

IDS Working Paper 236

Kenyan civil society perspectives on rights, rights-based approaches to development, and participation

Celestine Nyamu-Musembi and Samuel Musyoki

In collaboration with Mwambi Mwasaru and Patrick Mtsami (ILISHE Trust, Mombasa, Kenya)

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This paper is part of a collaborative research project involving the Institute of Development Studies, Just Associates and partner institutions in seven countries. In Kenya, members of IDS worked with Kenyan human rights activists and organisations, including the Kenya Human Rights Commission and others referred to in detail within this paper.

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Summary

This paper goes beyond conceptual debates to explore country level practice around emergent rights-based approaches to development, and their relationship with more established practices of participatory development. Drawing from the perspectives of a cross-section of Kenyan civil society groups, the paper examines the extent to which these approaches overlap, and evaluates the prospects for an integrated and sustained approach to civil society's questioning of institutional arrangements that foster unequal relations. Current trends suggest a gradual closing of the chasm between the practice of participatory community development and the practice of rights advocacy: community development NGOs are taking more seriously the notion of people's rights and entitlements as the starting point for their work, and the need for greater engagement with macro-level political institutions to build accountability; rights advocacy NGOs are responding to demands for active and meaningful participation of marginalised groups in shaping a rights advocacy agenda that is genuinely rooted in communities; and community-based networks are looking inward to ensure internal legitimacy, inclusiveness and non-discrimination. These trends hold promise for an integrated and sustained approach that is potentially more effective in Kenya's new political climate characterised by stronger demands for accountability at different levels. The paper concludes with suggestions on how these emerging trends can be strengthened.

Keywords: rights, participation, civil society, social movements.

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Preface

As different sectors of civil society grapple with increasing challenges of poverty, exclusion, and violence, there is a growing trend to combine concepts and experiences from the fields of human rights and participatory development into their programmes. Interest in shifting to a “rights-based approach” to development has intensified in recent years. International development agencies have increasingly begun to frame their work in terms of rights. Similarly, human rights organisations have been exploring concepts and strategies of participation and how to apply them to their work. Yet whilst there is a great deal of “rights talk” and “participation speak” at the international level, what exactly is a “rights-based approach” all about and how does it link with what’s being done in the name of “participation”? To what extent are development organisations changing their practices from the fulfilment of needs to engagement with rights issues? To what extent are human rights groups incorporating participation into their work? What are some of the historical and contextual factors driving these shifts? And what new practices are emerging in which rights and participation come together?

This series of Working Papers draws on the findings of *Linking Rights and Participation*, an action research project co-convened by the IDS Participation Group and Just Associates in collaboration with partners in Brazil, India, Indonesia, Kenya, Mexico, Nigeria and Zimbabwe. The project sought to contextualise the rights-based approach through deepening understandings of how different actors in different countries frame the links between rights and participation, what various rights-based approaches look like in practice, and what makes some of these approaches powerful forces for change. As part of this, it examined how groups understood ideas of participation and power and applied them to their work. The project brought together a range of development and human rights organisations, from grass-roots CBOs to international agencies, to explore possibilities for enhancing and strengthening links and improving practice. Additional publications from this project are available as listed below.

- Participation Group, IDS

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Celestine Nyamu-Musembi and Andrea Cornwall

Institute of Development Studies, Sussex

IDS Working Paper 234

‘Rights-based approaches and beyond: challenges of linking rights and participation’

Lisa VeneKlasen, Valerie Miller, Cindy Clark and Molly Reilly

Just Associates, Washington D.C.

