movement towards inclusion, has been the various measures on the minority Twa. As noted earlier, the most excluded and marginalised minority ethnic community in Burundi and Rwanda historically, and even during the current time, has been the Batwa. In Burundi, the legal and policy frameworks and the roles of institutions are working for the promotion of the inclusion and integration of the Batwa politically, economically and socially. The most important legal instruments included the constitution and the Electoral Code of 20 April, 2005 (The Republic of Burundi, 2005).

The new constitution of Burundi recognises the Batwa as a minority ethnic group which is excluded, marginalised and segregated against. (The ITEKA Bulletin, October, 2004). The Constitution is known as the Interim Post-transition Constitution of the Republic of Burundi and it, therefore, stipulates the need for the government to have policies and strategies of promoting the Batwa community so that there reaches a point when the Batwa can enjoy equal position and rights like the other ethnic groups. For example, the constitution provides that the Electoral Commission should nominate three members of the Twa ethnic group for the national assembly and three for the senate. There is also a political will to integrate members of the community in government administration. In one of the provinces, the adviser of the governor is a Mutwa. The president has appointed a Mutwa on the commission dealing with land conflicts.

As far as institutions are concerned, there are a number of state institutions that play the roles of promoting the positions and rights of the Batwa. In terms of state institutions, the parliament of Burundi, both the senate and the national assembly, is responsible

for ensuring that there is no ethnic discrimination in the country. In December, 2008, the senate organised a workshop which was preceded by investigations on the life conditions of the Batwa community. Other state institutions which work for the Batwa include the ministry of national solidarity, human-rights and gender, the ministry of environment, the ministry of culture, youth and sports and the president's office. All these assist the Batwa in terms of housing, provision of food and clothing, and provision of education and health services.

Internal NGOs that facilitate the promotion of the interests and rights of the Batwa include the Union for the Promotion of the Batwa (UNIPROBA), the Minority Rights Group (MRG), the Christian Union for the Education and Development of the Destitutes (UCEDD and Action Batwa (AB). UNIPROBA, for example, works for the Batwa all over the country in all aspects of life such as education, health, housing, human-rights and sensitising the people (the Batwa), to participate in political matters. The organisation is also active in advocacy work and lobbying for the improvement of policies and laws. For example, it is currently lobbying parliament and political parties on the necessity to improve the constitution since it still greatly marginalises the Batwa. The other organisations are concerned with various aspects such as building houses, providing education and health services, and fighting for the human-rights of the minorities.

International organisations and agencies include the United Nations Integrated Bureau in Burundi (BINUB), the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the World Bank (WB), the European Union (EU), Care International, the African Commission on Human and People's Rights and International Work Group for Indigenous Affairs, Denmark. These organisations are also concerned with the promotion of human-rights and provision of assistance to the ethnic minorities, particularly, the Batwa. For example, UNESCO is concerned with the promotion of culture and

education. BINUB organises workshops and seminars to educate the minorities on their political, economic and social rights.

Rwanda

Given the history of Rwanda, the measures to be discussed will be those which began and continue to be taken after the genocide of 1994 when the RPF took over power. After taking power from the government of Habyarimana through a military operation, the RPF government faced serious problems. These included ending the genocide, the state of insecurity and reconstructing post-genocide Rwanda. Among the steps taken was establishing various institutions. The institutions included the Commission of Human Rights, the National Commission of Unity and Reconciliation, the Legal and Constitutional Commission and the Electoral Commission. The Legal and Constitutional Commission was responsible for drawing up a list of legislative provisions to be abrogated or amended in conformity with the 1993 Arusha Peace Agreement and preparing a new constitution. The Electoral Commission was responsible for the preparation and organisation of local, legislative and presidential elections (Kagame, 2002: 18-24).

In order to handle crimes connected with genocide, an organic law on the crime of genocide and crimes against humanity, was adopted in 1996 in order to punish all those who committed crime of genocide and other crimes against humanity. Furthermore, a system of participatory justice, known as *Gacaca*, was established. This system allowed Rwandans to establish the truth about the 1994 genocide and contributed to the trial and judgement of those suspected of genocide. Other measures included completing the new constitution which resulted in multi-party democratic elections. The communal and parliamentary elections were carried out in 2003, while presidential elections were carried out in 2006.

As far as legal and policy frameworks on ethnic and racial minorities are concerned, the approach of the government is

somehow different from that of Burundi. While in Burundi the constitution recognises the existence of ethnic minorities, in Rwanda, it does not do so. The overall policy in Rwanda is to abolish ethnicity by not recognising the existence of different ethnic groups. All the people of Rwanda are considered Banyarwanda and not as Hutu, Tutsi and Twa. Thus, the official aims and objectives are to eradicate ethnic ideologies which have been the cause of conflicts and genocide in Rwanda. All the people in Rwanda are expected to enjoy equal rights and opportunities according to their abilities.

This means the Constitution and other legal frameworks have no provisions to ensure the promotion and protection of the Batwa community, which historically and even under the current situation, has been and continues to be excluded, marginalised and segregated against. At the level of the official policy and legal framework, they are not excluded, marginalised and segregated against, but the actual practice arising out of historical circumstances puts the Batwa in that position.

As a result of the above policy, there are no state institutions which are directly concerned with the promotion of the rights of the Batwa and the provision of various types of assistance. Because of that, the Batwa have no members in the national assembly. At least there is one who has been nominated in the senate. This is likely to be so due to the ability and qualifications of the individual. One positive aspect which the government is doing for the Batwa is to encourage their children to get education, particularly, secondary education. It also assists the most disadvantaged Batwa to have shelter.

Institutions which are openly working for the promotion of the Batwa are international organisations such as those working in Burundi and internal associations. One of the known international organisations is the African Indigenous Minority People Organisation (AIMPO). There are three known Batwa associations that play various roles in assisting the Batwa and promoting their position in the Rwanda society. They carry out advocacy work, do some lobbying and speak to the government. They encourage the provision

of education and health services and carry out vocational training such as tailoring and other skills.

Observations on Measures Taken in Burundi and Rwanda

As noted earlier, the current regimes in Burundi and Rwanda have the overall aims and objectives of democratising the societies of the two countries in order to solve permanently the age-long problem of periodic violent conflicts and genocide. The question is to what extent the policies and legal frameworks fore mentioned can lead into the achievement of those aims and objectives. While to a large extent they have the potential to succed, they still have some shortcomings which are likely to hinder that success.

In Burundi, the policy of establishing ratios in accordance with numbers of the ethnic groups in the two houses of the parliament, in the government administration and civil service, and in the armed forces can be good in the short run as a transitional measure. In the long run, it has the danger of perpetuating ethnic consciousness. Worse still, the ratios are only concerned with the Hutu and Tutsi; the Batwa are not included, which means that the exclusion of the Batwa will continue because they are excluded from the constitution. The constitution stipulates clearly that in the Senate and the National Assembly, the ratio of the numbers of representatives between the Hutu and Tutsi should be 67% and 33%, respectively. The same ratio should be concerned with positions in state organs and the civil service. In the defence and security forces the ratio, between Hutu and Tutsi is 50% each. In all these ratios the Twa are excluded. This means that the measures being taken on the Batwa cannot lead to meaningful inclusion unless the constitution is amended. Furthermore, in addition to the government's measures of assisting the Batwa through provision of food, clothing and housing, there is a need to put emphasis on vocational training as well as the allocation of land for the Batwa so that they become more self–reliant and empowered to meaningfully participate in political, economic and social affairs.

In Rwanda, the policy of creating conditions of equal opportunities for all the Banyarwanda regardless of their ethnic belonging is good in the long run. But in the current situation, it is likely to perpertuate relations of ethnic marginalisation, exclusion and segregation. This is because some ethnic minorities, particularly the Batwa, still find themselves in the disadvantaged position through the long historical development in the Rwanda society. Thus, in addition to that policy, special measures need to be taken for the Batwa.

In both countries, the policies and legal frameworks are very silent on the Asian minorities. The general perception is that Asians should not be regarded as minorities because they are not disadvantaged like the Batwa.

This is because Asians are economically well off, as most of them constitute high and middle level traders. What appears to be obvious in both countries is that despite the fact that most of the Asians have citizen status of these countries, they are greatly excluded politically and marginalised. Thus, it is difficult to find them as representatives in both houses of parliament, in government positions and the civil service and even in local government positions. This is a matter that requires a study that can lead to the development of views on how the Asian minorities can move from the situation of political exclusion into political inclusion.

Zanzibar

As far as Zanzibar is concerned, the most relevant measures we can present and discuss here are those of conflict resolutions commonly known as *Muafaka*. So far, we have *Muafaka I* and *Muafaka II*. *Muafaka III* is expected to be signed in the foreseeable future. Each *Muafaka* constitutes a peace agreement which is signed after peace negotiations. The first *Muafaka* was signed on 9 June, 1999. This followed peace negotiations between CCM and CUF, brokered by the Commonwealth secretary general, Chief Anyaoku, between 1997 and 1999. The peace negotiations were due to the political conflict

between the two political parties arising out of the 1995 elections in Zanzibar as pointed out earlier (Mpangala, 2000: 63-64).

Our interest is to know the nature and character of the contents of the *Muafakas*. *Muafaka I* had about 15 items of the peace agreement. The main areas included rectification and reform of state organs which were concerned with the management of elections, legal amendments, the functioning of political parties and reconciliation. The first area involved rectification of ZEC to it independent enough, reform of the judiciary and reform of the security forces. The second area required amendments of the Zanzibar Constitution, the Zanzibar electoral laws and establishment of a permanent voter register. The third area required that all political parties must enjoy sufficient freedom to carry out their political activities. The fourth area required CUF to recognise the president and the Zanzibar government and that its members of the House of Representatives to begin attending its sessions (Hamad, 2004 and Mwakyembe, 2004).

Muafaka II was signed on 10 October, 2001 following peace negations between CCM and CUF which had been going on since March, 2001. The negotiations were necessitated by the second conflict between the two parties following the mismanagement of the 2000 elections and the killings of 26 and 27 January, 2001. Since most of the items of the agreement of *Muafaka I* had not been implemented, all the unimplemented items were taken to be part of *Muafaka II*. The only items that had been implemented were those concerned with reconciliation. Additional items for *Muafaka II* included requiring both parties to recognise the tragic events of 26 and 27 January, 2001, the return and resettlement of refugees from Kenya and the carrying out of a by-election in Pemba. To a large extent, the items of the agreement of *Muafaka II* were implemented before the elections of 2005. There were still some complaints that some were not satisfactorily implemented.

As noted earlier, *Muafaka III* has not been signed although the negotiations between CCM and CUF had been carried out for nearly

14 months between 2007 and 2008. It is the aspect of establishing a coalition government which has made it difficult to the *Muafaka*. It was part of the items of the peace agreement that a coalition government should be established between CCM and CUF. The disagreement between the two parties is on the modalities and the timing of establishing the coalition government. Certainly, this is a very important aspect in the movement towards political inclusion.

It has to be noted that the most serious problem now in Zanzibar political relations is not racial differences and marginalisation. The problem, that continues to grow seriously, is the issue of regionalism, particularly, between Unguja and Pemba. This is because Pemba is a stronghold of CUF and to a large extent Unguja is a stronghold of CCM. At the level of representation in the House of Representatives and in the Union Parliament the Wapemba are represented through their elected representatives. At the level of participation and inclusion in government and the civil service, they are greatly marginalised. The Tanzanian electoral system of the winner-takes-it all makes things worse.

Other issues, which require close examination as far as minorities are concerned, are issues of Indian and religious minorities in Zanzibar. It has been observed that up to the time of the revolution, Indians on the whole constituted a well off group economically preoccupied with much of small businesses. A number also occupied positions in the middle and lower ranks of the civil service. As a racial group, Indians were not a direct target of the revolution as since they were not a threat politically. However, they were indirectly affected economically by the immediate post–revolution policy of nationalising businesses. Many of then began to experience economic hardships and, left Zanzibar for Mainland Tanzania. For example, the number of the Ismailia community was about 2,000 before the revolution. But after the revolution many left and by 1979, the number was only 67. At the level of policy and the constitution, they are not politically segregated against and marginalised. They

enjoy equal opportunities as other Zanzibaris. The current minister of education is an Indian and there are some members in the House of Representatives.

There are also religious minorities because Zanzibar is predominantly a Muslim society. Muslims constitute about 95% of the people of Zanzibar. The religious minorities include Christians and Hindus. Christians constitute about 4% of the people. The first Christian Church was the Anglican Church which was constructed in 1873 and at that time, it mainly played the role of converting and working for the freed slaves. That is why even the church was constructed at the slave market. Freed slaves centres were also established in other parts of Zanzibar.

Later on, other Christian denominations opened up branches in Zanzibar such as the Catholic and Lutheran Churches. Up to now, Christians are still a minority. At the level of the policy of the country and the constitution, they enjoy equal political and other opportunities. According to the Zanzibar Constitution, the state has no religion. In recent years, some Christians have even been able to hold ministerial positions and there are some nominated members in the House of Representatives. However, as the unofficial level, some Christians feel some tendencies of marginalisation, particularly, in terms of education opportunities. Some instances of harassments by Muslim youth against Christians and Christian institutions have occasionally been experienced, particularly, during against Ramadhan.

In addition to the *Muafakas,* there are other measures towards political inclusion in Zanzibar. The most important measure has been the provision of civic education. The Research on Education for Democracy in Tanzania (REDET), an institution based at the University of Dar es Salaam, has established a project known as the Democracy School in Zanzibar. Groups of young people from political parties, CSOs and university students, are placed in the school for three weeks where they get lectures and are involved in discussions on various aspects of democracy, multi-party politics,

multi-party elections and the development of the Zanzibar society in general. The project began in 2007. The Centre for Legal Services in Zanzibar is another institution which is periodically organising seminars and workshops for constitutional, legal and political development (Legal Services Centre in Zanzibar, 2007).

Areas of Focus for Future Research

General Observations

The concept paper has provided a long historical background in order to determine the origins of the present ethnic and racial relations and, therefore, the nature and character of exclusion or inclusion in political decision processes in the three countries. Although the historical background situations may not need much further improvement yet, future research should not ignore this important part. More findings are required, particularly, of recent background situations that can facilitate a better understanding of current situations for better solutions.

This brief study has revealed that both Burundi and Rwanda have similar objectives of fighting against ethnicity and avoiding past consequences of ethnic marginalisation, segregation, exclusion and oppression, that often resulted in conflicts and genocide. They are all determined to create new societies. However, they differ in approaches which also characterise their legal and policy frameworks. This is the position of their constitutions and their legal frameworks. The position of Zanzibar is similar to that of Rwanda. Future research will have to focus on finding out the implications of these differences for the successful functioning of policies and legal frameworks in the movement towards inclusion. In all the three countries, research should critically examine the legal and policy frameworks so that suggestions for their improvements can be made. The position of Indian minorities in all the three countries has to be examined.

Future research has also to take into consideration the role of the civil society. It is increasingly clear that in building democracy, especially ensuring inclusion of ethnic and racial minorities in political and even in socio-economic processes, the civil society can play a vital role. We have already observed how CSOs in Burundi, Rwanda and Zanzibar are playing that role. However, that role needs to be advanced and the contexts in which the CSOs are functioning need to be studied and analysed. Within the context of the role of the CSOs, the issue of gender mainstreaming should also be taken into serious consideration. Gender-based CSOs should also be at the forefront in the fight for inclusion and against exclusion of minorities.

The Special Case of Burundi

The significance of this research project for Burundi is obvious, given the history of conflicts and genocide, the history of exclusion and marginalisation, and current policies and strategies to solve past problems and create a new society in the country. The research will have to put focus on two main areas.

First, as noted above, it will have to focus on the legal and policy frameworks. The Constitution which is referred to as the Interim Post–transition Constitution of 2005, is a direct product of the Arusha Peace Agreement for Burundi and the transition period. The study will, therefore, have to examine the peace agreement and processes of the transition period. The extent of people's participation in the process of preparing the constitution as well as in the referendum of passing the constitution on 28 February, 2005 will also have to be examined. Implications of the ratio system in the national assembly, in the senate, in state positions and the civil service, will have to be looked at critically in terms of movement towards inclusion. The electoral system and electoral laws such as the Electoral code of 20 April, 2005, and the electoral processes will also have to be examined.

Second, the research will have to focus on institutions which are concerned with the movement towards inclusion of ethnic minorities in political decision-making processes. Our brief study has identified state institutions, international organisations and local non-state organisations. We have already presented and discussed these institutions and their roles in the concept paper. The research will have to examine much more the nature and character of these institutions, their roles and their effectiveness in the movement towards inclusion. An understanding of relations between the various types of institutions is important given the fact that some of these institutions are directly concerned with protection and fighting for the rights of the marginalised minorities.

The Specific Case of Rwanda

Given its turbulent history in terms of conflicts, civil war and genocide and past policies of exclusion and marginalisation, this study is relevant for Rwanda. Like Burundi, future research will have to focus on the legal and policy frameworks and on institutions. The constitution of Rwanda and the electoral laws will have to be examined much more comprehensively. The constitution is a product of the Arusha Peace Agreement for Rwanda of 1993 and post–genocide period of reconstruction. What are the implications of the policy of abolishing ethnic identity in terms of the movement towards inclusion, for instance, of the Twa marginalised minority community?

Unlike Burundi, Rwanda does not have many state and non–state institutions working on minorities. Partly, this is due to the policy of not recognising the existence of ethnic groups and ethnic minorities. However, there are about three non–state organisations which are directly concerned with the protection and fighting for the rights of the Twa as already discussed. There are also some international organisations. All these institutions need to be examined in the process of future research.

The Specific Case of Zanzibar

At the level of legal and policy frameworks, the Zanzibar Constitution of 1985, the Zanzibar Electoral Law (*Sheria ya Uchaguzi Na. 11 ya 1984*) and their various amendments as well as other relevant laws, will need a special focus in the research process. At the level of legal and policy frameworks, Zanzibar is racially and regionally inclusive. But in practice, there are still some remnants of tendencies of racial exclusion and marginalisation. But, what is very conspicuous is regional exclusion and marginalisation, particularly, that of the people of Pemba. This needs a much more serious study. The position of Indian and religious minorities needs also to be examined.

In terms of institutions in addition to state institutions and non–state organisations, political parties and relations between them will have to be seriously examined. The *Muafaka I* and *II* and the stalemate of *Muafaka III* between CCM and CUF will require special attention. The roles of the Legal Services Centre and REDET in providing civil education will also have to be examined. The position and role of ZEC requires special attention.

Conclusion

This comprehensive background on ethnic and racial relations in Burundi, Rwanda and Zanzibar has thrown light on the contemporary policies and strategies to put an end to negative ethnic and racial relations. Though there are differences in approach, the efforts being undertaken by the three countries provide that hope that the problems of ethnic and racial relations will eventually be solved, thus ensuring inclusion of the ethnic and racial minorities in political and other processes. It is my hope that the findings of this and other studies will be useful for policy makers in these and other East African countries in improving their policies and strategies.

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2
A Review of Studies on Minorities in East Africa

Prof. Hamudi Majamba

Introduction

This is a review of comprehensive studies undertaken in the East African countries of Kenya, Tanzania Mainland, Tanzania Zanzibar, Uganda, Rwanda and Burundi under the auspices of KCK. The studies aimed at strengthening the political participation and inclusion of ethnic groups and minorities (marginalised) in political decision-making processes in East Africa–with a view to ultimately contributing to a truly people-centred East African Community (EAC).

The studies identified specific marginalised minorities in each of the countries, on the basis of race, ethnicity and social status. The criteria applied for identification of the marginalised groups was common in all the studies, and focused mainly on two components: first, communities disadvantaged by unfair discrimination as a result of their numbers. They consequently find it difficult to participate in political, social and economic life; and secondly, communities seeking to preserve their culture and lifestyles amidst the challenges of land reform policies, such as pastoralists/nomadic and hunter–gather communities. The identified communities were subjected to in-depth study with a view to assessing the extent of their marginalisation, discrimination and exclusion in the political and decision-making processes. The term "political" was broadly defined to include issues beyond the rights to vote and access political offices in order to embrace other activities undertaken by the

communities to promote their own interests and protect themselves against discrimination such as the formation of cultural organisations among Batwa communities. The studies reviewed the legal and policy framework as well as implementing institutions that shape ways in which identified communities contribute to and influence democratic participation. Available avenues for participation of such communities and constraints faced were highlighted, and some insights on the extent to which these communities take into account the interests of the marginalised among them was provided.

The case study on Tanzania entitled The Political and Social Exclusion of Minorities in Tanzania: The Case of Hadzabe Hunter-Gatherers delves into four minority groups described as politically and socially excluded groups. While the title of the study may create the impression of a focus only on the Hadzabe; the Barbaig, Maasai and Asians are also covered. The Hadzabe are at the threshold of extinction, unless efforts are made to address their plight. Pastoralists in general, and the Barbaig and Maasai in particular, are perceived as barbaric, primitive and people in need of urgent transformation. On the other hand, focus is given to the Asian community predominantly due to its inferiority stance in terms of numbers–which however sharply contrasts with its ability to influence the political and economic base.

Although studies have generally not covered the Asian community, it constitutes a powerful economic minority that controls most of the industries and commerce not only in Tanzania but in the entire East African region. Despite their wealth, Asians have distanced themselves from politics and social integration. Like other minorities, Asians have not been directly participating in politics mainly on account of their failure to integrate sufficiently into the social fabric of Tanzania and are to this extent still treated as foreigners who do not deserve leadership positions in the society. Some have labelled them as blood-sucking exploiters who lack the necessary patriotism

to become leaders in the country. This, however, the study concludes, does not imply that the Asian community does not influence who gets into political office in Tanzania. This revelation, to a great extent, makes this community a special group that requires more in-depth study across the region to determine whether they actually fit within the category of the marginalised in the context of the study.

Despite some recent policy and legislative reforms aimed at addressing the interests of pastoralists, the study suggests that the manner in which the government has dealt with them has not changed at all since independence. The government believes that pastoralists' land can be put to more productive use because of the perception that they are primitive and their manner of land ownership and use wasteful and irrational. Consequently, big chunks (in some cases 100%) of the land formerly belonging to pastoralists now form the bulk of the leading national parks and other conservation areas. Similarly, pastoralists have been associated with environmental degradation and stern measures have been taken to evict them from key water catchment areas resulting in an unprecedented wave of internal displacements. An example cited was the government's eviction in 2006 of more than 1000 pastoralists' households from the Ihefu valley in Southern Tanzania, ostensibly for overgrazing and drying up key water catchment areas on which the nation depended for generating hydroelectric power.

There have been some policy and legislation reforms to address and recognise the rights of the Hadzabe (and other marginalised groups) with regard to accessing traditional resources in the area of wildlife management, gender disparity and discrimination in land tenure issues; and for them to try agricultural activities. While it may be too soon to fully assess the success of these recent reforms, some have been sharply criticised. Whereas the National Strategy for Growth and Reduction of Poverty (NSGR) popularly known as MKUKUTA (a government initiative aimed at taking on board

pastoralists' development) registered some positive developments, it excluded other minorities such as hunter-gatherers, where the Hadzabe fall. Some legal provisions have been labelled ambiguous and thus leaving wide discretion in interpretation that may defeat the good intention of the reforms. Efforts by the government and other stakeholders to transform the Hadzabe to try agricultural activities proved unsuccessful for lack of requisite infrastructural facilities and failure to engage the community in various strategies of developing alternative livelihoods. Consequently, the Hadzabe reacted by returning to the forest and killing all cattle given to them by the government prior to de-camping in the forest.

Lack of awareness of their civic rights was singled out as the main challenge in undermining the active and effective participation of the Hadzabe in the political process at the local level. Coupled with this, is the lack of a clear social-political organisation among the Hadzabe which makes it frustratingly difficult to mobilise them to advocate for their rights and pursuit for possible survival alternatives even more difficult. Unlike other traditional societies like the Maasai and the Barbaig which have functional traditional authoritative structures, the Hadzabe have no council of elders or clan authorities.

Unlike the studies of Burundi and Rwanda, this study does not address the opportunities for the Hadzabe to engage at the regional and international levels. The study would have benefited from an analysis of the extent to which national laws and policies have implemented some of the international legal instruments on rights of the local marginalised communities which the government has ratified. This would have provided further insights on opportunities marginalised communities such as the Hadzabe could apply in their quest to strengthen their cause at international and regional level including the EAC.

The study on Zanzibar entitled Nationalism, Citizenship and the Politics of Exclusion in Zanzibar opens with a caveat, that it

was impossible to delineate a specific ethnic or racial minority given that the issue in Zanzibar is not a contest between a majority and a minority group, but rather "political polarisation involving two numerically and almost equal political camps." Despite the caution however, the author concedes that the people from Pemba Island who are predominately of Arab, Asian, and Comorian origin, have generally suffered more, compared to those from the sister Island of Unguja. This marginalisation is attributed partly to colonial legislation that was inherited wholesale at independence that categorised citizens. The study also pointed out that Zanzibar remarkably distinguishes itself from all the other countries in the region in terms of ethnic and racial composition and relations. Hence discrimination, marginalisation and political exclusion in Zanzibar cut across racial, ethnic and regional lines. Further, that contradistinguished from the rest of the region, the notion of marginalisation in Zanzibar is located within the underpinnings of an African identity versus a Zanzibari identity, which has had implications on the nationalism and citizenship rights in Zanzibar and Tanzania as a whole. The study thus largely centres on the historical differences between Unguja and Pemba in terms of demographic composition, racial and class relations-the racial composition of Unguja being mainly people of African decent and that of Pemba being predominately Arab. The social stratification based on division of labour and cultural differences among the various racial and ethnic groups during the colonial times in Zanzibar, is believed to have had an impact on the present social structure. This has in turn had an adverse effect on opportunities for political participation of people from Pemba. Hierarchically, Arabs chiefly represented the "landed" class and the ruling aristocracy. Asians constituted the merchant class and the middle class. Most Shirazis were peasants, except for a few who were landlords and occupied the ranks of the middle class and Africans were the lowest n the social stratum representing the

labourers and tenants. Hence class differences and antagonism, were believed to have been sharper in Unguja than in Pemba- where, a meagre 5 percent of landowners owned more than half of the clove plantations, compared to Pemba where the peasantry owned an almost equal proportion of the clove plantations to that of the Arab and Shirazi peasants. Development and poverty disparities today between Unguja and Pemba were also discussed. The study confirmed poorer service provision and delivery by the government in Pemba compared to Unguja, despite the general perception that the people of Pemba are quite industrious and entrepreneurial. In terms of public employment, people from Pemba are also believed to be excluded from almost all key positions in the Zanzibar government and in other public institutions, a trend traced to the early days of the revolution when Zanzibaris of Pemba, Arab, Asian and Comorian origins were distrusted by the authorities.

An analysis of current laws revealed some inherently discriminatory laws, key among these being the electoral laws. The residential requirement for one to be registered as a voter has had a negative impact on Zanzibaris. This is especially to those originally from Pemba who are either business people or students scattered in Zanzibar and Mainland Tanzania. The law has been blamed for polarising Zanzibari society and for creating avenues for marginalisation, especially for those emanating from Pemba.[296] The Zanzibar Election Act of 1984 which gives government employees, employees of public institutions and international institutions the right to register as voters and vote in the areas where they have been transferred to. But it denies the self-employed and employees in private companies to enjoy the same right. This was also categorised as discriminatory and unconstitutional, thus going against the spirit of the International Convention on the Elimination of All Forms of

[296] The formation of a Government of National Unity after the 2010 General Election has, to some extent, provided some relief and addressed the post-election schism that had plagued Zanzibaris for quite a while.

Racial Discrimination (CERD). Similarly, the law that disallows dual citizenship was said to discriminate against a significant segment of Zanzibaris living overseas.

Even though the post-revolution government in Zanzibar has had quite visible representation of Christians in different posts in government including in the ruling Revolutionary Council and cabinet, the study illuminated aspects of religious intolerance in Zanzibar. These are believed to have first manifested amongst the majority Muslims, and later between Muslims and the Christian minority. Religious intolerance against Christians is thought to have emerged with more vigour with the introduction of multiparty politics in 1992, with the torching of churches, bars and other related acts of discrimination on the Isles.

The study notes that within the marginalised political community in Zanzibar, women, youth and the elders have suffered more as a result of the perpetration of the politics of discrimination and exclusion. A wide gap between men and women in their overall status in social, public life and employment and in decision-making processes exists.

The study concludes that Zanzibar has been affected by competing versions of nationalism, citizenship and the politics of exclusion. On the whole, a clarion call was made for the promotion of Zanzibari territorial nationalism as opposed to racial, ethnic or regional based nationalism. The Union Government of Tanzania and the EAC were urged to play a key role in promoting inclusivity in Zanzibar in accordance with Article 7 of the Treaty of the EAC which seeks to promote people-centred cooperation.

Participation of Minorities and Indigenous Peoples in Decision-making Processes in Kenya, like Tanzania Mainland which addressed the Hazabe, makes an in-depth analysis of a hunter–gather community in Kenya; the Ogiek. As is the case with the Zanzibar Study, discrimination of minorities in Kenya was linked to the

colonial era. The emergence of the catch phrase 'the place of the minorities' was linked to the colonial era that was characterised by marginalisation and exclusion of Africans by mainly the European settlers, and to the selective policies and legislation of the early days of independence. The emergence of minority and indigenous peoples' rights movements, at the national level in Kenya is a relatively new phenomenon, earlier initiatives having focused primarily on the participation of pastoralists communities. Prior to the enactment of the new constitution in August 2010, the protection of minority and indigenous people's rights had been envisioned in the anticipated Lands Act. Other legal avenues that could be exploited included the Forest Act of 2005 which though not explicit on minority and indigenous communities, has provisions on community participation that could be used to enhance their participation in the management of the forests and other natural resources therein; as well as to further influence policy on forests and biodiversity. The new constitution of Kenya however now explicitly recognises the rights of minorities and the marginalised groups. Some key recommendations are made by the study to fortify the progressive constitutional provision. Supporting legislation needs to be put in place, mechanisms to ensure effective representation and participation of minorities and indigenous communities in decision-making, especially with respect to matters that directly affect their livelihoods. Intensive lobbying for representation by minority groups is necessary even after implementation of the constitutional provision and the relevant structures will have been put in place. A case was also made for capacities of minority and indigenous communities to be strengthened as well as those of personnel who directly work with them, in order to contribute to the development of a minority rights' sensitive workforce that will contribute significantly towards ensuring participation of these communities and eventually enable their development.

The case studies on Burundi, Rwanda and Uganda are all focused on the same community (the Batwa)-a community which after the drawing up of political boundaries found itself spread across these three East African countries. The three case studies show the extent to which the Batwa community has been divorced from decision-making processes, efforts to involve them in decision-making processes, and the similarities and variations in the approaches applied by the governments in the three states to ameliorate the livelihoods of the Batwa. The successes and challenges faced by the governments in this endeavour are also highlighted.

The study, Ethnic and Racial Minorities and Movement Towards Political Inclusion in East Africa:The Case of the Batwa in Burundi, traces the involvement of Batwa in politics and decision-making processes from the pre-independence era to the post independence era. Special reference to the 2000 Arusha Peace Accord, and its salient features with regards particularly to the rights of the Batwa underlined. In the course of presenting this historical account, issues of governance were highlighted, and as was the case with the Zanzibar study, emphasis was placed on national identity as a foundation for Batwa's political participation.

The study points out that the constitution of Burundi explicitly recognises the protection and inclusion of ethnic minority groups in the governance system, including the Batwa, and also recognises their right to choose their representatives to the national assembly. The constitution also makes provision for the participation of Batwa in local governance. The Electoral Code of September 18, 2009 re-echoes this constitutional provision by guaranteeing the right of the Batwa to political participation in national institutions through a co-option procedure. The historical marginalisation of the Batwa on the other hand is brought to the fore. Limited access to land and health care; food insecurity and the soaring illiteracy rates, believed to be the highest in the country that confront them,

are highlighted as some of the key challenges facing them. Their inability to mobilise resources, mainly due to the stigmatisation is revealed as the primary concern.

To alleviate the plight of the Batwa, the study underscores the need for the government of Burundi to meet its regional and international obligations in an effort to promote and protect the Batwa including facilitating their participation in politics. Governments in the region were urged to comply with the fundamental principles of human rights and good governance outlined in the Treaty that established the EAC. These are also largely reflective of the international legal instruments to which these governments are signatory, and for governments to be held accountable to these provisions. A call was made for the debate on the question of human rights within the context of the EAC Treaty and the rights of marginalised communities in particular to be widened. The study also advocates for lobbying donors to support activities that favour the elevation of the status of the Batwa, including sensitisation programmes to enable Batwa to participate in constructive politics and to exercise their voting rights.

The study on Rwanda entitled Ethic and Racial Minorities and the Movement Towards Political Inclusion in East Africa: Case of Rwanda offers an exhilarating analysis of the Batwa community supported by useful data. To provide a foundational understanding of the dynamics of ethnic minorities in Rwanda, the study presents an analysis of the country's political landscape from the second half of the 1990s to the present, as well as outlining the government's efforts to foster political inclusion of ethnic minorities. The newly entrenched constitution of Rwanda has progressive provisions that recognise the rights of minorities. These, according to the study, initially had significant impact in promoting a number of welfare associations by and for the Batwa. With time, however, the constitutional provisions were compromised making it difficult for

the Batwa to effectively participate in political decision-making processes. According to the study, there have been no successive efforts by government to promote affirmative action and to empower the Batwa. The electoral system in Rwanda further marginalises the Batwa and exacerbates the poor participation of the numerically disadvantaged group in the democratic processes. Specifically, the requirement of queuing behind one's political candidate was singled out as propagating stereotyping against the Batwa, who are already discriminated against. The establishment of protected areas such as national parks and other natural reserves and the introduction of agricultural expansion programmes have led to the displacement of the Batwa and denial of their traditional livelihood as gatherers, thereby reinforcing their social, economic and political exclusion and vulnerability. In short, the Batwa in Rwanda are not any different from their counterparts in the region, and hence remain at the periphery in terms of political participation.

There are some lessons that the paper discusses at depth that could be helpful for the studies on the Batwa in Burundi and Uganda. Among the very fundamental one is the focus on the NGOs established by these communities, setting out advocacy strategies which help in confronting the challenges and opening up opportunities.

The study on Uganda entitled Ethnic– Racial Minorities: Movement towards Political Inclusion: The Case of the Batwa in Uganda notes that the concerns and status of the Batwa and other minority groups in Uganda were ignored by both colonial and post-colonial governments, at the expense of the more affluent and representative societies such as the kingdoms, which were considered more productive and on account of their potential to serve the interests of the State. Recent efforts by the government to address the plight of the Batwa were highlighted. In addition to Uganda being a signatory to a number of regional and international, national

legal instruments that guarantee indigenous people's rights, the 1995 Constitution of the Republic of Uganda provides for the right to equality and freedom from discrimination and guarantees. This provision covers all persons irrespective of sex, race, colour, ethnic origin, tribe, birth, creed/religion or social, cultural, economic status, political opinion or disability. The Constitution also provides for the establishment of Equal Opportunities Commission to advance the rights of the marginalised in Uganda, which government has put in place. The decentralisation system of local government units is yet another notable opportunity that marginalised groups can utilise to strengthen their political participation. In terms of policy, the Poverty Eradication Action Plan (PEAP) and the Social Development Sector strategy (SDS) sought to address various social development concerns which include social exclusion, inequity, vulnerability, unemployment and disenfranchisement for different groups including indigenous ethnic groups, rural women, elderly, youth, children, the unemployed, child poverty, disabled, internally displaced persons (IDPs) and refugees.

Despite these efforts, indigenous groups are still marginalised in political processes. Like their counterparts in Rwanda, ancestral land of the Batwa in Uganda was converted into protected areas. This denied them access to forest based foods, medicine and other resources- therefore marking the beginning of the end of their age old forest-based hunting-gathering traditions and livelihood. Thus, today they live in a somewhat skewed relationship with the dominant cultivators, nomadic and off-farm business communities.

The study provided a number of recommendations. Emphasis was placed on civic education, along with skills enhancement in leadership, advocacy and negotiation to be inculcated into Batwa communities as a means of increasing their participation in social and political activities at the local and national levels. Parliament is urged to enact laws necessary for implementing policies and

programmes aimed at redressing social, economic, and educational or other imbalance in society in accordance with the Constitution. The establishment of networks to provide support and lesson sharing among organisations working to promote the rights of ethnic minorities, and countries where they reside, to enable Batwa engage at regional and international levels was advised.

Conclusion

The studies and their recommendations set a foundation for serious consideration for policy and legal reform in the East African countries in order to address the predicament of marginalised communities in the region. Some of the experiences drawn from the studies of the various communities are similar, while others are diverse and varied. One plausible reason for the common approach by the states in the region in implementing policy and legal reform may rest in regional and international legal instruments. Some of these instruments call for the application of common approaches in their implementation at national levels. On the other hand, the diversity is understandable considering the different cultural, political, social and economic bases upon which the traits in these communities are founded. This realism also applies to those communities which seemingly have the similar historical links; though different jurisdictions such as the Batwa, now found in Burundi, Rwanda and Uganda. In this regard, some of the lessons drawn from the studies in the four countries would certainly have to be adopted with necessary modifications to accommodate the varied circumstances.

The studies also reveal that selected communities to a great extent reflect the experiences of the most marginalised in the respective countries. Thus, any process of reform contemplated by governments should take on board such communities in decision-making processes if such reforms are to succeed. In this regard, more studies focused on other communities to complement these are

necessary. Also disclosed is that the focus on the plight of women, youth and elderly in the studies was somewhat obscure and should have been more vivid. Nonetheless, the studies largely disclose that even within the marginalised communities certain groups continue to be discriminated against: among these women, children and the elderly; and in the case of Zanzibar, people in the diaspora. Accordingly, governments in the region should address challenges faced by the marginalised communities and devise mechanisms to enable them to participate effectively in the decision-making process at different levels of democratic governance, with special attention to the marginalised among them.

However, the paper on Rwanda is not included because it was not available at the time of publication.

3

Ethnic and Racial Minorities and Movement Towards Political Inclusion in East Africa: The Case of the Batwa in Burundi

*Bambanze Vital and Amani Jean Pierre**

Introduction and Background

> There is nothing more aggressive and no situation can ever be more generating of crime than a minority which is not fully recognised.[297]

Historical Background of Burundi

One cannot appreciate Burundi without taking due consideration of the long list of politico-ethnic violence that has marked its recent history; namely the violence, political unrest and inter-ethnic massacre mainly between the Bahutu and Batutsi. This state of affairs has considerably affected the question of political participation of different groups of the Burundian population at the national and regional levels within the EAC institutions.

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[297] SUINEN Philippe,(2003), « *From Belgium and Hungary for Europe and the World : the minorities to recognise, the unity and diversity of Europe »,* in The Rights of the Minorities, Delperee Francis and Laszlo Trocsanyiss.dir, Bruylant, Brussels, p.11.

Burundi is a small landlocked country in Africa and one of the five countries that constitute the EAC. Unlike most countries in Africa, Burundi's population is composed mainly of three ethnic groups, namely the Batwa, Batutsi and Bahutu. Burundi is characterised by a vivid absence of villages and the existence of dispersed habitats.[298] None of the ethnic groups occupy its own territory, nor possess its own chief, its own history or its own culture, although the Batwa mostly occupy the edges of the forests.[299]

Presently, there is no official census which would provide accurate figures of the population composition of the three ethnic groups in Burundi. However, UNIPROBA, an NGO primarily set up to advocate and promote human-rights such as economic rights, and to fight against any form of discrimination and social marginalisation of the Batwa, puts the total population of Batwa at 78,071 out of an estimated Burundian population of more than eight million.

The political history of Burundi begins in the early 16th century.[300] According to oral tradition, from the end of Ntare Rugamba's reign (towards 1850), Burundi was probably one of the most powerful interlacustrine kingdoms, inhabited by a dense population, speaking the same language, conscious of their belonging to one nation and ruled by a king referred to as "Mwami."[301]

The Belgian colonial administration played a key role in creating social divisions that resulted in ethnic tensions among the people of Burundi through the inoculation and imposition of a racist and grotesque vision based on morphological considerations which aimed at dividing the Bahutu, the Batwa and the Batutsi. These divisions

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[298] Acquier Jean Louis, (1986), *«Burundi»*, The Parenthèses (eds), Marseille, France ; p.67.

[299] ibid., p.19.

[300] Mworoha Emile,(1987), "*History of Burundi: from the origins to the end of the XIXe century*", HATIER (eds), Paris, France; p.105.

[301] Gahama Joseph,(2001), *"Burundi under-Belgian administration: The period of the mandate 1919-1939"* , Karthala, Paris; p.13.

emerged soon after Burundi's independence of 1 July, 1962, and were to shape Burundian conflict in later years.

After independence, several phenomena constantly occurred that led to the conflict between the Bahutu and the Batutsi. The bi-polarisation of the ethnic conflict between the Bahutu and the Batutsi marginalised the Batwa. The Arusha Peace Agreement of 2000 recognised that the Burundian conflict was fundamentally a political conflict with extremely important ethnic measurements.[302] The Arusha Peace Agreement, as well as the Burundian Constitution derived from it, recognised this social and political marginalisation, and recommended seats in parliament to be reserved for the Batwa as a means of creating parity. In reality, the Batwa constitute an extremely disregarded ethnic group. This is also reflected at the level of their representation in political parties and among the elite.[303]

As noted above, the Arusha Peace Agreement recognised the need for the inclusion of Batwa citizens in national life. It developed mechanisms to ensure political participation by all ethnic groups in Burundi. The question that remains is whether this truism will be reflected within the framework of the EAC.

Based on the results of a 2008 survey carried out by the national committee on the participation of Burundi in the EAC political federation, a most citizens agreed with the adhesion of Burundi in the EAC.[304] Regarding the political benefits of the EAC, security has significantly led to better co-operation and good governance among member states. However, while recent international instruments and national legislation recognise the principle of ethnic and other

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[302] Article 2 and 14, Arusha Peace Agreement and Reconciliation in Burundi signed 28 August, 2000.

[303] Stef Vandeginste,(2006), "*Consociative Theory and Power Sharing in Burundi*", Institute of Politics and Development Management of the University of Antwerp, in CAHIER; p. 23.

[304] National Consultative Committee on the Creation of the Political Federation of the EAC States November, 2008, *Popular Consultation on the creation of political federation of the EAC States*, Final Report, Bujumbura, pp.3 -32.

minority participation in state institutions, it is the thesis of this paper that the Batwa will only be effectively involved if the principle of good governance is fairly applied in the Community.

Justification of Batwa as an Ethnic Minority Case Study

Since the Arusha Peace Accord, the right of participation of the Batwa is constantly improving. First of all, there is consensus among Burundians that the Batwa have historically been more marginalised in different state institutions in comparison to their fellow countrymen, the Bahutu and Batutsi, and that the Batwa live under dire conditions. Factors such as lack of or limited access to land and means of production (90% of the Batwa are faced with the problem of access to the land), food insecurity, limited access to healthcare (89% do not have access to healthcare), and education (Batwa have the highest illiteracy rates in Burundi estimated at 78%), are a major concern to compared to their political participation in national institutions.[305]

In the context of the EAC, it should be stated that the principle of minority participation (of the Batwa) must be grounded on the fact that minority representatives do not feel excluded by the mathematical game. This principle is differently implemented from country to country, with some allocating seats to minorities and others opting for inclusive policy in public institutions.

The Burundian Constitution of 18 March, 2005 explicitly recognises the protection and inclusion of ethnic minority groups in the governance system, including the Batwa. The 18 September, 2009 Electoral Code equally embodies provisions which guarantee

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[305] See, Amani Jean Pierre, (2009), *Historical development in Burundian land law and impacts on Batwa land ownership*, Forest Peoples Programme, London, England. www.forestpeoples.org/documents/africa/land _ rights_series_base.shtml; Senate of Burundi (http://www.senat.bi), August 2008, "*Report of information on the situation of the Batwa*", LEG III/RAP n°7, Bujumbura, pp. 4-5.

the Batwa political participation in national institutions through a co-option procedure.

Thus, the objective of the following study is to provide a well-grounded and sound research on the inclusivity of ethnic minorities in political decision-making in the EAC in order to strengthen their involvement in democratic processes and ultimately lead to a truly people-centred development. Specifically, the study will provide information and data on the existing legal and policy framework as well as practical realities relating to the involvement of the Batwa ethnic group in political decision-making in Burundi and in the EAC, taking into account the challenges and present opportunities.

The paper is divided into four parts. The first part deals with the Batwa's political participation in Burundi, analysing the pre-independence era in 1960, and the post-independence period with special reference to the 2000 Arusha Peace Agreement.

The second part is concerned with the question of good governance and Barundi national identity as a foundation for the Batwa political participation, taking into consideration practical and conceptual approaches.

The third part addresses issues of the Batwa political inclusion in the EAC with focus on the fundamental and functioning principles on human-rights and good governance outlined in the Treaty establishing the EAC.

Finally, the last part provides an analysis of the challenges relating to the Batwa political participation in the EAC.

Conclusions and recommendations are drawn at the end.

Historical Background of the Batwa

The term "Batwa" or "pygmy" refers to the hunter and gatherer peoples of a small size living in small groups and who move constantly from one region to another in the equatorial forests of central Africa. The term pygmy is used by the non- pygmy persons in a pejorative manner and most Batwa detest it because they consider

it an abuse by their neighbours, though educated Batwa tend to approve and make use of it.[306]

In Burundi, the pre-colonial status of the Batwa placed them in a kind of "caste" within the Burundian society defined by an endogamy relatively rigorous and certain economic, technical or ritual specialisations.[307]

Mworoha described the Batwa as stereotypically unfit to share a meal or drink and even get married to. As a result, the Batwa were shunned from public events; they were rarely present in political and religious gatherings.[308] Other ethnic groups looked down upon them and viewed them as incapable of representing themselves or other people in different sectors of Burundian society.

Hunting and gathering were the Batwa's main activities. Besides, these constitute their traditional cultural values. The Batwa were also distinguished by their ability to handle arms (the arrows) and their distinct accent when speaking the national language, Kirundi.

Despite Burundi's ratification of the Convention on the Elimination of all Form of Discrimination Against Women (CEDAW), on 8 January, 1992, Batwa women face several limitations in the enjoyment of their basic human-rights and live under conditions of extreme poverty. They suffer from a situation of double discrimination on account of their ethnic background and gender. These women, therefore, deserve dual protection: as women and as minorities.

The Mutwa woman is the pillar of the family life. She is responsible for feeding the family, healthcare, and child education. Because of this heavy burden in the amid of extreme poverty, these women are at times forced to beg for the sake of their family's

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[306] Lewis. J, (2000*)," The Batwa Pygmies of the Great-Lakes Region*", Minority Rights Group (MRG), London; pp.7-5.

[307] Acquier Jean Louis, *op.cit*, p.101.

[308] Bimonthly of information of the UN Operation in Burundi (June 2006), *Special Batwa*, Magazine n°10, p. 6.

survival. The plight of the Batwa women is exacerbated by concubine and polygamous practices.

However, thanks to the primary school gratuity measure. Since 2005, an increased number of girls attend school although a lot more still needs to be done in terms of sensitisation for them to stay longer in school as a strategy to enable Batwa women to join public institutions.

Participation of the Batwa in Politics

Significant changes relating to the political participation of the Batwa came with the Arusha Peace Agreement and Reconciliation signed on 28 August, 2000. This participation was two pronged: it was to come through co-option that involves appointing people to parliament to ensure ethnic balance and through nominations to state-controlled institutions by the head of state.