IDS Working Paper 235

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Institute of Development Studies, Sussex

In collaboration with Mwambi Mwasaru and Patrick Mtsami

ILISHE Trust, Mombasa, Kenya

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The following **Country Studies** from this project are also available online at

www.ids.ac.uk/ids/particip/research/rights

Brazil

‘Linking Rights and Participation: Brazil Country Study’, by Almir Pereira Júnior, Marta Antunes and Jorge O. Romano, ActionAid Brasil

India

‘Linking Rights and Participation: India Country Study’, by National Centre for Advocacy Studies, India

Indonesia

‘Linking Rights and Participation: Indonesia Country Study’, by Dina Lumbantobing and Nani Zulminarni

Kenya

‘Linking Rights and Participation: Kenya Country Study – Linkages and Gaps in Theory and Practice’, by Sammy Musyoki and Celestine Nyamu-Musembi (IDS) and Mwambi Mwasaru and Patrick Mtsami, ILISHE Trust, Mombasa

Mexico

‘Linking Rights and Participation: Mexico Country Study – Exploring the Relationship Between Human Rights and Citizen Participation’, by Mónica Jasis, Centro Mujeres and Mayela García, CIDEM

Nigeria

'Linking Rights and Participation: Nigeria Country Study – Exploring Experiences from the Niger Delta to the North West Region', by Nkoyo Toyo, Gender and Development Action, with inputs from Justice C. C. Nweze, Kaine Agary, Timiebi Koripamo Agary, Hussani Abdu and Ibrahim Nai'ya Sada

Zimbabwe

'Linking Rights and Participation: Zimbabwe Country Study', by Revai Makanje, Luta M. Shaba and Everjoice J. Win

In addition, *IDS Bulletin* Vol 36 No 1, edited by Jethro Pettit and Joanna Wheeler (January 2005) is dedicated entirely to the theme of rights.

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Abbreviations

AAK	ActionAid Kenya
CBOs	Community-based organisations
CGD	Centre for Governance and Development
CLARION	Centre for Law and Research International
CRS	Catholic Relief Services
CSOs	Civil society organisations
DELTA	Development Education Leadership Teams in Action
KANU	Kenya African National Union
ILISHE	Ilimu Sheria
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
HECA	Horn, East and Central Africa region
KRSP	Kwale Rural Support Programme
KEWWO	Kenya Women Workers Organisation
KHRC	Kenya Human Rights Commission
KTN	Kenya Television Network
NARC	National Rainbow Coalition
NMDT	Ngua Mlambo Development Trust
MUHURI	Muslims for Human Rights
NGOs	Non-governmental organisations
PLA	Participatory Learning and Action
PRA	Participatory Rural Appraisal
RBAs	Rights-based approaches
SD	Sombera Dzumbe
SNV	Netherlands Development Organisation
SUCAM	Sugar Campaign for Change
UNHCR	United Nations High Commissioner for Refugees
VDO	Village Development Organisation

1 Introduction

This paper is based on a study that was carried out in Kenya between July 2002 and May 2003, which involved gathering and analysing the views of civil society organisations (CSOs) on current practice around rights, rights-based approaches to development, and participation. The purpose of the study was fourfold. First, to examine and highlight examples of country level practice around emergent rights-based approaches to development, going beyond conceptual debates and organisations' policy statements. Second, to find out how these emergent rights-based approaches fit in with pre-existing approaches such as participatory development, and whether the new context enhances the possibilities for meaningful transformation of unequal power relations. Third, to examine whether there has emerged a convergence between the work of human rights groups and that of participatory community development groups as a result of increased overlap and co-existence of the discourses of rights, rights-based approaches to development, and participation. Fourth, to go beyond the perspectives of professional civil society groups to understand how the work of grass-roots movements relates to these discourses.

The post-December 2002 political climate is an opportune time for such an enquiry. First, because it marks roughly half a decade since international NGOs such as Oxfam, CARE and ActionAid – who are key players on the Kenyan community development scene – explicitly adopted policies to incorporate rights-based approaches into their work. Second, in the run-up to the December 2002 election, there was a massive nationwide civic education campaign as a result of which there is heightened citizen awareness of rights and demands for active and meaningful participation. These demands are directed primarily at government, but organised civil society has also come under pressure to re-define its identity and justify its role as a force for positive transformation of unequal power relations. Human rights advocacy groups, for example, have been forced to think about how their work could be more broadly participatory and rooted in communities, and go beyond a somewhat elitist macro-political level focus that largely involves “logging” violations and “naming and shaming” violators. Groups involved in community development have been forced to shed their “apolitical” stance and get involved in policy advocacy and in facilitating the creation of spaces for marginalised groups to be heard in governance structures at district and national levels. As a result there is emerging convergence between the practice of rights advocacy and the practice of participatory community development. Movements at the community level are at the stage of evaluating the spaces opened up by the new political climate, and crafting strategies on how best to exploit them. Therefore their demands for active and meaningful participation as a matter of right are gaining profile both in their relations with government institutions and with the professional civil society groups they interact with. At the same time they too are under internal and external pressure to look inward and address issues such as exclusion, and establish their internal legitimacy.