At the executive level, there is no participation of the Batwa currently. Their low academic credentials coupled with their virtual absence in political parties are often cited as reasons for the exclusion of Batwa from government.

At the grassroots level (the townships and the hills), the Batwa are not yet represented, but there is growing optimism that this will change with the coming into force of the new Electoral Code of 18 September, 2009, which requires the Independent National Electoral Commission (CENI) to co-opt a person from the Batwa from among the lists of political parties, in case a Mutwa has not been elected.

The limited participation of the Batwa in political processes is traceable to the pre-independence era in Burundi.

Pre-Independence

The socio-cultural aspects of Burundian society, namely the settlement, agro-pastoral and artisanal techniques and language and

beliefs, are a result of a complex history spanning two millennia and one interlinked with the Great-Lakes region[309].

The pre-colonial history mentions the existence of a relatively strong monarchy with a hierarchical society in Burundi. The chronology of dynastic history in Burundi is, however, contested, but King (*Mwami*) Ntare Rushatsi (16th century) is considered the founder of the Kingdom.

It is believed that the *Mwami* imposed his authority over several small kingdoms of the north-east, the north-west and the south of what is the current Burundi. He was viewed as quasi-divine and using his prestige, occupied a central place in the life of the kingdom.

Despite varying narratives about the origins of the three ethnic groups in Burundi, there is some level of consensus that the Batwa were the first inhabitants of Burundi. It is believed that the Batwa, the Bahutu and the Batutsi, were one and the same people who lived in the same territorial space, practised the same religion, spoke the same Bantu language (Kirundi) and submitted to the authority of the *Mwami*.

Mwami's kingdom was centralised. He was assisted by administrative authorities and delegates called *Abaganwa* (plural) or *Umuganwa* (singular) who administered territorial entities. The deputy chiefs *Abatware* (plural) or *Umutware* (singular), who were either Tutsi or Hutu, also provided some assistance in the administration.[310] There is no historic affirmation that there has ever been a Mutwa deputy.

Another category of leaders were the *Bashingantahe*. These were judges and advisers at all levels of the administration who were mainly Bahutu and Batutsi. The *Bashingantahe* symbolised cohesion; a fact that was recognised by the Arusha Peace Agreement. The

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[309] Mworoha Emile,(1987), "*History of Burundi: from the origins to the end of the XIXe century*", HATIER (eds), Paris, France; pp.105 & 272.

[310] CHRETIEN Jean Pierre and Coifard Jean Luc, (1967) " *Le Burundi"* Paris, Documentation Française, p.14.

agreement also acknowledged that the entire law of ancient Burundi was shaped by customary law, which was responsible for organising public life and State structures, as well as governing the private life of the Burundian people. Indeed, even the *Mwami* himself was required to observe customary law. However, Delacauw clearly points out that Burundian customary law related to predominately two ethnic groups, the Batutsi and Bahutu.[311]

In this regard, one could, therefore, rightly conclude that the Batwa were not governed by the national customary law despite the important role custom played in the public law (executive power, judicial power, the administrative management of the territory etc.) as well as in the private law (rights of the people, properties, liberal and estate duties, etc.) of the country.

Despite their lack of political participation in the governance of the kingdom, the Batwa recognised the authority of the *Mwami* since they participated in some activities such as war and took part in the royal hunt,[312] although their participation could not be categorised as or considered political.

From Independence to the Arusha Peace Agreement

The Batwa have historically been marginalised despite the fact that all the constitutions of independent Burundi prohibit discrimination; a clear demonstration of a gap between law and practice, which, to the Batwa, renders the protection a mere slogan.

As noted, the necessity to take into account the political participation of the Batwa began with the Arusha Peace negotiations, initiated by the political actors in Burundi, with this hope of ending the ethnic- politico crisis that broke out on 21 October, 1993, following the assassination of elected President Melchior Ndadaye.

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[311] Delacauw, (1936), " *Barundi Customary law* ", General Magazine of the Belgian Colony, Volume I, p.1.

[312] Bimonthly of information of the UN Operation in Burundi (UNOB), *op.cit;* p.8.

Articles 49, 75 and 86 of the Constitutional Act of 1996 are instructive:

> To the stage of their acceptance as well as when operating, the political parties must comply in their organisation and in their composition with the controlling processes, to the democratic principles and to the ideal of national unity, while taking into account the various components of the Burundian population;
>
> The Government must be appointed bearing in mind the preservation of the national unity while taking into account various components of the Burundian population;
>
> The National Assembly is composed of the members of the previous National Assembly or their substitutes. However, the National Assembly can be completed or widened. In this case, the President of the Republic, after dialogue with the members of the National Assembly promulgates a decree that specifies practical modalities.

It was, therefore, at the time of expanding the national assembly of Burundi that for the first time in the history of Burundi, a person from the Batwa ethnic group, moreover a woman, was co-opted as a member in the national assembly.

From the Arusha Peace Agreement to date

By developing general principles to guide an efficient and sustainable manner, the Arusha Peace Agreement addresses the problems of the Batwa, thus underlying meaningful progress with regard to the political participation of the Batwa.

Following the Arusha Peace Agreement, various transitional codes and the transitional Constitution of 18 March, 2005 made provision for six reserved seats in parliament by way of co-option, for three Batwa in the national assembly and another three in the senate.

The new Electoral Code of 18 September, 2009 also reinforced the inclusivity principle to further accommodate Batwa political participation at local administration levels.

The Constitution of 2005

The preamble to the Constitution of 18 March, 2005[313] recognises, as a constitutional principle, the protection and inclusion of ethnic, cultural, religious and minority groups in the governance system. It prohibits discrimination and advocates for equality and social justice.

The prevailing opinion in Burundi points to a dominant role in political participation by the Bahutu and the Batutsi. To this extent, the Batwa do not fundamentally feature in the Burundian politico-ethnic conflict. They are less interested in politics and are not effectively represented in public institutions and political parties.

Article 171 (4) of the Constitution provides that "the Senate is competent to lead some investigations in the public administration and, if the case arises, to make some recommendations to ensure that no region or group is excluded from the benefit of the public services". To this end, the Senate for the first time in 2008 addressed itself to the living conditions of the Batwa in a bid to ensure that all components of Burundian society are fairly treated.[314]

Several constitutional provisions make reference to non-discrimination and are,therefore, of utmost importance to the Batwa. These provisions can invoke them to fight against discrimination and to ensure enjoyment of their rights.

Article 13:

> All Burundians are equal in merit and in dignity. All citizens enjoy the same rights and have the right to equal protection of the law. No Burundian will be excluded from the social, economic or political life of the nation because of their race, language, religion, sex or ethnic origin.

[313] See, Law n°1/10 of March 18, 2005 carrying enactment of the Constitution of the Republic of Burundi, *B.O.B*, and TER/2005 n ° 3, pp. 1-35.

[314] Senate of Burundi (http://www.senat.bi), "*Report of information on the situation of the Batwa*", LEG III/RAP n°7, Bujumbura, August 7, 2008, p.1.

Article 17:

> The Government of Burundi has the duty to achieve the aspirations of the Burundian people, in particular to heal the divisions of the past, to improve people's living standards and to guarantee all the citizens the possibility to live in Burundi safely without fear, discrimination and hunger.

Article 22:

> All citizens are equal before the law which must assure them equal protection.

These articles clearly recognise that nobody shall be subject to discrimination on grounds of one's origin, race, ethnic group, sex, colour, language, social status, religious or philosophical convictions or physical or mental incapacity, HIV status or any other incurable diseases.

Article 62:

> All the people have the right to mutual respect without any consideration.

Article 164, paragraph one:

> "The National Assembly is composed of at least one hundred members of whom 60% are Hutu and 40% Tutsi, including a minimum of 30% women, elected by universal suffrage for a mandate of five years and three members, descendants of the Twa ethnic group co-opted in accordance with the Electoral Code".

Article 180:

> "The Senate is composed of:
>
> 1) Two delegates from every province elected by an electoral college composed of members of townships counsel advisers of the province considered, coming from different and elected ethnic communities by distinct votes;
>
> 2) Three people from the Twa ethnic group; and
>
> 3) The former heads of state.

A minimum of 30% women is guaranteed. The Electoral Code determines the convenient ways of doing this, through the co-option process, if the case arises".

Articles 164 and 180 of the Constitution guarantee the political participation of the Batwa in parliament and are progressive provisions for the Batwa which should be maintained and reinforced in future constitutions of Burundi. Indeed, Burundi has been commended by the Working Group of the African Commission on Human-rights and Peoples (CADHP) as "one of the rare countries of Africa where the cause of the communities (Batwa Indigenous Community) emerges with hope[315].

To date, however, there is only one woman among the three Batwa members in the national assembly and the same applies to the senate.

The Electoral Code of 18 September, 2009

Articles 108, 141 and 181 of the Electoral Code provide for the political participation of the Batwa in three different ways. Article 141 provides that the senate shall be composed of "Three members of the Twa ethnic group co-opted by the Independent National Electoral Commission and coming from different regions".

Regarding the procedure of the election of members of the national assembly and senators, Article 108 provides: The co-option of the deputies of the Twa ethnic group is made on the basis of the lists presented by their most representative organisations recognised by the authority of tutelage, while taking into account the gender dimension and the geographical distribution.

This article recognises Batwa's right to choose their representatives to the national assembly. This procedure is democratic in the

[315] Report of the Working Group of the African Commission on the Populations / Indigenous Communities, *Visit of research and information in Republic of Burundi,* Banjul-Gambia, 2007, p.11.

sense that Batwa organisations choose their representatives. The involvement of Batwa in CSOs in Burundi confers further legitimacy to the public policies relating to the participation of the Batwa.

Batwa political participation is further provided for at the township and local administration levels through their election as townships advisers and local administrators. Article 181 states:

The Township is managed by the local council and the local administrator. The township council consists of fifteen members of which at least 30% shall be women. They are elected on the basis of blocked lists of political parties or independent candidates to the proportional representation. Every list must take into account ethnic diversity and gender participation.

The blocked list consists of at least fifteen candidates and a maximum of thirty candidates. However, in case the composition of a township council does not reflect the ethnic and gender diversities of the electorate, CENI may order the co-option of the people coming from an under-represented ethnic group provided that they do not constitute more than one fifth of the members of the council.

People to be co-opted are nominated by CENI in equal number from the lists of those elected. No one can be a member of more than one township council.

CENI co-opts a person of Twa ethnic group where they exist on the lists of the political parties in case they have not been elected.

Article 181 provides that the township councils must generally reflect the ethnic diversity of their electorate, an indicator that even the Batwa are included.

The co-option is guided by the lists of the political parties. This innovation constitutes a legal obligation that compels the Batwa to belong to political parties which have elected members in township councils, as opposed to the co-option in parliament which is based solely on the Batwa ethnic group regardless of their allegiance to a political party. Accordingly, the Batwa in parliament claim that they

defend the interests of the Batwa ethnic group and not the interests of political parties.

It is, therefore, important that the Batwa are sensitised at the level of their communes to join political parties where they can be co-opted, and in case they fail to occupy key positions on the blocked lists, be elected among the fifteen members of township councils.

Good Governance and National Identity as a Foundation for the Batwa Political Participation

The term good governance does not have a precise definition, but its primary objective emphasises the need to learn to live together and manage peacefully the common house, to ensure the conditions of survival, peace and the balance between humanity and the biosphere.[316]

National identity is critical to contemporary political societies, including that of Burundi, despite the crises of identity dramatised by the cyclic conflicts that resulted in casting a tragic shadow over the country since the years of independence.

Since, pre-colonial times, different components of the Burundian population identify themselves as Burundian with the exception of the Batwa who, because of their historical marginalisation and different life style, tend to consider themselves different. They identify themselves simply as Batwa and consider the rest of their countrymen Burundian. They do not see themselves as belonging to the Burundian national identity.

The aspiration for national identity is based on, among other factors, communal integration among the citizens. In this regard, it is crucial to commend efforts to integrate the Batwa in key public institutions in Burundi. This process is a contribution to the edification of the national identity of the Batwa.

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[316] Bontemps Michel Ange, (2009),"*Good governance and citizen participation*", Act of the seminar organised by the Haitian section of the IDEF, p.2

Conceptual Approach

Governance is fundamental to all spheres be it the state-controlled arena, the administrative and quasi-public sphere, and the private sector. A decentralised system of administration is pivotal to promoting good governance for the Batwa. According to Bourgeois, "administrative nationalism" underlines the importance of the homogeneous decentralised institutions because it is the essence of governance to have institutions allowing its members self-management.[317]

The rights of the Batwa go beyond the framework of the right to participate in institutions and include the following:

- The right to participate directly in all state-controlled decisions that concern them;
- The right to free contact with other states that have similar ethnic groups;
- The right of access to national media and the right to its own media, written or electronic (Website);
- The right to found and form associations to defend their interests and carry out their own activities.

National identity is fundamental in improving the political process and in redefining the rules of the political game. National identity signifies the existence of a community or a united social group.

Practical approach: Achievements of the Government of Burundi as regards the Batwa

By virtue of their long and continuous historical presence in Burundi, the Batwa have the legitimacy to demand for their rights in governance. It is for this reason that the Arusha Peace Agreement and subsequent constitutions remain symbolic acts of consecration

[317] Daniel Bourgeois, (2005), "*The Cajun townships of the New Brunswick": government's order?*, Acts of the Symposium of the ACFAS held at the University of Quebec in Chicoutimi, p.11.

of the participation of the Batwa in different institutions, and more precisely, the right to be represented[318].

Besides the Batwa representatives in parliament, they are slowly beginning to participate in other spheres of government administration. The Batwa have been appointed to various positions, including in the National Land Commission and other Assets, the State General Inspection and as senior adviser of the governor of Kirundo Province.

Despite these encouraging developments, the participation of the Batwa in public affairs remains limited mainly because of their inadequate education and passive role in political parties. They are more preoccupied with what could be referred to as "immediate problems" such as access to land and the improvement of their living conditions. Furthermore, the Batwa view the different posts bestowed on them by the head of the state and president of republic as favours or gifts and not as rights.

With regard to the right of the Batwa to set up or create organisations to protect their interests and the right to join or freely participate in their activities, Act no.530/87O of June, 2003 of the home affairs ministry gives UNIPROBA the right to carry out activities to defend the interests of the Batwa in Burundi. This Act reinforces their right to associate.

UNIPROBA has a website (www.uniproba.bi) and enjoys free access to the national media. In addition, UNIPROBA in collaboration with some local and foreign partners regularly organises national workshops or training seminars for the Batwa. The organisation also participates in international conferences and advances the rights of the Batwa and has in the past organised an international conference in Bujumbura on the question of the Batwa and the indigenous peoples of Africa, in particular on the Pygmies of the central Africa DRC, Uganda, Rwanda and Burundi).

[318] Damame Dominique (1994), *"History and desire of history"*, South Pole, n°1,p.68.

The human-rights ministry in collaboration with the United Nations Integrated Office in Burundi every year on 9 August celebrates with the Batwa associations the international day of the indigenous peoples.

The foregoing section demonstrates the importance the international community and government attach to the question of the participation of the Batwa as a key aspect of good governance and social justice. This, therefore, provides a firm basis for advocacy for the political participation of the Batwa in the EAC.

The Batwa Political Participation in the EAC

The international law has opened up to the social reality and now recognises the rights of minorities. The Treaty establishing the EAC recognises certain fundamental principles of human-rights and governance that also guarantee the promotion and the protection of the rights of minorities within the EAC.

It would be appropriate at this juncture to analyse the manner in which the EAC Treaty can be of benefit to the Batwa through the EAC fundamental and operational principles. However, before we delve into this subject, we provide a brief summary of the EAC institutions.

The EAC institutions

Article 9 (1) establishes various EAC institutions as follows:

(a) The Summit;
(b) The Council;
(c) The Co-ordination Committee;
(d) The Sectoral Committees;
(e) The East African Court of Justice (EACJ);
(f) The East African Legislative Assembly (EALA); and
(g) The Secretariat and other institutions that may be created by the Summit.

In making appointments for staffing and composition of the organs and institutions of the Community, there is a requirement under Article 7(5) to take into consideration gender parity.

It is through these institutions that the Batwa can be fully integrated in the EAC, more especially the EALA, an institution we believe is closest to the people of the EAC. It is, however, noteworthy that since Burundi joined the EAC and elected member to EALA in May, 2008, none of the nine members of the EALA from Burundi is a Mutwa. This in part is because; the main criterion taken into account in electing candidates to the EALA is that one has to belong to a political party with representatives in the national assembly. It is important to underscore here that the three Batwa representatives in the national assembly are there as a result of ethnic considerations.

The EAC Operational and Fundamental Principles

Articles 6 (a) and (d) of the EAC Treaty provide for the fundamental principles that shall govern the realisation of the Community's objectives. These include mutual trust, political will, sovereign equality and good governance. Good governance in this context includes adherence to the principles of democracy, the rule-of-law, accountability, transparency, social justice, equal opportunities and gender equality, as well as the recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter of the Human and People's Rights. These provisions are of direct relevance to the Batwa with regard to the promotion and protection of their rights.

The operational principles of the Community are clearly laid out in Article 7 of the EAC Treaty, and of specific interest to this study are paragraphs (a) and (d) which provide for people-centredness and market-driven co-operation, and the principle of subsidiarity, with emphasis on multi-level participation and the involvement of a wide range of stakeholders in the process of integration.

The principle of subsidiarity presupposes matters ought to be handled by the smallest, lowest or least centralised competent authority. It presupposes that a higher authority should only perform those tasks which cannot be performed effectively at the local level or should handle what the lower echelon could only do less efficiently.[319] Here, the EAC as a whole is the higher echelon while member states are the lower echelon.

Article 7 of the Treaty defines subsidiarity as a principle that stresses the participation of several peoples in the economic integration process.[320] The principle only applies to issues of shared expertise between the EAC member states and does not concern itself with the expertise of individual states. Its focus is more on human rights.

The principle is useful for purposes of this study because it assumes that each member state should address its issues at the local (national) level. In a sense, the principle does not permit the intervention of the Community in the affairs of its members. In this regard, the key question is whether the Batwa can have the opportunity to express themselves within the EAC in order to enjoy their right to participation as well as other human rights.

Recognition, Promotion and Protection of the People: The Case of the Batwa of Burundi

The EAC Treaty recognises the (ACHPR of 1981. Burundi ratified this Charter by the decree-law n°1/29 of 28 July, 1989.

The concept "peoples" in the ACHPR is not defined. It is also not defined in other international legal instruments that use the term. Nevertheless, the African Commission on Human and People's Rights interprets the term "peoples' rights" to mean the

[319] Jean-Yves Naudet, (2004), " *Society and Subsidiarity"*, Conference 2-4 September, 2000, University Paul Cézanne, Aix-Marseille III, p.1.

[320] Treaty for the creation of the East African Community (as modified in date of 14 December, 2006 and 20 August, 2007), p. 4.

rights of different peoples in the same country. For example, the Commission recognises that the different distinct groups in a state can be recognised as peoples.[321] The Commission has also interpreted Article 19 of ACHPR relating to equality of all peoples to show that the discrimination in Mauritania with regard to black Mauritanians was domination by one group over another.

In another context, the African Commission on Human and People's Right made reference to the rights of "all peoples in Rwanda".[322] Discriminatory practices for political purposes have been condemned by the Commission. The Commission notes that Article 2 of the African Charter prohibits discrimination on the basis of language, national or social origin, birth or any other situation. Considerable importance is also attached to the right to equality by the Charter and all measures aimed at excluding a group of citizens from being involved in democratic processes are forbidden.

The rights of minorities are, therefore, guaranteed within the general interpretation of the "rights of the people". The African Commission, therefore, links the concept of minority to the "rights of the people". The legal basis for this is Article which provides: "All peoples are equal; they enjoy the same dignity and have the same rights". In this context, the Batwa, although a minority, constitute a people within Burundi and in the EAC. They are, thus entitled to equal rights and protection. All State systems must recognise that minorities have the right to exist and to be treated without discrimination, as well as to participate in public life. And this applies to the Batwa in Burundi. Legally, minorities have the right to preserve their identities and to enjoy political and economic equality like all other groups within the state.

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[321] *The Social and Economic Rights Action Center and the Center of Economic and Social Rights v. Nigeria*, Communication 155/96, Fifteenth Activity Report, 2001-2002, ACHPR/RPT.15.

[322] Resolution on the Situation in Rwanda (1993-1994), *Seventh Annual Activity Report of the African Commission on Human and Peoples Rights*, ACHPR/APT/7th, Annex XII, para. 2.

Partner states to the Charter are obliged to adhere to its provisions and accord and guarantee persons within their countries the requisite human-rights protection. In this vein, the Batwa in Burundi have a right to defend the provision on respect of their human rights.

Recognising the rights of minorities in the EAC does not contradict the better functioning of the member states. On the contrary, it promotes harmonious development in the EAC; economic integration cannot override respect for human-rights in the EAC. Indeed, the freedom of the EAC State parties to freely exercise their operations within the region is guaranteed by upholding human rights. This realism is also acknowledged in international law.

Challenges and Obstacles to Batwa Political Participation within the EAC

In order to properly analyse the political involvement of the Batwa in the EAC, it is important to identify the obstacles that can affect their effective participation.

Three broad areas, namely: the socio-economic status, mobilisation of resources, and the issue of identity and group consciousness, have been identified as major obstacles.

This section also provides the strengths and weaknesses that the Batwa face in their interaction with the State, particularly with regard to their right of association, which can inform the EAC perspective.

Socio-Economic Status

The socio-economic status of the Batwa is one of the key variables or factors that affect their political participation and involvement. And as some authors have argued, the more the socio-economic status of a group is raised, the greater the propensity of the minority group to participate in political life. Therefore, there is a nexus between economic stature, setting up of associations intended to defend the interests of the minority group and political involvement.[323]

[323] Leighley, Jan, E. and Arnold, Vedlitz,1999, "*Race, Ethnicity and Political*

Other authors also demonstrate that the level of income and education are determining factors in the way in which a group organises itself to participate in the political sphere. Arguably, the stronger the associative network of a group, the more likely it will take part in the formal political life.[324]

As previously demonstrated, the socio-economic status of the Batwa is precarious. Factors as such poverty, lack or very little access to land and the means of production, food insecurity and limited access to healthcare and education, remain their major preoccupation instead of political participation. It is, therefore, difficult for the Batwa to actively participate in the EAC due to such a weak economic status.

What is the progress on the Batwa Association?

UNIPROBA is the most representative association of the Batwa in Burundi and is recognised by the African Commission of Human and People's Rights. However, UNIPROBA is still dependent on donors for its survival and receives no contribution from its members. This state of affairs undoubtedly puts at stake the protection of the interests of the Batwa within the EAC in general and at the national level in particular.

Given the passive role of the Batwa in politics, UNIPROBA which is represented at the national, provincial, communal levels, as well as at the grassroots levels, continues to encourage the Batwa to exercise their voting rights at the national or local levels and to participate in political parties. This is mainly because few Batwa join political parties, pressure groups, professional unions or human-rights associations.

Participation: Competing Models and Contrasting Explanations", the Journal of Politics, Vol.61,No 4, pp. 1092-1114.

[324] Vera, Sidney and al., 1993,"*Race, Ethnicity and Political Resources: Participation in the United States*", British Newspaper of Political Science, Vol.23, pp.453-497.

Although some constitutional provisions provide numeric representation and encourage all ethnic groups to actively participate in the country's governance, this has not necessarily led to better integration of the Batwa in the public service due to lack of requisite educational qualifications. Available education statistics of the Batwa are illustrative. To date, only three Batwa (all men) have completed university studies at the bachelor's level. Most Batwa girls quit school at teenage to get married.

A comparison with the Ganwa, who are descendants of the royal dynasty, but like the Batwa are demographically very few, indicates that Ganwa leaders, who are generally economically well-off and possess a lot of educated people and have politically partnered with the Batutsi, are politically very active.[325]

Finally, one can conclude that the precarious socio-economic status of the Batwa could prevent their participation in the EAC. It would, therefore, be useful to first develop a policy aimed at raising the socio-economic status of the Batwa in conformity with the EAC objectives as specified in Article 5 (3) (a) which provides that the Community shall ensure the strengthening and consolidation of co-operation in agreed fields that would lead to equitable economic development within the member states which would in turn, raise and improve the quality of people's living standards.

Burundi Law n°1/006 of 26 June, 2003 on political parties contains provisions relating to the integration of women in the national and provincial organs of the political parties, as well as ethnic parities. Article 33 of the law stipulates that the national and provincial organs of any political party must be set up, bearing

[325] Stef Vandeginste, (2006), "*Consolidative Theory and power sharing in Burundi*", Institute of Politics and Development Management of the University of Antwerp, in Cahier, p.23.

in mind the principle of national unity while taking into account various ethnic components of the Burundian population and gender participation. It provides further that no decision-making organ of any political party at the national level will have more than three quarters of the members coming from the same ethnic group. The same principle equally applies to gender participation.

Sadly, in practice, the law is not complied with. To date, there is no Mutwa man or woman in the decision-taking organs of any of the political parties. As such, it is difficult for the Batwa to participate politically in the EAC institutions when they are, for the great part, politically absent at the national level.

Mobilisation of Resources

The socio-political environment is an important element that affects the collective action of a given group.

The theory of the mobilisation of resources holds that the involvement of a group must be considered like a rational behaviour for the same reason as all other institutional behaviour. According to this theory, the mobilisation of resources in view of a collective action includes a cost and a profit for the group or the organism wanting to enter into a concrete political action. The group in question must take into account this financial balance in the development of its strategy of action that, in a lot of cases, does not generate the expected profits.[326]

The low ability of the Batwa to mobilise resources disadvantages them and hinders their participation in the political life in Burundi and will ultimately do so in the EAC. For example, it is difficult for a Mutwa to found a political party since this requires not only political will but also various interventions, including financial resources. What is worse, the law regulating political parties forbids parties from

[326] Olsen, Marvin, E., (1970),"*Social and politics of Blacks*", American Sociological Review, Vol. 35, 4, pp.682-697

benefiting from foreign financial support. Yet, political parties play an important role in raising people' consciousness through debate. Similarly, to be a candidate in a national election at presidential and legislative levels requires remittance of guaranties of which most Batwa are incapable. To date, there are no outstanding Batwa in the business sector, not even a renowned manager of a private business or important tradesman.

For the Batwa, political parties are sources of inter-ethnic conflicts. They did not take part in the Burundian conflict in a fundamental way to assure a constant presence in political institutions. From the Batwa point of view, one would rather live poor, but peacefully. Yet, as noted above in Burundi, representatives to the institutions of the EAC are elected through political parties. This, therefore, remains a handicap to the participation of the Batwa in EAC institutions.

The limited participation in politics by the Batwa has, however, been recognised by government. The government has recognised the role CSOs can play in sensitising them. In the same way, Article 108 of the Electoral Code of 18 September, 2009 provides that co-option of the Batwa in parliament should be done on the basis of lists presented by their representative organisations; an avenue that can be used to further enhance their participation in political processes.

Identity and Group Consciousness

It is with resolute political will that a group, including a minority, can acquire some political rights and attain power.

Available literature relating to the political involvement of minority groups points to sizeable research regarding socio-psychological dimensions of the communal belonging. Some of these studies specifically address the importance of the questions of identity and group consciousness.

Apparently, the stronger the collective identity of a given group, the higher its political involvement or activeness. The level of ethnic consciousness is, therefore, a determining factor for the identification of common objectives and in defining strategies to implement these objectives. Consequently, groups willing to defend their collective interest would increase their political activities through demonstrations and activities of representation or involvement.[327]

Among the different elements that allow measuring the level of collective consciousness, the proximity of the inter-group ties and inter-group relations play a major role.

The Batwa are somehow known for their sense of solidarity and for being endogamous. According to some commentators, close relations between the members of the same group lead to the development of a collective consciousness and political will, while others argue that ethno-cultural exchange between a minority and majority group would encourage the members of a minority group to commit themselves politically.

These various elements of identity would act as stimuli that would encourage a bigger number of people from the group to integrate into the political arena. Unfortunately, the Batwa of Burundi are generally not politically active.

Conclusion and Recommendations

The study has made an in-depth analysis of the rights of minorities under international law, in general, and Burundian law, in particular, to participate in governance. The focus of the study has been the Batwa community in Burundi.

The findings reveal that there are various ways in which the Batwa are represented in public institutions in Burundi: through governmental nominations, co-option and elections from among their own constituency, the members of the Batwa community.

[327] Olsen, Marvin, E., 1970"*op.cit*; pp.682-697.

The study has highlighted the major achievements made so far with regard to integrating the Batwa into public life in Burundi. However, though encouraging, a lot more still needs to be done. Beyond the usual weaknesses for which one blames international law, the Burundian government has not acted quickly enough to recognise the rights of minorities, a people often not responsible for the big internal conflicts within states though states fear that the denial to grant minorities their rights contributes to ethnic conflicts. Our analysis also shows that the EAC Treaty prioritises economic integration and lesser devotion to human-rights protection and promotion. We also point out that the issue of political participation is the reserve of the states through the principle of subsidiarity.

It is our contention that the right to participate in governance is the first step towards promoting the involvement of the Batwa in political processes.

In this regard, we recommend and underscore the need:

- To widen the debate on the question of human-rights for peoples within the EAC and respect of the provisions of the EAC Treaty relating to human rights;
- For efforts to raise the living standards of the people of East Africa;
- To encourage the Government of Burundi in its efforts to promote and protect the Batwa, including facilitating their participation in politics; and
- To encourage donor support for activities that favour the elevation of the status of the Batwa, including sensitisation programmes, to enable the Batwa to participate in constructive politics and to exercise their voting rights.

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4

Participation of Minorities and Indigenous Peoples in Political Decision Making in Kenya

*Nyang'ori Ohenjo**

Executive Summary

This paper discusses the inclusion of ethnic and racial minorities in decision-making processes in Kenya. Such inclusion is expected to strengthen and consolidate democratic participation. The paper discusses existing legal and policy frameworks as well as practical realities relating to the participation of ethnic and racial minorities in political decision making in Kenya, taking into account the challenges and opportunities.

This paper traces the emergence of the phrase 'the place of the minorities' to the era of colonialism. During this period, discrimination was racial. The Whites were the most privileged, followed by the Asians and lastly the Africans. One significant event that happened during this time, however, was the forceful acquisition of some lands formerly belonging to Africans, by the Europeans, for use in agricultural production. Moreover, because the Europeans wanted to maximise benefit, they implemented policies that restricted development to areas that they occupied or where they had a direct interest. These happenings were to be significant in post-independence Kenya as the government retained the same investment policies which meant that particular areas were placed outside the government radar for development.

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In effect, a trend of marginalisation was set and those communities that mainly depended on traditional livelihoods became the victims. These communities were then forced by the circumstances to identify themselves as minorities and/or indigenous peoples in Kenya in their attempt to fight for their rights.

The paper is divided into several parts. Section 1 briefly explores Kenya's socio-economic and political history with the main aim of placing the history of marginalisation and exclusion into context. Section 2 discusses in depth who minorities (and or indigenous peoples) in Kenya are and their main identification criteria. The chapter briefly traces the emergence of minority rights on the world scene, and justifies why some communities in Kenya qualify to be identified as minorities and/or indigenous peoples. Section 3 discusses a case study, the Ogiek, who are a Hunter-Gatherer community in Kenya. The case study is developed to exemplify the challenges that minority or indigenous communities in Kenya face. Section 4 then looks at the international minorities' and indigenous peoples' rights, within the Kenyan context. It also discusses the jurisprudence that has been developed over the years, which could be applicable in the Kenyan context while pursuing the recognition of minority rights. Section 5 deals with the situation of participation of minorities in decision making processes in Kenya; giving examples of positive steps made. Section 6 is the conclusion; and in Section 7, some recommendations are offered.

One of the main challenges towards the participation of minorities and indigenous peoples has been the non-recognition and hence lack of legal protection of their rights. Due to this factor, it has been difficult for minorities and indigenous peoples/communities to be able to secure automatic representation in decision-making processes. This has slightly changed with the enactment of a new constitution which, through Article 56, recognises the rights of minorities and marginalised groups. Even so, there will be a need for intensive

lobbying for representation by the minority groups, even if structures will be put in place. Another key challenge that emerges is that of the capacity of the minority communities to effectively engage at the various levels of decision-making. These capacities range from technical to financial. The main reason for this, it could be argued, is because the emergence of minority and indigenous peoples' rights movement (s), especially at the Kenyan national platform, is quite new. In fact, there is no available evidence to suggest that there existed any pressure for the government at the national level in Kenya, before the establishment of the Centre for Minority Rights Development (CEMIRIDE), in 2000. Granted, there were community-focused initiatives, like the Pastoralist Thematic Group (PTG) that initially participated in the Poverty Reduction Strategy Paper (PRSP) and the constitutional review process. However, this participation was limited to pastoralists' interests and not all minority and/or indigenous communities.

Despite these challenges, some emerging opportunities could be exploited to deepen the participation of minorities in decision making in Kenya. These opportunities have been achieved through the strong lobbying at the national level, especially a very strong participation in the Constitution of Kenya Review Process (CKRP) that culminated in the referendum of 2005. From here, minorities have participated in the development of the Draft National Land Policy (DNLP), which was recently approved by cabinet and parliament has already passed the relevant Sessional Paper. Before the enactment of the new constitution in August 2010, this development saw the protection of minority and indigenous people's rights for the first time in a legal statute in Kenya through the anticipated Lands Act. There also exist some legal avenues that could be exploited. For instance, Kenya has the Forest Act, 2005 that recognises community participation rights. While the Act does not explicitly mention or recognise minority and or indigenous communities, minorities and

or indigenous communities can use the provisions on community participation to enhance their participation in the management of the forests and other natural resources therein, as well as to further influence policy on forests and biodiversity.

To be able to exploit these avenues, and address the identified challenges, the paper makes two key recommendations. One: since the existence and rights of minorities and indigenous communities have been legally recognised by the new constitution in Kenya, there is need to ensure that all subsequent legislations ensure effective representation and participation of minorities and indigenous communities in decision-making, especially concerning issues that will directly influence their livelihoods.

The second recommendation is in the area of strengthening the capacities of, not only the minority and indigenous communities themselves, but also the staff who directly work with them. Since minority, including indigenous peoples' rights are recognised internationally, and that the Kenyan government has slowly started opening up the recognition space slowly, it is important that the capacities of staff working directly with minority communities in Kenya be strengthened. This will help develop a minority rights' sensitive staff who will contribute significantly towards ensuring participation of these communities and hence enable their development.

Kenya's Historical Background

Pre-independence Kenya

To understand the concept of minorities in Kenya today, the country's pre-independence history is important. (The concept of minorities is discussed in depth in Part 3.) This is because minorities as a human rights concept emerged in Kenya due to marginalisation and discrimination of certain communities after colonisation, by using structures and institutions that developed during this period. Kenya's

experience with the 'modern' decision-making structures began with its colonisation in 1885, as a result of the Berlin Conference in the same year. Before this time, communities in what is Kenya today had their own socio-economic and political institutions-they each had their unique ways of life, getting their food through: fishing, hunting and gathering, pastoralism and agro-pastoralism. These socio-economic activities determined the various modes of political and social organisations that were evident then.

Kenya was formally placed under British rule as a colony in 1895 after the British had declared Uganda (Buganda) its protectorate, hence the need for secure access to the sea (read Indian Ocean) from Uganda. After placing Kenya under its control, the British sought to acquire land as a major commodity and hence established infrastructures and institutions to serve these interests[328]that institutionalised marginalisation.

Between 1895 and 1915, the British had acquired control of Kenyan land and established property rights.[329] These laws were to radically change the socio-economic and political structures in the country. Land, the most vital resource amongst the African communities, and largely communally owned, was turned into private property. The land legislation that came into force during this time favoured the settlers (Europeans). The natives, especially in areas that were christened 'white highlands'-the best farming land-were formally dispossessed of their land and confined in reserves. (The Kikuyu and some of the Kalenjin communities were affected here.)

In several other situations, the British colonialists also resorted to 'agreements' especially where communities were seen to be 'troublesome.' The Maasai community was specifically disinherited

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[328] Makoloo, M.O., (2005), "Kenya: Minorities, Indigenous People and Ethnic Diversity", Minority Rights Group International, London.

[329] Wanjala, S. C., (2000), Essays on land law: The reform debate in Kenya, Faculty of Law, University of Nairobi, Nairobi.

through the now infamous Maasai Agreements of 1904 and 1911. In the first agreement, the then Maasai leaders signed the Maasai Agreement of 1904, stipulating that the Maasai agreed to remove their people and livestock to reserves away from the railway line, and away from any land that may be thrown open to European settlement. Part of the agreement reads:

> And by the removal of the foregoing sections to the reserve we undertake to vacate the whole of the Rift Valley, to be used by the Government for the purposes of European settlement.[330]

Other legal mechanisms that were used by the colonial government included Land Acquisition Act of India (1894) to acquire land next to the railway line and the Foreign Jurisdiction Act of 1890 which brought into being the East African Lands Order in Council in 1897. The Council empowered the Lands Commissioner in charge of the colony to lease land to white setters for a period up to 99 years as long as the said land was 'idle'. Later legislations-the 1902 Crown Lands-Ordinance, the 1908 Land Titles Ordinance and the 1915 Crown Land Ordinance made all land in Kenya "crown land" and the ethnic communities became tenants of the Crown (The British).

To enhance and protect their economic gains, Europeans came in with new political arrangements. The alienation of the 'White Highlands' as well as other pieces of land stemmed from the knowledge that whoever controls the land is in a good position to influence the government. From 1919, Europeans were allowed to elect their representation in the Legco-a political representation and decision-making institution, which was empowered to make key national decisions. Later the Asians, with significant economic power amassed from trading activities, started to push for their right to representation and governance. Asians had come to Kenya as indentured labourers from Britain's Indian empire to construct the

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[330] Cited at: http://www.geocities.com/olmorijo/maasai_agreement_1904.html. Accessed on 1st April 2010

railway. They were to be followed by Indian traders who set up shops at the coast and later moved with the railway into the interior.

At the representation level, native Africans were left out. The Africans, of course, resisted this. From 1921, Kenyans started fighting for political representation. This is seen through the formation of Young Kikuyu Association. This was an organisation that sought to fight for the African rights, specifically the appropriated Kikuyu land. From this political organisation, others like Kikuyu Central Association (1928) followed. Other political organisations formed during this period were the Young Kavirondo Association, the Akamba Members Association, the north Kavirondo Central Association and Kikuyu Provincial Association in the 1930's.

In 1944, the first African was appointed in the Legco, with the number later increasing to two in 1946, four in 1948 and lastly eight in 1951. While there was this representation, it was not elective as the representatives were appointed by the colonial regime from African individuals known to them. It would, therefore, be arguable whether this representation was effective.

The main impacts of these new policies and institutions were abject poverty, disease and high rates of illiteracy amongst the communities that lost their decision-making institutional and administrative powers. Traditional cultural institutions were dismantled and several communities assimilated into other cultures thereby losing their identities. With most communities having held their land communally, the introduction of individual land tenure led to the disappearance of social structures. With this, the country started experiencing class systems, mainly based on ethnic or traditional livelihoods backgrounds.

Post-independence Kenya

Following independence in 1963, the land issue was not fully addressed, and no effort was made to deal with the competing lands

rights claims.[331] Land problems, and their attendant issues, have thus persisted and as the Integrated Regional Information Networks (IRIN) notes:

> "... land ownership issues ... have remained unresolved since colonial times, when pastoral groups such as the Maasai and Kalenjin were ousted to make way for British settlers, who (were) in turn employed (as) labourers...."[332]

Instead, when Kenya became independent, "the nationalists accepted not only the sanctity of private property but also the validity of colonial explorations"[333]. Armed with this thinking, land (read commercial agriculture and livestock production) became central to government planning for economic development. This was amplified in the Sessional Paper No. 10 of 1965[334] which ensured that the country's wealth remained in the perceived productive areas, which included the former 'white highlands'. It asserted that:

> …to make the economy grow as fast as possible, development money should be invested where it will yield the largest increase in net output.[335]

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[331] See, Human Rights Watch Report, 1997.

[332] Cited at: http://www.irinnews.org/InDepthMain.aspx?InDepthId=41&ReportId=70998&Country=Yes. Accessed on 1st April 2010.

[333] ibid.

[334] Republic of Kenya(1965), Sessional Paper No.10 on African Socialism and its Application to Planning in Kenya, Government Printer, Nairobi.

[335] ibid.

Box 1: Dominion (Example of Agricultural Expansionism against traditional Economies)

Yala Swamp is a wetland bounded to the north by Nzoia river and the south by Yala river. The swamp lies within Yala river catchments of the Lake Victoria basin drainage. This is Kenya's largest wetland, and is regarded as a very delicate ecosystem and habitat to some rare flora and fauna, including endangered fish species. Besides, the swamp has served the adjacent communities since time immemorial as source of fish, water, agricultural land, pastures, wild animals, plants for constructing houses, source of wood fuel, medicinal plants etc. Yala swamp is one of the most fragile ecosystems around Lake Victoria, and to conservationists, the swamp should be treated as Kenya/East Africa's national heritage, resource of Lake Victoria, one of the wetlands in East Africa with the highest number of biodiversity, buffer zone between land use and Lake Victoria and a regional museum for lost species of Lake Victoria.

Dominion Farms Ltd, an affiliate of the USA-based Dominion Group of Companies, based in Oklahoma, USA moved into the swamp through an arrangement with the Lake Basin Development Authority (LBDA). Dominion signed a lease agreement with Bondo and Siaya County Councils. (Busia County Council is not part of the agreement, although it shares a significant part of the river and the swamp.) The initial proposal was that Dominion would engage in rice production, in part of the swamp known as Area I, covering about 2,300 ha. This land portion had been reclaimed before 1970, and previously used by LBDA for agricultural activity, mainly to produce cereals, pulses and horticultural crops. An environmental impact assessment (EIA) was initially commissioned for large-scale rice production before the introduction of other varieties of crops.

Source: *Information courtesy Friends of the Yala Swamp, a lobby group consisting of a number of CSOs*

This approach clearly favoured the development of areas having natural resources, good land and rainfall, transport and power facilities. Several development plans later, land tenure and land use was directed to agricultural production, with development planning and resource allocation focused on the high potential areas. Some of these development plans include Sessional Paper No.1 of 1986[336] which re-emphasised that agriculture was the leading sector for economic growth and job creation and the PRSP 2001-2004[337], which formed the basis for the Economic Recovery Strategy 2003-2007[338] identified landlessness as a major underlying cause of poverty. The policy document concluded that inadequate land policies had negatively affected agricultural production.[339]

It is important to note that this agricultural development was not focussed on traditional economies that were still the mainstay of many rural communities, but rather based on commercial agricultural and industrial production[340] (see Box 1).

Through the Sessional Paper No. 10 of 1965, President Kenyatta also stressed that the economic approach of his government would be 'dominated' by the desire to ensure the Africanisation of the economy and the public services.[341] The process of Africanisation saw increased tribalism in the manner in which resources were distributed. This era then saw the Kikuyu, and their 'cousin' communities-the Embu

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[336] Republic of Kenya(1986), SESSIONAL PAPER NO.1OF 1986: Economic Management For Renewed Growth, Government Printer, Nairobi.

[337] Republic of Kenya(2001), Poverty Reduction Strategy Paper 2001-2004, Government Printer, Nairobi.

[338] Republic of Kenya (2003): Economic Recovery Strategy for Wealth and Employment Creation 2003-2007, Government Printer, Nairobi.

[339] ibid.

[340] Ohenjo, N., *Minorities' and indigenous peoples' experience in Kenya's Poverty Reduction Strategies process in Hughes,* A., (2005), PRSPS, Minorities and Indigenous Peoples-An Issues Paper, Minority Rights Group, London.

[341] Makoloo, M.O., (2005), op cit.

and Meru-amass large tracts of land, especially in the former White Highlands. Thus, instead of putting up industries in all parts of the country, for instance, everything was to be concentrated in the region of these ethnic groups, while other regions of the country were only to act as a source of labour.[342] This was essentially a case of winner-takes-it-all capitalism disguised as African socialism.[343] The independence development policies have adopted pre-colonial politics and led to the socio-cultural exclusion that exists today, through systematic marginalisation and discrimination of certain communities.

Who Are Minorities in Kenya

A brief history of minority rights law

> Most conflicts happen in [...] countries, especially those which are badly governed or where power and wealth are very unfairly distributed between ethnic or religious groups. So the best way to prevent conflict is to promote political arrangements in which all groups are fairly represented, combined with human rights, minority (and indigenous peoples') rights and broad-based economic development.-Kofi Annan, former secretary-general of the UN (Millennium Report statement, 3 April 2000)

The push for recognition and protection of minority rights exploded onto the world scene after the cold war. During this time, ethnic communities invoked claims of repression to push for more autonomy to exercise their cultural rights[344]. After the disintegration of the Soviet Union, questions of minorities and their rights have continuously caught the international communities' attention. This is because more than 25 million Russians who had been reduced

[342] Syagga, P.M (2007), Land ownership and use in Kenya; policy prescription perspectives in readings from an inequality in Kenya: Sectoral Dynamics and Perspectives, Society for International Development, Nairobi.

[343] ibid.

[344] Ishay, R. M. (2004), History of Human Rights: From Ancient times to the Globalisation Era, University of California Press, Berkeley.

to minority status in the former Soviet Republic became more vulnerable to human rights abuses.[345]

The push for protection of minorities as, 'collectivities', is not entirely new in human rights history. Evidence exists that this discourse existed before the 20th century.[346] After World War I, during the negotiations for the League of Nations Convention, the then United States (US) President, Woodraw Wilson, pressed for the international protection of racial and international minorities.[347] His objective was not, however, achieved, as this protection did not find its way into the covenant. It could be argued that this was because protection of minorities, with collective rights, was seen as threatening to states, since it would mean that these minorities had claims against the states.

The Convention on Prevention and Punishment of Genocide of 1948[348] is notably the first international law on protection of minorities in the post-World War II era. It provides special protection for ethnic, religious and racial minorities against extermination. In 1947, the UN established the Commission on Human Rights, which in turn set up the 'Sub-Commission on the Prevention of Discrimination and Protection of Minorities'. The Sub-Commission's mandate was to make recommendations on issues including the protection of minorities. However, over the years, it expanded its mandate to address other human rights issues, gradually reducing its focus on minorities.[349]

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[345] ibid.

[346] Thornberry, P. (1991), International Law and the Rights of Minorities, Oxford Clarendon Press, London.

[347] ibid.

[348] United Nations (1948), Convention on Prevention and Punishment of Genocide, United Nations, Washington.

[349] See "A short history of minority issues at the UN" at http://www.minorityrights.org/1333/campaign-to-keep-minority-voices-at-the-un/a-short-history-of-minority-issues-at-the-un.html, accessed on 4th March 2010.

In the early 1990s, the conflict in the Balkans refocused the attention of the international community on the need for minority protection. In 1992, the UN unanimously adopted a Declaration on Minorities, and in 1995 established the Working Group on Minorities (WGM) to monitor the implementation of the Declaration.[350] In September 2007, the UN Human Rights Council (HRC) established the UN Forum on Minority Issues replacing the Working Group on Minorities, as a platform for promoting dialogue and cooperation on minority issues and for contributing to the work of the independent expert on minority issues.[351]

Identification of minorities and indigenous peoples

There is no existence of an internationally agreed definition of minorities. However, minorities in any country could be taken to be non-dominant ethnic, religious and linguistic communities, who may not necessarily be numerically inferior. This may include indigenous and tribal peoples, migrant communities and refugees. These groups are not homogenous-some members face further marginalisation due to age, class, disability, gender or other factors.

The most commonly cited definition for minorities is that of the UN Special Rapporteur, Francesco Capotorti, who in 1966 defined minorities as:

> 'A group numerically inferior to the rest of the population of a State, and in a non-dominant position, whose members-being nationals of the State-possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religions and language.'[352]

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[350] See Minority Rights Law at http://www.minorityrights.org/549/law/law.html, accessed on 1st April 2010.

[351] Resolution 6/15 of the 21st UN Human Rights Council Meeting held on 28th September 2007 adopted without a vote.

[352] Makoloo, M.O., (2005), Kenya: "Minorities, Indigenous People And Ethnic Diversity", Minority Rights Group International, London.

Box 2: Recognising Minorities in Africa

The key criterion that is increasingly accepted internationally in the determination of minority status is that of self-identification. On this basis, it is the individuals and thus groups themselves who should self-identify as minorities, irrespective of whether they are described as 'nationalities', 'communities', 'ethnic groups', 'peoples' or 'nations' by states.

Source: *Slimane, Samia (2003) Recognising Minorities in Africa*

In 1985, the UN Sub Commission on the Prevention of Discrimination and Protection of Minorities refined its definition to describe minorities as:

> "A group of citizens of a state, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with each other, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact in law".[353]

The UN Sub-commission on Prevention of Discrimination and Protection of Minorities in 1954 described minorities as those non-dominant groups in a population which possess and wish to preserve ethnic, religious and linguistic traditions or characteristics markedly different from those of the rest of the population.[354] These definitions put emphasis on citizenship, and numerical strength as key determinants. However, a distinct ethnic group can constitute a numerical majority and be in a non-dominant position, and thus be entitled to the application of minority rights standards, to protect their rights to non-discrimination and identity[355] (see Box 2). Similarly, the limiting criterion of citizenship can be used to exclude certain groups from their rights as minorities.[356] Indeed, the UN

[353] Mpangala, G.P., (2009), "Ethnic And Racial Minorities and Movement Towards Political Inclusion in East Africa: Cases of Burundi, Rwanda and Zanzibar", Kituo Cha Katiba, Kampala (Unpublished).

[354] ibid.

[355] Makoloo, M.O., (2005),op cit.

[356] ibid.

Human Rights Committee (HRC), through a General Comment to Article 27 of the ICCPR has stated that a state party cannot restrict the rights under Article 27 to its citizens alone.[357]

This resonates with the criteria for identifying indigenous peoples especially in Africa. For example, the stress on cultural difference, non-dominance and a desire to transmit culture to their successors also rings true for indigenous peoples (See Box 3)

Box 3: Ogieks Petition State over Ancestral Rights in Mau

The Ogiek community has appealed to the Government for an urgent meeting to discuss their stake in the Mau Forest. The community argued that their rights as a minority community will be violated if they were to be displaced from the forest. They said that this was their ancestral land and the only home that they knew, and hence they had nowhere else to go. The call by the Ogiek came after the Kenyan Parliament adopted a report on the Mau Forest Complex. Against an international outcry for the destruction of the forest, the government formed a Task Force on the Mau to unearth the real situation about the destruction of the complex, that is the country's largest water tower and give recommendations on the way forward.

The Ogiek argue that the report by the Mau Task Force established by the Prime Minister's office acknowledged that the forest was a home to the indigenous forest dwellers and as such, a special provision should be made to protect their interests.

According to the community, it was in their interest to protect and conserve the forest and hence they should not be evicted alongside other communities that had invaded the forest complex over the years. They also argue that an eviction will leave their ancestors unattended to leading to their being haunted during their lifetime.

Interview by Nyang'ori Ohenjo with Daniel Kobei, Executive Director, Ogiek Peoples Development Program (OPDP) on Thursday, 17th September 2009.

[357] HRC General Comment No. 23, 50th session, 1994 at Para. 5.1.

The International Labour Organisation (ILO) identifies indigenous peoples as:

- tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; or
- peoples in independent countries who are regarded as indigenous on account of their decent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest for colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their social, economic, cultural and political institutions'.[358]

Whether indigenous or minority, therefore, these peoples suffer when it comes to political, social, economic and cultural discrimination, and exploitation.[359] What the foregoing means is that, in sum, any criteria used to identify minorities should aim at the furtherance of the rights of minorities to exist, to be treated without discrimination, to the preservation of their cultural identity and to their participation in public life.

From the foregoing discussion, minority groups or communities emerge due to shared ethnic, religious, linguistic or cultural characteristics, and the members of the group acknowledge a common identity on this basis. Similarly, indigenous peoples share common ethnic, religious, linguistic and or cultural characteristics. What mainly distinguishes them from ethnic, religious and linguistic minorities is their attachment to their ancestral lands and natural resources. They have maintained a culture that is strongly linked to their ways of using land and natural resources. This distinction is reflected in separate international standards for indigenous peoples.

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[358] Article 1: ILO Convention 169 (1969), United Nations, Washington.

[359] Makoloo, M.O., (2005), op cit.

Box 4, The Case of Nubians in Kenya, illustrates the Nubians' case, especially their experience with marginalisation over the years, as well as their efforts to stick to their culture. The Ogiek, who identify themselves as indigenous peoples, for example argue that from colonial times onwards, Ogiek groups have been displaced from their ancestral lands without consultation, consent or compensation.[360]

Box 4: The Case of Nubians in Kenya

The Nubian community in Kenya came from the Nuba Mountains in central Sudan. They were brought into Kenya and other parts of the then British East Africa in the Early 1900s by the colonial administration as soldiers. After the Second World War, they were demobilised in various parts of Kenya, and indeed, East Africa. In Kenya they are found in Kakamega, Nairobi (Kibera and Kaloleni), Kisumu, Koibatek, Mazeras, Meru, Nandi and Nanyuki. They are also in Eldama Ravine and Isiolo. In spite of having lived in the country for close to a century, they are still denied citizenship. Until now, the community is not among the recognised ethnic communities in Kenya.

Nubians are known to be very conservative; to date, they have maintained their cultures and have completely resisted assimilation. They have retained their names, staple food, dress style of *buyi buyi* (Sari) and language. In cases where a female is married to one of them, she has to learn their language, dress in *buyi buyi,* pierce her nose and wear ankle bangles.

The failure to obtain identity cards, a pre requisite for all Kenyans, has resulted in majority of Nubians living without any gainful employment. Furthermore, they have been politically disenfranchised, as one needs identification documents to participate in political processes.

Source: *Adopted from CEMIRIDE, (2009): Locating minorities and indigenous peoples in poverty reduction and accountability initiatives in Kenya, Nairobi, Stellanjoint Venture.*

[360] Ohenjo, N., (2003), "Kenya's Castaways: The Ogiek And National Development Processes", MRG Micro Study, Minority Rights Group, London.

Examples of minorities and indigenous peoples in Kenya

The current constitution of Kenya of August 2010 does set the criteria to identify minorities and indigenous peoples/communities. However, the criteria set for marginalised communities are largely in conformity with international standards and norms. This report will thus rely on these criteria which identify marginalised communities (in this case read minorities and/or indigenous communities) as:

a. A community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole;
b. A traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;
c. An indigenous community that has retained and maintained a traditional lifestyle and livelihood based on the hunter-gatherer economy; or
d. Pastoral persons and communities, whether they are:
    - Nomadic; or
    - A settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole.

A number of communities in Kenya fall into the bracket of minorities and or indigenous peoples. These groups can be grouped, depending on cultures, traditions, and or livelihoods into indigenous peoples, religious minorities, ethnic minorities and linguistic minorities. Geographically, the spread of minorities (including indigenous peoples) is large.

Minorities in Kenya can loosely be classified into four groups:

a. Ethnic
b. Religious

c. Linguistic
d. Indigenous peoples[361]

It should be noted, nevertheless, that this classification is not distinctive as some groups may fall in two or more areas of classification.

Ethnic minorities

An ethnic group is basically a tribal grouping. It identifies itself through a sense of common historic origin. It shares cultural traits and institutions, such as dress, food, language and family patterns. Kenya's population is a composite of ethnic communities. According to the population census, Kenya has three big homogenous communities-the Kamba, Kikuyu and Luo. Ethnic minorities here are distinguished by the small size of their populations. These include the Ogiek, Elmolo, Malakote, Sanye Waata,[362] Terik and Yiaku. It should be noted however, that some of these groups can still fall under indigenous peoples; like the Ogiek and Waata (hunter-gatherers) or linguistic minorities like the Terik and the Yiaku. The Yaiku are also hunter-gatherers, hence they fall into the indigenous peoples grouping.

Other examples of ethnic minorities in Kenya include Nubians and the Somali. These are communities whose citizenship is not recognised by the Kenyan state. For example, the Nubians have been fighting for citizenship recognition for years, since settling in the country in the 1930s and 40s (see Box 4).

Religious minorities

Kenya is generally a Christian nation. Approximately 80 per cent of the country practices Christianity (Protestants represent 58 per cent of the Christian majority while Roman Catholics represent 42

[361] Makoloo, M.O., (2005), op cit.
[362] ibid, p.9.

per cent).[363] 10 per cent of the population practise Islam. Less than 1 per cent practise Hinduism, Sikhism and Baha'i. The remainder follow various traditional indigenous religions.[364] Generally, Kenyan laws, including the constitution of Kenya and the various drafts, have borrowed heavily from the Judeo-Christian tradition. In this regards, communities that are non-Christian become religious minorities. These include Muslims, Buddhists, Hindus and those Kenyans who practise traditional African religions.

Linguistic minorities

These are communities whose languages are at the threat of extinction. In Kenya, examples of such communities include: the Terik in western Kenya, the Elmollo around Lake Turkana and the Yiaku. The Yiaku, for instance, decry the systematic assimilation that they suffered under the Maasai; they claim that they would be abducted and made cattle herders of the Maasai.[365] In the end, they were assimilated, by being forced to go through their circumcision rites and learn the Maasai language, occasioning a process of extinction.[366]

Over the years, the community lost its self-esteem, and pride of identity, succumbing to being identified as Maasai. Indeed, as of 2007, there were only 5 known speakers of the Cushitic Yiaku language (also called Yaaku and Mukogodo); making it Kenya's most endangered language.[367] According to 65-year-old Lobes Lokinyanyi:

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[363] See Bureau of Democracy, Human Rights, and Labor, International Religious Freedom Report 2007 at http://www.state.gov/g/drl/rls/irf/2007/90103.html, accessed on 1st April 2010.

[364] ibid.

[365] Focus Group Discussions (FGDs) with the Yiaku, in Mukogodo, Laikipia District.

[366] ibid.

[367] See More than 100 Yiaku and Laikipia Maasai villagers gather to map the Mukogodo at http://www.ipacc.org.za/eng/news_details.asp?NID=123, visited 22nd October 2008.

> Only a few old people can speak my language. Many died before their children could learn it. It is really sad. The beginning of the end of the Yiaku community and language started with colonialism. When the colonial administration banned hunting, our way of was disrupted. Furthermore, having the Maasai as neighbours only made matters worse. 'The Maasai…were rich in livestock and used this to marry girls from our community. We did not have livestock to pay dowry, so, the Maasai girls were also out of our reach. Many of our men died without a family. Many of the Yaaku men became herders for the Maasai and as they acquired livestock, they gradually intermarried with the Maasai; they were assimilated into Maasai culture, abandoned their language and started speaking Maa (the Maasai language). We were forced to abandon our language, identity and culture by the Maasai.[368]

On Mount Elgon, the Ogiek community is also facing an identity crisis. They are forced to identify as Saboat, or be killed by the Saboat.[369] This is basically due to the dominance that the Saboat have over them and, hence, the belief that they (Saboat) should be the decision-makers.[370]

Indigenous peoples (Communities)

Locally, hunters and gatherers, pastoral communities and some fishing communities define themselves as 'minorities' or 'indigenous people'.[371] This is often based on their lifestyle, numerical strength or mode of social and economic set up.[372] These are communities who have retained and maintained a traditional lifestyle and livelihood based on:

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[368] Interview with Lobes Lokinyanyi on 18th February 2010.

[369] Interview with Daniel Kobei, the Executive Chairman of Ogiek Peoples Development Programme (OPDP).

[370] ibid.

[371] Lillian Aluanga, 'Banjul ruling offers ray of hope to the minorities' The Standard, 28th February 2010, at http://www.standardmedia.co.ke/specialreports/InsidePage.php?id=2000004406&cid=259&, accessed on 1st April 2010.

[372] ibid.

a. A hunter or gatherer economy; or
b. Pastoral persons and communities, whether they are nomadic; or a settled community which, because of its relative geographic isolation, has experienced only marginal participation in integrated social and economic life of the republic as a whole; or
c. Fisher communities being communities that have relied and continue to rely on their indigenous fishing knowledge and practices for subsistence.[373]

Examples of hunter-gatherers in Kenya include the Ogiek, the Sengwer, the Yiaku and the Boni.

Examples of pastoralists are the Maasai, the Pokot, the Turkana, the Rendille, the Samburu, the Somali and the Oromo, amongst others.

Some communities who constitute indigenous fisher communities in Kenya are the Nyala, the Luo[374], the Samia the Suba, the Bajuni, the Illchamus (also pastoralists) and the Elmollo. Indeed, in the Draft National Land Policy, the government of Kenya recognises that:

> Minority communities are culturally dependant on specific geographical habitats. Over the years, they have lost access to land and land based resources that are key to their livelihoods. This follows the gazette notice of these habitats as forests or national

[373] Minorities Reforms Consortium's definition in their memorandum to the Committee of Experts (CoE) on Constitutional Review. Minorities Reforms Consortium (MRC) is a network of pastoralists, indigenous fisher peoples, hunter gatherers, and ethnic, religious and linguistic minorities. It is hosted by the CEMIRIDE.

[374] The Luo in Kenya may not be a numerical minority but they identify themselves as indigenous peoples/communities under the general provisions of international law. Thus within the classification used by this group they qualify as minorities under the indigenous peoples grouping. http://www.standardmedia.co.ke/specialreports/InsidePage.php?id=2000004406&cid=259&, accessed on 1st April 2010.

reserves or their excision and allocation to individuals, who subsequently obtain titles to the land.[375]

A typical example of this development is the action by the government to gazette lands belonging to the Ogiek. The Kenyan government controls Ogiek ancestral lands through three Acts of parliament: the Government Lands Act (1970, revised 1986), the Forests Act (1957, revised 1964) and the Wildlife (Conservation and Management) Act (1977, revised 1985). Under these legislations, Ogiek ancestral lands are gazetted as government forests or national game parks/reserves. [376]

Hunter-Gatherers in Kenya-A Case Study

Background

In Kenya, the commonly known hunter-gatherer communities include the Sengwer, found in Marakwet, West Pokot and trans-Nzoia East Districts in the Northern Rift Valley and the Ogiek in the Mau mountain forest complex region and Mount Elgon. Others in this category are the Waata in the Tana River, Lamu, Kilifi and Malindi in the coastal region and the Boni (Aweer) in the coastal region of Lamu, bordering Somalia.

Hunter-gatherers inhabit forested areas. The forest is their theatre for cultural and religious activities.[377] They have been known throughout history to practise subsistence techniques of hunting and gathering wild food, with little or no agriculture.[378] They

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[375] Republic of Kenya, (2007), National Land Policy, Ministry of Lands, Government Printer, Nairobi.

[376] Ohenjo, N., (2003), "Kenya's Castaways: The Ogiek and National Development Processes", op cit.

[377] See 'Pastoralists and Hunter Gatherers Ethnic Minorities Network (PHGEMN) Memorandum' to the Constitution of Kenyan Review Commission (CKRC), 15th July 2002.

[378] See Hunter Gatherers, an Encyclopaedia article at http://uk.encarta.msn.com/encyclopedia_781531154/hunter-gatherers.html, accessed on 16th February 2010.

traditionally hunted such animals as antelope and wild pigs, but this is now generally prohibited. They also gathered (some still do) wild plants for food and medicine, and collect honey from beehives that they make from hollow logs and place in the high branches of the forest trees. Honey plays a central role; it is used for food and for brewing beer, as well as for trade with neighbouring peoples outside the forest.[379] Today, these activities rarely provide as much as 50 per cent of their diet, but typically remain highly valued and a central focus for group identity because of their unique relationship with the land and the environment is necessary for their survival as culturally distinct peoples.[380] The steady decline in hunter-gathering activities is due to a number of factors, including legislations prohibiting these activities. Hence, many of them are trying out other economic activities like cultivation and livestock keeping.[381]

Traditionally, hunter-gatherer communities generally had loose socio-political structures and institutions. The Ogiek, for instance, were organised according to clans. The clan, *Oret*, constituted by several local groups, is the land holding unit, and the most important unit socially. The Ogiek did not have centralised leadership institutions like chieftaincies or political councils.[382]

Ownership of land was by ridges that were allocated to particular clans; the land was used by members of these clans to hunt and mount beehives.[383] This is noticed amongst the Yiaku who had several clans like the Orondi, Sialo, Olodonyolossos and Lum.[384] Land, therefore, being communal or a common property of all the members of a particular community, it was thus accessible to all

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[379] Community FFDGs, July/August 2008.
[380] Op cit, PHGEMN Memorandum.
[381] ibid.
[382] Ohenjo N, Kenya's Castaways: The Ogiek and National Development Processes, op cit.
[383] Interview with Daniel Kobei, Executive Chairman, OPDP.
[384] FGDs with community, July 2008.

members of that particular community and no particular person could claim supreme rights over the others in the community.[385]

The beginning of political and economic marginalisation of the hunter-gatherers at the national level could be attributed to colonial policies that assimilated them into neighbouring communities.[386] For example, the Carter Land Commission of 1932 recommended that the Ogiek should be moved from their ancestral lands, which lands were needed by the colonialists, and resettled amongst other neighbouring communities to enable their assimilation.[387] Colonial capitalism hence led to the marginalisation of hunter-gatherer communities at the advantage of agricultural expansion.

As admits the government in the draft Kenya National Land Policy, the land question has manifested itself in many ways, such as fragmentation, breakdown in land administration, disparities in land ownership and poverty. Many hunter-gatherer communities have been removed from their lands due to conversion of their land to national parks and reserves, logging concessions by the government; trust lands and resettlement of squatters on their lands.[388] They have been brutally forced out of their livelihoods, thus occasioning poverty. For example, the Boni National Reserve was conceptualized primarily as a wildlife sanctuary for elephants in 1976. This reserve derives its name from the Boni hunter tribe who live in that region and it is home to Africa's rare elephants. Situated at the northernmost corner of the Kenyan coast, the reserve shares its border with Somalia.

Hunter-gatherers' statistics are not available in Kenya[389] because after independence, the successive governments perpetuated the

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[385] Op cit, PHGEMN memorandum to CKRC, 15th July 2002.

[386] Ohenjo N, Kenya's Castaways: The Ogiek and National Development Processes, op cit.

[387] ibid., p.1.

[388] ibid., p.2.

[389] See Representative Presentation 'The Forest Guardian' To the Indigenous

policy of non-recognition. This means that information on their population and wellbeing is guesswork. Up to now, the Kenyan government recognises 42 tribes, and categorises hunter-gatherers as 'others', or simply lumps them together with neighbouring peoples.[390] Even then, in a report to the UN, the government admits that while it only recognises 42 ethnic groups, there could be more, with recent studies indicating there could be up to more than 70 ethnic identities.[391] Some of these unrecognised communities could be hunter-gatherer communities. Implicit in this admission is that there could be communities whose rights and development aspirations are not adequately taken care of.

According to the 1989 census, the only hunter-gatherer community recognised is the Boni (Aweer). There is listing for Dorobo, whose population is put at 24,000. However, as already discussed, this term applied to many groups including the Yiaku, the Sengwer and the Ogiek. It is, therefore, difficult to discern who exactly the census targeted for compilation of the census figures. In essence, this means that the 1989 national census did not recognise many hunter-gatherer communities such as the Waata, the Ogiek, the Sengwer and the Yiaku. According to the Ogiek and the Sengwer, for instance, they were listed as either Maasai or Kalenjin, respectively.[392] In the 1999 census, the Sengwer refused to participate unless the government recognised them as a distinct identity.[393] The

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Minority Unit Fellowship Program-United Nation Office of High Commissioner for Human Rights. http://www.forestguardian.net/news/news-00-06.htm, accessed 19th February 2010.

[390] Cited at http://www.minorityrights.org/?lid=3956, accessed on 19th February 2010.

[391] See Kenya Government's report to the Economic and Social Council of the UN in September 2007, on the implementation of the International Covenant on Economic Social and Cultural Rights (ICESCR).

[392] FGDs with communities, July/August 2008.

[393] Interview with Moses Leleu Laima, a 70-year old Sengwer, in March 2010.

government then indicated that it had given community Code 81,[394] but during the census, members of the community were informed that the code did not exist.[395] Even though the population statistics for this census were not released based on tribal figures but rather administrative boundaries, it could be assumed that the Sengwer, as well as many other unrecognised ethnic communities were still lumped together with other communities, or characterised as 'others' as had been the practice.[396] Explaining this, a senior demographic officer with the ministry of planning and national development, indicated that this was due to the experience of the 1989 census. He stated that:

> It was discovered that the ethnic figures were hijacked, abused and used for the wrong purposes, mainly political propaganda. This is why you found that in some cases senior politicians claimed that the figures of their communities had been doctored. This raised unnecessary tensions.[397]

According to this officer, the figures on ethnicity were collected but not processed for the reasons stated.[398] This means that while this denies minority and indigenous groups data on which to base their advocacy, the government on the other hand lacks crucial data with which to plan the country's socio-cultural and economic development.[399]

This means that available population statistics on these communities are estimates. The available estimates indicate that

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[394] In Kenya, communities are identified by codes.

[395] Interview with Moses Leleu Laima, a op cit.

[396] In the Population and Housing Census of 1999, the government did not provide information on the ethnic breakdown of the peoples of Kenya. Instead it opted to provide information disaggregated by age, districts and gender. Since it is not possible to find a district that is purely occupied by one specific ethnic group, it is not possible to know the exact numbers of the ethnic communities since that time. See Makoloo, M.O., (2005), op cit, p. 11.

[397] Makoloo, M.O., ibid., pp.11- 13.

[398] ibid.

[399] ibid.

the Ogiek number between 20,000[400] and 37,000[401], the Sengwer, between 30,000[402] and 60,000[403], the Aweer (Dahalo-Boni), between 3,500[404] and 5,000[405], the Yiaku between 5000 and 8,000[406] and the Waata between 5,000[407] and 10,000[408]. The total estimate of the hunter-gatherers population in Kenya is about 110,000.[409] These figures need validation, something that can only be done through a census that will disaggregate data according to the various communities in the country. According to Mzee Jarso, the Waata number a modest 600 people in Tana River.[410] This gives the indication that the exact population of these marginalised groups is not known. Since many Waata have not gone to school they cannot help in collating and keeping crucial information such as the population size.

Socio-economic impacts of violations of the rights of hunter-gatherers

Poverty

The majority of Kenyans are wallowing in poverty owing to the inequitable access to, and utilisation of land and natural resources.[411] This especially affects indigenous communities, like the hunter

[400] Interview with Daniel Kobei, Executive Director, OPDP, in February 2010.

[401] For the estimates see http://www.minorityrights.org/?lid=3956, accessed on 28th February 2010.

[402] Figures given by Moses Laima, a 70 year Sengwer old man, in March 2010 interview, who says that this is an approximation.

[403] http://www.minorityrights.org/?lid=3956.

[404] Interview with the community members.

[405] Kenya Population Census of 1989. Table 2 : Population by sex and single years of age.

[406] FGDs with the community, July/August 2008.

[407] Cited at: http://www.minorityrights.org/?lid=3956, accessed 1st April 2010.

[408] Interview with community members, in January/February 2010.

[409] For the estimates see http://www.minorityrights.org/?lid=3956Accessed 1st April 2010.

[410] Phone interview with Mzee Jarso, a Waata elder in March 2010.

[411] Kenya Land Alliance 2002 Annual Report at cover page.

gatherers, who are natural-resources-dependant. This is because rights over land and other natural resources play a significant role in the distribution of wealth and poverty. According to the UN Committee on Economic, Social and Cultural Rights, poverty arises when people have no access to resources because of who they are, what they believe or where they live.

The Kenyan government's emphasis has been cultivation agriculture. However, it is not only agriculture that matters; other resources-including water, trees, rangelands, wetlands and water bodies-play critical roles as major or supplemental sources of livelihood. Many of these resources are communally owned and access to them is a key source of food, income and productive resources. For example, in India, community forests contribute up to 29 per cent of the income of poorer households, accounting for US$5 billion a year.[412] The commons (resources collectively owned or shared between or among populations) not only serves as a vital source of livelihood, especially for poorer and marginalised people, but also plays an important role as a fallback option for people to tide them over in difficult times.[413] This is not the same for hunter-gatherer communities, who do not benefit from forest resources. For example while tourism is one of the biggest foreign exchange earners, there is no evidence available, from this study, that members of the hunter-gatherer communities are either directly or indirectly in the tourism industry, or that any proceeds from tourism are directly or indirectly used to develop infrastructures in their areas, including hospitals, schools, tertiary institutions or roads.[414]

The net effect has been the violent disruption of their livelihoods, leading to poverty and deprivation. Hunter gatherers have thus

[412] See Property Rights for Poverty Reduction, 2020 Focus Brief on the World's Poor and Hungry People, October 2007, by Ruth Meinzen-Dick, Patricia Kameri-Mbote and Helen Markelova.

[413] ibid.

[414] Community interviews

suffered poverty and underdevelopment due to dispossession of land and in the process violations of their civil, political and socio-economic rights. The ACHPR ArticleS 20, 21 and 22), states that all peoples have the right to existence, the right to their natural resources and property and the right to their economic, social and cultural development. With their land gradually shrinking, hunter-gatherers in Kenya are vulnerable and their future existence is threatened and uncertain. According to the Ogiek, for instance, less than seven out of every ten households cannot afford a decent meal a day.[415]

Today, a number of hunter-gatherers have taken up farming, livestock production and wage labour; they also participate in entrepreneurial activities like beekeeping and manufacturing.[416] This however is with poor results as many members of the communities testify;[417] they do not have the skills and even resources to take off. So, in many cases, these initiatives are a failure; forcing a majority of them to rely on food handouts. For example, while the government tried donating sorghum seeds to the Boni for cultivation, they instead used them for food and ended up with stomach problems.[418] Many of the Ogiek, on the other hand, have been forced to try out anything including cultivation, but they have always failed. Apart from lack of skills, they do not get the right seeds and equipment.[419] This has lead to very high levels of poverty.

Education

Illiteracy levels amongst these communities are also very high-indicative of the poverty levels as well as government neglect. Primary schools in Ogiek areas are scattered (in many cases more

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[415] Phone interview with Daniel Kobei of the OPDP, on 15th January 2010.

[416] See Lee, B.R. and Hitchcock, K.R., African Hunter-Gatherers: Survival, History, and the Politics of Identity. African Study Monographs, Suppl.26, pp.257-280, March 2001.

[417] Op cit note 410.

[418] Ngumbao Kithi-Standard report.

[419] *Op cit* Note 410.

than 20 kilometres apart) and there is no single secondary school specifically serving Ogiek children. Those who pass their primary school examinations have to go to boarding schools far away from home. Drop-out rates are very high, especially at secondary school level.[420] This has resulted in illiteracy levels of more than 80 per cent.[421] Amongst the Waata in Tana River district, there is only one pre-primary school, which was built by a Muslim charity. The school, which depends on a feeding programme from the government and Muslim charities, does not have qualified teachers, and the children are mainly taught the Koran. In the whole community, there are only three people who have gone up to Form Four level-none of them being a woman.

Amongst the Boni, there are five primary schools; only two of them are operating but did not open in 2008.[422] Three others, which were built two years ago, have never opened and have been converted into stores for beehives. Most of the people have never gone past standard eight. The first councillor from the community, Mr Yusuf Kitete, a standard seven drop-out, is considered highly educated[423]. His election with the Ford Asili political party ticket is "a great achievement" among his people, who say they have got someone to whom they can present problems. So far, they do not have any secondary school. This is coupled with the fact that they do not have teachers.[424] The Boni have suffered the predicament of assimilation into other communities, who have provided teachers for them. But they have failed to get on well, hence requesting for

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[420] See Ohenjo N, Kenya's Castaways: The Ogiek and National Development Processes, Minority Rights Group International and Centre for Minority Rights Development, London 2003 p.3.

[421] Interview with Daniel Kobei, Executive Chairman, OPDP, August 2008.

[422] E-mail interview with Ngumbao Kithi, East African Standard journalist based in Mombasa, July 2008.

[423] Phone interview with Mr Ngumbao.

[424] Op cit 421.

teachers from their own community.[425] Among the Waata, there are standard 8 drop-outs, who cannot join form one for they lack the resources to fund education.[426]

Loss of biodiversity

The hunter-gatherers have been known to live off their ecosystems. Most of their food, clothing, shelter, their medicines, and their hunting weapons came from the productivity of their surroundings-plants and animals on which they completely depended for a living.[427] They did not need a pharmacy during illness as they depended on herbs that would treat the various ailments.[428] For this reason, they strictly conserved the environment. Children were taught the names and importance of the various species in the environment, generating the need to conserve them.[429]

However, for example, the Ogiek have been locked out of their "pharmacies" (the forests), since their habitats have been declared national forests or reserves with restricted access. This may be changing now with the development of new land policy and possibly the enactment of a new constitution that seek to redress this, but the current situation is that with poverty levels high, they cannot easily access health facilities, which are in any case inadequate. (There is only one doctor for the 6,000 people living in Mau.) Health standards have plummeted. According to the members of the community, their nutritional standards have fallen since they do not access nutritious meals anymore from the forests, and their crops fail perennially. Hunger is a common phenomenon; affecting their immunity systems and when they fall sick, they can neither easily access the traditional medicine or modern hospitals. Kaliasoi Chesinet, an Ogiek elder from Tinet in Nakuru district explains:

[425] Phone interview with Mr Ngumbao.
[426] Phone interview with Mzee Jarso, community elder.
[427] Community interviews.
[428] Community interviews
[429] Community interviews.

'The forest … is our hospital, where the herbs are.' The combination of poverty and inability to access their traditional medicine has resulted in low life expectancy, for the Ogiek people, of about 46 years. Five out of ten children die before the age of 5.[430] This was confirmed during interviews with the community for purposes of this study.[431]

The importance of biodiversity is underscored by Agenda 21, a comprehensive plan of action of the UN related to sustainable development, to be taken globally, nationally and locally by organizations of the UN, governments, and major groups in every area in which humans directly affect the environment. It was an outcome of the UN Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil, in 1992. In its Chapter 15, it says: "Our planet's essential goods and services depend on the variety and variability of genes, species, populations and ecosystems. Yet, land alienation, evictions and dispossession for arguably conservation and development, as well as the non-recognition of their customary rights to land and natural resources ownership and exploitation has also led to the undermining of the indigenous knowledge systems that have sustained them for centuries. The current decline in biodiversity is largely the result of human activity and represents a serious threat to human development.[432]

Today, indigenous peoples have been recognised by the international community as conservationists.[433] The World Summit on Sustainable Development (2002) reaffirmed the vital role of indigenous peoples in ensuring sustainable development while the United Nations Development Programme (UNDP) Human

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[430] Ohenjo N, Kenya's Castaways, op cit.

[431] Interview with Ogiek community members, on 26th January 2010.

[432] See Convention on Biological Diversity (CBD) signed by the Community and all the Member States at the UN Conference on Environment and Development, Rio de Janeiro, 3- 14 June 1992.

[433] Ohenjo N, Kenya's Castaways, op cit.

Development Report of 2000 reaffirms the link between cultural diversity and biological diversity. 'These communities are the repositories of vast accumulations of traditional knowledge… Their disappearance is a loss for the larger society which could learn a great deal from their traditional skills in sustainably managing very complex ecological systems', noted the 1987 report, Our Common Future, by the UN Committee on Environment and Development (the Brundtland Report).[434] By allowing unhindered logging and excision of forests, the Kenyan government transgresses the principles of sustainable development.[435]

Secondly, hunter gatherers are conservationists.[436] Because they depended on biodiversity for their sustenance, the hunter-gatherers knew better than to destroy their environment. Indigenous knowledge about the environment is learnt from the interaction of human beings and their environment, to the extent that expelling the indigenous communities, like the hunter-gatherers from their natural habitats breaks the cycle of intergenerational exchange of this knowledge.[437]

The process of forest exploitation, not only affects the hunter gatherer communities, it also spells disaster for Kenya as a whole. Kenya requires 10 per cent forest cover for regular water supply. Today it has only 1.7 per cent.[438] Kenya largely depends on waters

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[434] World Commission on Environment and Development, Our Common Future, Oxford, Oxford University Press, 1987; www.doc.mmu.ac.uk/aric/eae/Sustainability/Older/Brundtland_Report.html.

[435] Ohenjo N, Kenya's Castaways, op cit, p. 4.

[436] The World Summit on Sustainable Development held in Johannesburg South Africa in 2002 recognised indigenous peoples as important in achieving sustainable development. See also UNDP Human Development Report 2000.

[437] Ohenjo N, Kenya's Castaways., op cit.

[438] Geller, S., McConnell, R., and John Wanyiri, J., Linking National Forest Programmes and Poverty Reduction Strategies-Kenya, Food and Agriculture Organisation (FAO), November 2007. Available at http://www.fao.org/forestry/media/13645/2/0, accessed 1st April 2010.

that flow from a handful of wooded catchment areas -, the Mau and Mt Elgon forested areas, accounting for over 50 per cent of these waters,[439] with the other areas inhabited by the other hunter-gatherer communities accounting for a significant proportion.

Minorities' and Indigenous Peoples' Rights

Minorities' and indigenous peoples' rights have been acknowledged through international treaties as distinct rights that are part of these groups' human rights. There are many examples of human rights standards that address the protection and promotion of minority rights. Their equal participation in the public sphere needs to be supported.[440]

The ICCPR provides:

> In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.[441]

The 1992 UN Declaration on Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM)[442] in its Article 2(2) states that persons belonging to minorities have the right to participate effectively, *inter alia*, in economic and public life. Article 2(3) addresses the right of persons belonging to minorities to

[439] The Daily Nation quoted UN consultants as saying that the forest excisions will negatively impact on the Aberdare circuit and the Mau Hills catchment areas. They warned that, ultimately, communities in Nyanza Province and the planned Sondu-Miriu hydroelectric power project would be affected. The targeted forests were Mau complex, Nakuru, Nabkoi, Mt Kenya, Marmanet, North Tinderet, Londiani, South Nandi, Molo and Kapsabet, a total of 167,000 ha (see Daily Nation, 10 March 2001, www.nationaudio.com).

[440] Hughes, A., (2005), PRSPS, "Minorities and Indigenous Peoples"-An Issues Paper, Minorities Rights Group, London.

[441] Article 27, ICCPR, United Nations, Washington.

[442] UN Declaration on Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM), (1992), United Nations, Washington.

participate effectively in decisions that will directly affect them.[443] Finally, Article 5(1) emphasises the need for their participation in decision making by providing that 'national policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities'.[444]

Another important instrument on protection of minority and indigenous peoples' rights is the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).[445] Article 2.2 allows states to take special measures in the 'social, economic, cultural and other fields' to ensure that marginalised groups can enjoy their human rights fully and equally. Such special measures can and should be reflected in decision-making processes. [446]

As already discussed, indigenous peoples also share common ethnic, religious, linguistic or cultural characteristics. However, a key difference is normally their claims to ancestral lands and natural resources therein. These specific claims are recognised by various international instruments, like Article 14 of the ILO Convention 169 on indigenous and tribal peoples which provides that:

> Measures shall be taken in appropriate cases to safeguard the right of [indigenous] peoples to use lands not exclusively occupied by them, but to which they have traditional access for their subsistence and traditional activities'.[447]

Article 15 recognises the rights of indigenous peoples to have such land specially safeguarded, including through the right 'to participate in the use, management and conservation of these resources'[448]. Article 6 insists that governments, when applying the provisions of the Convention, shall: consult the peoples concerned, through

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[443] ibid.
[444] ibid.
[445] ICERD, United Nations, Washington.
[446] ibid.
[447] ILO Convention 169 (1969), United Nations, Washington.
[448] ibid.

appropriate procedures …establish means by which these peoples can freely participate … at all levels of decision-making [in all bodies] responsible for policies and programmes which concern them'.[449]

Article 7 refers specifically to the rights of indigenous peoples in the process of development, stating in Article 7(1) that indigenous peoples shall: 'have the right to decide their own priorities for development … and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly'.[450]

While Article 7 does not give the right to veto development plans by indigenous peoples, it provides for actual consultation in which [indigenous and tribal] … peoples have a right to express their point of view and a right to influence the decision. This means that governments have to supply the enabling environment and conditions to permit indigenous and tribal peoples to make a meaningful contribution.

Apart from ILO Convention No. 169, there are universal laws and mechanisms that apply equally to indigenous peoples. Among these is the ICERD, which has extensively considered state obligations with regard to minorities and indigenous peoples.[451] The oversight body for ICERD, the Committee on the Elimination of All Forms of Discrimination (CERD), has produced a number of general recommendations to aid both states and indigenous peoples to interpret the ICERD. For example, the general recommendation on the rights of indigenous peoples recommends that states:

> allow for sustainable economic and social development compatible with their [indigenous peoples'] cultural characteristics … [ensuring] equal rights in respect of effective participation in public life and that

[449] ibid.
[450] ibid.
[451] Hughes, A., (2005), op cit.

> no decisions directly relating to their rights and interests are taken without their informed consent … [recognizing and protecting] the rights of indigenous peoples to own, develop, control and use their communally owned lands and territories and resources traditionally owned or otherwise inhabited or used without their free and informed consent.[452]

In the preamble to the UN Declaration on the Rights of Indigenous Peoples, the UN General Assembly noted the concern of indigenous peoples' suffering from historic injustices as a result of, inter alia, their colonisation and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.[453] In Article 32 (1), the Declaration provides that Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.[454] Furthermore, in Article 18, it provides that indigenous peoples have the right to participate in decision-making in matters that would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.[455]

In Africa, the most visible standard for protection of the rights of minorities is the ACHPR.[456] The Charter contains group rights attributed to 'peoples', and although the African Commission has not yet defined the term 'peoples' contained in the African Charter, a glimpse at the jurisprudence of it indicates that the term 'peoples' is interpreted to mean communities within a nation-state. Similarly,

[452] ibid.

[453] United Nations, Declaration on the Rights of Indigenous Peoples, UN, Washington.

[454] ibid.

[455] ibid.

[456] African Union, African Charter on Human and Peoples Rights, Africa Union, Addis Ababa.

while the Charter makes no specific reference to minorities, the Commission[457] has clearly read it into the Charter. The minority rights approach is also reflected in the reporting guidelines for Article 19 which require that states give information on 'the constitutional and statutory framework which seeks to protect the different sections of the national community', and refer to 'Precautions taken to proscribe any tendencies of some people dominating another referred by the Article'.[458] In 1993, during the examination of the state report of Ghana, the notion of 'peoples' in Article 19, was interpreted by the Ambassador of Ghana as referring to the domination of one ethnic group by another, and not simply as the domination of one state over another. Article 19 states that 'All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another'.[459]

Moreover, the African Commission was confronted by allegations of discriminatory practices against certain sectors of the Mauritanian population, and expressed the view that:

> At the heart of the abuses alleged in the different communications is the question of the domination of one section of the population by another. The resultant discrimination against Black Mauritanians is, according to the complainants, the result of a negation of the fundamental principle of the equality of peoples as stipulated in the African Charter and constitutes a violation of its art. 19.460

In Kenya, the recognition of minority rights is quite new, dating back to only 2005. If it had been enacted, the draft National Constitution of Kenya, 2000, which had been agreed on by the National Constitutional Conference, could have been the first legal step towards recognition and protection of minority rights.

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[457] Slimane, S., (2003), "Recognizing Minorities in Africa," Minority Rights Group, London.

[458] ibid.

[459] ibid.

[460] ibid.

Currently, the international policy, especially in the area of eradicating poverty, recognises the right to be informed and participation of indigenous peoples and local communities in development and conservation initiatives. Generally, concern for social equity in development and/or conservation initiatives ranges from human rights to sustainable use of natural resources and participation and gender equity.

Kenya is a signatory to a number of other international human rights standards that protect the rights of indigenous peoples, the hunter gatherers included. For example, Kenya has ratified the ICESCR, the ICCPR, the ICERD, and the Convention on Biological Diversity (CBD). Others are African Convention on Conservation of Nature and Natural Resources, the United Nations Framework Convention on Climate Change, the Ramsar Convention, and the Convention for the Protection of World Cultural and Natural Heritage.[461]

Article 15 (a) of the World Conference[462] Against Racism's Programme of Action urges states to adopt or continue to apply, in concert with indigenous peoples (read hunter-gatherers), constitutional, administrative, legislative, judicial and all necessary measures to promote, protect and ensure the enjoyment by indigenous peoples of their rights, as well as to guarantee them the exercise of their human rights and fundamental freedoms on the basis of equality, non-discrimination and full and free participation in all areas of society, in particular, on matters affecting or concerning their interests.

While Kenya has not ratified the ILO Convention 169 concerning indigenous and tribal peoples in independent countries, its provisions are amplified by other international human rights

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[461] Kenya's Ecosystems on the Edge. http://forests.org/archived_site/today/recent/2002/knogbadl.htm

[462] Kenya participated in this conference and adopted the programme and plan of action.

instruments that Kenya is party to, like the ICERD, CBD, the World Conference Programme of Action, and the World Summit for Sustainable Development's Programme of Action. All these standards have specific provisions on indigenous peoples, who include hunter-gatherers, provisions that are largely in line with the provisions in ILO Convention 169. The Convention sets an identification criteria for indigenous peoples and recognises their rights to have their social, cultural, religious and spiritual values and practices recognised and protected (Article 5) and the right to define their development priorities (Article 7). It affirms the indigenous peoples' rights to lands traditionally occupied by them. Article 15 further provides that indigenous peoples should participate in the use, management and conservation of renewable and non-renewable natural resources.

Article 8 (j) of the CBD calls for State Parties to:

> respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for conservation and sustainable use of biological diversity," and that they "promote wider application with the approval and involvement of holders of such knowledge and practices," and that they "encourage the equitable sharing of the benefits arising from utilisation of such knowledge, innovations and practices.

In its final form, the Kenyan draft constitution that became popularly known as the Bomas Draft was responsive to the issues of concern to minorities and indigenous peoples in Kenya. Article 43 addressed the rights of minorities and indigenous peoples and redressed their marginalisation.[463] A year after the Bomas Draft was agreed on by most Kenyans through the National Constitutional Conference, a new draft in which several provisions, like those on minorities were

[463] Bomas Draft cited at http://www.justice.go.ke/images/stories/bomas_draft.pdf), accessed 7th September, 2009.

deleted, was presented to Kenyans for a referendum; it was rejected in a process that divided the country across ethnic lines.

Since 2008, nevertheless, minorities and indigenous peoples re-engaged in the revived constitution reforms process spearheaded by the MRC and ensured that some provisions of the Bomas Draft 2004 were retained in the current constitution of Kenya. Indeed, the clause recognising minority rights found its way back into the current revised harmonised constitution through Article 56 (see Box 5).

Box 5: Article 56 of the Constitution of Kenya

Minorities and Marginalized Groups

56. The State shall put in place affirmative action programmes designed to ensure minorities and marginalised groups-

(a) Participate and are represented in governance and other spheres of life;

(b) Are provided opportunities in educational and economic fields;

(c) Are provided special opportunities for access to employment;

(d) Develop their cultural values, languages and practices; and

(e) Have reasonable access to water, health services and infrastructure;

Constitution of Kenya promulgated on 27th August 2010

In jurisprudence, the precedent setting argument was that of the Illchamus against the Kenyan government, alleging that their right to representation had been infringed on. Their case was that since 1963, no person from their community had been elected MP. They further feared that considering the nature of boundaries and voting patterns in the constituency, they would never be represented in the next four decades. The IIlchamus are found in Baringo Central constituency whose larger population is Tugen and Pokot communities. In their plaint, they sought to have the court declare that their rights had been violated and that one of them should be nominated to parliament. The High Court judges, Emukule and Nyamu, in allowing the application, held that:

> The Illchamus were a unique, and homogenous and minority group who were culturally distinct, and among the indigenous peoples in Kenya. Minorities such as the Illchamus had a right to influence the formulation and implementation of public policy, and to be represented by people belonging to the same socio-cultural and economic context as themselves.[464]

This was a landmark ruling, which has been celebrated amongst minorities in Kenya. It is especially so, given that various previous attempts by communities like the Ogiek, Endorois and Maasai had failed to convince various courts to recognise minorities and protect their rights. It is important to note that the judgement relied on various international human rights standards, like the ILO Convention 169.

Participation of Minorities in Decision Making Processes in Kenya

A brief history of representation and participation in decision-making in Kenya

Political governance in any country is the single most determinant of development; it is at the political level that development policies are formulated and implemented. Today, in governance and development discourse, it is recognised that in order to be sustainable and contribute to stability, strategies for achieving poverty reduction and good governance need to include a special focus on the targeted people, and must enable their active participation.

> Minorities have the right to influence the formation and implementation of public policy, and to be represented by people belonging to the same social, cultural and economic context as themselves. For a political system to be truly democratic, it has to allow minorities a voice of their own, to articulate their distinct

[464] *Lemeiguran & 3 Others* v. *Attorney-General & 2 Others* (2008) 3 KLR (EP) 325.

> concerns and seek redress, and lay the basis for a deliberative democracy.[465]

This situation is aptly articulated by Ekitela Lokaale in an Opinion article when in the Daily Nation of 23 December 2006, he says:

> As the year comes to an end and 2007 beckons, the issue topmost in the minds of Kenyans is elections. And the common talk is coalition. Thus, statements keep coming like, 'no single party can go it alone' or the 'election will be a two-horse race' or 'we are the third force.'… One unaddressed question is: Who are forming these coalitions and what does this portend for the less dominant groups? More specifically, what is in for this for smaller ethnic, religious or linguistic groups? It is clear that the personalities behind the coalitions are driven by their ethnic numerical strength, whether ODM-K, NARC-Kenya or the Third Force-Kenya. In other words, critical membership of all the emerging coalitions depends invariably on how much of one's tribal or regional bloc one can donate. The unfolding coalition politics will worsen a problem that has continued unaddressed since independence: relegating or even ignoring altogether the voices of ethnic, religious and linguistic minorities. Indeed, the coalitions have no place for the Ogiek, Endorois, the Ba'hai faithful or even the Pokot or Turkana pastoralists. Perhaps, that is why we do not see any of their number dancing with the others on any of those podiums during political rallies. They will evolve to perpetuate what one author called the "dictatorship of the articulate"! The danger in such a dictatorship is that the coalitions will entrench the hegemony of dominant ethnic, religious and linguistic groups whose cries are loud enough to be heard over the faint murmurs of the minorities.[466]

Since independence in 1963, Kenya largely operated under a one-party parliamentary system, until 1992, when the country held its

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[465] Ghai, Y., Public Participation and Minorities, London, MRG, 2003, p.5.

[466] Ekitela Lokaale(2006), The Daily Nation, 23 December 2006, Nation Media, Nairobi.

first multi-party elections. Hitherto, under the one-party structure, leaders were generally forced on the electorate, depending on how they were placed within the corridors of power. This governance system was bequeathed to the Kenyan leaders by the colonialists. The exercise of political power and hence decision-making during the colonial times was evidently to serve the socio-economic and political interests of the settler community-the basis of colonial authority was exploitation of natural resources for the benefit of the colonialists. During this period, the Africans were shut out of politics. This informed the "warped investment...structure...and a highly discriminatory and unequal socio-economic system"[467] The earliest semblance of participation in decision making by Africans at the time was the creation of the Local Native Councils in 1924. However, these were not structures to enable effective and real articulation of the issues of concern to the Africans, but rather "a creation of the colonial state to 'control' African politics within 'responsible' limits by allowing them to 'harmlessly let of their steam".[468]

The independence Constitution of Kenya, thanks to the authoritarian colonial regime that the Africans had experienced, sought to ensure participation in governance by all. It was a federal constitution that devolved power to the grassroots to ensure the citizenry ably participated in governance. As Masime and Kibara note:

> It provided for the decentralisation and devolution of power. The constitution ... distributed power between (and within) the three arms of government in order to provide checks and balances. In terms of location, it distributed power between central and federal

[467] Masime K., Kibara G (2003), The State of Constitutionalism in Kenya 2003 in Law Society of Kenya (LSK) "Annual Human Rights Report 2003", Law Society of Kenya, Nairobi.

[468] Frank K. Matanga (2003), "Kenya: A Chequered Past" in The East African Journal of Human Rights and Democracy, East African Human Rights Institute, Nairobi.

> governments ... to facilitate citizen participation in governance at the local level.[469]

However, this was not to be. Immediately after independence, the then political leadership began tinkering with the constitution; power was centralised in the presidency, placing the premium on "state control" or access to state patronage as a means of capital accumulation. The immediate result was that ethnic associations became the basis of organising politics. Within this reality, the presidency, with control over resources was able to control politicians across the country. Under the guise of Africanisation, Kenyatta, the then president, was able to generously reward the narrow elite, mostly his Kikuyu tribesmen with positions in the civil service and parastatals in order to secure a support base. Concerning development, with a hold to resources, the government reiterated the colonial position of investing public resources only in areas where they would earn the highest return. Consequently, regional inequalities between Nairobi, the former 'White Highlands', coastal, northeast and western provinces are still evident today.

When it comes to taxation, for instance, central province is third from the bottom, just managing to stay ahead of Eastern and North Eastern provinces in terms of contribution. The province contributes just about a third of what Nyanza contributes to Kenya Revenue Authority (KRA). Setting Nairobi apart, more taxes are collected from Nyanza, Rift Valley, Western and Coast provinces in that order. Yet other economic, social and demographic indices tell a different story altogether. Considering that Central Province has the lowest poverty index in the country, according to UNDP figures, standing at 35.3 per cent, Nyanza, for paying the highest tax outside Nairobi, is the second poorest province, with an index of 70.9 per cent, just about two points ahead of impoverished north eastern at 73.1 per cent. The rest of the indices are Coastal at 69.9 per cent, Western

[469] Masime K., Kibara G (2003), op cit.

at 66.1 per cent, Eastern at 65.9 per cent and Rift Valley at 56.4 per cent.[470]

This picture of skewed development is not to say that all these areas have never been represented at policy decision-making levels; that their issues and concerns are never articulated by their representatives hence decisions go against them. It is a known fact that many communities who identify as minorities today have been represented in policy and decision-making dialogue in one way or another. It is however, arguable if this representation has been effective, for those that have been represented. In Kenya, for a long time, leaders were elected or appointed based on cronyism or sycophancy. During the Kenyatta era, state patronage became the basis of popular support[471]. This obviously affected the level and quality of participation, especially for minorities.

> The regime of Moi used several approaches in attempts to reign in forces that have been opposed to his government.... Among these approaches (were)... deregistration or proscription; removal of radical leaders from position of leadership; political appropriation and co-option; state propaganda to defame.... [472]

[470] See Society for International Development Report: Pulling Apart: Facts and Figures on Inequality in Kenya 2004.
[471] ibid.
[472] Frank K. Matanga (2003), op cit.

Box 6: Pastoralist Participation in Kenya's PRSP

The process

In late 2000, pastoralist groups from different countries in East Africa came together in Kenya for a *shirka* (gathering), along with development workers and agencies working in pastoralist areas. Pastoralists learned at the *shirka* that PRSPs are important instruments for getting development agendas, and that the Kenya document did not include their perceptions, needs or concerns.

Kenyan pastoralists and development workers formed a group aimed at including pastoralist issues in Kenya's final PRSP. The group had support from DfID and the Participation Group at the Institute of Development Studies, UK. This gave birth to the Pastoral Thematic Group (PTG). The PTG first had to submit a document to the PRSP secretariat in Nairobi explaining why Kenya should take care of its pastoralist population; the document was accepted. The PTG was enlarged to include the Permanent Secretary in charge of Ministry of Livestock and Agricultural Development, and the Economic Secretary.

The outcome

Although the World Bank approved the Kenyan PRSP, this did not elicit or trigger any flow of funding. This was due to difficult relations between donors and the government, something that was beyond the PTG's control. The PTG does not despair and continues with a monitoring plan to push for the implementation phase of promises made in the document. As a result of these efforts, the government has included some pastoralist priorities in the budget; but much was left out.

Adapted from Ohenjo, N., *Minorities' and indigenous peoples' experience in Kenya's PRS process* in Hughes, A.,(2005) PRSPS, Minorities and Indigenous Peoples-An Issues Paper, London, MRG, 2005, pp. 40-42.

With this kind of State patronage that also permeated the Community Based Organisations (CBOs) in the rural areas, it is arguable that

the minority communities were not able to get a proper chance at participation in decision-making processes. For example, during the development of the PRSP in the country, consensus-building and participatory techniques were cosmetic and tailored to create a picture of the government reaching a national consensus.

Those who participated in consultations at grassroots level found themselves surrounded by government officials from the provincial administration. Thus, they became mere spectators, as only government employees gave their views, while the 'community representatives' remained silent for fear of saying anything that could be construed to be anti-establishment. The members of the provincial administration represented the power of the State, and they would not tolerate anything that they considered a threat to the government-in particular, the empowerment of the poor.... Fear was thus instilled in many people, effectively ensuring that there was little or no opposition or criticism to the government-initiated processes.[473]

The pastoralists, however, had a bit of different experience in the PRSP process (see Box 6). Through lobbying, they allowed a Pastoralist Thematic Group (PTG), made up of representatives from various pastoralist communities to represent their concerns. However, even with this participation, it was not surprising that no more than a paragraph from the thematic paper that they submitted, was incorporated in the final PRSP. The way the pastoralist's contribution to the PRSP was treated lends credence to the argument that the government was not interested in the effective participation of all stakeholders, especially the poor. It only needed something that would pass as 'participation', to attract donor money; the final PRSP did not appreciate pastoralism as a culture-a way of life, more

[473] Ohenjo, N., Hughes, A., (2005), Minorities' and indigenous peoples' experience in Kenya's PRS process in PRSPS, MINORITIES AND INDIGENOUS PEOPLES-AN ISSUES PAPER, Minority Rights Group, London.

than being just a production system. Furthermore, no other poor minority or indigenous community was focused on as a Thematic Group to ensure that such a community's issues were adequately covered in the PRSP. Indeed, observed Peter Musakhi, from the Nyala, an indigenous fisher community around Lake Victoria:

"I actually came to learn of this process in the media long after it was completed".[474]

There are a number of lessons, though, from the Kenyan pastoralist experience in participating in the PRSP process. The influence of the *shirka* on pastoralist groups demonstrates the importance of sharing groups and networks, as well as common interest networks and alliances. Another key lesson is that many minority communities lack the requisite capacities, financial and technical and hence need this support. To the pastoralists, this is demonstrated through the support from the participation group at the Institute of Development Studies (IDS) and from Department of International Development (DfID); this enabled them, through the PTG to participate in the various activities of the PRSP process, which culminated in the development of their own document.

Government officials' participation at the *shirka* also facilitated the government's acceptance of the PTG and its participation in the PRSP process. This indicates that it is important for government to buy into the idea of minorities' participation and representation in key decision-making processes that are of direct relevance to them.

Important though, the incorporation of pastoralists into the PRSP process formed a strong precedent for participation for other minorities and indigenous peoples in Kenya. This experience, as will be seen later, was built on by many minorities in ensuring their participation in a number of processes, including the constitution review process, the drafting of national land policy, and the arid and semi-arid land policy.

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[474] ibid.

Minorities, recognition and participation: The Kenyan experience

In Kenya, before the new constitution was enacted on 27th August 2010, minorities were not legally recognised and their rights were not protected. This meant that over the years, there was no attempt to include minorities, as a special constituency, in decision-making processes. Most of the government efforts to involve communities stopped at general participation efforts at the grassroots, through initiatives like the District Focus for Rural Development (DFRD), and Community Development Funds (CDF) through the Constituencies Development Fund Act, 2003. There are also a number of other developed structures, which have evolved over time. Whether indeed, these initiatives have been developed to ensure genuine involvement of the people in decision-making and development, as opposed to political expediency, is arguable. In most of the government efforts, political or not, minorities have not had special representation to ventilate their issues and concerns. Recognition of minorities is important since amongst other things, it enables the minority communities obtain equality with all other groups, including in relation to participation in political life and decision-making processes as well as in development.

In theory, the Constitution of the Republic of Kenya, 1963 (Amended 2008), Section 82 guarantees equal rights for everyone and prohibits discrimination on the basis of tribe. However, minorities without explicit recognition have been unable to compete. It is this hoped that the recognition of minorities and marginalised communities in the new constitution will, therefore, enable affirmative action including special representation mechanisms in parliament and local authorities and other key decision-making structures and institutions, locally and nationally. This is especially true of minority communities who do not have the numbers, or are dispersed in different administrative units. Indeed, Article

100 of the new Constitution of Kenya, 2010, requires parliament to enact legislation to promote representation in parliament of amongst others, ethnic and other minorities and marginalised communities.

Minorities participation in national policy processes in Kenya

In spite of the non-recognition of minorities legally, there have, however, been some positive developments in the recent past, at the national policy-making processes, where there has been a deliberate effort to involve minorities. In fact, it could well be argued that Kenya now recognises the existence of minorities. In August 2009, ahead of the census, planning minister, Wycliffe Oparanya, directed that all minority tribes be given a separate code in the national census.[475] This was after a threat by some of the minority communities to boycott the census if they were not recognised as distinct ethnic communities. They had complained that since independence, they had been lumped together with other tribes. The Terik, for example, were lumped together with the Nandi, something they detested; after protesting they were given their own tribal code. The same case applies to the Endorois who for a long time have been grouped together with the Tugen.

It is noteworthy that the quest for minorities' recognition was upped with the constitutional review process, that begun in 2002. With the coming in of a new government, there was heightened hope that minorities would be recognised and their rights protected in the anticipated constitutional dispensation. In 2003, minority rights started finding their way into political pronouncements. This started with the then newly elected president, Mwai Kibaki, promising that

[475] Tom Matoke, "Minorities welcome census move, Daily Nation," Tuesday August 18 2009, cited at http://www.nation.co.ke/News/regional/-/1070/641532/-/7lmty6/-/index.html, accessed in January 2010.

his government would protect minority rights.[476] Since this time, at the political front, minority rights have somewhat been favourably addressed by the various politicians, especially during electioneering periods.

Practically though, a number of developments have taken place, at the national policy and decision-making processes, that have given minorities an opportunity to strengthen their participation in key processes. The most significant, was the constitutional review process, which culminated in the referendum of 2005. During this period, the constitution review structures explicitly provided for the inclusion of minority groups in the review process. For instance, one of the objectives of a new constitution was to promote the people's participation in the governance of the country through democratic, free and fair elections and the devolution and exercise of power.[477] Another objective, directly related to minorities was that the review targeted a constitution that respected ethnic and regional diversity and communal rights including the right of communities to organise and participate in cultural activities and the expression of their identities.[478]

During this constitution review process which begun with the enactment of the law in 1998, to its culmination in 2005, minorities made known their issues and concerns. During the CKRC process, marginalised communities, including minorities and indigenous peoples (communities) lobbied and achieved some constitutional provisions that ensured their rights to recognition, consultation and participation in development processes. Their right to ownership and exploitation of natural resources were also assured. The

[476] Opening the National Constitutional Conference in 2003, President Mwai Kibaki called on all the constitutional review structures to ensure minority rights protection and the rights of other marginalised communities. This was the result of intense advocacy for the government to officially recognise the existence of minorities in Kenya and to protect their rights.

[477] Constitution of Kenya Review Act, Sec. 2 A.

[478] ibid.

draft Constitution was agreed on by the National Constitutional Conference, which was supposed to be the final significant organ of the review. It had provisions on self-determination, rights of restitution and development of the resources of minorities for their benefit. The proposed constitution, if implemented, would have ensured the protection of the minority rights to be consulted in development projects that affected their lives and their right to participation in public life. It would also have seen fair and equitable distribution and use of land and natural resources such as water, fisheries, forestry, wildlife, pasture and genetic resources, which are best owned and used collectively.

The efforts to push for legal recognition of minorities in Kenyan law were the first well-documented attempt for minorities in Kenya to be recognised and get space in decision-making processes at the national level. It is also important to underscore the fact that efforts to engage government on the question of recognition by minorities across the country as one voice were being seen for the first time; alternatively, it would be either pastoralists, hunter-gatherers, or other ethnic communities on their own. To ensure their participation, minorities in Kenya coalesced around the Pastoralists and Hunter Gatherers Ethnic Minorities Network (PHGEMN) to spearhead their participation in the review of the Kenyan constitution. Through the PHEGMN, minorities began to realise that a stronger unified voice at the national level could make them gain significantly in their fight for recognition and hence participation in decision-making at various levels. From 2008, these efforts coalesced around the MRC with the end result being that finally, minorities and indigenous communities in Kenya are now recognised in the current constitutional dispensation.

Before this stage, as have been mentioned, the pastoralists, through the PTG had participated in the PRSP process, after they lobbied for their inclusion. As a result, the pastoralist experience

during the PRSP had vital lessons, one being that it was important to ensure that you have your voices heard in every process, rather than just sit and lament about being marginalised[479]. The pastoralists' prior experience was thus of immense value to the participation of minorities (read pastoralists and hunter-gatherers, as well as a number of other ethnic minorities) in the constitution review process. To ensure effective participation in the constitution review process, largely borrowing from the PTG experience, activities around lobbying and advocacy revolved on engaging key opinion leaders, as well as strengthening the capacities of members of these communities from the grassroots to engage in the processes effectively, through training and frequent seminars.

Another key national process where minorities had strong representation and participation, at the national level was the development of the Draft National Land Policy (DNLP). This draft was developed through a countrywide consultation process involving many stakeholders over a period of four years. The stakeholders were from the public and private sectors, the civil societies, the academia and the communities. The consultations involved holding of regional workshops, focused thematic group workshops, written memoranda and verbal presentations from the stakeholders. Most importantly, communities that identify as minorities, especially hunter-gatherers and pastoralists, were involved. This is vindicated by the recognition of the existence of minorities and the need to protect their rights to land. Notes the DNLP:

> Minority communities are culturally dependant on specific geographical habitats. Over the years, they have lost access to land and land-based resources that are key to their livelihoods. This follows the gazette notice of these habitats as forests or national reserves or their excision and allocation to individuals, who

[479] Ohenjo, N., Hughes, A., (2005), Minorities' and indigenous peoples' experience in Kenya's PRS process in PRSPS, Minorities and Indigenous Peoples-An Issues Paper, Minority Rights Group, London.

subsequently obtain titles to the land. These communities are now recognised internationally as minority groups deserving special protection by the State with regard to their land rights and ability to manage their natural resources in a sustainable manner. These communities have not been represented adequately in governmental decision making at all levels since they are relatively few in number. Their political and economic marginalisation has also been attributed to the fact that colonial policies assimilated them into neighbouring communities. In addition, the colonial government alienated their lands through forest preservation policies, which effectively rendered them landless as they were denied the right to live in the forests. Colonial capitalism also led to the marginalisation of hunter-gatherer communities at the expense of agricultural expansion.[480]Land issues requiring special intervention, such as historical injustices, land rights of minority communities (such as hunter-gatherers, forest-dwellers and pastoralists) and vulnerable groups will be addressed. The rights of these groups will be recognised and protected.[481]

Box 7: Participation of the Luo of Homa Bay and Mbita Districts in Nyanza Province

From interviews done amongst the Luo many people complain that they lack information on the ongoing processes into which they can input. According to them, most CSO workshops and seminars are conducted in 'cities' and only invite people from rural areas as participants. Often, those invited tend to be well-educated and/or 'prominent' figures in the community. Upon their return, very little information on what they just learned gets disseminated to the community. Therefore, the people asked that NGOs provide workshops at the grassroots so that all can benefit.

[480] Republic of Kenya, Draft Land Policy, Government Press, Nairobi, pp.69-71.

[481] ibid. p.6.

In Homa Bay, participation was hampered by high level of corruption in their Beach Management Unit (BMU). The BMUs are legally recognised organs run by the community at a particular beach to ensure the concerns of the communities regarding fishing, participation in decision-making processes, amongst others, are met.

In Homa Bay, people complained that the BMU was corrupt; people could bribe their way out of fines for nets that were illegal-it was alleged that the BMU chairperson was using illegal nets.

At Mbita, the BMU seemed much more organised as it had a coordination scheme where it worked with other beaches to coordinated fish prices.

Both BMUs hold meetings once a week where members are encouraged to voice their opinions and concerns. Some of the members and meeting participants at Homa Bay were women; while at Mbita very few to no women would show up to the meetings.

Generally, there appeared to be little participation concerning advocacy of rights. A local sewage plant was polluting the bay and no one had tried to put a stop to it.

Source: *Interviews by Nyang'ori Ohenjo with residents in Mbita on 16th January 2010 and Homa Bay on 21st January 2010.*

If implemented, the Draft National Land Policy will have the following outcome on minorities:

- Land issues requiring special intervention, such as historical injustices, land rights of minority communities and vulnerable groups will be recognised and protected.
- Participatory approach in decision-making over land and land-based resources.

Minorities participation in local decision making processes in Kenya

Since independence, it could be argued that minorities in Kenya have had avenues to ventilate their issues and take part in decision-

making at the grassroots level. During the Kenyatta regime, CBOs were allowed to come up as the main link between the political leaders and members of their communities. This was also evidenced in the Moi era. However, the impact of these organisations to enable effective representation of their peoples in grassroots decision-making processes has not been significant. This is because, instead of these organisations developing into institutions that would champion the rights of the people, they became political vehicles through which many political leaders used to either get into or retain political positions (see Box 7). The experience of Budalang'i Women Lobby Group in trying to access positions in the Constituency Development Committee (CDC) vindicates this:

> We have not been able to have our preferred representation on the committee because the cronies of the Member of Parliament do the appointments. Due to this, they will only appoint people whom they perceive as sympathetic to them politically, and this impacts on genuine participation. The result is apathy of the people when it comes to participation in decision-making processes, since they are wary of their views being ignored.[482]

Box 8: Defending a Land Claim-Nubians Reject Slum Upgrading in Kibera

In an interview with IPS, Issa Abdul-Faraj, and secretary- general Ibrahim Diab, dismissed the slum upgrading programme

"The slum-upgrading programme is not a new thing. It began in 1962 with a planned eight phases. But sadly, in all these phases, the authorities have used Nubians to get money for the projects, but at the end of it, they would give them out for commercial purposes," said Abdul-Faraj

[482] Interview by Nyang'ori Ohenjo with Ms Rose Odhiambo, member, Budalang'i Women Lobby Group, 14 September 2009 at Mudembi, Budalang'i Constituency, Western Province.

The two community officials termed the upgrading a "grand plan" for grabbing Nubian land, which had continued through successive administrations since that of Kenya's founding president, Jomo Kenyatta. They cited as an example Nyayo Highrise, another estate near Soweto East built in the 1980s under the same banner of slum upgrading, but which ended up accommodating a middle-class community. "The Moi regime also fenced off a huge chunk of land belonging to the Nubians to build Moi Girls' High School, just across the road…" adds 70-year old Abdul-Faraj.

According to Diab (53), a genuine slum-upgrading system for Kibera … would have involved the community …the fifth generation living in the area, before coming up with the project.

Source: *George Kebaso "Slum Upgrade Is Land Grab-Nubians," Inter Press Service News Agency, (IPS), September 25th 2009, Nairobi, cited at http://www.ipsnews.net/africa/nota.asp?idnews=48601 accessed on September 27th 2009.*

Indeed, for communities like Nyala, who are generally homogenous in their own constituencies, processes like the constituency development funds would have been a perfect avenue to ensure their strong participation in decision-making. Among the devolved funds where communities members are expected to have a lot of say are the CDF, the Local Authorities' Transfer Fund and the Youth Enterprise Development Fund. Others are Women funds, Constituency Roads Funds and HIV/AIDS funds.

With strong participation in national processes, it would have been expected that the minority communities at the grassroots would have strengthened their enjoyment within the local processes. However, evidence from the communities, as seen above, show otherwise. It could be argued that this has been due to a combination of factors. One: a number of CBOs are still reeling in the effects of sycophancy for politicians and hence taking very little notice of

the available opportunities to strengthen the participation of their communities in decision-making processes. On the other hand, some minorities are still completely locked out by political processes, even as the government shows willingness to recognise them and protect their rights. The Nubians are a case at hand here (see Box 8). The biggest complaint the Nubians have against the government with regards to this slum upgrading project is failure to have been consulted and not to have taken their concerns into consideration before the implementation of the project:

> We tried to make sure that our concerns as the original inhabitants of Kibera were taken on board before the slum-upgrading project to no avail. Our communications with the UN-Habitat Executive Director, Anna Tibaijuka, resulted in her writing to the government asking that we be involved, but this letter was not heeded to. We have even tried to go to court, but as you can see, the political leaders went on with the evacuation in total disregard of the existing court order stopping it, until our case is heard. It is disheartening ... it means we are not Kenyans.[483]

It could be argued that part of the problem of facilitating minorities' participation at the grassroots level is the lack of legal recognition of minorities. For example, the CDF Act, 2003, only defines a community as:

> Residents of a particular geographical area or region defined as a constituency, location, sub location and having common interests.[484]

While the Act does not give the objectives of the fund, it could be argued that it was intended to achieve more community participation and inclusion in development, as well as correct the skewed development that had been witnessed in the past. Article 21 (1) for instance provides that development projects should be community-

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[483] Interview by Nyang'ori Ohenjo with Yusuf Ibrahim Diab, a Nubian elder in January 2010 in Kibera, Nairobi.

[484] Republic of Kenya (2003), Constituency Development Fund Act 2003, Government Press, Nairobi at Article 2.

based, while Article 38 provides for the right of the community to be represented in any project being undertaken in their area[485].

While this Act may not explicitly provide for minorities, in areas where they are predominantly found, it gives them the opportunity to participate in the decisions of the provided structures at the local level. However, there is very little evidence that they are able to do this. Many members of the minority communities interviewed indicated that the avenues for their participation had been emasculated by politicians (read MPs) who, by virtue of the Act, are patrons of the Constituency Development Committees CDCs, and have a big leeway in deciding the people who end up serving on the committees. On the other hand, for minorities who find themselves in constituencies predominantly occupied by other communities, they are easily overlooked. The Ogiek, for example, have never had any representation in the constituency decision-making processes:

> We are few and surrounded by populous groups from the dominant communities. In the constituency, we are insignificantly few. Because we are seen as inconsequential politically, nobody bothers to consult us and hence we are not given opportunities to influence decisions at the local level. This means that we are invisible in the national processes. [486]

Another legal opportunity that could be utilised by indigenous peoples is the Forest Act, 2005.[487] This provides for the establishment, development and sustainable management, including conservation and rational utilisation of forest resources for the socio-economic development of the country. Article 22 of the Act provides for a forest community to use forest produce as it has been the custom of that community to take from such forest otherwise than for

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[485] ibid.

[486] Interview by Nyang'ori Ohenjo with Daniel Kobei of Ogiek Peoples Development Programme (OPDP) on telephone on 19th September 2009.

[487] Republic of Kenya(2005), Forest Act 2005, Government Press, Nairobi.

the purpose of sale.[488] And Article 3 of the Act defines a forest community, as a community that has a traditional association with a forest for purposes of livelihood, culture or religion. This gives avenue for indigenous peoples to participate in activities around environmental conservation as well as to benefit directly from these resources by claiming ancestral rights. However, a study conducted established that very few indigenous communities are aware of this provision.[489]

Gender and participation amongst minorities

In many minority communities, women often face double discrimination: they are generally marginalised as women, and in addition, they are marginalised within their communities. In some communities, women are not seen as complete human beings; they are sometimes associated with children. Moreover, women have no property rights and are not represented in various community decision-making structures and institutions. In terms of equal opportunities, men have more in terms of resources, property, education, land and inheritance. Women have more household tasks, and hence no time to participate in roles outside the home. This extends to the girl child whose education is affected by many chores at home. The electoral process is not favourable to women, and leadership is still dominated by men.

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[488] ibid.

[489] Various interviews with the Ogiek, the Nyala and the Boni established that the members of the community were not aware of the existence of this statute.

Box 9: Pastoralist Women in Decision-Making

Pastoralist women are less able than pastoralist men to participate in the decisions that affect their lives and livelihoods. Very few women have succeeded in campaigning for an open parliamentary seat. The lack of access to political participation has roots in a deeper marginalisation.

Little has been done to adapt education and health services to pastoralist livelihoods. Though governments may have taken steps to address the gender gap in education in general, these measures are not reaching pastoralist girls.

Pastoralist culture excludes women from important roles. Pastoralist women are brought up to respect and submit to the leadership of men. Women continue to be subject to female genital mutilation. If they do not, some consider them incapable of participating in decision-making.

Climate change has also taken its toll. In this grim scenario, women's knowledge of the environment is crucial in these times, and yet this knowledge, along with the specific plight women face, often goes ignored in drought mitigation strategies.

Source: (Adopted from Kipuri, N and Ridgewell, A (2008) *A Double Bind: The Exclusion of Pastoralist Women in the East and Horn of Africa.* MRG, London

Some of the factors which inhibit women's participation in decision making at the family, community and state level are: high illiteracy levels, ignorance, lack of confidence amongst women, lack of socio-economic empowerment, cultural and traditional values, biological factors, low level of technological knowhow among women, use of election gangs to cause violence, slow process of passing laws, low status in the household, insults against women politicians, lack of moral and family support, lack of relevant policies on women and their participation in politics and gender bias within the judiciary and the media.[490]

[490] Report on "Gender Learning Platform-Eastern Region," 4-6 December 2006,

Minority women, hence, are not only victims of social, economic and political marginalisation, as women, they suffer inequality in accessing resources, social services and participation in decision-making.[491] Box 9 titled: Pastoralist Women in Decision-Making underscores the plight of pastoralist women, which is representative of women from many other minority communities in Kenya.

Conclusion

The effective participation of minorities and indigenous peoples in public life is an essential part of a peaceful and democratic society.[492] For their proper integration into society, it is important that minorities and indigenous peoples are involved in public decision-making-especially when it affects them directly-and that they feel they have a stake in society. The risk of inter-ethnic tensions occurring will be significantly reduced when everyone affected by decisions feels a sense of ownership in decision-making.

Minorities and/or indigenous peoples arguably collectively constitute the biggest percentage of Kenya's poor population.[493] Put together, they arguably constitute more than 70 per cent of

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Garden Hotel, Machakos National Civic Education Programme (NCEP) Phase II (URAIA) cited at http://www.uraia.or.ke/images/GLP_Report%20 machakos.pdf accessed on 5th April 2010.

[491] Kipuri, N. and Ridgewell, A., (2008), A Double Bind: The Exclusion of Pastoralist Women in the East And Horn of Africa, Minority Rights Group, London.

[492] See UN High Commissioner on Minorities notes on Participation cited at http://www.osce.org/hcnm/23623.html, accessed 11th March 2010.

[493] There is generally no disaggregated data. However, the little data that is available indicates that amongst identifiable minorities and or indigenous communities, poverty levels are as high as 60 to 80 per cent, in some cases in the upwards of 90 per cent. See Ohenjo, N., Kenya's Castaways, op cit. The study by the Institute of Economic Affairs, The Little Fact Book (The Socio-economic and Political Profiles of Kenya's Districts), published in 2002, indicates that in Nyanza, predominantly occupied by fisher and agro-pastoralist communities, absolute poverty levels are as high as 60 per cent.

the Kenyan population. In Kenya, indigenous peoples such as pastoralists, hunter-gatherers and fishing communities as well as non-indigenous ethnic minorities, like the Nubians, are generally not officially recognised and are amongst the very poor. The lack of disaggregated data, which would highlight the discrepancies between the minority and dominant communities, however, has proved a major obstacle to identifying and, therefore, meeting the specific needs of minorities and indigenous peoples.

Statistics indicate that more than 52 per cent of Kenyans live in abject poverty. A huge number of this population, it is noteworthy, is made up of minorities and indigenous peoples, most of who are pastoralists, agro-pastoralists, hunter-gatherers and indigenous fisher communities. For instance, amongst the Ogiek, more than 90 per cent of the community lives in abject poverty.[494]

Natural resources are the engine of economic and social progress. For minorities, this is extremely important. Peoples' esteem, identity, well-being and harmonious existence with their environment are tied to the natural resources around them.[495] These resources, which are Kenya's inherent wealth, include water and wetlands, fisheries, wildlife, forests, agro-ecological potential, savannahs and grasslands, and minerals. Sadly, existing natural resources exploitation and conservation policies (apart from the Forest Act 2005) treat natural resources merely as capital stock to be exploited for short-term economic gain, leading to unsustainable exploitation and consequent violation of the rights of indigenous peoples.[496]

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[494] The Ogiek study put the estimate at 90 per cent (see Ohenjo, N., Kenya's Castaways op cit). The study by the Institute of Economic Affairs, The Little Fact Book (The Socio-economic and Political Profiles of Kenya's Districts), indicates that in Nyanza, predominantly occupied by fisher and agro pastoralist communities, absolute poverty levels are as high as 60 per cent.

[495] See Kenya at Crossroads-Scenarios for the Future, Institute of Economic Affairs (IEA) and Society for International Development (SID) 2001, pp.83-84.

[496] ibid.

From the foregoing, it is evident that while the space for inclusion of minorities has widened since early 1999, they have not effectively taken up this opportunity. At the national level, while there have been consistent efforts by the minority CSOs to engage in various processes, and they have recorded some impressive results, the same cannot be said to be true at the grassroots.

Recommendations

Secure the Rights of Minority Communities

One of the main reasons why minorities have not been able to effectively participate in decision-making processes in Kenya is lack of recognition, and hence unsecured rights. There is, therefore, the need to develop legislation that recognises collective rights of minority communities, various forms of local autonomy, institutionalise devolution mechanisms, and support for minority communities to determine their development priorities. At the constitutional level, the rights of citizens to participate in decision-making and governance institutions at various levels that have been provided for in the constitution of Kenya 2010 should be implemented. Apart from the right to vote and be represented by people of own choice, the Constitution also explicitly provides for decentralisation, delegation and devolution policies, to enshrine the principle of subsidiarity. Ethnic minorities thus need to be supported to effectively engage in the re-structured institutions and processes, to ensure that gains made are safeguarded and that subsequent legislations adhere to them.

Support the various capacities for better involvement of indigenous minority communities in decision-making processes

Staffs for development actors, government included, are crucial in ensuring a rights based approach to development, especially amongst minority communities. However, much of the conventional curriculum is very thin on social, economic and cultural rights, especially from a

collective rights perspective. They, therefore, tend to be forgotten in development plans; hence their unique situations are not addressed. To tackle this, the curriculum for training staff working with minorities should include minority/indigenous peoples' rights, pluralism and multi-culturalism as well as gender equity.

Indigenous and minority communities need to be supported to assess their capacity needs through participatory forums at the grassroots level. This will enable them to decide which capacities they need to develop. These can include technical and financial facilitation, legal advice and organising technical, technological, financial and administrative capacities.

Finally, there is a need to network indigenous and minority communities to learn and profit from others through exchanges of ideas and initiatives. This could be achieved through promoting national and regional networks. The hunter-gatherers, for example, have the Hunter-Gatherers Forum (HUGAFO), which should be supported to make it more responsive and of benefit to these communities in Kenya, as well as supporting individual communities to work with it. There is also the MRC, bringing together indigenous communities and minorities to engage proactively in the reforms agenda and debates. Such networks can play a vital role in linking initiatives facing similar problems and opportunities through regular meetings, workshops and exchange visits, electronic information exchange and published newsletters. It is also important, as an advocacy strategy to communicate the community-based approaches to development by indigenous and minority communities to development experts, government agencies, NGOs and international networks dealing with development. International donors (both bilateral and multilateral), the UN, especially United Nations Environmental Programme (UNEP) and UNDP and other development actors including NGOs should ensure that donor-funded programmes and initiatives mainstream the rights of indigenous peoples and minorities.

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5

The Political and Social Exclusion of Minorities in Tanzania: The Case of the Hadzabe Hunter-Gatherers

William Tate Olenasha, *

Introduction

Virtually, all African countries attained independence for the better part of the last century. But while this can be said of many and, especially mainstream societies generally, there is quite a substantive part of the citizenry which is still excluded from enjoying some of the fruits of independence. These societies, either by default or pure design, are socially and politically excluded and do not then as a matter of right, participate in important decision-making processes in their countries. This state of affairs is not healthy and especially during our times when democracy and political participation are cardinal principles of free societies. The colonial estate is very much responsible for the creation of these differences, but the mismanagement of the post-colonial estate has its share in the making and shaping of these realities.

The recognition of wider problems of socio-economic and political exclusion has prompted KCK to organise an East Africa regional study to take stock of the realities pertaining to minorities with the superior objective of finding ways of enabling inclusion and equitable participation in political processes.

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The component of the study in Tanzania has chosen the Hadzabe as a minority to be interrogated on the aspect of social exclusion. The Hadzabe have been chosen because of particular realities surrounding this community. The Hadzabe are a society at the verge of extinction and if no actions are undertaken to rescue them from continued marginalisation, we may as well forget that they once existed in our epoch. Apart from the Hadzabe, we will also touch base on realities related to another class of 'minorities' the pastoralists. While pastoralists are not minorities in the strict sense of the word, their way of life and economy make it difficult for national governments to provide them with support. This scenario places them among communities that are suffering from marginalisation and hence in need of attention.

We will also have occasion to discuss a more problematic 'minority'; the Asians. This group is inferior in terms of their numbers, but very powerful economically due to its well established economic networks. Their position in the political and social realm is one of ambivalence due to a number of historical and contemporary realities in the 'diaspora' they live in.

This paper comprises five parts. The first part sets the scene and articulates the rationale for the study. Part two deals with matters of definition and mapping of minorities in the Tanzanian context. Part three situates the issue of minorities within the national legal and policy framework. Part four focuses on minorities in relation to non-homogenous matters, including gender. The last part sets the framework for recommendations on addressing the issue of marginalised communities.

Minorities, Indigenous People and Marginalisation: The Mapping of Relevant Groups

Problems in Definition

The concept 'minority' is always used interchangeably with 'indigenous', bringing more confusion to what are already heavily

contested terms themselves. It is even more problematic when applied to an African context since those concepts have their specific origins and contexts. Another problem related to definition relates to recognition. Defining the concept 'minority' is complicated in itself because many countries in the world deny the existence of these groups and hence would not trouble to search for a proper definition. According to Sigler:

> The very existence of minority groups is often denied by political leaders of nation-states. This refusal to acknowledge the presence of a minority group is an easy way to deny that group any claims of right[497]

But, while states may be the culprits in eluding definitions and recognition of minorities, the concept itself is supposed to attempt to define groups of people from different geo-political contexts and backgrounds. This makes it extremely difficult to have an all-inclusive definition to capture the diversity. As it has been noted with clarity:

> While a precise definition may serve to minimise controversy by drawing the bounds in a clear fashion, thus fitting the relevant rights to undeniable claimants, on the other hand, controversy may not be easily avoided in view of the range and extent of the diverse groups that exist across the globe distinguished by factors that are often confused, complicated and contradictory. It, thus makes it virtually impossible to list all the minorities that exist[498].

But, what are some of the attempts to define 'minorities'. The first attempt to define 'minorities' in international law came as early as 1930 in the famous case of the Greco-Bulgarian communities, where the Permanent Court of International Justice (PCIJ) defined minorities as:

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[497] Sigler, J A , "Minority Rights: A Comparative Analysis", in Chris, Maina.(2005), Peter, Human-rights of Indigenous Minorities in Tanzania and the Courts of Law, p.2

[498] See SHAW, Malcom, "The Definition of Minorities in International Law", in Dinstein, Yoram,and Mala Tabory (eds.), *The Protection of Minorities and Human Rights*, Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1992, p. 1 cited in Peter, ibid., p. 4

> A group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by their identity or race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their own form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other[499].

All other attempts to define 'minorities' which followed afterwards were simply modifications and or alternations of the original one by the PCIJ. A clear example is the one that was given by Franseco Capotorti, the special Rapporteur to the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities:

> A group of persons which are numerically inferior to the rest of the population of a State in a dominant position, whose members possess ethnic, religious or linguistic characteristics which differ from those of the rest of the population and who, if only implicitly, maintain a sense of solidarity, directed towards preserving their culture, traditions, religion or language (Natan, 1991:9).

In addition, the rights of minorities are implicitly recognised in the international context under Article 27 of the ICCPR, 1996, which provides that:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language (ICCPR, Art 27).

When it comes to the African Human-rights System, there is no authoritative position on minorities, but it can, however, be implied from Article 22 of the African Charter on Human and Peoples Rights on the right to development:

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[499] ibid.

> All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind (ACHPR) (1984).

The above attempts to come up with a definition should not be taken to be all inclusive since these minorities are found in different historical, geographical and social contexts. A better description is given by Chris Peter Maina, a renowned Professor of international human-rights law:

> Minorities are of various types in different countries. They also suffer a variety of technical and legal disabilities and discrimination in general with very few opportunities open for them. These relate to employment, ownership of property, educational rights. Many of these rights may be at the level of State policy and also at times at individual level (Maina, 2005:7).

What of 'indigenous peoples'?

As was said before, 'minorities' relate closely to another category of people called indigenous people. Like 'minorities', 'indigenous peoples' are also difficult to define and despite many attempts, there seems not to be a universally accepted definition. An often cited definition is that given by the UN Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Jose R. Martinez Cobo:

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples in accordance with their own cultural patterns, social institutions and legal systems (Brolman et al(eds), 1993: 187).

It would seem from the above definition that for one to pass the 'indigenousness' test, several factors should be in place. The most important of these are:

- Occupation of lands or at least part of them;
- Common ancestry with the original occupants of these lands;
- Culture in general, or in specific manifestations;
- Language; and
- Residence in certain parts of the country, or in regions of the world.

The definition of 'indigenousness' has continued to be modified so that other communities which did not qualify before could become accommodated. New elements came to the fore, especially after the appointment of the UN working Group on indigenous peoples. The working group had identified four key elements/ characteristics which should be present (not necessarily all) before a certain community is taken to fit into the indigenous category:

- The occupation and use of a specific territory;
- The voluntary perpetuation of cultural distinctiveness which may include aspects of language, social organisation, religion and spiritual values, modes of production, laws and institutions;
- Self-identification, as well as recognition by other groups, as a distinct collectivity; and
- An experience of subjugation, marginalisation, dispossession, exclusion or discrimination.

Self-identification has been given a lot of weight recently. This is because it would be improper to label a certain community to be 'indigenous' if it does not wish to be called and labeled as such.

In Tanzania, the beginning of the 1990s saw an upsurge of a plethora of pastoralists and hunter-gatherer groups, which joined and associated themselves with the global indigenous people movement. Professor Hodgson gives a better description:

> The first Maasai INGO was formed in Tanzania, partly in response to recent global campaigns for the rights of 'indigenous' peoples. Since 1990, over one hundred INGOs have emerged in predominantly Maasai areas in northern Tanzania, attempting to organise people around diverse claims of a common 'indigenous' identity based on ethnicity, mode of production (being a pastoralist or hunter-gatherer), and a long history of political and economic disenfranchisement by first, the colonial and now the post-colonial nation State. Despite attempts to foster unity, promote common political agendas (such as the protection of land rights), and co-ordinate their activities through innumerable meetings and workshops and the creation of at least two 'umbrella' coordinating groups, the indigenous rights movement in Maasai areas has continued to splinter into even more groups and to become fractured by sometimes quite hostile disagreements over priorities, competition over resources, and tensions over membership and representation (Hodgson, 2002: 1087)

In addition, the Maasai, the Barbaig and the Hadzabe, according to Hodgson (2002:1088), do not claim to be the first people in Tanzania to qualify to be called 'indigenous'. For the Maasai at least know that they do not occupy their present territories having arrived in Tanzania and Kenya about three centuries ago.

The Mapping: Who is a 'Minority' in the Tanzanian Context?

Having attempted to give the different existing definitions and understanding in international and municipal law and practice of what constitutes a 'minority', it is now appropriate to discuss the predicament of some of the groups thought best to belong to this category. I will discuss Asians, pastoralists and hunter-gatherers. When it comes to pastoralists, the Maasai and the Barbaig, are the commonest. When it comes to the last category, the hunter-gatherers, I will discuss the Hadzabe.

Pastoralists: Minorities or Simply People in Need of Development Attention?

The Maasai and the Barbaig are the most famous pastoralists in Tanzania. Members of these two communities are very noticeable in the tribal dynamics of Tanzania because of their outstanding colourful cultures and traditions and their unequalled passion for cattle. The Maasai and the Barbaig are different from other Tanzanian communities and it is not difficult to notice whenever one encounters them in real life. Their attitudes and the way others perceive them is a product of history. History is replete with examples of how pastoralists have been shaped and created, the way they behave today and especially how they relate to the state and the mainstream society. The way the state deals with pastoralists has not significantly changed even in independent Tanzania. For example:

Pastoralists are perceived as barbaric, primitive and people in need of urgent transformation. In addition, their way of owning and using land is seen as wasteful and irrational, and their attitudes as barbaric. The negative perception and regard of the Maasai in relation to their usage of land is illuminated by a British colonial administrator:

> The Maasai have I believe some 20,000 square miles of country reserved for their use, is it sound and right, that they should be given the land… which can be put to far greater economic use by Europeans, for no better reasons, than the preservation of Barbaric customs; which should in my humble opinion be persistently, steadily, and gradually discouraged? The majority of the tribes of this country are advancing rapidly and discarding many of their repulsive customs for a better state of existence in Administration, Education, Scientific agriculture, better houses, etc. The Maasai will, if they do not give up that moran system, will wake up one day to find they are the heathen of the black men of this Territory (Hodgson, 2004: 36)

The consequences of the above conclusion by the colonial government that lands belonging to the pastoralists can be put to 'far greater economic use' still persist today. No single factor today is responsible for the pauperisation and disenfranchisement of pastoralists than this. Therefore, lands belonging to the pastoralists have been given away to uses considered most productive. Big chunks of land, formerly belonging to pastoralists, now form the bulk of the leading national parks and other conservation areas. Names like Serengeti, Ngorongoro, Arusha, Tarangire, Manyara, Longido, Loliondo, etc, are just some examples. The conservation craze in pastoralists has even gone beyond proportion. About 100% of the land mass in a pastoralist district like Ngorongoro has been set aside for conservation purposes.

Besides conservation, the expansion of farming is the second factor behind the usurpation of pastoral lands. For example, prime grazing land has been taken over for farming and in most cases with the sanction of the state, in districts such as Hanang, Simanjiro and Kiteto in Manyara region. In Hanang alone, about 70,000 acres of land amounting to 50% of Barbaig grazing land (Lane, 1991:41) were taken for wheat plantation in 1970, forcing the whole tribe to look for grazing land elsewhere. In addition, good portions of their lands have been turned into military training camps and barracks like the famous Monduli and Makuyuni. Good chunks of land have also been hived out for airport reserves like Arusha and Kilimanjaro.

As a result of the usurpation of good chunks of land, the pastoralists have now remained with land with extremely dry and harsh environments which cannot sustain pastoralism like before. But, this is an accident; it all seems to have been willed as one colonial master puts it very clearly in 1930:

> The needs of the Wambulu, the necessities of kindred tribes, the game of the country, the forest reserves, and the inequities of the Maasai. The principal reference to the Maasai appears to be based

> on the following principles:-If nobody wants the land, the Maasai may have it for the time being until they do. *That a pastoral tribe must of necessity be banished to the deserts, because apparently the deserts are the most suitable places for them and their stock* (Hodgson, 2005: 287) (emphasis mine)

The way pastoralists keep livestock has been a repeated concern of the government, mobility is simply not in the list of practices that government can tolerate. This attitude is unambiguous from the statement of the present president of Tanzania, when he assumed office in 2005

> We will take deliberate measures to improve the livestock sector. Our people must change from being nomadic cattle herders to settled modern livestock keepers. We will take measures to improve pastures, veterinary care, cattle dips and auctions. It is the duty of all regions, districts and local authorities to set aside pastoral land, especially in those areas with much livestock.

(Speech by the President of the United Republic of Tanzania on inaugurating the fourth phase of the Parliament of URT, 30 December, 2005 in (Shem and Mattee, 2006:16)

In relation, due to the nature of their livestock keeping, pastoralists have often been culpable in environmental degradation, owing to the once famous, but now discovered to be wrong theory of the 'tragedy of the commons'. The government thinking is very much in line with the 'tragedy of the commons' theory:

> It has to be appreciated that this practice of grazing private livestock on communal lands constitutes the major constraint to improved management of the natural pasturelands. The inevitable result of this system of livestock production is that the cattle owners keep excessive numbers of livestock which in turn leads to overgrazing, soil degradation, low fertility and high mortality rates. However, in order to allow for the best possible care of agricultural land in the future, users will be allocated land on the basis of leasehold, thus ensuring that they get full legal protection…. Restriction of animal

> numbers to any reasonable balance with the forage resource has proved difficult due to lack of land ownership rights and communal land ownership (Bilali, 1989: 6).

The ramifications of associating pastoralists with environmental degradation are enormous. The government has recently taken stern measures to evict pastoralists from key water catchment areas, resulting in an unprecedented wave of internal displacements. In 2006, for example, more than 1,000 households were evicted from Ihefu valley in southern Tanzania allegedly for overgrazing and drying key water catchments which the nation depends on for its hydroelectric power generation (Olenasha, 2004: 51).

Worse still, the practices of mobility have also meant that the government has a good excuse for not providing pastoralists with social amenities. Consequently, pastoral communities are the least served in terms of development infrastructure and key social services like education. Lack of education means they lack the necessary skills to compete in a world which is replete with unending competitions. It means also that they lack the necessary sophistication and clout to influence and shape political processes. The net effect is a spiral process of social and political exclusion. They do not have the power to influence key decisions and as a result, live at the mercy of mainstream communities.

The Asians: A Problematic Minority[500]

The concept of marginalisation and exclusion has until now dominated and shaped the definition of who constitutes a 'minority' in the Tanzanian context. Marginalisation has defined the context of pastoralists and hunter-gatherers, but the same has never been applied to the Asians, a small community in Tanzania and other countries of East Africa.

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[500] The term Asians is used here to refer mostly to South-East Asians which is not a homogenous group in itself. In Tanzania, the term is used almost exclusively to refer to Indians from the sub-continent of India.

The Asians pose a special problem when it comes to their minority situation. Numerically, the Asians are a microcosm of the population, standing only at 70,000 (Fazal, 2005) out of a population of more than 36 million Tanzanians. As a minority, therefore, they pass the numerical test. What about marginalisation? This is not so straightforward. A few things are not contested and we may wish to dispose these at the onset. One, the Asians are a powerful economic minority and control all important industries and commerce in Tanzania. This fact is not specific to Tanzania, but also a reality in the whole of East Africa:

> A survey of 100 large-scale manufacturing firms in 1990 established that Kenyan Indians owned 75%. They also owned 86% of footed firms valued at over Ksh100 million. By 1998, Asian-owned firms constituted 0.3 % of the Kenyan economy, but controlled over 70% of the monetised economy….. In Uganda, Asian-owned investments over the past decade are estimated at about US $1 billion. It is estimated that the Madhvani group alone contribute about 8% of the total tax collection in the country…..With the market reforms and liberalisation since 1994 in Tanzania, the Asians seem to have regained control of the most commercial sectors of the economy. .. much of the importation of goods is done by few big traders mainly the Ithnashris and Hindus. Less than 20 importing companies control 90% of the imports…. (Ranja, 2003: 6)

The fact that the Asians are powerful as a minority is not specific to them. Minorities have been successful in businesses in various other contexts globally. Good examples include the Levantines in Latin America, the Chinese in South East-Asia, the Jews in Europe and in our case, the Indians in East Africa. There is a hypothesis put forward that alien groups in Europe, Asia or Africa are determined to succeed in business partly because they have often been excluded from many more desirable occupations in the countries they have migrated to (Ranja, 2003: 2). Business is also often times the only activity they engage in because of discrimination from the mainstream population

and cannot, therefore, get land for agriculture or wage labour in the heavily indigenised civil service. Family and kinship networks help in promoting and getting the necessary capital for entrepreneurship (Kilby, 1983: 9).

The second matter for interrogation is whether the Asians in Tanzania are politically and socially excluded. It would seem, and emanating from the fact that they are an economically powerful group, that they are not. Careful scrutiny will demonstrate that this is not necessarily the case. When it comes to politics, money and the economy, they are the driving forces in many parts of the world. In Tanzania, this is not necessarily the case. Asians may not be able to command politics, their wealth notwithstanding. This is mostly because of two factors. One, the Asian community has not integrated itself sufficiently into the social fabric of Tanzania. They are still treated as foreigners who do not deserve leadership positions in society. Besides, they have been hit hard by antagonistic forces, including those labeling them as bloodsucking exploiters who lack the necessary patriotism to become leaders in the country. In addition, the Asians have deliberately distanced themselves from politics and social integration.

The following texts elaborately describe how Asians are understood in the Tanzanian context, which understanding has significant impact on their social and political exclusion:

> The racial stereotype of Asians holds that Asians monopolise the Tanzania trading and merchandising communities, they engage in illegal and unscrupulous business practice in order to make short term profits, portions of which they squirrel away in overseas banks; in so doing, they contribute greatly to the problem of corruption in the Tanzanian bureaucracy; that their ties of kith and kin in India, United Kingdom and elsewhere give Indian businesses an unfair economic advantage such as the opportunity to borrow capital from family firms at low interest rates (Lofchie and Galllaghy(1995) in Ranja:7)

This mindset does not end there:

> Asian businessmen have been milking the Tanzanian cow for a long time. So how can you avoid indigenisation? The Asians should be prepared to pay back for all the wrongs that they have done here... Of course... those of us who identify completely with the Swahili people and language [and are, therefore, isolated from the Asian communities] are being put in the same box as "blood sucking" Asian businessmen because we have the same skin colour as them . . . For a person on the street who does not know what I stand for, I am just a "Muhindi" [Indian]." -- Fatma Alloo, Ithna Asheri journalist and activist.

That is precisely the way Asians are characterised in Tanzania, a business class that does not want to be associated with the rest of Tanzanians, even though they continue benefiting from their resources.

The Asians do not seem to have interest in active politics, as very few of them enter into active politics. But, they have a lot of influence when it comes to who gets into power. It is a known reality that many of them are supporting key indigenous politicians. So, even though they are not necessarily marginalised economically, they are certainly marginalised socially and politically.

The hatred for the Asian communities was very pronounced during the hay days of nationalism and, especially during the peak of socialism. During those days, Asians were commonly referred to as bloody-sucking capitalists.[501] When Nyerere launched the famous *Azimio la Arusha* and its concomitant nationalisation programme, it was mostly the Asians who suffered due to the fact they were the ones who had property to be nationalised. About 74 % of the nationalised buildings were owned by the Ismailis, including Mawingo House, Dar es Salaam's first ten-storey building, on Seaview Road.[502]

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[501] *Wanyonyaji mabepari* in Swahili.

[502] Nizar Fazal, ibid.

Besides the numerical inferiority, the Asians maintain a distinct culture, religion and language which further cement their social and political exclusion. Very few Asians contest for political office at all levels. In contrast, they find themselves forced to support certain political factions to protect their economic interests. To date, the Asians, despite their legal citizenship, are perceived as foreigners and their prospects for political office and representation remain mostly unlikely.

The Hadzabe: A Minority at the Brink of Extinction

The Hadzabe and other Hunter-Gatherers in the Continent

The Hadzabe are among a host of the remaining first peoples of the African continent. This fact is rarely taken into account when dealing with the continent's history. It is said:

> When exploring Africa's considerable pre-colonial achievements one rarely focuses on the hunter-gatherers. Yet it was they who had sole dominion over the continent for millennia before the advent of agriculture, the Bantu expansion, and the rise of the great kingdoms of the savannah and Sudan. Africa is the cradle of humankind, and ninety percent of human history in Africa and elsewhere is the history of hunting and gathering (Lee and Hitchcock, 2001:259).

Despite the fact that a good part of the history of the continent is indebted to the hunter-gatherers, little has been done to seriously address their plight. As a result, they face a series of problems which include conflict with neighbours over land and other natural resources, unfriendly national policies, which require them to be settled, thereby limiting accessibility to wildlife resources (Lee and Hitchcock, 2001:259).

The Hadza: The People, their Homes and their Way of Life

The Hadzabe is a community under the threat of decimation. This ancient tribe is estimated to be just a little bit more than 1,000

people in total. This number may not be too precise because of the community's mobility and the well widespread tendency of the Hadzabe changing names and being assimilated to other tribes. It is also normal for many of their neighbours to refer to themselves as Hadzabe from time to time in order to benefit from various programmes designed to support the Hadzabe (Madsen, 2000: 16).

The Hadzabe are scattered into a series of forests and bushlands in the north-eastern part of Tanzania in the four regions of Arusha, Singida, Shinyanga and Manyara. They are also found in small numbers in Dodoma region. Their biggest number is, however, found in Yaeda valley and the Kideru ridge of the valley of Mbulu district in Arusha region (Hergum, 2002: 21). Several other ethnic groups inhabit the area, including the Isanzu and Iramba agriculturalists, the Iraqw agro-pastoralists and Datoga pastoralists.

Like other hunter-gatherers on the continent, the Hadzabe depend almost exclusively on hunting and gathering for their food needs. In gathering, they collect wild fruits, berries, roots as well as honey and its products. They hunt a variety of animals found on their lands and will literally eat anything alive, from the smallest of lizards, to the biggest of the elephants. The Hadzabe are very skilled hunters and there is an adage that they will not miss a single shot when they hunt with their mostly poisonous arrows. They also collect honey. This kind of life makes permanent settlement among the Hadzabe impractical.

Hunting and gathering are becoming difficult to practice for the Hadzabe because of the ever eroding natural resources base. The animals they used to hunt are no longer available in abundance nor are the forests to host their well cherished fruits and honey. Specifically forests, their farming neighbours have cleared them. When it comes to the fast disappearing animals, the state is the culprit. The existing legislative and policy framework which regulates

matters related to wildlife does not sanction traditional hunting for subsistence. Trophy hunting by the rich is what the state sanctions and regulates through law. The loss of traditional hunting rights has illegitimised the livelihood of the Hadzabe in the name of wildlife conservation. Activists supporting and advocating for the rights of the Hadzabe have been struggling for a legal recognition of their traditional hunting practices. Very recently, the Wildlife Conservation Act, 1974 has been repealed and replaced by the Wildlife Conservation Act, 2009. This law has given some remote possibility of the hunting rights of the Hadzabe to be recognised. The said provision of the law is reproduced below for ease of reference:

> (1) The Minister may, by order in the Gazette, declare a community to be a traditional community for the purpose of this Act and prescribe conditions to regulate the utilisation of wildlife.
>
> (2) The Director may grant a traditional community a licence to hunt such number of specified animals subject to such terms and conditions for such period as may be specified in the licence.

While it is possible indeed for the Hadzabe to be recognised as a traditional community with the potential of being licenced to hunt wildlife animals, the above provision of the law is full of bureaucratic legal processes which makes the right almost impossible to realise. For the Hadzabe to be able to hunt for food, the following requirements must be met:

- The minister must declare the Hadzabe to be a traditional community
- The minister must prescribe conditions to regulate the utilisation of wildlife; and
- The minister must give a licence to the said community specifying the period for which the said hunting must take place, including the type and numbers of animals to be hunted.

From the above provisions, it remains incontestably obvious that hunting by the Hadzabe has been put into the hands and discretion of one individual, the minister for natural resources and tourism

(MNRT). So, in reality and in a very strange way, the livelihood of an entire tribe has been put into the hands of one individual. Since the enactment of the law, the minister has not declared the Hadzabe as a traditional community neither has any licence been given to them to hunt any animals. Hunting is, therefore, illegal for them which is exactly the same position before the coming to force of the new law.

To confront the challenges faced by the Hadzabe, the government and other concerned institutions have decided to recommend alternative and often diversified livelihood strategies for them. Key in this is the attempt by the government to make the Hadzabe settle and embrace crop farming. To begin with, the government carried a massive exercise to settle the Hadzabe as a basis for embracing agricultural activities. The logic of the government is easy to sympathise with. Settled communities are easy to reach when it comes to the provision of social services. While this is understandable, attempts to settle the Hadzabe have been met with disastrous results mostly due to the fact that there was little preparation to design the most appropriate livelihood strategies for the Hadzabe. Because the Hadzabe were not sufficiently involved in making these strategies, they often returned to the forest from settlement camps (Lee and Hitchcock, 2000: 263), in one incidence, killing all the cattle the government had given them shortly before they deserted the camp.

It may be interesting to discuss a little bit why these government interventions did not succeed, as this stands testimony to how 'minorities' are treated in policy-making processes and development interventions. Lack of proper participation often results in inappropriate development programmes which have a negative impact overtime.

The settlement programme by the government had the bigger objective of transforming the lifestyles of the Hadzabe by assisting

them to abandon their traditional economy and embracing a totally different lifestyle. To abandon the traditional semi-nomadic life of hunting and gathering in the stead of sedentarisation and farming, was not going to be so easy. The government was building a nation of settled communities who participate in politics and national economic activities and become self-sufficient in food production, thereby contributing to national development (Madsen, 2002: 19).

The attempts to sedentarise them failed in all aspects because of several reasons. One, the climatic conditions for most of the Hadzabe land are not suitable for farming and the Hadzabe are not skillful farmers. Theirs is a different lifestyle all together. Farming implied permanent settlement and reliance on climatic conditions for crop growth. This was going to interfere with the traditional mobility aspect of the Hadzabe lifestyle. Besides, the government has enacted stringent wildlife laws that prohibit traditional hunting without licence. The new wildlife law puts strict conditions for a traditional community to get hunting rights. The fact that they cannot hunt freely has meant that they are in constant conflict with wildlife authorities. Farming, which has been introduced as an alternative livelihood, is not doing fine either. In Kipamba, Damanga, and Mongo wa Mono villages, Hergum notes:

> Families are settled and living according to themselves-"a very strange life". Now they have got a small area –a "shamba" (piece of land) for cultivating, and some also have got sheep or goats. But they are not used to this way of life. Life has become more complicated and difficult after being settled (Hergum, 2002:23).

Cultivation among the Hadzabe implies express dependence on climatic conditions for survival. Unreliable rainfall patterns have resulted in crop failures for most of the years. Thus, the settled Hadzabe community is one of dependence and destitution. Even with the attempts to settle them by giving them land to cultivate, there has been a threat by the neighbouring farmers and herders encroaching on their land. In Tanzania, all land is public land vested

in the president as a trustee of the entire public[503]. The anomaly is that the neighbouring farming and herding communities see the Hadzabe land as free and unoccupied "public" land.

Living with neighbouring agricultural and agro-pastoral communities means that exercise of their hunting and gathering rights is increasingly being restricted. When agricultural communities clear land for cultivation, it has implications for the game population which is the life-thread of the Hadzabe. Equally important, pastoralism among the neighbouring groups implies a considerable competition for land and pasture resources with wildlife as well as dwindling hunting grounds for the Hadzabe.

While the threat posed by the neighbouring communities upon the Hadzabe is a fact to worry about, governmental support has also disappointingly remained low. The popular stereotype of the Hadzabe among many Tanzanians is one of a pristine, backward and undeveloped people. It is, however, irrefutable that the Hadzabe are least developed compared to other sections of the national population. As a result of years of government inaction in the Hadzabe country, their communities have no basic social services like education, water and health.

Lastly, one clear shortcoming of these development interventions is the fact that the local Hadzabe never participated fully in their design and implementation. Therefore, there is no wonder that the results of the projects were always predictable failures.

Land Alienation and Uncertain Livelihoods

One of the most outstanding features of the Hadzabe marginalisation today is the fact that they are loosing their land at an unprecedented pace. Land alienation is happening in virtually all the areas occupied by other marginalised groups. Their farming neighbours are always expanding their farms and hence in need of more land yet the

[503] See S.4 of The Land Act, Cap. 113.(R.E.2002).

only available land seems to be that of the Hadzabe owing to their minimal investment.

For the Hadzabe, and very much for the other marganilaised groups like pastoralists, their manner of using land is not one that leaves behind good evidence of use and occupation. This is the unexhausted improvement test in property law that is very difficult to pass with their way of life and manner of using land. No better words can express this than the Hadzabe themselves:

> Other Tanzanians often think of our land as unused and empty. But it is not empty. Every part of it is owned and used by us. We have looked after it well. Until so much of our land was taken, the animals, the bees and the plants all multiplied well. We were never hungry. All our neighbours suffered from famines. In the history of the Hadzabe, there has never been a famine. No Hadzabe has ever died of hunger when we had our land. But now so much of our land has been taken, and is still being taken, many Hadzabe are hungry… (Hergum, 2002: 23).

Because of the above phenomenon and way of thinking, the farming and pastoral communities neighbouring the Hadzabe such as the Iraqw, the Nyiramba and the Barbaig, have taken much of their land. So, in reality the Hadzbe are a double marginalised group. They are marginalised first by the mainstream society with the support of official government policy. Secondly, they are marginalised by groups that are themselves marginalised such as the pastoralists.

Political Participation and Mobilisation of the Hadzabe

Electoral Participation

Democracy presupposes a society in which individuals bear a bundle of rights as well as duties. Democratic governments are expected to trace their legitimacy to individuals who choose and place a particular people in power. The government is in turn supposed to work for the betterment of its citizens, those who put it to power and without any discrimination. Successful performance of a government in itself

is dependent on active participation of all its citizens, including minorities. In Tanzania, the Hadzabe hunter-community constitutes perhaps one of the least represented populations in electoral systems, State institutions and many other decision-making bodies. Mbulu district, the home of the Hadzabe, is largely inhabited by the Iraqw people, but also other communities like the Ndorobo and the Datoga. The district is a parliamentary constituency which has never been led by a Hadzabe MP. The also applies to the councillor position which they have also been struggling to secure without success. With their almost negligible number, chances are few that the Hadzabe will ever produce an MP from among themselves. The test, however, is whether representing them entails advancing their interests in legislative and policy making processes. The truth, however, is that politicians are likely to pay little attention to the fundamental issues prevailing in the Hadzabe community, but often rely on stereotypical attitudes, perceptions, biases and evidence of failed initiatives in the past when making decisions about them (Madsen 2000: 37).

Political Participation at the Local Level

With the ongoing local government reforms in Tanzania, state power is increasingly being devolved to local government institutions. The idea behind local government reforms has greatly improved services delivery. The reform process intends to create largely autonomous, effective and democratically governed local government institutions. Local government laws[504] define the role and functions as well as empowering local authorities to perform such functions. The Local Government (District Authorities) Act, 1982 vests district councils with the duty of ensuring law and order as well as planning, designing, implementing and supervising all development programmes. The assumption is that local government structures are closer to the people

[504] Some relevant laws include Local Government (Urban Authorities) Act, 1982 and Local Government (District Authorities) Act, 1982.

and hence provide good space for participation in the planning and implementation of development programmes. Local government authorities have enormous powers when it comes to land use which has significant repercussions for the land rights of minorities. The Mbulu district council has in the recent past taken some steps to establish land use zones in the Yaeda valley in order to regulate land use among the Hadzabe, farmers and pastoralists (Hergum, 2002: 24). In what looks like a positive gesture by the district council, all stakeholders were involved in the land use planning process, including the Hadzabe. The land use zones have been planned in such a manner that there is land for cultivation, pastoralism and conservation. In the conserved area, rearing cattle is not allowed, but the Hadzabe are allowed to practice their traditional practices. Therefore, the participation of the Hadzabe in other important issues would have been strengthened had they been given the space and opportunity to be represented in the district council or even get a few of their own to be employed in the council. The truth is that very few of them get employed in the district council due to their mostly traditional economy and literacy levels. To empower them, the Hadzabe should be mobilised to take part in the electoral process and take up leadership positions in the village government institutions. This will give them a platform through which they will articulate their interests in decision-making processes affecting their lives at least at the local government level. Consequently, lack of representation in local government decision-making bodies constitutes a perfect recipe for further marginalisation, exclusion in the political offices and ultimately, impaired access to resources.

Challenges towards Political Involvement

Participation in politics presupposes an informed public conscience that is aware of their civil and political rights. Looking at the Hadza, little political involvement in village matters can be achieved

because they are not aware of their civiil rights. Another difficulty in mobilising the Hadzabe is their lack of a clear social-political organisation as one analyst observes:

> The Hadzabe, like most egalitarian living people, are lacking concrete and functioning leadership structures….The egalitarian social organisation of the Hadzabe undermines systematically and actively development of leaders (Hergum, 2000: 30).

Unlike many other traditional societies like the Maasai and the Barbaig, which have functional traditional authoritative structures, the Hadzabe have no council of elders and or clan authorities. When conflicts between families arise, there are no traditional dispute resolution mechanisms for reconciliation. As a result, these families often have no alternative, but to move away from each other to avoid further misunderstanding. Lacking a traditional authority among the Hadzabe makes it frustratingly difficult to mobilise them to advocate for their rights and pursuit for possible survival alternatives.

Civil Society Organisations and Hadzabe

A number of national, international organisations and donor-supported programmes advocating for the interests of the Hadzabe have been in place. NGOs have considerable advantages over government institutions in that there is relatively greater accountability and involve people on a first hand basis. CUSO is one such example of organisations that has been working closely with the Hadzabe from the early 1990s. CUSO assisted in establishing and titling of the Mongo wa Mono village in which a few Hadzabe were settled. In addition, the Lutheran Hydom Hospital is a charity organisation established in the Yaeda valley by the Lutheran church to provide medical treatment to the Hadzabe. Recently, powerful pastoralists' organisations, which operate under the rubric of indigenous people, have exerted a lot of influence on matters regarding the rights of the Hadzabe, especially land rights. These include two Meso-level organisations advocating for the rights

of pastoralists and hunter-gatherers, pastoralists indigenous non-governmental Organisations (PINGOS) and Tanzania Pastoralists and Hunter-Gatherer Organisation (TAPGHO). Another key player is a more modest and practical Ujamaa Community Resource Team (U-CRT) whose work evolves around land use planning as a tool to empower local communities in the use and ownership of natural resources. U-CRT played a key role in assisting the Mbulu district council to come up with land use plans for the Mongo-wa-Mono village which secured a good portion of Hadzabe land from further alienation and abuse by their neighbours. On another positive note, the PINGOs forum assisted the Hadzabe a few years ago to register their own organisation called the Hadzabe Survival Council (HSC), although its survival was short-lived due to the selfishness of its leaders and general lack of organisational initiatives among the Hadzabe leaders.

Besides promoting the land rights of the Hadzabe, some organisations, especially faith-based ones, have also provided the Hadzabe and other marginalised communities with basic services such as education and health. Education could play a great role in improving the lives of the Hadzabe by equipping them with knowledge and capacity to organise themselves and participate in political affairs.

The Legal Framework and Minorities: Opportunities and Gaps

The marginalisation of the Hadzabe and other groups in Tanzania is often times a function of legislation and policy stipulations. So, what may begin as social relations practices, end up getting legislated to have the force of law. However, not all legal instruments and policies are negative. Some offer rare opportunities for them to participate in meaningful social, economic and political processes. These laws and policies deal with a cross-section of issues, including local governance, conservation, land, and political participation.

Local Governance and Marginalisation: Opportunities and Challenges

Virtually, all Hadzabe live in rural areas in villages and sub-villages. This is why the activities of local government, are very important for their survival and wellbeing. For them, the village is the closest one can go into the strata of governance and administration. It offers a rare opportunity for them to participate in development and all matters related to their well-being. In contrast, matters of governance at the higher levels are the preserve of the majority and most influential, where minorities and the marginalised cannot secure good space for participation without special arrangement.

The local government system in Tanzania is a creature of the constitution (Tanzania, 1977). Chapter 8 of the said constitution sets the benchmarks for local governance:

> 145(1) There shall be established local government authorities in each region, district, urban area and village in the United Republic, which shall be of the type and designation described by law to be enacted by Parliament or by the House of Representatives.
>
> (2) 146(1) The purpose of having local government authorities is to transfer authority to the people. Local government authorities shall have the right and power to participate, and to involve the people, in the planning and implementation of development programmes within their respective areas and generally throughout the country.

The constitution has, therefore, willed and legislated very sufficiently the need for an elaborate and functional local government system in the country. Dr. Ringo Tenga, a leading champion of the rights of minorities, is very clear on this:

> It is important to note that Article 146 of the Constitution emphasises the main purpose of establishing local governments being, first, the devolution of governance authority to the people. Secondly, in pursuit of democratic governance, local governments are enjoined to involve the people in the planning,

> and implementation of development programmes. Consequently, governmental power at the village level, being the lowest grassroots level of local governance, must be based on popular power and derives this feature from the Constitution. Furthermore, the Local government organs are enjoined by the Constitution to involve people in planning for their development. It is important to keep in mind these two constitutional principles, that is, on one hand, the devolution of governmental power of the people; and on the other hand, the participatory imperative out of which the involvement of the people is fundamental in development planning… (Tenga, 2007: 3-4)

To reinforce the constitutional provision, parliament has enacted two principal legislations, one rural and the other urban: Local Government (District Authorities) Cap 287, R.E 2002(Act No. 7 of 1982; and Local Government (Urban Authorities) Cap. 288, R.E 2002(Act No. 8 of 1982).[505]

Consistent with the constitutional imperative on the devolution of governance authority and democratic governance, the Government of Tanzania has, with the support of donors, embarked on a project entitled the Local Government Reform Programme (LRGP), which aims broadly at empowering Local Government Authorities (LGA) to deliver on their constitutional mandates with greater efficiency and transparency (Shem & Matee 2005:32). The reform process has been well underway and is expected to be completed by 2010, the time which LGA will be expected to have become:

- Largely free to make policy and operational decisions within the laws of the land;
- Stable in terms of financial and human resources management
- Facilitative of people's participation in planning and implementing their own development plans;
- Responsive to the needs and priorities of the people, and
- Transparent and accountable.

[505] Other important legislation, the Local Government (Elections) Act of 1979 and the Regional Administration Act, of 1997.

Under the LGRP, the role of the central government is restricted to the development and management of policy and provisions of a regulatory and monitoring framework. The key issue in the reforms consists of devolving powers, functions and resources to the people in the communities. To achieve that objective, the local government laws create specific governing structures vested with powers and functions to ensure good governance and participation in running daily affairs of the villagers. At the village level, there is the Village Assembly and the Village Council, established by the Local Government District Authorities Act, 1982. The idea behind the establishment of these structures is to achieve broad-based community awareness and participation in the reform process and promote principles of good governance and participation, democracy, transparency and accountability. These are the main structures with the mandate to plan and oversee the day-to-day affairs of the people, including land use planning and management.

In theory, therefore, decentralisation offers unique opportunities for minorities and marginalised groups to participate in decision-making processes. The reforms in local government require districts to compulsorily undertake participatory planning. To make sure that this is realised, a bottom-up planning process is mandatory. In effect, therefore, this means that minorities and marginalised groups, who are often at the lower rank among members of society, get the opportunity to participate and give their own priorities and ideas on how development should be organised for their interest.

In practice, however, the decentralisation exercise may be a missed opportunity for the marginalised groups. Many of the marginalised groups under inquiry are mobile, a factor that impedes their participation in mainstreaming policy-making processes (Shem and Matee: 34). Sometimes, these groups, and for lack of awareness or by sheer negligence, decide not to get involved in the politics of participation and leave them to more settled communities. One study on the right to participation has observed that:

> Our discussion with community leaders and CSO officials in Katesh, Ngorongoro and Arusha revealed that pastoralists did not know that it was important to elect pastoralists leaders into elective decision-making organs of the State, they elected instead agriculturalists in order to relieve themselves of the hustle of attending endless meetings instead of taking care of their herds. When official policy and administrative decisions were made, these come as hailstorm upon pastoralists who were absent all the way, but involved in accordance with law (Mvungi, 2007:18).

With the Hadzabe, the local government reform process is strikingly at odds with their mode of life. Although there has been considerable decentralisation of powers in land use management and planning, the Hadzabe still find it difficult to take power and positions of influence in political leadership of the village councils. At least in theory, the Hadzabe could have access to governance affairs at the village government level, but the reforms are based on the idea of permanent villages. With the decentralisation of power and functions of the government, communities are expected to participate actively at the local government level in designing and implementing policies and plans aimed at social and economic development. This is not the case with the Hadzabe. There are few Hadzabe who run for elections to the membership of the council. Thus, the stereotypical attitudes of the local officials in the village councils have a big impact on policy formulation and implementation and this situation is reinforced further by the absence of Hadzabe people in the village administration. It would have been easier to articulate concerns of the Hadzabe if there was representation in the village governing structures.

So, while there may be opportunities for participation, other factors such as mobility and non-engagement of marginalised groups could be inhibiting.

The second obstacle to effective participation is inherent in the limitations and weaknesses of the LGRP itself. Devolution has not completely taken over oversight functions of parent ministries at

the central government level. Matters related to policy-making are still controlled from the centre and this is the problem since policies and legislation are the problems that minorities are struggling with in the first place.

The third obstacle relates to lack of a co-ordinate voice(s) for these marginalised communities. The ongoing LRGR offers opportunities for CSOs, among other key actors, to provide input into district plans. Many marginalised communities do not have effective and legitimate peoples' organisations to inform the making of the said plans. This is most true of the Hadzabe. For pastoralists, especially the Maasai, the problem is not the availability of these organisations, but rather their non-unity and conflicts. In most cases, these CSOs collide and conflict with traditional institutions, exacerbating the lack of effective co-ordination.

Land Laws and Policies and Land Rights of Minorities

If the colonisers were guilty of ignoring customary rights generally, the indigenous African officialdom is similarly guilty of ignoring pastoral tenure with the same air of prejudice, indifference, ethnic chauvinism and discrimination (Tenga, 2006:12).

The National Land Policy, 1995 and the Land Act[506] are the key tools setting out procedures and essential matters such as land holding, tenure and administrative mechanism, for dispute resolution. But with the Hadzabe, the more relevant piece of legislation is the Village Land Act, 1999. The Act identifies three categories of land namely; reserved land, general land, and village land. Generally, the Village Land Act places emphasis on the village as the main institution for land management. The main concern is how these laws work out against the Hadzabe in practice.

Generally, customary land rights, including the rights of hunter-gatherer communities, are recognised as forming part

[506] The Land Act, No.4 of 1999, and the Village Land Act, No.5 of 1999, and the Land Courts (Dispute Settlement) Act, 2002.

of the village land. The main problem in this regard is that determination of the land rights of Hadzabe is handled by the village government authorities who ideally favour cultivation than the needs of the nomadic and semi-nomadic hunter-gatherers and pastoral communities (Kaare, 1998:7). The village governments are empowered to make by-laws for virtually anything falling in the territory of the village. Unfortunately, it is to the disadvantage of the Hadzabe that the district and the village government enact by-laws that favour the settled agricultural community. In Yaeda valley, the village government prescribed a law on the temporal tenure and quality of housing (Madsen, 2000:60). This provision basically prohibits the grass-thatched houses of the Hadzabe. This means the Hadzabe should establish permanent houses, something contrary to their traditional lifestyle.

A great achievement in Hadzabe land rights advocacy is probably the titling of the Hadzabe village of Mongo Wa Mono in 1994 facilitated by CUSO. The village was issued with a certificate of incorporation and title deed. These were the early attempts by CSOs to secure land rights of the Hadzabe community. Thus, in theory, the Hadzabe have legal rights over the titled traditional land. Such legal ownership entitles them to use and manage natural resources found in the area, including wildlife. This is not, however, going to be the case exactly when it comes to wildlife as the law places the control and the ownership of wildlife resources with the central government. On the other hand, titling has not necessarily prevented further immigration of the neighbouring agricultural and pastoral communities. Thus, there is increasing vulnerability of the Hadzabe.

Wildlife Laws and Conservation

Laws related to wildlife and conservation are at the heart of contention when it comes to the rights of the hunter-gatherers and pastoralists. This is because a good number of their lands have

been taken away by conservation. And on top of that, the hunter-gatherers traditional economy has been severely eroded and made impossible by the prohibition of hunting and living in conservation areas. The National Parks Act of 1959 prohibited human habitation in national parks. This law was also responsible for the eviction of pastoralists from their ancestral lands. The eviction of the Maasai from Serengeti in 1958 to create a national park is a telling example. Similar provisions were used to create other national parks like Tarangire, Manyara, Arusha, just to mention a few. The Ngorongoro Conservation Act allows the practice of multiple land use. Despite this, it has not been easy for the conservation authorities to strike a balance between conservation and human development.

The Wildlife Conservation Act (WCA), 2009 is the framework legislation that is in charge of the largest share of conservation categories outside Ngorongoro Conservation area and national parks in Tanzania. Game Controlled Areas (GCAs) and Game Reserves (GRs), which take much of the country's conservation land mass, are regulated by WCA. Many of the GCAs and GRs that WCA is in charge of are often times pastoralists and hunter-gatherers lands or areas that they claim ancestral rights to.

The conservation logic of WCA is premised on the orthodox approach to conservation. It employs the fences and fines approach to conservation. Human beings are taken to be antagonistic to conservation instead of being a constituent element. The law has recently been promulgated anew, but the product is not different from the Wildlife Conservation Act, 1974 it sought to replace. Efforts to come with a wildlife law, which is sensitive to the needs and rights of local communities, have been constrained by those who still live in the past and are not ready to embrace the new conservation thinking which sees the human person as an integral part in conservation.

WCA prohibits many human activities. The law prohibits hunting without permission of the wildlife management authorities.

Everyone intending to hunt for commercial purposes or otherwise, must seek a permit from the relevant authorities. In theory, therefore, all hunting is prohibited unless it is licenced by the authorities. Most often, these hunting contracts are tilted at providing hunting rights to foreign companies and the rights of local communities in the supposedly beneficiary villages in which hunting is carried out are violated. As pointed out above, the Hadzabe can only hunt if they are recognised a traditional community by the minister for that time responsible for wildlife and upon being given a licence. It is ironic that a people's livelihood is succumbed to the same requirements of licensing like commercial hunters. In reality, the Minister may decide to not to grant them the said licence, thereby denying the community the opportunity and right to get food.

While the Hadzabe are denied hunting rights on their lands, those lands are easily given away to commercial agriculture and commercial tourist hunting companies and individuals. In 2005, Tanzania had plans to grant a hunting concession of ancestral lands belonging to Hadzabe to a royal family. The company (UAE Safaris) acting on behalf of the Crown Prince, Sheik Mohamed of the United Arab Emirates, was to hunt in an estimated 2,267 square kilometres of remote bush in the Yaeda Chini region of Mbulu district.[507] Ideally, the deal could have criminalised the Hadzabe as poachers and be driven off their land. Following a deep outcry from human-rights activists, the company cancelled their plans to use the Hadzabe land for hunting two years later. The concession could have granted exclusive hunting rights to the UAE Safaris and shattered the hunting rights of the Hadzabe community.

The wildlife policy offers a limited opportunity for peoples' participation in the management of wildlife resources as well as in benefiting from the wildlife found in their lands. The core objectives

[507] Cited at http://www.freelancejournalists.org.uk, accessed 23 Nov, 2007 James, A.(2007) "Hunter-gatherers great victory over commercial hunters".

of the policy are ensuring the conservation of biological resources and the sustainable utilisation of wildlife resources and ensuring that this conservation contributes to poverty alleviation and improving the quality of life of Tanzanians.

The policy states clearly that with respect to local communities: "It is the aim of this policy to allow rural communities and private land holders to manage wildlife on their land for their own benefit."

Poverty Reduction Strategies

The National Strategy for Growth and Reduction of Poverty (NSGR) or MKUKUTA, to use its famous acronym, makes a few positive developments regarding pastoralism, but does not address the demands and concerns of the other minorities, especially the hunter-gatherers. MKUKUTA is the first government policy in Tanzania to recognise pastoralism as a sustainable livelihood. In what looks a hardly fought inclusion by pastoralists' CSOs, MKUKUTA makes concrete proposals on how to address the vulnerability of pastoralists' livelihoods. These are some of the opportunities that can be used by those championing the pastoral course to address some issues related to marginalisation:

- Promote efficient utilisation of rangelands and empowerment of pastoral institutions for improved livestock productivity;
- Promote programmes that increase income-generating opportunities for women and men in rural areas through promoting small-scale industries, non traditional product and traditional crafts;
- Promote pastoralism as a sustainable livelihood;
- Construct charcos, improve access and quality of veterinary services and promote dairy and leather industries; and
- Ensure improved access to reliable water supplies for livestock development through promotion of small-scale rainwater harvesting.

Recognising pastoralism as a sustainable livelihood system is a revolutionary achievement in a situation where the state has all along considered the same as destructive to the environment and a livelihood that shall be transformed. The improvement of livestock productivity through provision of key services is a welcome development in a situation where those services have not been available.

Inclusion and Participation: Some Recommendations

Minorities Part of the Solution? Ideas around Change and Changeability

Pastoralists and hunter-gatherers face challenges whose solutions are not easily in sight. Seeking to be associated with external forces outside their national boundaries may not be the best solution available. While we have seen the example of how international advocacy in the form of indigenous people can help in times of crises such as when an investor invaded the Hadzabe land, there are not many examples to go by. Pastoralists and hunter-gatherers have been involved in the indigenous peoples' movement for close to two decades now. However, there is not a single example where their marginalisation and problems have been resolved by associating with the said movement. So, seriously, the pursuit for a sustainable human-rights regime for pastoralists and hunter-gatherers should perhaps begin at home. Critical in this change is the readiness of these groups to change and live according to the realities of the globe they live in. While it is true that pastoralists and hunter-gatherers have been changing with time, which is understandable in view of their humanity, a different kind of change, which is intended and willed, may be called to question now when the realities on the ground are so harsh and vastly changing. This is needed to rescue them from further marginalisation, and in the case of the Hadzabe hunter-gatherers, from extinction.

The Hadzabe still depend on the fruits of the forest and wild animals for survival. These forests and animals have been hived for conservation and what is left of their land has been taken by farmers and pastoralists. A pure life of foraging may never be possible anymore because of the vastly deteriorating natural resource base. So, even if we were to agree, and we hereby do, that the Hadzabe have an unalienable right to choose their livelihood means, we will just be doing so for academic interests and for fundraising since it is no longer possible for them to exercise that right.

The fact that the Hadzabe have been brought to near decimation is not forgivable and is certainly a result of policy choices which have had the effect of alienating them from their ancestral lands and resources found therein. This being the case, the beginning of the solution to their marginalisation is based on the fact that those resources are no longer tenable and they can no longer live a pure life of hunters and gatherers. The animals belong to the state and nobody can hunt them without a licence. The same applies to the forests; they are either gone or protected in one way or another. A minimum degree of adaptation, especially in the pursuit of alternative livelihoods, is important in this regard.

So, after all the attempts by the government to change the Hadzabe had shortfalls, they are not without merit although the approach was, however, wrong because the Hadzabe were not given the opportunity to participate in the decision-making process. In addition, the fact that the government considered the Hadzabe's way of life as primitive, irrational and barbaric, has also added to this shortcoming.

Some forms of livelihood diversification are needed to rescue the Hadzabe, but as we have seen, this is not an easy task and could take many years of mobilisation and awareness creation among them, as indeed this is a society that has been living on nature for many years.

The fate of pastoralists is more or less the same as that of the Hadzabe, but suffice to say, it is a little bit different. While the Hadzabe have virtually no options left to themselves, levels of destitution among pastoralists are different. What they share in common is the air and degree of prejudice that the state and the mainstream society level against them. Pastoralism is seen as an archaic way of earning a living which belongs to the pre-historic era of human civilisation. Pastoralists are considered primitive people who shy away from development and progress.

A second similarity is the fact that both the Hadzabe and some pastoralists like the Maasai and the Barbaig, have suffered various degrees of land deprivation and similar violations. Pastoralists have suffered massive land alienation since the colonial times and things did not improve with the flag independence. Big chunks of their lands have been taken for wildlife conservation. Tanzania has set aside some 30% of its total landmass for conservation and it would be proper to mention that a big part of this belonged or belongs to pastoralists. In some pastoral districts like Ngorongoro and Monduli in Arusha region in northern Tanzania, up to 98% of the total land mass has been turned into conservation areas of different kinds.

The net effect of shrinking pastoral resources is the fact that pastoralists can no longer sustain mobility, which is a very important strategy in dry land's pastoralism. Mobility allows pastoralists to access seasonably varying and scattered resources which often strike the necessary balance between pasture and water. This movement takes place in a manner that makes it possible for different ecological zones to be accessed in different parts of the year. This practice used to sustain pastoralism. Land alienation has meant that it is no longer possible to move from one area to another. In short, like the Hadzabe, pastoralists can no longer sustain their livelihoods from a traditional pastoralism system.

Community members who are dependant on pastoralism must also change and find some livelihood diversification and undertake the kind of animal husbandry that is realistic and relevant to the shrinking natural resource base. We are already seeing this change taking place among the Maasai pastoralists. Realising that they could no longer live in isolation, the Maasai are known to be wandering in leading urban centres in East Africa in pursuit of wage labour and trade. This was not possible to think of a few years back.

Their immigration into urban areas in recent years is evidence of their deteriorating livelihoods as a result of marginalisation and social and economic exclusion. This immigration has the effect of unplanned integration into the larger society, but does not serve well the purpose of inclusion since the factors that are responsible for their marginalisation in the first place are still intact. Also, the Maasai who migrate to urban centres do not have the education and the necessary skills to be meaningfully integrated into the mainstream way of life.

We have noted that there are different types of minorities in Tanzania and that they do not exist as a homogenous group. Because of this, solutions for their marginalisation and exclusion are also varied. For the Asians, whose exclusion is only social and political, a different solution is called for. For the Hadzabe, the fact that they are at the brink of extinction calls for a totally different strategy for their rescue. For pastoralists, who do not fit into the minority formulae, but marginalised nonetheless, their problem is not a question of numbers, but a question of misunderstood livelihood strategy. Their problem is an issue of organisation and assertiveness of the rationality of their land use systems. This diversity, notwithstanding, we are of the view that some general recommendations can be shared. The following recommendations can be made for a better inclusion of these groups into national, economic and political processes.

Solidarity with Others: The Power of Networks and Advocacy

We have noted that minority groups can assert their power and secure some space for dialogue through association with others. This is possible despite the risk of not being able to drive and define the agenda. We have observed a good example, where the minority Hadzabe have managed to drive away a very strong investor, just because of mobilising support from a bigger group of human-rights activists in and outside Tanzania. Civil society forums are emerging as effective tools of giving voice to otherwise voiceless minorities such as the Hadzabe. We have also noted that the trademark recognition of pastoralism as a rational and sustainable livelihood system in the NSGRP was an effort of pastoral CSOs in association with their allies.

Those who champion the cause of these minorities should assist them to build strong and vibrant CSOs. The policy and legislative environment in Tanzania is very enabling. It is now possible to register CBOs even at the district level, an achievement that was unthinkable a few years ago. The short-circuiting of the bureaucracy in registration, as well as the distance and expenses involved in a centralised registration system, have all meant that it is now possible for many people at the village level to register their CBOs.

The Use of the 'Fourth Estate': Taking the Voices of Minorities Across and Beyond Borders

The media is increasingly becoming a very efficient method of carrying afar the concerns of minorities. What we have seen in Tanzania is a marriage between the local media and CSOs whose fruits we have witnessed already. Significant development in the telecommunication industry has also meant that it is now possible for local communities to relay their grievances and report abuses to the media without having to rally in urban centres to get coverage.

Increasing the use of the Internet has also meant that it is now possible for the international media and international human-rights organisations to receive news as it happens on the ground. Minorities like the Hadzabe should be assisted in exploring opportunities that are present by increasing sympathetic media and human-rights lobby groups. They could use these avenues to articulate their demands and ideas. There is also the emerging concept of community media, where the local people can mobilise resources to have their own means of passing vital information among themselves. A community radio for the Hadzabe, for example, would be an important means of relaying important information among themselves as well as to the outside parties. It could serve as an important tool of passing important cultural elements from one generation to another.

Using Available Opportunities in the Policy Framework

We have noted a few opportunities that could be harnessed in support of the rights of marginalised groups. We have observed, for example, the fact that the land laws provide an avenue for common ownership of land. This is something those championing the rights of marginalised groups could take to another level and make sure that collective titling of these lands is done to ensure tenure security. Opportunities are available in the local government reform process for minorities to participate in district planning. Sometimes, minority groups have not taken advantage of this situation. MKUKUTA has recognised pastoralism as a sustainable livelihood. This recognition should be taken to another level in policy advocacy beyond MKUKUTA. The Hadzabe and the pastoralists could also use some of the openings in the wildlife policy and the Wildlife Conservation Act through the wildlife management areas, for example, to demand for participation in the management of the wildlife found in their lands, including getting equitable benefits thereon. The Hadzabe could use the opportunity in the new wildlife

law to advocate for their recognition as a hunting community and consequent licensing of their hunting activities.

There are a few opportunities in the policy that can help these marginalised groups in their struggle for equitable access to opportunities. Some of these are in the area of poverty reduction, the constitution, local government reforms and as well as a good number of policies and legislations, which deal with the management of natural resources.

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6

Ethnic-Racial Minorities: Movement Towards Political Inclusion: The Case of the Batwa in Uganda

*Kabann I.B. Kabananukye**

Executive Summary

The Government of Uganda is committed to addressing multi-ethnic and multi-cultural concerns. This commitment is demonstrated by the government's endorsement of international, regional and national legal instruments that guarantee indigenous people's concerns. Despite this, there still exists some ethnic-based conflicts, especially in the political sphere. These take some form of marginalisation, in which the political leadership favours some ethnic groups to the exclusion of others. Marginalisation of ethnic groups can take other diverse dimensions. It may be in form of the group's inability to field one or more of their own in key political positions. It may also be their inability to accept or reject political decisions. This paper highlights some of the key reinforcing factors that render minorities' political inclusion problematic in Uganda, using the case of the Batwa community.

Justification for focusing on the Batwa, as a minority ethnic group does not necessarily lie in their numerical weakness. Their selection was also based on their spirited self-portrayal as an impoverished community.

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Their visibility as one of the extremely vulnerable groups came into the limelight in the early 1990s. Their ancestral lands, comprising Bwindi, Mgahinga and Semliki, were converted into 'protected areas', denying the Batwa their traditional unrestricted access to forest-based foods, medicine and other resources. This marked the beginning of the end of their centuries-old forest-based hunting-gathering traditions and livelihood. Currently, they live in close association, not necessarily in a symbiotic, but a skewed relationship with the dominant cultivators, nomadic and off-farm business communities. When it comes to political processes, especially voting and being voted for, The identity of the Batwa and their ability to make rational political decisions, are undermined.

Limited grounded researched information provides a premise for spreading myths, derogatory labels and stereotypes about the Batwa. No other ethnic group in Uganda is widely debated about as much as the Batwa with respect to what they are supposed to be called (pygmies or Batwa), their livelihood, appearance, height, language and other cultural traits. Such debates go on irrespective of the human-rights standards which disregard one's size and language, among others. The Batwa are often told to modernise and integrate into mainstream development endeavours with the dominant ethnic groups. Their mode of life is considered inferior and less civilised. This situation renders their participation in political and other community affairs overshadowed. The state of affairs is aggravated by other problems such as lack of free access and utilisation of forest resources and inability to articulate their concerns, including limited meaningful participation in the political processes. These issues infringe on the Batwa's inherent human rights, subsequently reducing their opportunities to contribute productively to development and political processes. That these issues have not only escalated the Batwa's survival systems, social exclusion and vulnerability, but also compromised their active participation in political processes.

The paper comprises three sections. Section one provides background information. The challenges of forging a popular political system in a multi-ethnic society are highlighted. The policy and legal framework for the protection of minority rights and the promotion of their participation in political and development processes, have been provided. Highlights of the Batwa's demographic profile as a case for minorities have been provided. Section two highlights some of the reinforcing factors that render the Batwa's political inclusion problematic. The last section provides conclusions and recommendations.

Background Information

Democracy in Multi-Ethnic Groups

One of the challenges of contemporary times is the phenomenon of dispersed ethnic and diasporic communities with distinctive features and the desire to be accommodated politically both within the evolving global network of international organisations and democratic states. [508]

Ashton and Bryan argue that in the contemporary world order, while nation states survive, their functions change.[509] There is a need to accept superstructures based on confederalism and global organisation in a vast network of autonomous systems dedicated to solving complex and interdependent issues. The systems need to focus on preserving the environment, handling population growth, promoting democratic principles, protecting workers, alleviating poverty, promoting health and securing cultural values. In this context, democratic states are more likely to succeed and survive if they follow parliamentary constitutional principles. They also need to make some fundamental constitutional innovations that enable dispersed minorities, both at home and in the diaspora to be better represented, perhaps in separate legislative chambers[5].

[508] Alexandra Ashton and Joe Bryan, 2002.
[509] ibid.

The foregoing discussion implies that democratic institutions are better positioned to handle the problems of ethnic identity posed by globalisation than non-democratic regimes. Among democracies, parliamentary constitutional systems can handle the ethnic-based problems more easily than those following the separation-of-powers (presidentialist model). However, all existing constitutional democracies are handicapped by their lack of separate legislative chambers in order to represent geographically dispersed minorities, both within the country as ethnic communities and autonomous regions, and also to speak for citizens living in the diaspora. Overcoming this handicap is one of the major challenges for political design in a globalised world.

All democracies confront some fundamental problems that affect their capacity to deal with global challenges. The first problem is the level of their legitimacy, whether citizens voluntarily support governments as truly representative of their interests, or view them with hostility. The second fundamental issue is about the capacity of regimes to deal with modernity, the industrial revolution and growing ethnic diversity, including demands for autonomy or independence by mobilised ethnic-based communities.

Policy and Legal Framework

Through a variety of programmes, including the Poverty Eradication Action Plan (PEAP), the Government of Uganda has acknowledged the rights of indigenous people and vulnerable groups. The social development sector[510] seeks to address social development concerns which include social exclusion, inequity, vulnerability, unemployment and disenfranchisement, for different groups such as rural women, the elderly, the youth, children, the unemployed, child poverty, the disabled, IDPs, refugees and indigenous ethnic groups. The term 'indigenous people' has a broader meaning than 'who came first.'

[510] Ministry of Gender, Labour and Social Development, (Kabananukye and Bugembe report, 2005).

It embraces the movement for rights and justice for those left on the margins of development and who are perceived negatively by dominating mainstream development paradigms, whose culture and way of life are subject to discrimination and contempt and whose very existence is under threat of extinction.[511] The government has consequently endorsed the international, regional and national legal frameworks and instruments that guarantee their rights.

The frameworks are guided by the 1995 Constitution. The constitution provides for the right to equality and freedom from discrimination and guarantees for all, irrespective of their sex, race, colour, ethnic origin, tribe, birth, creed/religion or social, economic standing, political opinion or disability.[512] Parliament must enact laws necessary for implementing policies and programmes aimed at redressing social, economic and educational or other imbalance in society.[513] These provisions are further guided by the National Objectives and Directive Principles of State Policy and are the aspirations and values that should guide all organs and agencies of the state, all citizens and organisations and persons in implementing the constitution or other laws and in taking policy decisions for the establishment and promotion of a just, free and democratic society. These principles highlight the concerns of the people of Uganda regarding equal opportunities for vulnerable groups.

The Equal Opportunities Commission has been established and has integrated various international and regional legal frameworks. They include (i) the Universal Declaration of Human Rights, (UDHR)(ii) the International Covenant on Civil and Political Rights (ICCPR), 1966 ratified in 1995, (iii) the International Covenant on Economic Social and Cultural Rights (ICESCR), 1966 ratified in 1987, (iv) the Vienna Declaration and Programme of Action, (v) the

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[511] African Commission IPC (2005) 87; Wairama, 2001.
[512] Article 21 (2).
[513] Article 21 (2).

Declaration on the Rights of Minorities 1992, and (vi) the African Charter on Human and People's Rights (ACHPR).

Other guiding principles are enshrined in the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992).

Article 1 provides that states shall (i) protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and shall encourage conditions for the promotion of that identity, and (ii) adopt appropriate legislative and other measures to achieve those ends.

Article 2 provides that persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life as well as in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation. The establishment and maintaining of their own associations without any discrimination; free and peaceful contacts with other members of their group, with persons belonging to other minorities, as well as contacts across frontiers with citizens of other states to whom they are related by national or ethnic, religious or linguistic ties, are also provided for in this Article. The article also provides for the minorities' right to enjoy their own culture; to profess and practise their own religion; and to use their own language in private and in public freely and without interference or any form of discrimination.

Article 3 provides for persons belonging to minorities to exercise their rights, including those as set forth in the Declaration individually, as well as in community with other members of their group without any discrimination. It is further provided that no disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights as set forth in the Declaration.

Article 4 provides for states to take measures to:

- Ensure that persons belonging to minorities may exercise fully and effectively all their human-rights and fundamental freedoms without any discrimination and in full equality before the law;
- Create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards;
- Ensure, wherever possible, persons belonging to minorities have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue; and
- Ensure, where appropriate, education in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

Article 5 national policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities; and that programmes of co-operation and assistance among states should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

Article 6 states should co-operate on questions relating to persons belonging to minorities, *inter alia*, exchanging information and experiences, in order to promote mutual understanding and confidence.

Article 7 states should co-operate in order to promote respect for the rights as set forth in the present Declaration.

Article 8 provides that:

- Nothing in this Declaration shall prevent the fulfilment of international obligations of states in relation to persons belonging to minorities. In particular, states shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties;

- The exercise of the rights as set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognised human-rights and fundamental freedoms;
- Measures taken by states in order to ensure the effective enjoyment of the rights as set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights;
- Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of states.

Article 9 the specialised agencies and other organisations of the United Nations system shall contribute to the full realisation of the rights and principles as set forth in the present Declaration within their respective fields of competence.

Ethnic Groups in Uganda

Uganda is a multi-ethnic and multi-cultural society with 56 ethnic categories.[514] It is a melting pot of both indigenous and foreign peoples. Indigenousness is an attribute of both personal and collective identity. It is tied to the concept of peoples sharing the fundamental right of self-determination. The term indigenous implies the legitimate struggle for certain rights.[515] Some of the major elements that distinguish indigenous marginalised communities are summarised[516] as follows:

[514] In the absence of any specific research to update the status, this is still the official record. The 1995 Constitution quotes this figure as derived from the 1926 records. Probably there could be others yet to be unravelled.

[515] Woodburn, 1997.

[516] See details in the Kabananukye, May, 2004

1. Self-identification
2. Cultural distinctiveness
3. Geographical areas or ecosystems that describe ancestral region of habitation: with a legitimate claim to specific ancestral territory linked to their cultural identity and economic survival
4. Production based on natural systems and resources
5. A close link between the natural world and their cultures
6. Vulnerability resulting from social exclusion and social injustice being experienced
7. Indigenous peoples living in forests or communal ecosystems are and should be distinguished from spontaneous settlers or forest-dependent people, or those forced into such areas for security purposes
8. Do not seek to deny the claims of other ethnic groups
9. Belief that we are all indigenous is by consensu.
10. Socio-economic conditions at a less advanced stage
11. Consider themselves distinct from other sectors of society.

Linkage between ethnicity and political participation in Uganda is not disputed. The Batwa constitute one of the ethnic minorities in Uganda. It ought to be noted, however, that in Uganda, the Batwa constitute the sixth among the minorities (in terms of numerical weakness).[517] They are not only a minority in terms of numerical numbers, but also in terms of resource access, utilisation and political participation. They are also a marginalised community.

While their populations are small, their status in terms of vulnerability is yet to be ascertained. It is only the Batwa, Ik, Benet, Nyag'ai, and Venoma's vulnerabilities, that are vaguely

[517] UBOS, 2002, 2006.

understood.[518] It is from this perspective that this paper focuses on the Batwa, as an indigenous minority and a vulnerable group. A significant proportion of this paper discusses the marginalisation and discrimination that render the Batwa vulnerable. Hopefully, the case of the Batwa will demonstrate the experiences of other vulnerable groups in Uganda.

Demographic Profile of the Batwa

The Batwa, numbering about 6,000 individuals,[519] are one of Uganda's indigenous peoples and a hunter-gatherer community. Because of their numerical weakness and diverse stories, myths and stereotypes about them, most dominant ethnic groups do not know the Batwa look like.

Age and Gender Composition of the Batwa

The age composition of the Batwa has a significant implication on the reproductive potential, human resources, socio-economic activities and other demographic features. It is, therefore, pertinent to examine the age composition of the Batwa. The composition of the population is a key characteristic for meaningful analysis of demographic trends such as fertility, mortality and migration. The sex ratio, defined as the number of males per 100 females, is an index for comparing the numerical balance between the populations of either sex in different population groups irrespective of their size, location and time reference. The 2002 Population and Housing Census gave the Batwa a sex ratio of 95% implying that there were 95 males for every 100 females. This confirms an earlier complaint by the Batwa of wifelessness,[520] which is an aspect of vulnerability. The wifelessness concern is aggravated by the fact that there are limited intermarriages between Batwa and neighbouring ethnic groups.[521]

[518] Ministry of Gender, Labour and Social Development, 2006; Wairama, 2001
[519] Population and Housing Census, 2002.
[520] Kabananukye and Wily, 1996; Mateke, 1970.
[521] Ibid.

Batwa Distribution

As a traditional hunter-gatherer community, the Batwa's forest-based history and culture stretches through several generations. Even when some forests have not had much to offer (due to reduced resources), the Batwa still consider forests an important link to their culture, traditions and livelihood.[522] In Uganda, the Batwa are represented in various parts of the country.

The majority of the Batwa, 66% (3,706 people), were found in western Uganda in of Kisoro, Bushenyi, Kabale, Bundibugyo and Mubende districts.[523] While they are in almost all the districts of Uganda, they constitute a miniscule minority.[524] For instance, by 2002, eleven districts in Uganda had less than five Batwa individuals; eight districts had each a total of about 5- 8; four districts had 12-15, and another eight districts had 21-45. Nebbi, Kabalore, Kiboga, Wakiso, Kamwenge and Rakai district had a sizeable number of Batwa ranging from 63 to 95. In each of these districts, the Batwa population ranged from 366 to 935 people. Kisoro had the largest Batwa population constituting 13.9% of the total Batwa population in Uganda, Kasese 12.3%, Bushenyi 11.6% and all other districts 39.9%.

Population results from the 1991 and 2002 Uganda Population and Housing Censuses (PHC) indicate that the population of the Batwa increased from 1,398 to 5,591. However, in northern Uganda, their population reduced by 103. This could be due to the LRA insurgency that affected the region for over two decades.

There are three important issues about Batwa characteristics. Firstly, the Batwa population is a small proportion of the total population. By 1991, they constituted less than 1% of the nearly

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[522] Ibid.

[523] Mubende district is located in central Uganda.

[524] This analysis was made at the time when Uganda's districts were still 68 (now, by January, 2009, they were 80). It is, therefore, not clear as to whether the newly created districts have the Batwa population.

17 million people in Uganda.[525] Whilst the 1991 PHC gave the Batwa population as 876, subsequent studies[526] revealed that their population in western Uganda had been grossly under-enumerated. Through headcount,[527] the actual population was found to be 3,005 people, not 876 as reported by the 1991 PHC. Even when the PHC findings are adjusted by inter-censual growth in1991-1998, there is still a remarkably significant degree of under-enumeration as noted by Kabananukye:

> Disadvantaged or homeless people add to inaccuracies. Other reasons for these discrepancies include a deliberate refusal to enumerate such marginalised people.[528]

It should, however, be noted that under-enumeration is not solely characteristic of the Batwa. Even in other instances, some of Uganda's indigenous ethnic groups are not mentioned or are under-enumerated in official national statistics.[529] For example, details about some ethnic groups such as the Metu, Piswa, Bahima, Bavuma, Basese, Bagangaizi, Bagaya, Mening, Tepeth, Ny'angwar, among others, are unavailable. It is often reported[530] that because of their numerical weakness, minority groups are grouped under larger ethnic groups neighbouring them. In other words, the dominant ethnic groups are assumed to represent features of the smaller ones. Asked why some of the under-represented minorities are at times under-enumerated in censuses, one government official in Kisoro district responded with a typical stereotype answer: "The Batwa do not make themselves available for the census".

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[525] PHC, 1991.
[526] Op cit.
[527] By the author, 1998.
[528] Kabananukye and Wily, 1996.
[529] Population and Housing Census, 1991; (DHS, 1996)
[530] Kabananukye, 20 July, 2001.

Reinforcing Factors that Render the Batwa's Political Inclusion Problematic

A multiplicity of factors predisposes the Batwa to political exclusion. Their numerical weakness and wide distribution across the country, renders their articulation of a common stand on their concerns as an indigenous group problematic. These challenges to their political inclusion are reinforced by stereotyping and derogatory labels heaped on the Batwa community as demonstrated in earlier sections of this paper. Such issues are demoralising and disempowering. the Batwa's limited formal education and training, poverty status, and landlessness, disables, their meaningful participation in political processes. The Batwa tend to concentrate on day-to-day search for food, shelter and clothing at the expense of participation in political processes of their communities. This situation compares well with the way the Batwakazi shy away from accessing health services because of their poor clothing and impoverishment.[531] In situations, where the dominant ethnic groups, especially the Bakiga and Bafumbira, trivialise the Batwa's problems, limited attention is given to their meaningful political participation.

Local community participation at the LC level often takes place in people's homes. The Batwa's housing and construction technology continue to be different from those of their neighbours. Their observed[532] poor housing structures are consistent with findings from the 2002 PHC. Because of poverty, most Batwa use temporary materials to construct their houses. Only 7.8% reported using semi-permanent materials and 8.6% confirmed using permanent construction materials.

The dominant ethnic groups neighbouring the Batwa such as the Bakiga, the Bahororo and the Bafumbira, revealed[533] their

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[531] Kabananukye, 1999; Lewis and Knight, 1995.
[532] Kabananukye, 2007
[533] Kabananukye forthcoming.

dislike to entrusting a community authority with someone who does not live in a decent house. Another reason why the dominant neighbours do not like entrusting community leadership to the Batwa is because of their landlessness and frequent movement in search of a hosting landlord. As such, they are not elected into local community leadership positions.

Derogatory Labels that Continue to Demean the Batwa

Derogatory Labels and Romanticising One's Culture

Relations between minorities and the dominant ethnic groups are often characterised by hostilities, confrontational or latent. Confrontational hostilities may be in form of physical fights or physical harm. The latent ones, most characteristic of the Batwa and their neighbours, are in form of name-calling. Both the Batwa and their neighbours call each other derogatory names or labels. For instance, the Batwa regard non-Batwa (whether a Muganda, Kiga, Mutooro) as 'Bahutu', while the non-Batwa call the Batwa 'pygmies'. As had been the case for the Batwa in Uganda, for years discrimination, injustice and victimisation of hunter-gatherers was so intense that many adopted these derogatory labels for themselves or denied their identities completely, preferring to be assimilated or pretending to belong to a dominant group.[534] Name-calling has also been noted in diverse literature[535] on minorities and indigenous peoples, such as the Nd'robo, Chope, Boni and Negroes.

It is not common to lump together people who have different languages, living thousands of miles apart, and prefer to be called by their own names. Commonality in livelihood and living in a similar ecosystem may not necessarily guarantee lumping such people together. Such uncommon practice comes ripe when marginaliSing a specific community as the Batwa case will be seen later. Nevertheless, with respect to political participation, the impact of the Batwa's

[534] Kabananukye and Wily, 1996.

[535] Kabananukye and Wily, 1996; Lewis, 2000; Risby, 2002.

nicknames is social exclusion, where such people are sidelined and left out of critical decision-making processes.

Batwa and/or Pygmies

The Oxford Advanced Learners dictionary defines 'pygmy' as the "African population living mainly in the equatorial forest and South East Asia, which is characterised by short stature-a height of less than 1.50m". Pygmy also refers to 'a very small person or species of animals or plants with abnormal growth.

Diverse literature[536] point to different categories of people referred to as pygmies in the Equatorial rainforests.

Sir Harry Johnson considers pygmies as a "marked and distinct type of Negroes who degenerated into a race of stunted stature, a race that extends as far as Sardinia, Sicily and the Pyrenees". He further describes pygmies as the 'ape-like' forest people, 'leading brutish lives', found lurking in forests and living, to a great extent, on raw flesh of wild animals, honey and fruits. Accordingly, their physical characteristics have turned out to be one of the main causes of pygmy marginalisation and discrimination. However, the profile and implications of these structural variations in Uganda are inadequately studied at both endocrinological and genetic levels.[537] Keen observation reveals that this is not a universal attribute of the Batwa in Uganda.[538]

"Pygmies" is also a pejorative word used mostly by other ethnic groups or tribes to mock or marginalise the Batwa. It is on this ground that, Batwa detest being called "pygmies." The "pygmy" label gives rise to so many misconceptions.[539] Yet the same word inevitably arouses curiosity, interest, even fascination and attitudes not to be lightly dismissed by any writer who wants to be read! However, it

[536] Lewis, 2000; Brock et al, 2002; Risby, 2002.
[537] Hamilton et al, 1986.
[538] Kabananukye, 1996, 2007; Hall, 2006.
[539] Turnbull, 1962; 1972

is sometimes argued that the label "pygmy"[540] is too pejorative. It tells more about the western misconceptions about people living in primitive harmony in the rainforests of Africa. Do the authors not seek to define peoples according to their environment, and suggest that if the forest is destroyed, or if such people no longer live in the forest, then, somehow they are no longer 'Forest People', that they have a degraded identity? 'Pygmy' is sometimes considered[541] an absurd term derived from ancient fairy tales.

A study by Kabananukye and Wily[542] revealed that some Batwa pygmies prefer to be called "Abayanda", but not Batwa. However, others prefer to maintain the name "Batwa". The 1995 Constitution provides for only the name "Batwa". There is no constitutional provision that accommodates names that were not in the original schedule of the indigenous groups of Uganda. Thus, the use of the name "Abayanda" became problematic since it is not universally accepted.

Most written reports prefer to use the term "Batwa". Can we say that those using the word "Batwa" are misinformed writers? Another impression about the Batwa, as one non-Mutwa put it to the author in June, 2003, is presented verbatim as follows:

Batwa is a derisive term used to describe pygmies by their neighbours. They prefer to be called Batwa because this serves as a uniting factor in the struggle to articulate their entitlements.

The continued use of different names such as Batwa, Pygmies, Abayanda or BaSua has also impacted on these people's participation on the political arena. They are often called non-Ugandans. For instance, the BaSua, in Bundibugyo district are often referred to as Congolese, while those originating from Kisoro, are called Rwandese of Rwanda where there is a significant Batwa population.

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[540] Wild & Mutebi 1996

[541] Virginia Luling, 1998.

[542] Kabananukye and Wily, 1996

Stereotyping and Misinformation about Batwa

Batwa's Stereotyped roles and Responsibilities

'Stereotyping' is an image of or attitude towards persons or groups not based on observation and experience but on preconceived ideas. Stereotypes are often analysed as part of the symbolism of social and group relations, since they reflect and perpetuate social divisions. Negative stereotypes of the attributes or characteristics of a particular group or category are important constituents of discrimination and prejudice-racial, ethnic, gender and class. In the real social interaction among members of stereotyped categories, it is perceived both in the interaction between mutual stereotypes and the manner in which individuals strategically manipulate, comment upon or negotiate aspects of stereotyped roles and responsibilities.

In terms of the elite perceptions of the vulnerable poor in Uganda, there is a close association in policy circles between the vulnerable poor communities and a failure to be 'economically active'. The use of this term is pervasive among policy actors in Uganda, both state and civic, and although invested with different meanings by different actors, a predominant effect appears to be both the exclusion of the poorest groups from key poverty reduction programmes. In such programmes, the vulnerable poor are both stereotyped as 'unproductive' and blamed for the overall problem of poverty in Uganda.[543]

Misinformation about the Batwa

Through examination of the available literature, Kabananukye[544] observes that the concerns and status of the Batwa and other minority groups in Uganda were sidelined and ignored by both colonial and post-colonial governments. This was at the expense of the more affluent and representative societies such as the kingdoms of

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[543] Ministry of Gender, Labour and Social Development, 2005 (The Kabananukye and Bugembe Report).

[544] Cunningham, 1999.

Buganda, Bunyoro-Kitara, and Ankole. The latter were considered productive, with the potential to serve the interests of the state.[545]

There also developed, a stereotype attitude towards the minority communities, particularly the former forest dwellers and hunter-gatherers, in this case the Batwa. The attitude developed as a result of misinformation by European explorers, writers and administrators, the neighbouring farming communities and the Batwa themselves. In some communities, the Batwa were treated as primitive savages. In other cases, the information on the Batwa was exaggerated. Researchers were fascinated by the physical features of the people they studied, measuring their arms, legs and skulls, and debating their origin and level of intelligence.[546]

Sexual Encounter with a Mutwakazi Cures Backache

As recent surveys[547] put it, the poverty situation has rendered the Batwa vulnerable, not only to sexual abuse through rape, but also engage in socio-cultural practices, some of which are life-threatening. This is amid the common anecdote that sexual intercourse with a *Mutwakazi* (female Mutwa) cures backache. Some of the Batwa's neighbours, at times experiment on this theory rendering the *Batwakazi* (female Batwa) vulnerable to a host of sexually transmitted diseases.

Discussed from an aspect of political participation, the poverty and health of the Batwa are closely linked. Poverty constrains their ability to access and utilisation of medical services within their communities. Their lack of sustainable incomes makes medical expenses unaffordable. As reported in various studies,[548] the majority of Batwa are usually poorly dressed and so, shy away from medical

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[545] ibid.
[546] Kabananukye and Wily, 1996:20.
[547] Kabananukye, 2006; UOBDU, 2004.
[548] Kabananukye and Wily, 1996.

personnel and fear mixing with other patients who are better dressed.

Such a situation renders the Batwa helpless and increases their sense of rejection. They are often depressed as they are only concerned about the future of their children, food and housing and what their neighbours and friends will say. They fear, feel insecure and end up isolated. This aggravates their discrimination and limits their participation in political processes.

Batwa, Tourists and the Media

Tourists and the print media have developed curiosity in the Batwa. 'It is a fertile ground to capture stories that may catch the attention of the public. Batwa photographs (especially the nude ones and those in rags) are appealing to foreigners', as one journalist put it to the author in 2004. This attitude towards the Batwa and tourists is portrayed in a number of literature, as also reflected in the above quotation. Unfortunately, the information and coverage on the Batwa in the media remain inadequate and at times sensational. The very nature of the print media's profession, pressures and interests, and the people who bring the information to the public, leave out important facts that would facilitate policy interventions on the Batwa's plight.

This discrimination plays out in a number of ways all of which are exacerbated by the fact that those who perpetuate the stereotypes include public officials, educators and many others whose individual beliefs directly affect the Batwa. It makes employment, which is already scarce in Kigezi and Kisoro, more difficult to obtain. Reasons for visiting the Batwa vary. Some, alienated from their inner selves by the dictates and distractions of Western culture, yearn to make contact with a people who remain in touch with the earth. Others simply want to have their photographs taken with the interestingly short people. Unfortunately, tourists have consistently found their 'pygmy experience' less than rewarding and this is nothing new;

Elspeth Huxley was unimpressed back in 1948 and little has changed during the subsequent 60 odd years. Researcher Stan Frankland has identified three consistent objections from the accounts of disappointed travellers: 'The Sua are depicted as drug and alcohol abusers; secondly, the Sua are frequently labelled as violent; thirdly, they are seen as having lost culture.' In a nutshell, they are usually drunk, unpleasantly and aggressively pushy (these are just the most obvious of their cultural failings), rotten dancers and are taller than expected.

There are, of course, no guidelines to define what constitutes a pygmy tourism experience other than the dictum that the customer is always right and as far as many customers are concerned (Stan Frankland again) "The Sua have failed in their allotted role as a tourist attraction because they have not been 'pygmy' enough, their behaviour has not corresponded with tourist expectations." Word gets around and the Batwa receive relatively few visitors these days.

In a *New Vision* article titled "Only 76 Batwa are left", Henry Lubega calls it the "Last generation after they were demobilised (discharged from the army), but are back to their roots in Ntandi." Soon Batwa are depicted as the last smallest tribe who "might lose that status altogether as they set for extinction." The article describes them as: "tiny, bodied people" and "children of the jungle". The article gives reasons why their numbers have been reduced such as abject poverty, the Allied Democratic Forces (ADF) rebel atrocities, the need for national park expansion that has driven them out of their natural habitat inside Semliki National Park.

The article is consistent with some of the stereotyping and mis information about the Batwa. For instance, a look at some of the Batwa known to the author,[549] disproves the portrayal article's size of the Batwa, as the so-called "tiny–bodied people". And in the

[549] Kabananukye, forthcoming; Kabananukye and Andrew Report, 2007.

documented history[550] of the Batwa in Bundibugyo district, there has not been any Mutwa death attributed to the ADF rebels. Even when the Batwa population is very small, numbering about 70 individuals in Bundibugyo, their number has been staggering around the same totals for the last one hundred years.[551] It is, therefore, most unlikely that the Batwa in this district "might lose that status altogether as they set for extinction," as the newspaper puts it. The article also portrays the Batwa as if they were all in the army. This statement is incorrect. It was only four Batwa who had been soldiers in the 1985/96 liberation war.

The four Batwa former soldiers, including a lady confirmed this to the author in July, 2002.

Typical stereotyping

The Batwa are portrayed as a people with unique features that differentiate them from other ethnic groups. The following are some of the features:

Physical Description of the Batwa

In various literature, the Batwa are labelled as freakishly short. 'They stand at about 4ft high, are long-armed, short-legged, ugly, and usually distinctly prognathous (i.e. bottom jaw jutting beyond the upper). They have thick eyelids, hairy bodies and scattered hair on their heads.'

Throughout my 30 years of association with the Batwa, I have observed them keenly. They have similar features to those of their Bakiga and Bafumbira neighbours. This makes it difficult for non-Batwa to distinguish between the Batwa and their neighbours by appearance.

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[550] The mortality and fertility of the Batwa in Bundibugyo district is discussed in detail in Kabananukye, forthcoming.

[551] Kabananukye, forthcoming.

Despised by their Neighbours as Untrustworthy, Immoral, uncultured and Undeserving People whose Foods and Occupations are Disgusting

The Batwa are described by their neighbours as untrustworthy, immoral, uncultured and undeserving people whose foods and occupations are disgusting. In extreme cases, the false and negative stereotyping prevents neighbours from eating or drinking with the Batwa or accepting them as marital or sexual partners. They travel with such containers so that in case they are given food, which they beg for, or in form of payment for work for their neighbours, they can use the containers to carry the foodstuffs.

According to one respondent "In less extreme cases, the negative stereotypes are paternalistic, presenting the former hunter-gatherers (Batwa) as if they were irresponsible children incapable of making sensible decisions, lacking wisdom and in need of constant guidance and charity".

Perceived as dirty

Due to poverty, the Batwa are often portrayed as dirty and shabby.[552] Their extreme poverty makes hygiene difficult. Their neighbours perceive them not only as dirty, but that they had somehow chosen to be so. The community Project Officer for MBIFCT said that initially those going to school "resisted using pit-latrines, preferring to defecate in the bush."[553] The headmaster of Mabuyemeru Primary School reported that many people in the community did not want to associate with the Batwa because they were dirty.

Interestingly, this stereotype is not always associated with hostility. A tour guide, who brings tourists to see a Batwa community, asked: "Did you know they are short and shabby?"[554] A researcher included

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[552] Akankwasa, *op cit.*

[553] Dr Abel Tukahiirwa, Community Project Officer for MBIFCT, 14 April, 2004.

[554] Turinayo A., 7 April, 2004.

in his masters thesis that they smell bad, stated simply as an objective fact,[555] and a headmaster stood up for them, saying: "Despite being dirty, they're like others."[556] Given their poverty situation, some Batwa are dirty, not because they want to be, but because they lack adequate clothing and soap.

Branded as Lazy

It is claimed the Batwa 'want everything free and do not want to work'.[557] Other statements alluding to the Batwa's alleged laziness appear in Friedman's work.[558]

> The Batwa are perceived by their neighbours as lazy people who prefer begging. On the contrary, Batwa students who are dubbed lazy by their teachers disproved this when they expressed their love for hard work by revealing ambitions of becoming doctors, nurses, among others.

Before branding the Batwa lazy, one needs to look at a number of factors. First, the Batwa are traditionally a hunter-gatherer community. Indeed, while hunting and gathering have been rendered difficult since their eviction from the forests, expecting them to take up agriculture on the same footing with the non-Batwa would be expecting too much of them. This is something that the Batwa can do gradually, especially if they are given assistance in form of farm tools and implements. Some NGOs, including CARE, have come in to help the Batwa in this regard, in livestock keeping and agricultural production.

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[555] Nzita Richard, "A History of Batwa in Kisoro District: 1900-1990," History MA, 1992. p.84.

[556] Tumwizere Emmanuel, Mabuyemeru Primary School Headmaster, 20 April, 2004.

[557] Willa Friedman, 2004; Booker, 2004; Kabananukye and Andrew Report, 2007.

[558] ibid.

Secondly, the majority of the Batwa are landless[559] and, therefore, cannot establish long-term investments on the land that they do not own. Various peoples of Uganda have different livelihood systems. While, for example, the Karimojong depend on livestock; the Bakiga depend on tilling the land and the Basese on fishing. In other words, branding the Batwa as lazy because they are not tilling land like their Bakiga neighbours is being unfair.

Inferiority Complex

The Batwa suffer discrimination wherever they live. Every effort is made by their employers and landlords to make them admit they are inferior. This is to the extent that their culture has now been condemned to secrecy.

Paradoxically, despite this segregation by members of the public, the Batwa have remained true to their culture. This attitude is reflected in their sayings: *"Nabura ubwengye, nabura n'ubwobahutu ichumi."* (meaning that *however stupid I may be, I am cleverer than ten Bahutu* (a term here used to refer to "others", other than the Batwa).

Regarded as Stupid and Hot-tempered

It is claimed that Batwa have no interest in education, less intelligent and bad-tempered. On the contrary, several examples, where Batwa topped in academic performance, have been cited. For instance, at Bishop Primary School in Kanungu, 11 Batwa in one of the classes got the first top 11 positions.

Mindset of Batwa

One Mutwa man said the Batwa in Uganda are "missing something. They construct but they also destroy".[560] Precisely what was "missing" was never identified, but the idea that many Ugandan Batwa think somewhat differently from their Bafumbira and Bakiga neighbours,

[559] UOBDU-ULA, 2004; Kabananukye and Wily, 1996; Zaninka, 2001; Kamugisha et al., 1997.

[560] Interview 20 April, 2004, translated from French.

was commonly expressed. Some of the major issues of the different mindsets implied in this presentation are cited in the following stances:

No savings Culture

"A Mutwa wants only to have a thing in hand and to eat. He would rather accept one thousand than a million after a month."[561] The Batwa are only interested in immediate satisfaction, especially in terms of food and drinks, and have no saving culture. It is even believed that the Batwa burn food stores after getting satisfied from a meal. It is further said they have no interest in politics and see no value in land. However, researchers reveal that lack of a savings culture is situational and characteristic of hunters-gatherers. An example of a Mutwa girl, who saved scholarship funds to buy iron sheets, is mentioned.

Collective Responsibility

It has been observed that when something good is done for the Batwa in Kabale, those from Kisoro or even Rwanda, come to take advantage. The respondent separately recognised that the entire community was changing locations in order to be within the area helped by Mgahinga and Bwindi Impenetrable Forest Conservation Trust Fund (MBIFCT). This means that although there might be a small population suffering, once improvements are made the population may grow, making the intervention more costly. This also happens when a school that has many Batwa begins to feed its students, students from other schools come to take advantage of the free lunch. This makes interventions more challenging.[562]

Conservativeness of the Batwa

Several writers attribute Batwa marginalisation and poverty to their unwillingness to accept change. It is also said they rarely challenge

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[561] Tumwizere Emmanuel, Mabuyemeru Primary School headmaster, 20 April, 2004.

[562] Willa Friedman, 2004

their abuse and exploitation. However, their openness in learning new ways discredits this.

Intermarriages with Neighbouring Ethnic Groups

Intermarriage still appears very rare between the Batwa and their neighbours (the Bafumbira and Bakiga), but concern is rising among some about the vulnerability of Batwakazi, the lack of economic self-reliance of the Batwa and its impact on marriage and intercommunity sexual relations. At Mabuyemeru Primary School, one Mutwa pupil was very tall with different facial features from the others and it was explained that his father was not a Mutwa. At the same time, most sources said that intermarriage was still impossible because of perceived inequality.[563] A few explanations arose. Many sources noted sexual relations, especially between the Batwakazi and non-Batwa men.[564]

General Relations with Neighbours

The Batwa, like many other indigenous vulnerable groups, do not have an effective political voice and opportunity to forward their views to decision and policy makers. Being a minority, their voices and concerns are still overshadowed by the prioritie of theit dominant neighbours. They hardly marry their neighbours (Bakiga, Bahororo and Bafumbira). Paradoxically, there are many reported[565] cases of rape, sexual abuse and harassment by neighbours. An unspecified number of children born onto Batwa girls by non-Batwa men have been reported in all the Batwa communities in Kisoro and elsewhere, yet rarely do the Batwa socially mix with their neighbours. Kabananukye and Wily[566] report one respondent saying: "I would describe the general attitude as real discrimination…we do not want to share

[563] Nzita Richard, op cit.
[564] Kabananukye and Wily, 1996; Kabananukye, 2002; 2007.
[565] Kabananukye, 2007; Zaninka, 2003; Booker, 2004.
[566] Kabananukye and Wily, 1996: p.42.

facilities like hospitals, schools or water sources with them. We consider them dirty."

Deteriorating Morals

According to Henry Nzita, these clandestine sexual relations result in children that the fathers abandon.[567] The nature of these relations differs. In some cases, Batwa girls resort to prostitution to earn an income. "The morals of the Batwa are deteriorating mainly because of the harsh economic conditions."[568] Besides prostitution, this author argued that their situation was also conducive to alcoholism. "They spend the little money they get on alcohol; as a result, majority are drunkards."[569]

Others explain the relationships as less explicit prostitution, but still non-Batwa men are able to take advantage of Batwakazi because of the economic imbalance. Young Batwakazi are especially vulnerable since they are lured into sex for cash by the rich. As a result, AIDS is a threat to the Batwa community. The survival of the Batwa is also threatened by the situation where there Batwakazi prefer to marry non-Batwa yet girls from other communities cannot marry Batwa men.

Historical Overview of the Batwa

Traditional Hunter-Gatherers Relocation

The African pygmies, such as the Batwa, are the largest category of hunter-gatherers in the world. They live in close association with farmers in the east and the central African rainforest.[570]

For generations and, perhaps centuries, the Karimojong, Maasai, Turkana and Basongola's livelihoods have traditionally depended

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[567] Nzita Richard, "A History of Batwa in Kisoro District: 1900-1990," History MA, 1992. p84.

[568] ibid.

[569] ibid.

[570] Cavalli-Sforza, 1986; Ed Hagen, 1993: African Pygmy Settlement Pattern.

on livestock. They supplement livestock products with food from cultivators. In the same scenario, the Batwa, like the Ndorobo, Benet, and Ik, are traditionally a hunter-gatherer community. Their traditional food sources and livelihoods have depended on hunting and gathering. Supplementary foods were also traditionally obtained from cultivators and nomadic neighbours such as the Bakiga, Banyankore and Bafumbira. On a number of occasions, the hunter-gatherers have been told, as derived from political statements by district officials that play host to the Batwa and other hunter-gatherers,[571] to modernise and integrate into mainstream development endeavours of the dominant ethnic groups. The Batwa's mode of livelihood is considered inferior and less civilised. There is limited understanding of how a hunting-gathering culture is also one of the critical livelihood practices supporting a number of people, the Batwa inclusive. This position renders the Batwa's participation in political and other community affairs looked down upon by the dominant ethnic groups.

Indigenous under-represented communities such as the Batwa, have invariably lost their cultural autonomy and economic independence through the processes of modernisation. Consequently, they have tended to become a marginalised group in the modern society. In many cases, they have had to make a way for development in the form of programmes designed by and for others and have been "resettled" or left to fend for themselves.

It has been observed that in most development debates, hunter-gatherers' concerns are more often overshadowed by challenges that confront pastoralists and cultivators once they are all congregated as vulnerable indigenous people. Furthermore, pastoralists' challenges are different from those of hunter-gatherers. For instance, landlessness, alternative livelihood systems and frequent livestock

[571] Ministry of Gender, Labour and Social Development, 2005 (Kabananukye and Bugembe report); Booker, 2004.

diseases and wild animal attacks on livestock, for those living within or near protected areas, are some of their challenges. On the other hand, hunter-gatherers suffer marginalisation, extreme impoverishment, landlessness and lack of resources.

From Batwa's Evictions to Impoverishments

Unlike the pastoral or nomadic communities and cultivators in the same geographical region in the early 1990s, the Batwa lost their territorial rights and accessibility to ancestral forested lands and foods. With the creation of Mgahinga Gorilla National Park (MGNP) in 1991, the Batwa were evicted from their ancestral lands. They lost uncontrolled access to the forest resources inside MGNP where they used to derive their economic, social and cultural sustenance.[572] This rendered them squatters on neighbours' land "often on terms no better than servitude"[573] with limited livelihood strategies to maintain their communities or future. At the time of gazetting the forest lands, some Batwa households were forced out of their ancestral homelands without compensation. The case of the Batwa is in many respects similar to the case of the Banyabutumbi, another hunter-fishing community in western Uganda.

Batwa's Relocation Dilemma

Historically, the Batwa are a forest-centric people whose history of forest habitation and association stretches through several generations and centuries. Even when some forests have not had much to offer, they still consider a forest as an important link to their culture and livelihood. As Kabananukye and Wily put it, "it is not a coincidence that most of the Batwa in western Uganda are either in or around forested lands."[574] Any solution to their problems should perhaps be sought in or around forested areas.

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[572] Kamugisha *et a*l., 1993.
[573] UOBDU-ULA, 2006.
[574] Kabananukye and Liz Wily, 1996.

They have certain spiritual and religious ties with forests. Specific sites are revered and considered central to their existence.[575]

Events since MGNP Inception

Since their eviction and relocation outside the forested lands, the Batwa have become a focus of attention from CSOs. The government has directed efforts towards solving the challenges facing the Batwa, especially livelihood demands among agriculturists. Sustainable food supply, access to land, education and housing questions, are central to the Batwa's challenges and have formed the basis for the CSOs' interventions towards the Batwa. Various organisations, albeit with limited co-ordination (save for the youthful United Organisation for Batwa Development in Uganda-UOBDU) have for years been attempting plausible strategies to redress these challenges, including discrimination and marginalisation of their rights as indigenous inhabitants of forested lands in western Uganda[576].

In 2003/4, the Mgahinga-Bwindi Management Trust (the Trust) embarked on a programme to resettle the Batwa with the purchase of pieces of land for them. The Adventist Developement and Relief Agency (ADRA) also purchased land in Birara, Kisoro to resettle the Batwa. However, only about 10% of the Nyarusiza community, neighbouring Mgahinga, have benefited. In addition, Muhabura Diocese bought about one acre of land within Kisoro Town Council and about 20 Batwa families have been resettled. In the Kisoro Local Government Tourism Development Plan of 2004, the Batwa's culture and traditions as well as the environmental and wildlife resource were emphasised as principle tourist features in the district. The Uganda Wildlife Authority (UWA) has established a comprehensive biodiversity conservation programme with an outreach component that aims at providing the Batwa and other

[575] Hunting is no longer done since their forested areas have now attained the status of national parks: (Kabananukye, 2002).

[576] Kabananukye and Andrew Report, 2007.

communities neighbouring the protected areas, with increased incomes. The Batwa Tourism Plan has also been established to mainstream Batwa culture into tourism so as to benefit the Batwa and other stakeholders.

This shows an increasing realisation among stakeholders, *inter alia*, Batwa themselves, the non-Batwa, especially the Bafumbira and Bakiga, central government and Kisoro district local government, UWA, the media and other CSOs, that Batwa's plight deserves specific attention and action programmes. Given this increased awareness, it is likely that the Batwa's vulnerability will find itself on the political agenda.

Landlessness

It has been pointed out in the introduction, that the Batwa faced an outright eviction from their ancestral lands in the early 1990s. Without any compensation, they have found themselves relocated to a non-forest ecosystem. The non-forest environment has required the Batwa to live a settled lifestyle as opposed to nomadic movements. Implications for this are diverse. This has necessitated securing land on which to settle and perhaps put up "permanent" houses as well as establishing some agriculture or any other economic activity. Acquisition of land, agricultural tools and implements are still major challenges for the Batwa.

For instance, a 2004 survey found that among the Batwa, 44% were entirely landless.[577] Those without land lived on land provided by the dominant ethnic groups and became involved in bonded labour agreements, receiving little or no payment for their work on their landlord's fields. A critical point to note is that of the 56% who did have land, no titles were held by any Batwa as they either squatted illegally on government land or on land donated, but not titled to the Batwa by various NGOs.[578]

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[577] UOBDU-ULA, 2006.

[578] ibid.

The well-wishers and NGOs providing grants for the purchase of the Batwa's land are still overwhelmed by the provision of adequate pieces of land. The current Batwa's landlessness also explains their squalid housing situation and insignificant amounts of livestock kept.[579] This also has an important bearing on their participation in the political affairs of their communities.

The Constitution recognises all forms of land tenure.[580] But the "Batwa's case is riddled with diverse, direct and indirect restrictions", Kabananukye observes. The issuance of clauses such as the strict control of "environmentally fragile" areas as vested in the state organs[581] to oversee the forestry/wildlife policies and legislation is testimony to this. Undermining the Batwa's traditional institutions stems from "obstacles to development" that are blamed on endogenous factors within the traditional societies. They include lower per capita income, lack of significant agricultural improvements which would form a basis for industrialisation, high population growth rate and lack of political foundations.[582]

The Land in Question in Kisoro Town Council

The council had made a detailed surveyed plan along which developments in the town council should follow. The Batwa's lands are within the planned area. The new planned plots do not necessarily follow the Batwa's original land boundaries. This situation displeases the Batwa as they would want to maintain the original boundaries. As one of the Council officials put it to this study,

> Allowing the pygmies (Batwa) to continue holding onto undeveloped and unplanned pieces of land within the town council boundaries is

[579] Kabananukye 2007.

[580] Other systems of land tenure (in addition to communal) in Uganda include: freehold, leasehold, Mailo and customary. In the freehold tenure system, the holder has a legal document attesting exclusive interests.

[581] Uganda Wildlife Authority, 1996; National Environment Management Authority; UWA, 2000; 2002.

[582] Kabananukye, forthcoming.

> unacceptable in the modern age. In this millennium development era, specific standards of hygiene, sanitation, and housing ought to be met. It is, therefore, prudent that these people (Batwa), especially those living in the urban area, must meet basic standards of an urban setting.

In another development, the oral history of the area shows that the Batwa came to this location (where the town council is located) as the then paramount chief's body guards, court jesters and providing free labour and entertainment to the paramount chief. In later years, some of the Batwa were rewarded with pieces of land for their life-long services as exemplary loyalty to the chiefs. As it were, some of the Batwa that grew old would be 'grounded like elderly air-hostesses'. That is, they would be retired, but kept close to their children and grandchildren still active in the paramount chief's palace. Later in the years, the reign of chiefs came to an end and so was the role of the Batwa in the chief's palace. But, as it were, the Batwa remained on their premises.

The Batwa are traditionally hunters and gatherers whose mode of land tenure is different from the agriculturists. While the hunters and gatherers do not establish land boundaries and demarcations like their agricultural neighbours, they still consider undemarcated lands theirs. That is, the very pieces of land that they had been given which were later slowly encroached on, by their agricultural Bafumbira neighbours, in the case of Kisoro. Of late, Kisoro Town Council arbitrarily assumed full ownership of the former paramount chief's land, specifically the palace, and by proxy, the council also assumed ownership of the land that had been given to the Batwa.

The council has no right whatsoever to evict someone [a *bona fide* occupant] from a piece of land that someone occupied prior to the passing of the 1997 Land Act. The Act states that whoever occupied land prior to the passing of the Act, is considered *the bona fide occupant,* owner. Through logic, under the Ugandan law, since

the Batwa occupied the said pieces of land prior to the 1997 Act, they have a right to stay on their pieces of land. Besides this logical basis for their claims to this land, the Batwa constitute one of the indigenous minorities, and therefore, the government is mandated to protect them so that they can fully enjoy their fundamental freedoms and human rights.

Batwa and Education

Access to Education

In order to promote sustainable development through capacity building, raising awareness on various issues of national importance and improving general standards of living, it is important to examine the education levels of the community in question. The education system aims at training children and adults in a range of skills from basic education to professional development.

National Challenges in the Education Sector[583]

A recent survey[584] of the education status of the Batwa aged between 6 and 12 years and then the education levels of persons aged 6 years and above, has shown that 40.4% of the Batwa in Uganda had never been to school. 35% of males had never been to school, whereas a big proportion of the females had never been to school. By the year 2002, about 28% of the Batwa school-going population had left school. 31% were attending school by the census time. Limited access to education and training continues to characterise the majority of the Batwa. Their situation is often portrayed as their deliberate refusal to take part.[585] With very few Batwa earning an income without assistance from outsiders, most would be unable to send their children to school despite free education under the Universal Primary Education (UPE) programme. Consultations

[583] Refer to Annex 1 for the institutions helping the Batwa in education.
[584] Kabananukye 2007 based on the analysis of the 2002 PHC.
[585] Akankwasa 2001; Willa Friedman, 2004.

from eleven focus group discussions in the districts of Kisoro and Kabale revealed that most parents cannot afford stationery, school uniforms or food for lunch. Some of them, however, say that, even when school dues were paid, they would not go to school because of many other problems. "*While we have no where to sleep, no land and food to eat, there is no point in pushing our children to school*".

The illiterate population was 2,270 people out of 5,575 persons in the survey. This means 49.3% of the Batwa were illiterate compared to 50.7% who were literate. The level of illiteracy was higher in females than in males, at 57.5% and 42.5%, respectively. Access to resources like bursaries and vocational schools are yet to be considered for the ethnic minorities as an affirmative action plan. The Education Standards Agency (ESA) is still young and has not addressed issues of discrimination and marginalisation of ethnic minorities. The question of whether Batwa children are retained in schools and in non-formal education is yet to be addressed by local authorities, the Batwa parents and CSOs. There is a grey area, especially with those who have completed school at elderly age-do they have access to the same opportunities as others?

The Distance Factor

The fact that Batwa are distributed in all the districts of Uganda makes it hard to discuss their inaccessibility to education. Ideally, the Batwa are assumed to access schools in their neighbourhood just like other ethnic groups in Uganda. This discussion becomes real to the reader (especially one who does not know the Batwa) once it is premised on the traditional stereotyping and impoverishment of the Batwa. This section is devoted to stereotyping about the Batwa and education.

Akankwasa[586] explained that the Batwa are "stereotyped as inferior human beings in all aspects. As a result, this has promoted a culture

[586] Akankwasa: 2001.

of hopelessness among them."[587] He reported discrimination as the main reason for dropping out of school. "Those who would be able to find the money and obtain admission suffer an inferiority complex created by discriminatory harassment."[588] Kabananukye and Wily also pointed out that the hierarchical relationship between the Batwa and 'others', dominant 'neighbours' is perpetuated by both parties. While the non-Batwa choose to walk in front, the Batwa readily choose to walk behind.[589]

Comparing recent observations with past accounts (of 1970 and 1980s) of the relationship between the Batwa, Bafumbira or Bakiga,[590] it is revealed that the reception of the Batwa within their surrounding communities has slightly improved, although a lot of hostility still exists. "They don't own land and authorisation to live in Uganda because people don't like the pygmies," a Mutwa said.[591] This discrimination plays out in a number of ways, all of which are exacerbated by the fact that those who perpetuate the stereotypes include public officials, educators and many others, whose individual beliefs directly affect the Batwa. It makes employment, which is already scarce in Kigezi and Kisoro, more difficult to obtain.

Employment Issues

In 1996, only three Batwa were fully employed. Of the remaining, only 168 received regular cash incomes through self-employment and 300 were found to receive irregular cash incomes.[592] The 2004 study found that out of 2,551 Batwa, only 46 had any kind of sustainable income and classed themselves as 'employed'. The remaining, while receiving irregular forms of income, nonetheless had no secure forms

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[587] ibid.

[588] ibid.

[589] Kabananukye and Liz Wily, 1996:151.

[590] Bafumbira are the dominant ethnic group in Kisoro and Bakiga the dominant one in Kabale. These two districts are home to the largest number of Batwa in Uganda and are the sites of most of the research carried out.

[591] Interview with Mutwakazi, April 20, 2004.

[592] Kabananukye and Wily, 1996.

of income.[593] Given their limited employment opportunities and income, their political participation is also limited.

Largely without a 'direct constitutional right' in Uganda, often oppressed by their farming neighbours, the Batwa earn a living from the most meagre resources. As the forests cease to be accessible for their traditional livelihood, they are beginning a new livelihood strategy. Indeed they never came with cultivable land from the forests. They, thus remain landless, in a community where agriculture is the mainstay.[594] Consequently, they have resorted to selling their (unskilled) labour to their farming neighbours. This constitutes over 90% of their income.

This exacerbates the problem of not having enough money to buy food and scholastic materials for their school-going children. It also prevents them from taking part in local politics, thereby missing out on possible outlets for improving their situation. "Many Bakiga and Bafumbira still find the Batwa repugnant, contemptible and worthless to approach for an opinion on a decision."[595] Finally, it directly makes school attendance more difficult as children, who overcome other obstacles to get to school, often find problems when they get there.[596]

Discrimination in Schools

A recent report[597] shows that since 2000, the number of Batwa children attending school has increased. Nevertheless, Batwa children are harassed and ridiculed by their classmates from other ethnic groups for being dirty and lazy.

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[593] UOBDU, 2004.

[594] Uganda has an agricultural economy with 90% of the population dependent on agriculture and agro-based industries. Agricultural produce contributes 98% of Uganda's exports and the country is basically self-sufficient in food.

[595] Akankwasa, op cit 2001. p 239.

[596] Turinomuhangyi Sylver, teacher at Seseme Integrated Primary School, 29 April, 2004.

[597] Kabananukye report of 2007.

Batwa do not like School

It is alleged that the Batwa do not appreciate the value of education. However, this has since been discredited because most Batwa have demonstrated their appreciation for education. The perception that they do not attend regularly or drop out of school or lack interest can be explained by lack of school fees, harassment and abuse (Kabananukye, 2002).

Whilst many start school, very few complete. It has also been reported[598] that among the Batwa communities, there are only three Batwa on school management committees in Kisoro. As such, Batwa children lack role models.

Livelihood Suited Educational System

An observation[599] has been made that the Batwa's educational system could be tailored to their livelihood. Kapupu argues that since the Batwa are a hunter-gatherer community, they could also be provided with the ABEK like educational system (see Box AA).

Box AA: Abek Educational System for Karamoja Region

Both formal and non-formal primary education is provided to the children in Karamoja. While one section of the students benefit from the formal UPE, another section of school-going age children benefits from the Alternative Basic Education for Karamoja (ABEK) programme. In the ABEK programme, the time schedule and content are designed to respond to the intense livelihood activities of the community. The lessons are held very early in the morning and late in the evening to allow the children to perform livelihood activities during the day. It is noted that in the whole of Karamoja, children are the bread winners. Their removal from any livelihood activities would not be supported by parents, because it threatens the survival of society.

[598] Op cit.

[599] Kapupu D. The Mbouti of Kivu …Unpublished report, 2001.

In terms of content, the formal primary school curriculum is a standard, national and not specially tailored to the needs of the Karamajong society. ABEK, while giving numeric and writing skills, also provides skills pertinent issues such as animal and human health especially hygiene and sanitation. The relevance of ABEK content has stimulated interests among parents and children and, coupled with the timing of the lessons which is sensitive to the need for livelihood activities, has attracted massive support among the Karamajong.

The coverage of primary education (both formal and non-formal) is still limited. It benefits only about 40% of children of school-going age, leaving out 60% of children. The latter are involved in looking after livestock, particularly in the kraals, household activities and casual labour for income in urban centres in the region.

Given the Batwa's changed livelihood, from hunting and gathering, the ABEK-like educational system may not apply because of a number of intervening factors. For instance, the Batwa's landlessness coupled with their wide distribution across the country renders the system impracticable. Even in the districts where the Batwa have significant numbers, the presence of other schools, which are predominated by the dominant ethnic groups, renders the ABEK-like education system not cost-effective. They would rather be facilitated to join the already established schools. In the circumstances, separate education for the Batwa would appear to condone discrimination, which is unconstitutional.

Batwa's Loss of Culture and Language

Batwa Language

In 1902, Sir Harry Johnson wrote that while their intonation was consistent between groups regardless of the language being spoken, the "pygmies" did not have their own language and spoke those of the surrounding communities. Since then, Johnson's assessment has been debated, but both sides seem to agree more than they realise.

As a minority group, the Batwa speak the language of their neighbours. As one non-Mutwa respondent put it:

> The Batwa have to speak our languages, otherwise they would find it difficult to work and relate with us, the Bakiga. They have to learn Rukiga so that they can compete favourably in schools and religious centres.

In this, the Batwa language and culture become threatened. This view is reflected in diverse literature. For example, while discussing whether a Rutwa language exists, a representative of ADRA said Batwa's original language had long disappeared.

Through a variety of programmes, including the Poverty Eradication Action Plan (PEAP), the government has acknowledged that culture (and by implication language) is an intrinsically important dimension of a person's identity. Culture and language are a form of capital with the potential to move people out of poverty. The government has consequently endorsed the international, regional and national legal framework and instruments that guarantee the right to culture and the use of one's language both in public and in private. In spite of the state's duty to protect, promote and respect language rights, as well as the known contribution of the language factor in the development processes, many minority groups continue to lose their language, for instance, the Batwa and the Ik.

The language expected to be spoken by the Batwa is hardly known and/or written anywhere. While examining the challenges facing minorities in Uganda, Kabananukye and Kwagala assert that the Ik language, Icietot, is used mainly in the private domain. Many times, the use of Icietot is equated to backwardness by the dominant ethnic groups and the language is in danger of extinction. They exhibit similar social and economic characteristics, including marginalisation and exploitation. Two Ugandan languages, the Nyangái and the Singa, have been recorded as extinct.[600]

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[600] Kabananukye and Kwagala, 2007: *op cit*.

Leadership in Local Councils

Local Authorities' Structures

The key means by which the poverty policy is delivered in Uganda is through a highly decentralised system of local government units known as the Local Council (LC) system. The LC system consists of a pyramid of multi-levelled local governance structures, descending from the apex of LC5, at the district level; LC4, at the county level; LC3, at the sub-county level; LC2, at the parish level; and LC1, at the village level. There are direct local elections for three tiers of government (LC1, LC3 and LC5) and a participatory planning process is, in theory, in place to ensure that local concerns are fed upwards into policy-making and resource allocation procedures. Whereas a system is in place to facilitate indigenous people's participation in leadership, the Batwa's participation is constrained by structural issues pertaining to their numerical weakness, coupled with limited education and resources as will be examined later. This is especially so given the fact that political processes in Uganda for the recent past have become more linked to one's ethnic group and financial standing.[601]

Batwa Participation in Local Councils

In most rural Ugandan communities, agricultural land and its ownership constitutes an important status placement factor. More than 90% of Uganda's economy is based on the agricultural sector. The Batwa's landlessness, coupled with limited education and training, places them at the extreme end of the status placement continuum. Is it because of their low status in the contemporary societies that they shy away from active community participation, especially in administration. In Rwubaka's words, he says:

> Generally, public information through the print and electronic media rarely reaches us. Due to lack of formal education, the neighbours'

[601] Brock et al 2002: 42; Ahikire, 2003.

> poor understanding of ourselves, we are rarely elected into political positions in the communities where we form a minority.

Although it is claimed that the Batwa are effectively represented in local council administration, only two Batwa were on a local council in the whole of western Uganda, and even then at the lowest level (LC 1).[602] It is claimed that at times they are not called upon to attend LC meetings, or even when they attend, a Mutwa "can not be allowed to freely express his views? This is very rarely done even on matters directly affecting them.

Batwa in Community Participation: the Colonial Factor

Before the establishment of the colonial administration, each tribal grouping in Ugandan had its own system of administration. The African Native Authority Ordinance of 1919 was the first attempt by the colonial power, Britain, to set up local administration. The ordinance provided for powers and duties of African chiefs and for implementation of the African authority.[603]

On the attainment of political independence in the late 1950s and early 1960s, many developing countries turned their attention to nation-building and thus heavily invested in programmes for economic development. Prosperity was experienced in a number of African countries. But with time, the modest and sometimes negative consequences of central planning and administration, became apparent. In Uganda, the Local Administration Act 1967 centralised power and stifled local decision-making.[604] To address the then apparent problems, grassroots communities elected their representatives to local governments at the interval of every four years. The elected representatives were expected to deliberate on the issues that the local communities perceived to be pertinent in their areas. It is these elected representatives that did the planning, priority setting and policy formulation among other responsibilities on behalf

[602] Kabananukye, 2004.
[603] Villadsen 1996.
[604] Lubanga 1996.

of local communities. However, in many instances, the communities had rarely been consulted and even where consultation was made, decisions were already made from above prior to the grassroots consultations. The traditional local community participation was, thus stifled and undermined as the representatives were made more or less like rubber stamps of the then colonial masters. [605]

In the framework of the ongoing decentralisation process, local governance and community participation, it is noted[606] that the entire process of formulation and implementing policies is carried out under the direction of state and local governments and the people are left out as spectators. This situation spells out a false start for, not only the Batwa's participation in local governance, but also puts into question the planners' ability to plan for the vulnerable groups that are less known. Paucity of data and information of indigenous peoples' issues renders such central planning problematic. A clear understanding of the traditional social networks and or functioning of the local systems is critical towards addressing their social exclusion. The integration of the Batwa's issues into the overall development plans may be compromised in the same manner other indigenous groups were treated by colonial masters. They only concentrated on what the centralised and other bigger ethnic groups would offer.

Even in later years after colonialism, we realise a situation of lack of capacity of the Batwa and many other local communities to participate despite encouragement from existing policies and laws that advocate local participation and bringing of services nearer to the people. There is also a continuing situation where there are inadequate consultations between grassroots communities and local government officials despite existing channels of representation by politicians.

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[605] ibid.
[606] ibid.

Batwa's Traditional Leadership

Batwa's traditional leadership is egalitarian.[607] In egalitarian societies, people earn a position of leadership through their ability and experience. This implies that a group may have several leaders, each specialising in their own sphere. Equality is maintained through a levelling process. Those who try to use their superior status and the respect due to them in order to dominate over the other members in the group, are rapidly criticised and brought back to a more modest attitude through this criticism. They may even be ostracised. This is one of the reasons why these societies are said to be acephalous.

The leader is responsible for the community's well-being and is, therefore, the one who has to distribute most wealth. Influential positions are maintained by being as subtle as possible in maintaining a consensus within the group. Despite the fact that this is a true democratic system (though without elections), this type of leadership and the process of decision-making that goes with it often make it difficult for the members of a community to agree over problems that are beyond their own experience and to trust a representative or spokesman with their requests.

Another problem is due to the fact that the village may only be an administrative division that has no connection whatsoever with endogenous reality. It is, therefore, often difficult for a stranger to work out who might be representing the group. Arousing group consciousness and developing some form of group representation to deal with the outside world can be a long and labourious process. The career of leaders can be very brief indeed, and they then return to being ordinary group members. The levelling process regulating leadership often implies that communities are split up into groups, each representing itself, and they do not necessarily rally when one particular group makes a decision.

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[607] Kabananukye, forthcoming.

Among the Batwa, leadership roles vary according to context. Men or women with recognised skills and experience in a particular situation might be accepted as having some authority in that context[608]. For instance, John Rwubaka's case has been cited[609]. John Rwubaka is the de facto leader of the Batwa. He is respected in Kabale, Kanungu, Rukungiri and Kisoro districts. He has emerged as a leader because of his charisma, aggressiveness and ability to confront anyone that oppresses his minority people.

The Batwa and Rwubaka's leadership style appear to be aligned with other hunter-gatherer communities' form of livelihood. Traditionally, the Batwa, more like other hunter-gatherers' bands across Africa, have no knowledge of each other.[610] For instance, in the case of Uganda, it was not until 1999 that a meeting was organised[611] for the Batwa leaders in Kisoro to meet with those of Bundibugyo; and the ones in Kabale were also united with the ones in Lira. It is, however, noted that despite these tribal differences, hunter-gatherers still maintain clear cultural similarities and continue to maintain their identity in over a dozen African countries,[612] Uganda inclusive. Thus, it is such a wide distribution across districts which compromises their political representation at various levels.

It is sometimes argued that the Batwakazi play a much greater role in decision-making and free express their opinions compared women of neighbouring communities. And there is more equitable relationship between the sexes.

Conclusion and Recommendations

Debates on the preservation of the Batwa culture and/or assimilation and integration into the mainstream development agenda should not

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[608] Lewis J (2000), Kabananukye, 2002.

[609] Kabananukye, 2002.

[610] Kabananukye and Wily (1996).

[611] Kabananukye, 1999.

[612] From Uganda to Kenya, Tanzania, Gabon, Cameroon, Botswana, Namibia, & S. Africa.

look at cultural preservation as an issue. Education and economic well-being go hand in hand. Access to education (both formal and informal, locally and nationally) among the Batwa is a critical tool for increased awareness about their situation and access to other opportunities. These must be simultaneously addressed. The major obstacle to the Batwa's education is finances and this is closely linked to their landlessness. Buying land for the Batwa must be considered urgent. Other forms of assistance such as helping their children attend school are useful and should be pursued, but not used as an excuse to avoid addressing the more fundamental concerns of land, self-reliance and a voice in all social, economic and political circles.

The Batwa need training in diverse practical fields, for instance:

- Leadership skills and civic responsibilities. This will increase their participation in social and political activities at local and national levels.
- Participation, advocacy and negotiation techniques. The result of this is increased advocacy concerns for the Batwa at various levels as well as enabling their representatives to use opportunities available under the new institutions to promote their rights.
- Grassroots civic education:
  Increased advocacy on the Batwa concerns at local and national levels;
  Increased confidence by the Batwa leaders to engage government officials and demand accountability; and
  Increased mobilisation to participate in development activities in their communities.

They may have a well-preserved culture that is severely threatened, but the education system available is neither the problem, nor contributing to it. In terms of improving their situation creatively, programmes that target poverty reduction should be aligned to

the Batwa's mode of livelihood. This does not necessarily deny the important tangible role that culture can play in development processes. It can contribute to positive economic systems both in the sense of tourism based on that culture and as a means of building constructive identities. Culture is most threatened by engagement in marginal livelihood activities [e.g. begging, sex work] that predispose the Batwa to health hazards.

The destitute, like the Batwa, need grants, not loans. Loans can only help the economically active poor who have access to other factors of production such as land. Batwa communities can be facilitated to access material and non-material support to meet their basic physical, social and psycho-social needs. Where appropriate, strategies such as participation and representation on local councils should be designed in the form of affirmative action to equitably redress the imbalances.

The Batwa found themselves becoming the focus of attention from CSOs and the government towards their challenges, *inter alia* while the majority of interventions have been and continue to be limited to ceremonial contacts with the Batwa and without a deliberate empowerment component. The programmes and interventions are still at infant stages and have not had a significant impact. A deliberate effort has to be made to address these issues with the active involvement of all stakeholders, including the Batwa themselves. It is from this perspective that the human-rights based approach (HRBA) to development interventions ought to be established at all levels to address the Batwa's vulnerability on a sustainable basis.

Ensuring Batwa's Equity, Equality and Non-discrimination

This requires incorporation of express safeguards in development instruments and interventions to protect against threats to the rights and well-being of the Batwa. Care has to be taken at the planning/formulation stage to address any discriminatory outcomes,

for example, concentrating social services in urban centres based on population ratios will discriminate against the rural sparsely populated people. There is a need to streamline the current the Batwa targeted programme design processes to ensure their compliance with basic principles of human rights. Interventions in Batwa's development should be modelled within the framework of human-rights standards and directed towards promotion and protection of human rights.

This perspective introduces the HRBA concept that seeks to address the Batwa's vulnerability based on basic human-rights principles. This conceptualisation brings on board a new thinking about Batwa's development interventions. It is assumed that if we target and plan for the realisation of human rights, then this serves as the surest way to achieve the Batwa's real needs and development. This way, the Batwa are recognised as beneficiaries and are at the centre of all development efforts.

This development approach is premised along key principles:

(i) implementation of international human-rights standards,
(ii) empowerment,
(iii) accountability of duty bearers at all levels,
(iv) realistic participation and inclusion of all stakeholders, and
(v) equality and non-discrimination.

Once these principles are used, then the Batwa's vulnerability will be progressively addressed and eliminated. To address their vulnerability, there must be a deliberate commitment on the part of all stakeholders, the Batwa, their neighbours, the government, local authorities, development partners and CSOs.

There is a strong legal basis to facilitate the utilisation of this development approach to address Batwa's vulnerability. For instance, Article 20 of the 1995 Constitution provides that human-rights and freedoms are inherent and not granted by the State and shall be respected, upheld and promoted by all organs. Article 21 recognises

equitable development that is a key to the HRBA. Chapter 4 of the same Constitution guarantees rights which are supposed to be promoted and protected. Articles 51-53 establish an institution to spearhead the protection and promotion of human rights. The national objectives and directive principles of state policy put emphasis on the need to promote and protect human-rights such as the ones stipulated in objectives X, XI and XIV.

This paper has provided highlights of the impoverishment and vulnerability of the Batwa. Given the legal framework, their situation has to be addressed regardless of their numerical weakness. The purpose is to go beyond statistics so that the Batwa are targeted for assistance and helped out of poverty and vulnerability.

Encouraging Stakeholder Participation

This is not a development option, but a human right that must be respected. The HRBA requires a high degree of active, free and meaningful participation by all stakeholders. It should also be facilitated to avoid mere formal or ceremonial contacts. In this development paradigm, due attention is given to issues of accessibility to development processes, information and redress or complaints mechanism form a linchpin to the success of the interventions.

Meaningful participation of the Batwa can be achieved in an environment, where the Batwa are allowed to exercise freedom of assembly, association, expression and speech, in the planning and programme implementation. It should be acknowledged that the Batwa can think and have views and rights that must be put into consideration while planning.

Promoting Empowerment

The Batwa and other vulnerable groups need to be empowered to gain self-esteem, self-actualisation and critical thinking to demand or reject services leading to effective sharing of power and decision-making. HRBAs give preference to strategies for empowerment over

charitable responses. The Batwa should not only be looked at as a pitiful community that deserves charity. The focus should be on rights holders as the owners of rights and the directors of development, and emphasise the Batwa as the centre of the development process. The goal here is to give them power, capacity, capabilities and access needed to change their own lives, improve their communities and influence their destiny. Empowerment entails equipping the Batwa with the necessary information, knowledge and skills to enable them advocate and claim their rights.

Design for Community Development

HRBA requires putting in place logical steps in any programme initiative. They include:

- Causality/problem analysis which calls for recognition of a problem before plans to address it are put in place. This can be achieved through advocacy and social mobilisation.
- Role/pattern analysis, which involves understanding the complex web of relationships between rights holders and duty bearers.
- Analysis of capacity gaps ascertaining why there is a violation or a risk of violation. Capacity here refers to the ability or inability of the duty-bearer to undertake a function.
- Progressive realisation which means there is a need to take note that economic and social rights can be realised gradually because many processes are constrained by scarcity of resources. It should be noted that the state has the obligation to provide some minimum levels of enjoyment of rights such as those that reinforce the dignity of the Batwa.

Promoting Awareness and Education

The government should provide information to the Batwa to enable them participate in development issues that affect them, and challenge decisions that threaten their rights. The government

should empower pro-Batwa CSOs to participate in development planning along the HBRA framework.

It is important to establish safety nets while planning for the Batwa in as far as resources can permit; establishing and maintaining social safety nets to protect them since some of them may be unable to provide for themselves.

Given their wide distribution countrywide, there is need to establish a national Batwa Advocacy Network (BAN) for purposes of exchanging information and experiences among themselves from different communities worldwide. This will help in the development of a national advocacy strategy and a stronger voice. It will also increases national awareness and action on the issues affecting the Batwa communities as well as advocacy both at regional and international levels. This will help:

- Achieve greater awareness on issues affecting the Batwa at the international level;
- Build confidence of Batwa representatives to participate at similar forums; and
- Governments pay attention and act on issues raised at the different fora.

The networks can help in the articulation and framing of a national advocacy strategy to address some of the concerns of Batwa communities such as education, landlessness and discrimination. The networks will also help provide support and share lessons learnt among organisations and countries. Strong networks would also assist the organisations to engage various institutions like the Human-Rights Commission, which can be instrumental in bringing about a positive change in the lives of the Batwa. They would also enable the Batwa to engage with regional institutions like the African Union, New Partnership for African Development (NEPAD), EALA and the Pan-African Parliament. Batwa networks would also enable them to engage international institutions such as the UN Working

Group on Minorities the UN Working Group on Indigenous Peoples and the UN Forum on Indigenous Issues.

Organisation, facilitation and funding of peer visits should be in the form of community-to-community visits. Through such peer visits, the Batwa should be more empowered to take up best practices and lessons, learning from success stories of other Batwa and indigenous communities.

It has been observed that there are some commendable initiatives that are attempting to address their vulnerability. However, the organisations need empowerment through capacity building. Through this initiative, CBOs would be strengthened and guided to operate in a co-ordinated and sustainable manner. This would also include improved ability to effectively carry out activities at the local and national levels.

There is a serious lack of reliable information on the nature and prevalence of the Batwa's vulnerability in Uganda. The continuing misinformation and stereotyping of the Batwa must be urgently addressed through research and sharing findings to demystify these issues. There are some useful statistics from the Uganda Bureau of Statistics (UBOS) that would facilitate planning for such vulnerable communities. Local Council authorities should be encouraged to access and utilise such data while planning for vulnerable groups.

The government is yet to include the Batwa in the department of special needs in all districts. In the event of the fact that many districts have, if any, special budgets for the Batwa, there should be a deliberate attention and budget for the Batwa and similar vulnerable communities. The ministry of education, through the department of special needs, should revisit their priorities to include the Batwa. Where possible, local authorities should work closely with, evaluate, monitor and facilitate pro-Batwa CSOs.

Exclusion of public goods does not work. As it has been demonstrated that when 'resources and other good things are done

for the Batwa in Kabale, those from Kisoro or even Rwanda come to take advantage'. There is need to facilitate the Batwa from within their communities. This helps, not only in terms of integration, but also in limiting their unnecessary movements.

By way of policy recommendations, it is hereby proposed that government and other stakeholders in the culture sector ought to address the challenges facing the minorities' languages. Cultural research and documentation needs to be improved through mechanisms such as recording traditional cultural expressions, cultural tourism and building the capacity of cultural practitioners, especially among the Batwa communities. There is need to initiate the review of culture-specific laws and to monitor/ evaluate the interventions of others. For instance, the culture specific laws could look at the National Culture Centre which operationalises the activities of the Nommo Gallery and the National Theatre.

The Government, in collaboration with cultural institutions and CSOs, should institute measures geared towards preserving cultural rights. There should be promotion and facilitation for cultural events, rituals and rights advocacy consultations/ awareness, and mobilisation of the people to support these cultural issues.

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7

Nationalism, Citizenship and the Politics of Exclusion in Zanzibar

*Mohammed A. Bakari**

Introduction

This paper aims at identifying a specific ethnic minority in Zanzibar for in-depth interrogation at the local and national level to determine the extent to which it has been marginalised, discriminated and excluded in Zanzibar's political processes and decision-making. This study is undertaken with the overall objective and spirit of regional integration aimed at providing research input that will influence the inclusion of ethnic groups and minorities in political decision-making in East Africa in order to strengthen their participation in democratic processes in the region and ultimately contribute to a truly people-centered development.

The paper comprises two main parts. The first part offers a general mapping of the category of people considered to be ethnic and racial minorities in Zanzibar and the way the issue of contending nationalist outlooks has affected the entire political discourse, including the notion of nationalism and citizenship. The second part comprises a brief review of policies and institutional arrangements shaping the way the identified marginalised political community is mobilised to advance its interests and strategise, participate in and influence democratic institutions, and highlights opportunities and challenges encountered.

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It also documents issues relating to political parties and elections as well as alternative forms of political mobilisation through cultural, religious and civil society spheres. Besides, patterns of decentralisation of power and local governance, as avenues for people-participation in the political processes, are examined. Also, tackled in this part is the discussion on the extent and manner in which the identified politically marginalised community takes into account the issue of empowerment of its internally marginalised groups such as women, the youth and the elderly, which is a cross-cutting issue featuring in the other sections of the paper. Finally, the study ends with an overall conclusion and general recommendations that can challenge conventional thinking about the role of minorities in political processes as well as proposals on appropriate ways to advance the discussion and shape the Citizenship and Identity Programme of KCK within East Africa.

Mapping Ethnic and Racial Minorities in Zanzibar

Ethnic, Racial and Class Relations

In terms of ethnic, racial composition and relations, Zanzibar remarkably distinguishes itself from all the other cases in the East African region (Tanzania Mainland, Kenya, Uganda, Rwanda and Burundi). Whereas ethnicity and ethnic relations are more pronounced in all the other cases, in the case of Zanzibar racial identities and racial relations are more appropriate terms given its peculiar demographic and historical features. Zanzibar, an offshore island in the Indian Ocean, formally a great empire stretching to some parts of the Mainland from Mogadishu in Somalia to Sofala Mozambique, has had contacts with the outside world for centuries (Bennett, 1978:79).

Zanzibar (Unguja and Pemba Islands) is part of the United Republic of Tanzania since 1964 following the Union with Tanganyika. Under the Union arrangement, Zanzibar retained its internal government

with jurisdiction to manage non-Union affairs.[613] The Islands are located about 22 miles (35km) off the coast of the Indian Ocean. Unguja and Pemba jointly have a total land area of 2,232 square kilometers. Unguja, where the seat of the Government and the main commercial centre are located, occupies 63% of the total land area and Pemba, which is considered as a peripherised region since the colonial days, occupies 37%. According to the population projection based on the 2002 census, by 2008[614] Zanzibar had a population of 1,192,383 inhabitants. Unguja Island had a population of 733,186 inhabitants (61.4%) and Pemba 459,197 inhabitants (38.5%). Since this study focuses on the issue of discrimination and marginalisation of ethnic minorities or majorities, the Unguja-Pemba divide will feature prominently. Unfortunately, however, there are no available statistics to determine the actual percentage of the people originating from Pemba and Unguja. What is indisputable is that due to less economic opportunities available in Pemba, there has been, for a long time, a mass exodus of people from Pemba to Unguja. That is to say, in Unguja, particularly in the Urban West Region, a large number of people there originated from Pemba.

Unlike the other East African countries, whose inhabitants are multi-ethnic, the Zanzibar population is first and foremost multi-

[613] The Zanzibar government has all the three arms of government, namely the executive (under the president of Zanzibar), the legislature (House of Representatives) and the judiciary, up to the High Court. The Court of Appeal was formally the East African Court of Appeal and following the collapse of the EAC, it became a Union matter in 1977. A union with two governments [instead of a unitary state or a clear federal structure with three governments] was favoured by the founders apparently due to two main reasons. One, due to the fear under a unitary state of one government, the smaller partner (Zanzibar) could loose its historical identity and be completely swallowed by the bigger partner (Tanganyika). Two, it was assumed that it would be too costly to run three governments (Nyerere 1994: 15).

[614] Based on the projection of the 2002 census which was provided by the National Bureau of Statistics Office.

racial. In the absence of up-to-date statistics of the racial and ethnic distribution of the population, the pre-independence census of 1948 could provide a rough indication.[615] According to the 1948 census, the main ethnic and racial communities recorded were the Shirazi who are usually referred to as indigenous, a mixed breed of centuries of blood intermingling between Africans and Arabs (56.2%), Africans (19.5%), a category representing recent immigrants from the Mainland and Arabs (16.9%), who represented both those who settled on the islands for several centuries and the relatively new-comers, who came in the early 19th century. The other identities included the Asians (5.8%), Comorians (1.1%) and Goans (0.3%) (Lofchie 1965: 7). In terms of political association and mobilisation, however, it was essentially the Africans, Arabs and the Shirazis, who extensively mobilised during the struggles for independence and some patterns of their political orientations are to some extent visible to date. Although the Zanzibar population is conspicuously multiracial and multi-ethnic, it is relatively homogenous in religious terms. Over 96% of the population is Muslim and most of them (about 90%) belong to the Sunni sect (Lofchie 1965:72).

Historically, there was a significant difference between Unguja and Pemba in terms of both demographic composition, racial and class relations during the colonial era. In terms of racial composition, Unguja had more than twice the number of Africans than Pemba; and Pemba had more than twice the number of Arabs than Unguja; and just one quarter of the Asians lived in Pemba. That is to say, Pemba was socially much more exposed to Arab influence than Unguja and Unguja had more African influence than Pemba. But

[615] The figures were quoted from the 1948 census. It is important to note that the demographic composition has remarkably changed as a result of the 1964 Revolution in Zanzibar. Quite a significant number of people (mostly Arabs, Indians and people originating from Pemba) left the islands and settled elsewhere, either on the Mainland or overseas, and people from the Mainland continued to flock into Zanzibar.

what was more significant in terms of the difference was the fact that there were clear patterns of correlation and association between social classes and racial identities (Lofchie, 1965: 227, Sheriff, 1991: 86, Bakari, 2001: 54). Arabs predominantly represented the landed class and the ruling aristocracy. Asians represented the merchant class and occupied the middle position in the social hierarchy; most of the Shirazis were peasants and the few who were landlords, occupied the ranks of the middle class. Africans constituted the lowest social stratum, representing labourers and tenants. On the whole, however, class differences (and hence antagonism) were sharper in Unguja than in Pemba. In Unguja, a meager 5% of landowners owned more than 56% of the clove trees, whereas in Pemba, where about 80% of the clove trees existed, the peasantry in that island owned 58% of all clove trees and the proportion of the Arab and Shirazi peasants was almost equal with little difference in terms of their economic situation (Sheriff, n.d: 13 cited in Bakari, 2001:51).

Social stratification based on division of labour and cultural differences among the various racial and ethnic groups that existed during the colonial times, to some degree has had an impact on the present social structure as Horowitz observes:

> The ethnic division of labour and more general cultural differences as well, imply divergent principles and stratification: these tend to produce different types of elites among various ethnic groups. The leadership of one may be composed predominantly of university-educated professionals, while leadership in another may be confided to traditionally oriented aristocrats. This was the situation in Nigeria, where the Hausa-Fulani aristocracy led Northern parties, whereas the Ibo, lacking an aristocracy, relied on Western-educated professionals (Horowitz, 1985:565).

The situation in Zanzibar before independence and after the revolution was not much different from the above scenario. During the colonial period, Arabs were classified as landlords, Asians as merchants, Shirazi as peasants and Africans as labourers. The public

service was predominantly staffed by Arabs and Asians, with the exception of the police force which was almost exclusively manned by Africans of Mainland origin (Bakari, 2001: 54). In the post-revolution era, a different pattern of division of labour occurred. Apart from the collapse of the plantation economy and landlordism, a new set of elites rose to power. Among other things, the differences in education that occurred in the post-revolution era in Zanzibar could partly explain the current set up of the social structure and division of labour.

The people of Pemba and Arab origin, for example, who were sidelined as they were not part of the "new aristocracy" of the revolutionaries,[616] were compelled to venture into areas where they could not be severely blocked. These included the pursuit of higher education and engagement in commercial activities, particularly during the post-economic liberalisation era. A large number of people among the politically marginalised sections of the society (non-aristocrats) migrated to the Mainland and overseas. Against this backdrop, different types of elites now exist among the two competing political camps. One camp (i.e., those belonging to the ruling party) controls the government and coercive instruments of the state, while the other camp, (i.e., the opposition, particularly during and in the post-Jumbe era from 1972 to the late 1980s), to a considerable degree dominated the professional cadre of the government before carrying out a systematic purge of those who were perceived to be anti-establishment, particularly in the pre and post 1995 general elections under President Salmin Amour and his successor, Amani Abeid Karume (Bakari, 2001:133).

[616] In the post-revolution era, the new rulers who claimed to have deposed an Arab aristocracy/oligarchy to institute a majority rule constituted another aristocracy, namely "African aristocracy".

Racial/Ethnic Groups and Class Character

Prior to independence, the relationship between ethnic groups and social classes was to a considerable degree quite clear. Although one could not draw a general conclusion that each racial group belonged to a specific social class, it was reasonable to generalise that most members of a particular racial group belonged to a certain class. One could reasonably say, for example, that the upper class was predominantly Arab and Asian. The Arabs constituted a landlord class and the Asians a merchant class. The middle class consisted of some sections of Arabs, Indians and well-to-do Shirazis. The lower class was predominantly African and poor sections among the Shirazis. In terms of social classes today, class differences to some extent still exist, but to a considerable degree, cut across all racial and ethnic identities. There are no clear demarcations and correlations between racial categories and social classes as was the case during the colonial era (Bakari, 2001: 92-95).

One could still observe that quite a significant number of Arabs belong to the middle class or upper classes. This socio-economic position is not by virtue of being in government service, but by owning and running business ventures some of which with capital assistance from their relatives and friends in the country or from the Middle East. On the whole, however, it may be misleading today to associate a particular racial or ethnic group with a specific social class. The collapse of the plantation economy, the development of the public sector in the 1960s and 1970s and the economic and trade liberalisation from the mid 1980s, jointly created conditions that allow social mobility across racial/ethnic groups. Some social climbers have achieved a higher economic status from public employment or employment in the private sector and others have transformed their living standards through commerce.

Today, Africans and some sections of the Shirazis, particularly those based in Unguja, constitute the new ruling clique/oligarchy

with immense political power and a disproportionate share in lower, middle and top government positions (Bakari, 2001: 138, Shivji, 2008:234). The private commercial sector is still to a considerable extent dominated by Zanzibaris of Asian and Arab origin. In comparative terms, Zanzibaris of Pemba origin seem to be more conspicuous in the sector, particularly among the middle and small business undertakings than those from Unguja (Mwase, 1997). This observation applies to commercial activities based in Zanzibar town, Dar es Salaam and other parts of the Mainland. On the whole, social classes are so amorphous in Zanzibar today to the extent that the correlation between racial groups and social classes is not self-evident unlike the case during the colonial era.

Conceptualisation of Race and Ethnicity in Zanzibar

Whereas in all the other cases in East Africa, the dominant patterns of relations are clustered under ethnicity, in the case of Zanzibar the relations are saliently racial.[617] When it comes to using an analytical concept, nevertheless, we have to make up our mind which concept is appropriate in explaining the relations. Analytically, we can hardly get extra mileage by using racial relations as distinct from ethnic relations. Whereas it could be conceptually sensible to separate "race" from "ethnicity", whereby race signifies genealogical differences of colour and excludes other ethnic features such as religion, language, culture or nationality, for analytical purposes and comparison, a broad concept of ethnicity may be more appropriate as it embraces an array of differences based on colour or tribe, language, religion and some other attributes of common origin (Horowitz, 1985:41). As to whether Zanzibaris of Arab and Asian origins are racial categories, this is hard to dispute. The controversy surrounds the other identities, Africans and Shirazis, as to whether they constitute a single racial category (with different ethnic identities) or they are distinct racial

[617] This has been aptly put by Mpangala in his concept note to this publication.

groupings. For the purpose of this study, the two concepts of race and ethnicity are used more or less interchangeably.

In the case of Zanzibar, the term 'African' as an ethnic or racial label is not a straightforward concept. Depending on the context and purpose, it is used sometimes interchangeably to refer to the Africans of Mainland origin and the Shirazis. Sometimes, depending on circumstances, the Shirazis would accept the 'African' identity (label) when they differentiate themselves with Arabs and Asians, however, at times they seem not to be comfortable with the African label, for example, to be put in the same category with Africans who are considered as recent immigrants from the Mainland. Sometimes, a more loosely label is applied to the Shirazis and Africans as "Waswahili"[618], a cultural identity label which seems to be so inclusive as to include even Arabs and Asians who are part of the Swahili and Islamic culture in East Africa. Apparently, all the racial labels used are exclusive perhaps with the exception of the "Waswahili" (i.e., a cultural identity) which is pliable to accommodate almost all the racial and ethnic categories in the East African coast (Middleton, 1976: 502).

According to the official identification by the British administration, initially the 'African' was quite an inclusive ethno-geographical identity and it included, in addition to those originating from the various African tribes of the Mainland, Waswahili, Shirazis, Somalis, Ethiopians, Sudanese, Commorians and the like (Coutts,1956, Clause, 8). In the 1950s when politics and nationalist struggles were intensifying, the definition of 'African' according to the British colonial authorities became more restrictive. In the new definition, Shirazis, Commorians, Somalis and Ethiopians, were considered non-Africans. In this definition, 'Africans' now exclusively denoted people from the Mainland tribes (ibid., Clause 8). In spite

[618] Waswahili basically refers to the people along the coast of East Africa whose dominant culture is Islamic and Swahili language.

of the above controversial account of ethnic and racial identities in Zanzibar, for the purpose of our study, suffice it to say that Zanzibar is a multi-racial and multi-ethnic country which is demographically different from all other nations in East Africa.

The Fallacy of Majority versus Minority Discourse

The dominant racial discourse among the British colonialists, the revolutionaries in Zanzibar and policy makers in Tanganyika, particularly Nyerere, was that what existed in Zanzibar were class and power struggles between an Arab minority and an African majority (Al-Barwani, 1997, Sheriff, 1994:151).[619] Western and Mainland scholars predominately subscribe to the doctrine of African nationalism against Arab domination (e.g., Lofchie, 1965: 8, Mbwiliza, 2000:28). Lofchie and Mbwiliza, among many others, for example, their notion of Zanzibar Africans include the Wahadimu, Watumbatu, Wapemba and Mainland Africans, with the assumption that these would be the bearers and champions of African nationalism. According to Mbwiliza, Shirazi identity is simply an unfounded myth of glorifying foreign/non-African origin which can hardly be supported by any substantial genealogical origin, a myth which has been reinforced by overplaying the maritime factor in Zanzibar's history (Mbwiliza, 2000:28-34). A lot has been written by historians and other scholars about the origins and authenticity of the Shirazi identity in Zanzibar and throughout the East African coast. There are those who have stressed the maritime and foreign

[619] It is, for example, reported that during the 1964 uprising in Zanzibar, the Zanzibar Nationalist Party (ZNP) / Zanzibar and Pemba Peoples' Party (ZPPP) government requested military assistance from the British Army Station in Kenya and the British High Commissioner, replied, "…I will not recommend it. You are a minority government, and I will not recommend that her Majesty's Government should interfere in the internal affairs of Zanzibar" (Al-Barwani, 1997). Similarly, Sherriff (1994: 151) talks of what he refers to as "a forced marriage", i.e., "the imposition of the Union to buttress the dominance of half of the society over the other without any popular consultation".

genealogical and cultural origins and those who have stressed the African genealogical and cultural origins (Chami, 2007). In this paper, we do not intend to carry forward that seemingly endless debate. A key point to be considered in this controversy is that:

> Analytically, however, in social sciences genealogical authenticity of the Shirazi descent is of less significance. What is more significant is the existence of the perception, be it a reality or a myth, that there is a category of people who consider themselves as a distinct ethnic group and identify themselves as such (Bakari, 2001: 70-71).

This doctrine of an African majority and African nationalism versus an Arab minority and Arab nationalism, apparently has been proved wrong by history. The historical fact was that the entire society was split almost along the middle and racial relations and nationalist outlooks were more complicated than it was assumed by those who subscribed to the doctrine of "African majority" rule which had replaced an Arab (foreign) aristocracy.

Although there was no consensus among analysts on the degree of society polarisation on the eve of the 1964 revolution, the fact that society was polarised was beyond question. It has been well documented by many scholars that social and racial/ethnic polarisation on the eve of the revolution had already dramatically peaked during the era of politics *zama za siasa*, for example, from the 1950s to independence (Othman and Mlimuka, 1990: 155, Shivji, 2008: 20). Three racial identities, namely Arabs, Africans and Shirazis, were highly mobilised and were predominantly associated with specific parties. Indians, on their part, remained largely ambivalent as most of them chose not to participate in active party politics, fearing that they could be considered as a non-indigenous racial group and, hence could face reprisals by the more locally based racial groups, something which could jeopardise their well-established commercial interests in the islands. A wide range of interrelated factors, including social classes, racial/ethnic

cleavages and regional differences and particularly between Unguja and Pemba, were at play and had a direct bearing on the degree of society polarisation.

Unlike most scholars who view competing nationalist outlooks in Zanzibar as an ethnic or rather racial contest pitting Arabs versus Africans (for example, Lofchie, 1965, Mrina and Matoke 1980), some scholars, Shivji, (2008), for example, view the contest as one pitting Zanzibari versus African [black] nationalism. The latter perspective in essence challenges the conventional wisdom to which most politicians and scholars subscribe, particularly those from the Mainland. Shivji, correctly in my view, argues that "if Zanzibari nationalism was rooted in culture, African nationalism was rooted in race" (ibid.: 9). In this case, therefore, the argument of African majority versus Arab minority is extremely shaky. While the Arabs could be considered as a racial minority, Africans did not constitute an absolute majority in any sense for purposes of political mobilisation and affiliation. Hypothetically, if Africans really constituted an absolute majority, as it is claimed in the official discourse, the revolution would have most probably produced a truly legitimate government for the "majority" Africans and the Arab minority having been toppled, disposed and forced to flee the country en masse, that could most probably bring once and for all an end to Arab rule and Arabs would not be in a position to reorganise themselves against the majority African rule. The main argument, therefore, ought to be structured in terms of political divisions between almost equal two sections of society. Admittedly, racial and ethnic divisions have had a role to play. But the divisions, to a large extent, were cemented by ideological underpinnings, particularly relating to the concept of nationalism and citizenship rather than racial identities.

With a review of diverse sources on Zanzibar nationalism, one may also come up with an interpretation which views the bitter pre

and post-independence conflict as a contest between Afro-centric and Arab-centric outlooks of nationalism (Bennett, 1978: 229). There are evidently prejudicial attitudes among Zanzibaris of various ethnic groups on the issue of national identity, citizenship and patriotism. This state of affairs is among other factors, an outcome of the failure of the Zanzibar intellectuals and politicians during the struggle for independence to forge an all embracing caveat of the notion of citizenship which was definitely a major challenge in such a divided society. The ZNP failed to transcend its perceived inclination of Arab-centric civilisation and so did the ASP which also failed to transcend its openly declared Afro-centric view of the government by the African majority versus Arab minority rule. The other party, ZPPP, was also caught in between. Suspicous of both Arabocentric and Afrocentric [black African] view of nationalism, for example, 'black' African is the son of the soil, ZPPP found itself sandwiched by the two major political currents of the day and ended up being more or less ambivalent. The split that occurred within the Afro-Shirazi Party in 1969, leading to the founding of ZPPP by a splinter group, was to some extent influenced by the competing notions of nationalism and citizenship. Whereas the African faction was in favour of Afrocentrism [black African nationalism] with considerable influence from the Mainland, the Shirazi faction, being proud of their cultural heritage to the land, was quite suspicious of the African faction within the party that the latter would undermine the national cultural and religious identity of the islands due to their strong ties with the predominantly Christian Mainland (Bakari, 2001:57).

Immediately after independence, the ZNP/ZPPP coalition government adopted a policy of indigenisation (or rather Zanzibarisation) of the Police force. This policy could be interpreted as discriminatory. Some 270 men (90 from Tanganyika, and the rest from other Mainland territories) were to be affected. They were relieved of their duties without proper compensation (Sullivan

1964). This was interpreted, not as a move to unify the force and make it multi-ethnic or multiracial, but rather it was viewed as a form of discrimination against Zanzibaris of Mainland origin. Although it is difficult to prove that the newly elected government was in favour of Zanzibaris of Arab origin at the expense of other ethnic or racial groups, the perception that Zanzibaris of Mainland origin were viewed with some suspicion was quite apparent.

Nationalism and Citizenship

Whereas there has been no controversy in the other East African countries regarding the ethnic identity of their nations, it has been an issue in Zanzibar since the colonial. In pre-colonial Zanzibar (before the advent of the Omani Arabs, that is, before the 16th century), the local dynasties were considered as Shirazi dynasties, already an inclusive concept of identity for nationalism. There was no serious contest between members of different ethnic or racial identities and racial and ethnic relations were by and large harmonious. Apparently, there was no serious attempt by any racial or ethnic grouping to superimpose its position or to acquire a hegemonic status over the others (Middleton, 1992: 2).

During the colonial era, the notion of citizenship was not yet developed since there were no citizens, but subjects. Zanzibar was a British protectorate, but the subjects were considered as subjects of the Sultan of Zanzibar. In spite of the fact that they were not citizens as such, in terms of being entitled to all rights of citizenship, there was a form of legal identification to at least identify Zanzibaris from non-Zanzibaris. According to the Nationality Decree of 1911, Zanzibaris were of three categories. The law provided that:

(a) A child born in Zanzibar or otherwise whose father was born in Zanzibar shall be the subject of the Sultan by birth;

(b) A child born in Zanzibar by unknown parents or whose nationality is not known shall be the subject of the Sultan;

(c) A child born in Zanzibar by a father who is a foreign national born in Zanzibar shall be the subject of the Sultan. (Clause No. 3 of Nationality Decree, No. 12/1911).

According to that law, any person born in Zanzibar could within three years from the end of his childhood demand a nationality status to be considered as a Zanzibari (Clause 4). Besides, the law provided that any person residing in Zanzibar for three consecutive years or a Zanzibari resident for five years could be registered as a Zanzibari by application (Clause 5(1). For women, the law stated that a woman who is not a Zanzibari national, if married to a Zanzibari, shall be a Zanzibari as well, but a Zanzibari woman married to a foreign national shall lose her Zanzibari nationality (Clause 6).

In 1952, another decree on nationality was enacted. Under this decree, like under the earlier one, Zanzibar's residents were considered as subjects of the Sultan. Again, three categories of nationals were specified, namely nationality by birth, nationality by inheritance and nationality by adoption (application). Nationality by birth applied to any person born before or after 27 December, 1952 in the Sultan dominion (Clause 3 of Nationality Decree, Chap. 39). Nationality by inheritance applied to any person born before or after 27 December, 1952 outside the Sultan's dominion provided that his/her father was a Zanzibari when he/she was born. The provision further stated that if the father of such a person is a Zanzibari by inheritance, such a person would not be a Zanzibari until his/her birth had been registered according to the Registration of Births and Deaths Decree within a period of 12 months from the day of his/her birth (Clause 4 of Nationality Decree, Chap. 39).

As regards nationality by application (adoption), the law was explicit that any foreign national was eligible to apply and become a Zanzibari national after meeting the laid down requirements, for example, residing in Zanzibar for the period of 12 months after the

adoption of this decree and be of good conduct and some knowledge of languages, especially Swahili, English or Arabic.

The bottom line in both 1911 and 1952 nationality decrees was that residence was considered as nationality and for that reason, all Zanzibar residents were not only subjects of the Sultan, but were also considered as Zanzibari nationals. In order to effectively implement the Nationality Decree, the Registration of Persons Decree of 1954 was passed which made it mandatory for every Zanzibari who had reached 16 years to be registered and be given a special identity card [Clause 6(3) of the Nationality Decree Chap 42] and failure to register was a criminal offence under the law (Clause 6 (4)). Besides, the law provided that a person who would fail to register him/herself in accordance with the law would be considered to have denied his/her Zanzibari nationality and would, therefore, be ordered to leave the country.

Under the 1963 Zanzibar Constitution, the same legal instruments on Zanzibar nationality were in force, with the exception that the Constitution entailed the basic principles of human and citizens' rights which were not provided in the earlier legislation. Following the creation of the Union between Tanganyika and Zanzibar in 1964, Zanzibar and Tanganyika lost their nationality status and citizenship became one of the Union issues.

In 1985, the Revolutionary Government of Zanzibar enacted the Zanzibari Act No. 5 of 1985. Basically, this law clarifies the conditions under which a Tanzanan citizen may become a Zanzibari. Under this law, a Zanzibari is defined as:

(a) A person who is a Tanzania national who has been residing in Zanzibar before 12 January, 1964;
(b) A person who from 26 April, 1964 has been a Tanzanian national and has been born in Zanzibar will be a Zanzibari if his parents, or his father or mother is a Zanzibari;

(c) A person who is a Tanzanian national and who before 26 April, 1964 was a Zanzibari shall be a Zanzibari provided that he has not lost his qualifications as a Tanzanian national (Section 3 of Act No. 5 of 1985).

Under this Act, therefore, any person with the above stated qualifications shall be a Zanzibari. Besides, Section 4 of the Act provides that any person who is a Tanzanian national who has been residing in Zanzibar for 10 years and, who intends to continue residing in Zanzibar, may be a Zanzibari by application.

In principle, the colonial decrees on nationality and post-revolution legislation are not discriminatory on the basis of one's racial or ethnic origin. The main qualifications for one to enjoy a nationality status (before the revolution) and residential status (after the revolution) have been on the basis of birth and residential requirements of having resided in Zanzibar for a specified period of time. Since 1964 following the union with Tanganyika, there has been a debate in Zanzibar over whether a "Zanzibari" refers to a sub-national (territorial) identity or simply a residential status.[620]

Following the introduction of multi-partism in 1992, the issue of Zanzibariness, whether as a territorial identity or simply residential status, has re-emerged with great sensitivity because it is linked with political rights, including the right to be registered as a voter for Zanzibar elections. For example, the five years (from

[620] The controversy over whether Zanzibar is a country or not (*Zanzibar ni nchi au si nchi*) arose in parliament in July, 2008 following the remark by the Prime Minister Mizengo Pinda that "Zanzibar is not a country" since according to the URT Constitution, it is part of the United Republic of Tanzania. This kind of controversy has always been there as evidenced by the landmark case before the Court of Appeal (Criminal Application No. 8 of 2000) between *SMZ v. Machano Khamis Ali & 17 others*. The Court of Appeal revised the decision of the High Court of Zanzibar (Case No. 7 of 1999) on the argument that treason could not be committed against a non-sovereign entity, namely Zanzibar. It was held that Zanzibar, just like its partner, Tanganyika, is neither a state nor is it sovereign. The state and sovereign is the United Republic of Tanzania.

1995 to 2000) and the currently 36-month residential requirement in Zanzibar, have led to the disemfrachisement of quite a large fraction of Zanzibaris who are not permanent residents of Zanzibar, including those based on the Mainland. Consequently, there has been a persistent claim by certain sections of Zanzibaris that the existing laws on citizenship in Tanzania and the electoral laws, which define who is eligible to vote and be voted for in Zanzibar, are exclusionary since they deny quite a substantial number of Zanzibaris, including those based on the Mainland, their political rights to determine the governance affairs of Zanzibar.

In East Africa, therefore, the Zanzibar problem relating to national identity and citizenship is unique. There are evidently minority groups in all East African countries, but these have not posed any formidable challenge on the national identities of those countries. The 'African' identity has not been challenged in the Tanzania Mainland, Kenya, Uganda, Rwanda and Burundi. In Zanzibar, however, the 'African' identity, the way it has been perceived, has been under constant challenge. Whereas the post-revolution regime has been promoting the 'African' identity, the opposition forces in society have been advocating the 'Zanzibari' identity, which is multi-racial and multi-ethnic. The issue of an African identity versus a Zanzibari identity has an implication on the nationalism and citizenship rights in Zanzibar and Tanzania as a whole.

One of the issues relating to citizenship and nationalism in Zanzibar is the issue of dual citizenship, a topical issue which is now debated across East Africa and beyond. To most Zanzibaris, the denial of dual citizenship is considered as sheer discrimination for a fraction of Zanzibaris who, voluntarily or involuntarily, fled the country after the revolution. There is evidently no East African country with a stronger diaspora than that of Zanzibar given the unique historical experience of Zanzibar in terms of its multi-racial population and mass exodus of people after the 1964 revolution.

The significance of this group is not simply in terms of its numerical its strength, but essentially in terms of its proportion to the total population of the country and in terms of its political articulation, organisation and mobilisation, that have been sustained from the 1960s to date. To deny this community citizenship rights in the case of Zanzibar, could in effect be interpreted as an act of discrimination, not necessarily of a specific minority group, but of a substantial fraction of the population. Their continued engagement of such people in the politics of Zanzibar in different forms, including organising forums, carrying out some advocacy and lobbying outside the country, suggests that such groups of people still have strong political affinity to their country of origin irrespective of how long they have lived outside Zanzibar or Tanzania.

Policies and Institutional Arrangements for Discrimination

The Electoral Process and the Politics of Exclusion

The legal and institutional framework governing elections, including the nature of the electoral system, may either promote representation and integration among societal groups, or may be one of the systematic mechanisms for political discrimination and exclusion of certain sections in society. In Tanzania, including Zanzibar, the political transition was a transition from above, whereby basic rules of the game were not negotiated by the contending actors. Instead, the regime, under the ruling party, unilaterally prepared the stage for political competition which was strikingly skewed in favour of preserving the status quo under the guise of multi-party politics (Bakari, 2001: 154-55). The inherited majority electoral system (winner-takes-all) was left intact, independent candidacy was disallowed, a significant proportion of people were disemfrachised by restrictive legal requirements, an electoral commission was

constituted on partisan considerations and electoral constituencies were drawn arbitrarily in favour of the ruling party.

Among the legal provisions governing elections, there are some which are considered inherently discriminatory and others seem to have discriminatory effects in the course of their implementation, for example, the controversial residential requirement for one to be registered as a voter. Initially, during the 1995 and 2000 general elections, for one to be eligible to register, one must have resided in a particular constituency for five years consecutively. Opposition leaders expressed their worries that residency requirements would lead to the disemfrachisement of Mainland voters, including Zanzibaris originally from Pemba, who are business people scattered all over the country. It was estimated that residency requirements barred approximately 20,000 voters from voting in the 1995 elections, including Pemban students studying in Unguja island and in the Mainland (*The East African*, 3 August, 2000).

In 2001, following the signing of a reconciliation deal between CCM and CUF, the residency period was shortened to three years. In both cases, however, quite a significant proportion of the Zanzibar electorate has been denied their political right to vote. Among those who have been affected is a large number of Zanzibaris based on the Mainland in search of economic opportunities given the deteriorating economic conditions in Zanzibar. There is no compromise among the contending parties on this rule. Whereas the opposition call for the emfrachisement of all Zanzibaris, including those based in the Mainland, the ruling party is opposed to that idea, arguing that allowing Zanzibaris outside Zanzibar to vote has some logistical problems of control as parties, particularly the CUF, could organise ineligible voters outside Zanzibar to their advantage. At any rate, however, such a provision has had a grave impact in denying quite a significant number of the otherwise eligible voters the right to vote in Zanzibar. Worse still, such people have been even denied

the right to elect the president of Zanzibar whose constituency is the whole of Zanzibar.

The provision that for a Zanzibari to be eligible to vote he or she must have resided in Zanzibar for 36 months consecutively sounds discriminatory, although it may be useful in preventing the possibility of importation of non-Zanzibaris to vote in Zanzibar. Similarly, a condition has been imposed that to get registered as a voter in Zanzibar, one must have a birth certificate. This borders an outrageous requirement in the case of Zanzibar, where the majority of the middle aged and old people do not have birth certificates and the procedure to get them is highly cumbersome and discriminatory. These requirements, while in one respect seem to have a good intent, in practice, they seem to serve a more negative purpose of disemfrachising and discriminating quite a significant number of the otherwise eligible voters.

Currently, there is a requirement that for one to be able to be registered in the Permanent Voters Register (PVR), he/she should possess a special residential identity card called Zan ID, which is issued by the directorate of Zan ID. However, the whole procedure to get a Zan ID has been tainted with partisan considerations. It has been reported that the provision of the IDs has continued to be a problem even after the statement of good will (popularly known as *Maridhiano*) in November, 2009 by President Amani Abeid Karume and CUF secretary General Seif Shariff Hamad. It has been reported that scores of people are still denied that right or find it rather difficult to access the right. The following case is a good illustration:

> Time Juma Abdallah, a woman aged 55, has a voter registration card No. 220450008 issued in April, 2005 at Mwanakwerekwe constituency. She has not got a Zan ID since 2006. She has tried to go to her Sheha (treet/village leader), Ahmada Othman. Time is required to produce her birth certificate and she does not have one

> due to bureaucratic bottlenecks. She is also denied a form to appeal to the director. She has six children who are eligible to vote, but only one has a Zan ID (*Mwana Halisi*, 16-22 December, 2009).

There are other provisions which are seen by observers to have discrimination effects in the electoral system. For example, section 12 (6) (iii) of the Zanzibar Election Act No. 11 of 1984 states that government employees, employees of public institutions and international institutions, have the right to register as voters and vote in the areas where they have been transferred to. By contrast, self-employed and employees in private companies or people who have shifted to other areas for residence, cannot be registered as voters in their new areas of domicile. On the whole, it can hardly be disputed that either by intent and spirit or by their effects, some of the provisions relating to elections are in conflict with Article 21(1-4) of the Constitution and other articles. Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) guarantees everyone, without distinction or discrimination, "political rights, in particular the rights to participate in elections-to vote and stand for election…".

In the case of Zanzibar, the electoral processes and outcomes before and after independence, instead of creating a firm foundation for democracy and social integration, seem to have further polarised society. Discriminatory conduct and human-rights violations usually reach their peak during election times and in the aftermath of almost every general election. In essence, there is no environment for freedom of choice and freedom of association. There have been many victims of the electoral process ranging from those, who lose their jobs or demoted, to those incapacitated by life injuries, those who have been forced to flee the country and those who have lost their lives. The worst incident was that of 26/27 January, 2001 when CUF planned to stage nationwide demonstrations on 27 January to demand a new constitution, an independent electoral commission and a rerun of

the Zanzibar election. In an effort to suppress the demonstrations, the police on Thursday 25 January arrested the CUF chair, Prof Ibrahim Lipumba, and over fifty supporters at Mbagala in Dar es Salaam. During the arrest and in police custody, the detained CUF members were beaten. The following day in Zanzibar Stonetown, the police opened fire at a Mosque at Mtendeni after Friday prayers and killed two people. On the day of demonstrations, the police violently suppressed marches in Dar es Salaam, Pemba and Unguja, and the government initially reported that 23 people, including one policeman, were killed during the demonstrations, mainly on Pemba. A few days later, the government reported that those who had been killed were 27. In 2002, a presidential commission of inquiry into the Zanzibar killings, popularly known as Mbita's Commission (named after its chair Brigadier General Hashim Mbita), reported that 31 people were killed and 294 injured (Mbita's Commission 2002). CUF sources, however, disputed the findings, claiming that those killed were more than 46 (CUF, 2005:6).

In the aftermath of the demonstrations, over 2,000 people, including CUF legislators, fled Pemba for Kenya, where they sought political asylum. This was the first time in Tanzania's history to produce political refugees. Scores of people were arrested. The government alleged that the demonstrators attacked Police posts and the security forces responded accordingly. CUF and human-rights organisations claimed that security forces used excessive force to repress the demonstrations, which started out peacefully until provoked by the police.

In addition, there were other means through which the policy of discrimination was executed in the past. For example, in the aftermath of the 1995 general elections, there was a systematic initiative by the authorities to harass perceived opponents of the regime, particularly those originating from Pemba. Some have had their houses unlawfully demolished by the authorities in an attempt

to force them to return to Pemba (Bakari, 2001:261). This kind of harassment was also reported in the aftermath of the 2005 general elections, where some houses were demolished in Tomondo in the outskirts of Zanzibar town, the area which is predominantly inhabited by people originating from Pemba.

What is noteworthy is that there are no reported incidents of complaints among the common people up to now that they were harassed by the ordinary people of Unguja. Social relations between Waunguja and Wapemba are generally not considered to be hostile as has been explained in section two. It is usually those in authority who are associated with the discriminatory attitudes and actions.

To be precise, the outcomes of all the previous elections have been highly contested by the opposition and observers' reports have categorically, in the case of the 1995 and 2000 general elections, stated that the elections did not reflect the will of the people. Even in the 2005 general election, which was not blatantly disputed by election observers, serious discrepancies were pointed out which in essence would amount to discrediting the validity of the election outcomes as well. In essence, the electoral process in Zanzibar has further polarised the society and in recent year the pattern of polarisation has increasingly shifted from racial and ethnic and assumed a regional dimension between Unguja and Pemba. One of the commonest complaints voiced is the fact that that all the six presidents since the 1964 revolution have come from Unguja. Since 1985, there were expectations that Pemba would also produce a president, but this dream is yet to be realised.[621]

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[621] In 1985, Seif Shariff Hamad (who was then the Chief Minister of the Zanzibar Government and a very popular political figure among the people) contested party nomination for a presidential candidate with Idris Abdul Wakil, who was the Speaker of the House of Representatives. Hamad was defeated by a narrow margin in what was viewed by analysts as a bitter contest between liberators (hardliners) and front liners (reformers).

Political Parties, Elections and Patterns of Mobilisation

In the general electoral pattern and voter behaviour, racial and ethnic loyalties, if any, are less definite as they compete with an array of other politically important loyalties, reflected in mixed party systems and complex issue configurations. Some formally staunch ASP/CCM members defected to the opposition due to personal negative experiences of the system that was in place. There is no indication that voters have voted in favour of certain candidates because of their ethnic or racial identity. This applies to both parties. No party is known to have benefited or suffered an electoral defeat at the constituency level due to the racial or ethnic identity of its candidate. Arab candidates win in those constituencies which were formally ASP strongholds, and African or Shirazi candidates win in those constituencies which were formally ZNP or ZPPP strongholds. The political configuration within CUF is fluid enough to accommodate diverse groups and interests. It is largely a political agenda rather than racial or ethnic, or regional identities, that defines the overall mission and mobilisation character of the party.

As regards alternative forms of political mobilisation between the two main contending political forces in Zanzibar, CCM and CUF, both use conventional and non-conventional methods of political mobilisation, including cultural, religious and civil society avenues. In principle, both political parties carry out their normal party activities using formal and informal structures. Both parties are mass parties with elaborate structures from the centre to the grassroots. The linkage between CSOs and political parties in Zanzibar is not well developed yet. Due to the legacy of a single party authoritarian system and the politics of exclusion that has been in existence for decades, the civil society in Zanzibar is generally weak, although it has shown some signals of growth in recent years. Apart from the constraining political environment, the law governing CSOs in Zanzibar and Tanzania as a whole, bars CSOs from engaging

in politics, particularly in expressing their position or preference toward a particular political party. Under the prevailing political and legal environment, therefore, it is very difficult, if not impossible, for political parties to use civil society organisations as vehicles for political mobilisation, except in those areas that are considered politically insensitive.

In the specific case of Zanzibar, however, the informal arrangements of party organisation have been playing a very critical role in political mobilisation. Since the advent of multi-party politics in 1992 *maskanis* or *vijiwe* (gossiping centers),[622] for instance, have emerged to become formidable informal arrangements of party socialisation and mobilisation to the extent that they have been widely recognised and patronised by the top leadership of both political parties, although they have not been integrated into the formal party structures (Mmuya & Chaligha, 1993: 114-17, Bakari, 2001:179-184).

Relatedly, Zanzibar from the time of nationalist struggles to date, the elders have been quite a significant force in political socialisation and mobilisation. Even before the advent of multi-party politics, for example, during the underground political resistance championed by those who had been purged from the ruling party in 1988, the elders played an important role in sustaining political resistance and discrediting the regime. Under a situation of communal politics and wide political polarisation, elders from both sides of the political spectrum were informally used for purposes of political articulation, socialisation and mobilisation, given the strategic historical position and social status in their respective political groups.

[622] Traditionally, Zanzibaris have a custom of spending their evening time, usually after Magharib prayers, gossiping and drinking coffee at special centres called *barazas*. In the advent of multi-partism in 1992, the name *baraza* was replaced by the name *maskani*. This informal institution, which has been traditionally predominantly social in nature, was now transformed to be predominantly political and exclusive in that each *maskani* or *baraza* was affiliated to a specific political party.

In addition to the *maskani* phenomenon and the elders, religious institutions have also been used, for not only religious and cultural socialisation and mobilisation, but for political articulation and mobilisation as well. Just like CSOs, legally, religious institutions are also not allowed to engage in politics. In practice, however, religious institutions in Zanzibar, including mosques, have been used for political socialisation, articulation and mobilisation. Mosques, for example, particularly due to their speeches during Friday prayers, can be categorised in terms of their stance towards the regime. There are mosques which are known for being critical of the regime such as Kikwajuni Mosque, which was formally under Sheikh Nassor Bachu, one of the prominent religious leaders of the Islamic reformist movement in Zanzibar, and Mchangani Mosque under Sheikh Ally Hemed Jabir. Both mosques are located in Zanzibar town. On the other side, there are also mosques which are known for their pro-establishment stance such as Malindi Mosque, also in Zanzibar town. The situation is similar in Pemba, but since Pemba is predominantly in the opposition, there are fewer mosques which could be considered as pro-regime.

Apart from the mosques, some religious institutions in some ways have been associated with preaching with effect on political articulation and mobilisation. The Islamic Propagation Organisation (UAMSHO), for example, which was established in 1998, has assumed quite a high profile in its stance apainst the regime and has been critical of the government on a number of policy issues, including the tourism policy. The law prohibits preaching or distributing material that might be considered inflammatory or represent a threat to public order. The government occasionally denies permission to religious institutions seeking to hold demonstrations, if there is a perceived likelihood that the gathering could lead to confrontation or ignite religious tensions. In addition, the law imposes fines and prison sentences on political parties that

campaign in houses of worship or educational facilities, although the enforcement of this law has been a problem.

Although the opposition camp and the politically marginalised groups may enjoy the support of some religious institutions, the ruling party and the government have also a set of religious institutions in their service. According to the Mufti Law of Zanzibar 2001, for example, the president of Zanzibar is authorised to appoint an Islamic leader, or *mufti*[623] to serve as a public employee of the government. The *mufti* has the authority to approve or deny the registration of Islamic societies and supervise mosques. Under this law, the secular government is empowered to supervise and co-ordinate all Muslim activities. Given the political significance of the civil and religious space, groups that have been discriminated, marginalised or excluded in the political process (as represented by opposition parties, some civil organisations and some religious institutions), are constantly competing with the ruling party and the government in fighting for the control of the religious space due to its potential strategic position in political articulation and mobilisation.

In principle and in reality, politics permeates all domains and is practiced using both formal and informal channels, conventional and unconventional methods and secular and religious institutions. However, the use of unconventional channels and methods may have a potential for eroding a civic sense of duty in politics. This trend, if not properly directed and managed, may have a negative impact on the political discourse that is likely to gradually degenerate and lead to parochial and divisive communal politics, an outcome that is not good for the national integration agenda and democratic politics.

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[623] A *Mufti* is an Islamic scholar who is an interpreter or expounder of Islamic law (*Sharia*).

Discrimination in Public Employment

Discrimination in public employment and in accessing public resources and opportunities has been one of the common strategies applied by the Zanzibar Revolutionary Government. This strategy can be traced from the early days of the revolution. The extent of application of this strategy, however, has been fluctuating over time. It was applied extensively immediately after the revolution in the name of safeguarding it. All Zanzibaris, who were perceived to be enemies or potential enemies of the revolution, were targeted by this strategy/policy. Due to stereotyping, the victims and potential victims were many. The list included people originating from Pemba, former members of ZNP and ZPPP, Zanzibaris of Arab and Asian origin and Comorians. During the second phase, the government under Aboud Jumbe (1972-1984) attempted to reduce discrimination on the basis of one's origin. The policy was also widely applied during the one-year interim presidency of Ali Hassan Mwinyi in 1984/1985. Since the political crisis of 1988, however, which culminated in the expulsion from the party and government of Seif Shariff Hamad and his associates, the discrimination policy has been widely applied against perceived opponents of the regime.

In its June, 2008 report in parliament delivered by Shoka K. Juma, CUF showed with statistics the scale of discrimination in almost all key positions in the Zanzibar government (see Table 1). For example, all the top five leaders of the government are from Unguja. These are the president, the chief minister, the deputy chief minister, the speaker of the House of Representatives and the chief justice. Besides, out of 17 ministers, only one comes from Pemba and she is a minister without portfolio. Similarly, out of the six deputy ministers, there is only one from Pemba. Out of the 15 principal secretaries, only two are from Pemba and out of 12 the deputy principal secretaries, none is from Pemba. Again, out of the 102 directors, managers, and commissioners, only 17 are from Pemba.

Table 1: Government Positions: Unguja vs. Pemba

Government positions	Unguja	Pemba	Total
Cabinet ministers	14	1	15
Deputy ministers	5	1	6
Permanent secretaries	13	2	15
Deputy permanent secretaries	12	0	12
Regional commissioners	4	1	5
District commissioners	7	3	10
Special forces commanders	5	0	5
Police commanders	18	0	18
Heads of government departments	87	13	100
Total	165 (88.7%)	21 (11.3%)	186 (100%)

Source: Parliamentary Debates, Parliament of Tanzania, Speech by Hon. Shoka K. Juma (CUF MP), Dodoma, 25 June, 2008.

This pattern is not only visible in political and civil service positions, but also in the military and quasi military positions of the Zanzibar government. For example, all heads of the Zanzibar Government Brigades (Special Brigades) namely volunteers, Anti-Smuggling Squad (Naval Force), prisons and the Fire Brigade, are from Unguja. This discrimination in the public service equally applies to positions in the Union Government. For example, among the senior police officers in Zanzibar, including the commissioner, five regional police commanders, and 10 district police commanders, none comes from Pemba.

Whereas discrimination against certain sections of people could be observed in most public institutions, the situation is so conspicuous in the defence and security establishments of the Union government and the Revolutionary Government of Zanzibar. This tradition has a long history right from the early days of the revolution. Zanzibaris of Pemba, Arab, Asian and Comorian origins were not trusted by the authorities. They were generally considered to be against

the ideology of 'African' majority rule or 'African' aristocracy. For example, they were considered as anti-revolutionary forces in society. In 1972, for example, following the death of the first president of Zanzibar, Abeid Amani Karume, at a party meeting in Pemba, it was explicitly stated that Zanzibaris of Arab origin, Indians and Asians, should never be recruited in the military (Bakari 2001). Although this has not been officially stated, particularly since the 1980s, the behavioural part of it seems to be still in existence. Although with time one could observe some relaxation, particularly with respect to Arab half-cast Zanzibaris, the general attitude among Zanzibaris of Arab and Asian origins has been to avoid seeking employment in security and defence establishments, fearing that they might not be considered by the authorities. In addition, they have also feared to join these establishments because they envisage no prospects of promotion or carrier advancement since they are viewed as intruders and outsiders in these institutions.

The Zanzibar Constitution of 1984, Article 21 (2) clearly outlaws discrimination. But there is convincing evidence indicating that the Zanzibar government (usually behavioural and sometimes by policy implications) discriminates Zanzibaris on the basis of their political affinity as well as colour and their origin. Those who are followers, let alone leaders of opposition parties, find it very difficult to get entry into the public service. Generally, it is rare for people perceived to support opposition parties and those originating from Pemba to be given high positions in the government. For example, immediately after the 1995 general elections, the government established a special security unit in the president's office called the General Security Office (GSO) with a special mandate to carry out political screening of employees and applicants of public employment. Related to that, there are also plausible claims that Zanzibaris of Arab, Indian and Comorian origins are usually not employed in the security and

defence forces, including in the Zanzibar special units (Legal and Human-Rights Centre 2006).

The disparity in public employment between Unguja and Pemba and among the various racial and ethnic groups is quite evident. The worst situation is observable in the recruitment within the defence and security establishments. On the whole, according to CUF estimates, about 83% of the senior government leaders are from Unguja and only 17% are from Pemba. Pemba has about 40% of the total population. This disparity in the allocation of senior positions in the Zanzibar government is also evident in the Union Government, but in relative terms, a larger proportion of people originating from Pemba are represented in the Union Government. Currently, for example, the vice-president of the United Republic and two deputy ministers are from Pemba.

There is a very high rate of emigration from Pemba to Unguja, the Mainland and other parts of the world, due to economic hardships and political repression. It is important to underline the fact that this glaring disparity in the allocation of government posts is not due to an imbalance in educational achievements between the two islands. Although hard data on the differences in educational achievement between the two islands is not available, it is widely believed that people originating from Pemba constitute a greater proportion of the people with higher education. Thus, it is fair to consider this disparity as outright political discrimination used as a strategy aimed at rewarding supporters and sanctioning both real and perceived opponents of the regime.

Apart from rewarding supporters through allocating them government posts and sanctioning opponents, the allocation of public resources through the annual budget constitutes another device for implementing the discrimination policy. During the seven years of Karume's administration, Unguja's roads were allocated about 83% of the budgeted funds, while Pemba roads received only

17% of the funds. According to CUF sources, the current demand for road construction in Pemba is 320km and only 87km in Unguja (Parliamentary Debates 2008). Given the fact that this pattern is observable in most of the sectors in development expenditure, it could be roughly estimated that the total development expenditure allocated to Pemba is less than one-third of the annual budget.

As an illustration of the gravity of polarisation between the two islands following the failure of reconciliation talks for the third accord in May, 2008, a group of 12 elders from Pemba presented their petition for the creation of a state of Pemba to the the UN secretary general through the UN country director, Oscar Oscar Fernandez-Taranco. The elders were arrested and released a few days later. Connected to that, four members of the House of Representatives were also summoned to a police station for questioning in what was considered by the authorities as treason (*The Citizen*, 11 June, 2008). In the following year, there was a formal threat by CUF leaders to impeach the president of Zanzibar on the grounds of applying an outright discrimination policy against one side of Zanzibar (Pemba). Apparently, this was a mere threat or simply a public relations exercise, as it would not have been possible for the motion to be adopted in the House of Representatives, where CUF is in the minority, with only 25 members against CCM's 52.

Given the severity of the problem of discrimination in public employment, far reaching institutional reforms are needed in Zanzibar. Good intentions, Horowitz (1985:565) observes: "Will not necessarily be enough to establish points of contact and sympathy among elites whose backgrounds do not mesh". For example, in case an agreement is reached that recruitment in the public service should be strictly on meritocracy, the ruling party cadres and followers may stand to loose since they have been beneficiaries of a patronage system as a way of rewarding their party supporters and punishing their opponents. It is undeniable that part of the power they posses

accrues from a patronage system. At the moment, for example, there is a large number of the youth, who have been employed in the Zanzibar special brigades and are in turn used to vote for the ruling party and carry out violent attacks during elections. On the other hand, if meritocracy is adopted, the group belonging to the opposition camp stands to gain because quite a large number of the educated people and professionals in this group have not been absorbed by the public sector. These are some of the areas where the competing parties seem to have divergent interests.

Development Disparity and Poverty between Unguja and Pemba

Historically, Pemba has been on the periphery of political circles even during colonial times when Unguja used to be the headquarters of both Arab and British administrations. Separatist demands are made due to recurrent claims of marginalisation of Pemba in terms of government positions and resource allocation. As Table 1 shows, only 11% of senior civil servants hail from Pemba. Pemba residents use these figures as evidence of their exclusion from the governing process.

Moreover, Pemba people strongly assert that the CCM government has not been keen on bringing development to Pemba. Due to lack of disaggregated data on government funds allocation in Unguja and Pemba, it has been difficult to determine the validity of this persistent claim. However, according to the Household Budget Survey (2004/05), 61% of households in Pemba live below the basic needs poverty line compared to 42% in Unguja (see table 2). Indeed, the poorest district in Zanzibar, with the highest number of people living below the basic needs poverty line, is Micheweni (74%) in Pemba.

Table 2: Poverty Status from Household Budget Survey (HBS): Zanzibar

	1991/92 HBS			**2004/5 HBS**		
	Unguja	Pemba	Zanzibar	Unguja	Pemba	Zanzibar
People living below the basic needs poverty line (%)	59	64	61	42	61	49

Source: Revolutionary Government of Zanzibar (2007) *Zanzibar Strategy for Growth and Reduction of Poverty, Progress Report,* p 16.

However, a sketch of a sample of policies and associated practices could provide a clue of the actual situation on the ground. According to available statistics, social services and infrastructure are generally poor in Zanzibar, but the situation in Pemba is more pathetic than in Unguja (Chachage, et. al., 2006: 49-54). Generally, the degree of poverty is higher in Pemba than in Unguja. This abject poverty situation seems to be a paradox given the fact that the people of Pemba are generally perceived to be quite industrious and entrepreneurial. Most of the people from Pemba have established themselves in medium and petty commercial activities in Unguja, Mainland Tanzania and in some neighbouring countries. The puzzle is: why is it that they have failed to invest and establish themselves in Pemba? It may be partly due to the small size of the market in Pemba as well as the low purchasing power of the people the Island. At any rate, however, it is plausible to assume that the abject poverty in Pemba has led to the exodus of the critical labour force from Pemba to other areas (in terms of energy, capital and skills). An analysis of demographic data indicates that quite a large number of young persons and able people in the middle ages have fled the island and resettled in Unguja, several parts of the Mainland and overseas. Whereas there are evidently some benefits accrued as a result of exporting labour in terms of remittances for the benefit of relatives and families back home, the overall impact of the exodus of labour from Pemba seems to be on the negative side, for example, this labour drain has reinforced the vicious circle of poverty in Pemba.

Centralisation of Power and the Politics of Discrimination

A policy decision of whether to centralise or decentralise power in a polity is not simply an administrative or managerial decision seeking to maximise efficiency and effectiveness in the implementation of public policy. Rather, it is first and foremost, a political decision relating to the exercise of power and control over resources. Centralisation of power at the expense of the local government system or regional autonomy is one of the characteristic features of undemocratic regimes and those regimes that tend to discriminate against certain sections of the people, particularly if those people are geographically concentrated in specific areas. Over centralisation of power facilitates abuse of power, corruption, erosion of democratic institutions and government accountability. In addition, centralisation may also significantly contribute to ethnic exclusion and conflicts (Lawoti, 2007).

Whereas the Government of the United Republic of Tanzania has undertaken remarkable reforms of the local government system with the aim of devolving power to the grassroots, the Zanzibar government has been lagging behind in undertaking local government reforms or devolving substantial power to the regions, districts and sub-district levels, up to the village levels. An argument could probably be made to the effect that given the small size of the polity in Zanzibar, there is no need for decentralisation and devolution of administrative power to the lower units and that the entire Zanzibar polity could be effectively administered from the centre in Zanzibar town. But, if democracy and good governance mean, among other things, popular participation both directly and through representatives in decision-making and development processes, then any argument against decentralisation, devolution of power and the local government system, is likely to be self-defeating regardless of the size of the polity in question.

In the case of Zanzibar, it is plausible to assume that the sluggishness of the process of devolution of power to the grassroots has been caused by the endemic political hostilities between the two main rival political parties. The level of decentralisation of administrative authority responsibilities is strikingly low. The village executive officer (*sheha*), who is actually a representative of the central government, is an appointee of the regional commissioner (RC), who is an appointee of the president. Due to persistent political conflicts, the level of co-operation of the people at the grassroots in decision-making and development activities has been generally low.

Apart from the ministries, departments and agencies (MDAs) of the central government, Zanzibar is administratively divided into five regions, three in Unguja and two in Pemba. Each of these regions has two districts. Regions and districts are administered by RCs and district commissioners (DCs), respectively. Besides, each district is divided into several electoral constituencies (*majimbo*) each with one MP (Union), one member of the Zanzibar House of Representatives and a councillor who is also elected by a popular vote.

On the surface, one may get an impression that Zanzibaris are lucky for having extensive representation at the local levels. In reality, however, that representation is more nominal than real, as it does not practically translate into political and administrative powers of policy and decision-making, neither at the local level nor at the national level. The constituency (*jimbo*) is in essence not an administrative unit as such since the councillor does not have any substantive administrative work to perform at the constituency level. Below the district, the only administrative unit existing is the *shehia,* which is headed by the *sheha* who deals with minor administrative matters. Admittedly, there is also a municipal council (Zanzibar Urban), three town councils, all based in Pemba, and five district councils, one in Pemba and four in Unguja. However, these institutions, which would otherwise operate as structures of local governments, are not

really functioning. In practice, all the administrative units, from the regions to the lowest level of *shehia,* "receive policies and directions from the centre. They do not enjoy any administrative or financial autonomy. Even the members of staff who serve in these offices are employed by the central government. For all administrative purposes, for example, *shehias* under an MP, a member of the House of Representatives, and a councillor from an opposition party, are administratively managed by the central government through its local agent (*sheha*).

Whereas consultants and government officials have produced various studies and technical reports, the status of local governance and decentralisation in Zanzibar is still illusive. According to the official report based on expert advice, the following recommendations were made to create and improve the status of local governance in Zanzibar:

- The Zanzibar government should make a decision that specifies the ministries involved in decentralisation (devolution) and those that remain centralised;
- There is a need to restructure the lower level of government; streamline roles and functions of councillor, *sheha*;
- There is a need to review existing legislation to provide for local governments' involvement in service delivery;
- It is imperative to build capacity and mobilise financial resources that will enable local governments discharge their responsibilities of service delivery;
- There is need to harmonise the laws that govern matters of local governments. The principles of the local governments Acts need to be reviewed to provide for the following: comprehensive local government legislation; clear definition of structures and mandates; strengthening basis of the authority and autonomy for local governments; strengthening and empowering local governments; restructuring and redefining roles and functions of both regional and district administrations; and institutional

linkages at all levels of governance and create a development committee that combines political and administrative/ implementation roles;

- Establish a local government service commission that will be responsible for personnel matters, including recruitment, training and promotion, etc.;
- There is need to run an induction course for politicians (councillors) at the beginning of each term of office to focus on topics such as the roles and functions of obligations. Design a comprehensive training package for local government staff to focus on issues such as managing local governments in general and financial management, in particular planning, monitoring and evaluation and reporting;
- An institution or organ be formed at ward/village levels to provide an institutional link between the council and the people;
- Regional Administration Act: Current legislation on local governments and other relevant Acts be (a) harmonised and (b) re-written to facilitate formation of lower level (ward and Village) institutions of local governments (RGoZ, 2009).

At any rate, the ambiguous local governance status and decentralisation of power ought to be resolved in Zanzibar in order to promote democratisation and good governance at administrative levels (from the centre to the grassroots). Evidently, there are some worries due to fear of loosing the present power and status to some of the people, while in other contexts, they are related to the fear of disturbing the country's political system. In many cases, it was also noted that many people are ignorant of what local governments are and what roles they ought to play. In such an arrangement, it is very difficult for communities and other non-governmental actors to get opportunities to participate in the deliberations of matters relating to local authorities and the central government (including development plans and budgeting) at the regional, district and sub-district levels.

Status of Women, Youth and the Elderly

There is no comprehensive study conducted in Zanzibar to date to establish the extent and manner in which the politically marginalised groups take into account the interests or the empowerment of its internally marginalised groups such as the women, the youth and the elderly. To get a rough picture of the situation, one has to get a broad picture of the position of those groups in Zanzibar so as to deduce the status of the marginalised within the marginalised groups and to see whether their fate is any different from the fate of the marginalised groups within the relatively politically privileged groups.

The extent to which women, the youth and the elderly fair in the political process or in terms of the overall wellbeing, depends on a number of factors. These include the level of development of a particular society, education levels, customs as well as institutional arrangements in place, including a constitution and the legal framework pertaining to political parties, elections, and CSOs. Institutional arrangements may be designed to allow affirmative action in employment or gender mainstreaming in all avenues of the public space.

In the absence of any data on the status of the youth and the elderly in Zanzibar, we shall demonstrate the general picture of the marginalised groups by documenting the status of women using the scanty data available. Although the status of women has been gradually and steadily improving, a wide gap between men and women in terms of their overall status in social and public life still exists. The degree of marginalisation of women is still high. In employment, for example, most women are engaged in the informal sector, particularly petty businesses which are unsustainable in most cases due to lack of adequate capital and lack of entrepreneurial skills. In the formal sector, women represent 36% of the total number of employees (Zanzibar Manpower Survey Report, 2002). This percentage of women in formal employment seems to be correlated

with their level of higher education. For example, the State University of Zanzibar ((SUZA) enrolled a total of 703 students in 2009 and 275 (39%) were female, while 428 (61%) were male. Therefore, the participation of women in formal employment has to be viewed in the context whereby most women are engaged in the lower strata of the labour force mainly in teaching, nursing, clerical work and secretarial posts (Dadzie, et. al., 2009:64).

Apart from under-representation in formal sector employment, women under-representation in politics and decision-making is even more striking. Women, for example, only constitute 23% of all ministers, 17% of deputy ministers, 14% of principal secretaries, 0% of RCs, and 20% of DCs as Table 3 illustrates. Members of the ruling party occupy all these key decision-making posts. That is to say, opposition women do not have the opportunity to occupy any of these positions under the current administrative arrangements. The only opportunity they have to participate is through the elective posts, namely MPs, members of the House of Representatives and Ward councillors. But even in the elective posts, their access is limited. Currently, for example, almost all CUF women representatives in parliament and the House of Representatives occupy the special seats allocated to women.

Table 3: Women Representation in Decision-making Bodies

Post	Total	Male	Female	Percent
Ministers	14	11	3	21.4
Deputy ministers.	6	5	1	16.6
Principal secretaries.	13	11	2	15.4
Regional commissioners.	5	5	0	00.0
District commissioners.	10	8	2	20.0
Shehas (Street/village leaders)	335	315	20	6.0
Total	**383**	**355**	**28**	**7.3**

Source: Ministry of Labour, Youth, Women and Children Development, Zanzibar, 2009 and other sources.

What could be implied from the above explanation is that women, as a group regardless of whether they belong to the privileged or underprivileged or discriminated group, are generally under-represented in the political space and decision-making arenas. Those who belong to the marginalised group or the opposition camp, to be more precise, are likely to suffer more in terms of accessing political and economic rights and opportunities. In light of the above, all political parties have been striving to improve women participation among their ranks, with the ruling party (which is more resourceful) taking the lead, but more effort is needed to promote women participation in party politics in line with the country's policy of gender equality. In addition, affirmative measures for women in public employment should be implemented. Just like women, the other marginalised groups, including the youth and the elderly across the political spectrum, also stand to gain should the ongoing reconciliation initiatives between the two contending political forces in Zanzibar be successful. In the following section, we shall briefly explain the status of religious minorities, particularly the Christian community living amid a predominantly Muslim community and government.

Discrimination Against Religious Minorities

Zanzibar has for centuries enjoyed remarkable religious harmony and tolerance among followers of different religions and different denominations (Bakari, 2001:89). It is instructive to note that way back in 1860, Sultan Seyyid Majid allowed the French Roman Catholic Mission from Réunion to settle and establish their religious and humanitarian activities, including building a church at Stone Town (Bennett, 1978: 82-83). Starting from the early 1980s, a religious movement[624] claiming a mission of purifying Islamic religion, which had been for centuries polluted with distortions and

[624] This movement is labelled by their opponents with different names such as *Ansar-Sunna*, Muslim fundamentalists, radical Muslims and the like.

innovations (*bid'a*), emerged on the islands with a radical approach. This started to create some feelings of religious intolerance among Muslims. It also instilled fear among the non Muslims, particularly the Christian minorities on the islands, who feared that if the new movement became successful in disseminating their religious doctrine, their enjoyment of religious freedom in Zanzibar could be curtailed.

Since the inception of multi-party politics in 1992, there have been unprecedented incidents on the islands such as setting churches ablaze. Prior to the 1995 general elections, for example, a church at Legeza Mwendo in Unguja was set ablaze. Presumably, related to that, in 2004, a year before the general elections, there was a spate of bombings. In March, 2004, a number of bombs were detonated, causing loss of property. A Police car was set ablaze at Mwanakwerekwe police station and the Roman Catholic Church at Jumbi, the home of the Muslim Jurist (*Mufti*), Sheikh Harith bin Khelef, was bombed. In addition, the house of the Minister for Communication, Zubeir Maulid, was also bombed and another bomb was diffused at Mercury Bar.

Consequently, the government reported that it had deployed a team of detectives from the Mainland to investigate who was behind those incidents. The government promised that a report would be made public after a thorough investigation. As we write this paper, we are not aware of any official report that has been released to that effect. It is still a puzzle. One cannot tell for sure whether those incidents were politically or religiously inspired. The general public is not aware of who were behind such acts-the security personnel, the ruling party, the main opposition party, the unruly party zealots of one of the political parties, or religious activists. Whereas the act of bombing churches and bars could be perhaps associated with a religious motive, bombing a police car and the house of a minister could be sensibly attributed to a political motive. In principle, it is

not fair to prejudge (without any convincing evidence), however, the context and the timing of the bombing incidents on both political and religious targets may raise a plausible assumption that such acts seem to have been much more inspired by political rather than religious motives. Whatever might have been the motive of the perpetrators of those incidents, particularly on churches, such incidents are very likely to be perceived by Christians in Zanzibar and beyond as acts of discrimination against a religious minority.

In the public domain, there are no documented reports that Christians or any other members of religious minorities in Zanzibar are discriminated against. Although there are no reliable statistics available, the post-revolution government in Zanzibar has had quite a visible representation of Christians who have occupied posts at different levels of government, including members of the Revolutionary Council, cabinet ministers, principal secretaries and directors.

In the social and private domains, however, there have been quite a number of incidents which could be interpreted as discriminatory against Christian minorities on the islands. There have been incidents where churches have been set ablaze, particularly in rural areas, as was the case in Legeza Mwendo mentioned earlier. Although there is no official evidence yet to establish who were behind such acts, but as pointed out, such acts are likely to be inspired by either religious or political motives, or both. Given the religious homogeneity, particularly in rural areas, it could be plausible to assume that Muslims, are less tolerant of Christian activities, including the construction of churches in the predominantly Muslim settlements. Christian leaders have been reporting, for example, that it is very difficult for Christians to get access to land as Muslims are usually reluctant to sell their plots of land to Christians fearing that such plots could be used to build churches. In one incident, for example, it was reported that evangelist Peter Masanja, a resident of Zanzibar's

south-east town of Paje, was arrested by security agents sometime in early August, 2010. Before his arrest, Masanja used to invite Christians to his house, as he had made part of his land available for church activities. Muslims in the locality interpreted Masanja's activities as plans to establish another church in the area. The rumours angered local residents and they vowed to prohibit any Christian activities in the area.

Masanja was later arrested and reportedly imprisoned in Kilimani cell in Zanzibar town (CDN 2010). Based on interviews with some local residents, including religious leaders in Chake Chake Pemba and Zanzibar town,[625] it could be admitted that it is very difficult for Christians to buy land in Zanzibar because most Zanzibari Muslims are unwilling to sell their land to Christians. Muslims have been generally suspicious of Christian activities, alleging that the number of churches already existing in Zanzibar is too high given the small number of Christian worshipers on the islands. They, therefore, consider the increasing number of churches as a long-term strategic mission to undermine Islamic culture on the islands. The resentment to Christian activities and church construction, in particular is more pronounced in rural areas than in urban areas (*Annur* 22-25 October, 2010).[626] In urban areas, Muslims are generally more tolerant of Christian activities given the demographic and religious mixture that has characterised urban Zanzibar for more than two centuries.

Generally, in the public service, no formal accusations have been levelled against the government for favouring certain religious denominations. At the communal level, however, there have been

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[625] Interviews conducted by the author with various respondents (anonymous) August and September, 2009.

[626] According to this newspaper, a conflict erupted between Muslim and Christian believers at Maungani in Zanzibar west district on the claims of the existence of the church close to a mosque in the area and hence causing disturbance to worshipers. Muslims in the area claim that Christians play their songs of worship (*kwaya*) during Muslims' prayer times (*Annur*, 22-27 October, 2010).

accusations from minority religious groups, particularly Christians that the predominantly Muslim Zanzibar in some instances discriminates against religious minorities. In this context, therefore, religious tolerance ought to be inculcated through religious teachings and the national civic education programmes.

Conclusion

It has been observed in this paper that the Zanzibar society has been polarised as a result of, among other things, different outlooks on nationalism and citizenship. The post-revolution regime under the Union arrangement sought to promote African [for example, black African] nationalism instead of broad [multi-racial] Zanzibari nationalism. History has proved that the notion of an African majority rule versus an Arab minority rule in post-revolution Zanzibar was an erroneous interpretation of the Zanzibar political discourse since the society has continued to be divided politically almost along the middle with two political communities which are now largely represented by the two main rival political parties. Given the nature of Zanzibar's demographic setup, genuine nationalism cannot be black African, Shirazi or Arab nationalism. Genuine nationalism ought to be inclusive and representative of all the population segments and cultural patterns. The challenge ahead, therefore, is to promote Zanzibari territorial nationalism as opposed to racial, ethnic or regional-based nationalism.

In the case of Zanzibar, it has not been possible in this paper to delineate a specific ethnic or racial minority for in-depth interrogation on how it has been discriminated against, marginalised and excluded in the political process because the focus here is not on a contest between a majority and a minority group or groups, but rather political polarisation involving two almost equal political camps. The group that has been a victim of discrimination, marginalisation and political exclusion, cuts across racial, ethnic and regional boundaries.

Development in Zanzibar, as a whole, has been evidently affected negatively, but in relative terms. Pemba has generally suffered more than Unguja. The people of Pemba, majorly of Arab, Asian, and Comorian origins, have also been victims of political discrimination. Besides, the marginalised groups, particularly the women, the youth and the elders within the marginalised political community, have immensely suffered due to the perpetuation of discriminatory and exclusionary politics.

A wide range of policies and institutional arrangements have facilitated discrimination, marginalisation and political exclusion of certain segments of society. These include the electoral system based on the majority principle of winner-takes-all system, centralisation of power (at the expense of local governance and regional autonomy) and employment in the public service and in the defence and security establishments. Currently, however, there seems to be some light at the end of the tunnel following the new reconciliation initiative headed by the President of Zanzibar, Amani Abeid Karume, and CUF secretary general Seif Shariff Hamad. In January, 2010, a bill was passed by the House of Representatives for the creation of a government of national unity after the general elections in October, 2010. If this latest initiative becomes successful, Zanzibar will change its historical course of discrimination and political exclusion on the basis of racial, ethnic, regional and political affiliation, and will open up new avenues for political dispensation, representation and empowerment of the citizenry, including marginalised groups such as women, the youth and the elderly, across the political spectrum in the Zanzibar political landscape.

Recommendations

In light of the above discussion, the paper advances the following general recommendations:

- The issue of dual citizenship is so pertinent in Zanzibar given the large Zanzibari diaspora based in the Arabian Gulf, Europe

and the US. Policy makers in Tanzania and East Africa should recognise that the current law in Tanzania that disallows dual citizenship has a grave impact on Zanzibar and it amounts to discrimination of a significant segment of Zanzibaris living overseas.

- Since Zanzibar has been severely affected by competing versions of nationalism and citizenship and the politics of exclusion, the Union Government and the EAC have a role to play in the process of promoting an inclusive concept of nationalism and citizenship in Zanzibar in congruence with Article 7 of the Treaty of the EAC, which seeks to promote people-centered co-operation.
- There is a need to effect major reforms of the electoral process so as to transform it from a zero-sum game into constitutional power-sharing arrangements, where all important segments in society can be effectively represented in the political process.
- Far-reaching public service reforms are needed in Zanzibar to make the public service transparent and professional in line with the new public management principles.
- Decentralisation arrangements and local governance should be promoted to allow broad participation of the people in decision-making processes.
- Increasing regional autonomy to Pemba and reducing the concentration of administrative power of the central government in Zanzibar may help accelerate development in Pemba.
- The development imbalance between Pemba and Unguja is a policy issue that should be given its due attention by policy makers.
- The issue of civic education has to be accorded a special consideration by the state and non-state actors in a bid to cultivate collective consciousness of Zanzibari territorial nationalism, while recognising racial diversity in the context of cultural unity.

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