The paper is divided into five main sections. In the remainder of this introductory section we outline the methodology of the study. Section 2 then gives a brief historical outline of the political context in which civil society organisations in Kenya operate. Section 3 examines ways in which practitioners of participatory community development are engaging with the discourse of rights, in particular rights-based

approaches to development. We identify five ways in which this engagement manifests itself in the current practice of the organisations involved in this study. Section 4 examines rights advocacy practitioners' engagement with the discourse of community participation and the influence this has had on their work. We do this through an in-depth discussion of two organisations. Section 5 examines the discourses of participation and rights from the vantage point of community-based struggles. We focus on the experience of two networks of community-based organisations. The concluding section sums up the key insights, highlighting opportunities and challenges that the post-December 2002 political climate presents for civil society efforts at translating these discourses into effective tools for meaningful social change.

The methodology employed during the Kenya study combined semi-structured interviews with workshops conducted using a combination of techniques drawn from Participatory Learning and Action (PLA).¹ The semi-structured interviews were carried out with 16 key informants drawn from 10 Nairobi-based national and international non-governmental organisations (NGOs) whose work cuts across the fields of human rights and development.² The interviews focused on understanding how the different organisations describe their work in relation to rights, rights-based approaches and participation, and how, if at all, they put these concepts into practice.

The workshops facilitated participatory sharing, reflection and learning among three grass-roots-based networks in Kenya's coastal region, namely Ilimu Sheria (ILISHE) Trust (Mombasa), Sombera Dzumbe (Mariakani) and Ngua Mlambo Development Trust (Voi). In total we held five workshops. The first workshop focused on building rapport and planning; three workshops with each of the networks, and a joint reflection workshop at the end of the study with representatives from all the three networks.

The content of the workshops was shaped by the specific issues that these networks have organised their struggles around, and activities that they had already planned to undertake. The ILISHE workshop focused on land and shelter struggles; the Ngua Mlambo workshop on communities' rights to benefit from and play a role in the governance of natural resources; and the Sombera Dzumbe workshop on challenging the hierarchies inherent in communities' relationships with development agencies and in particular with the Kwale Rural Support Programme funded by Agha Khan Foundation. The workshops employed a whole range of PLA tools for analysis. PLA tools used include physical mapping of the areas, resources and services to draw out the issues; historical profiles outlining major events and changes that have taken place and how these have shaped groups' struggles; listing and analysing strategies used to engage with different actors over time; analysis of relationships with key institutions; action planning to identify and prioritise actions needed to address the issues identified.³

¹ PLA is a methodological approach that uses visual methods to facilitate analysis, reflection, discussion and action-planning with groups of people, for instance community groups organising to solve a specific problem, as is the case with the Mombasa Council Tenants' Associations discussed here. For further discussion of PLA see Chambers (1997).

² See organisational profiles in Annex.

³ The process has generated various other outputs in addition to this paper. These include workshop process reports, video documentaries with views expressed by tenants involved in shelter struggles in council estates in Mombasa, a TV programme aired on Kenya Television Network (KTN) and a collection of photographs.

2 Political context: trends in organised civil society's responses to the political climate

Organised civil society activity in Kenya has experienced tremendous growth and visibility since the early 1990s, following the end of one-party rule in late 1991 and the outright repression that characterised the late 1970s and the 1980s. The story about how civil society groups have responded at key political moments can be told from two perspectives which, until recently, have had little interaction with each other: the perspective of the rights advocacy camp and the perspective of the participatory development camp.⁴ The 1970s were characterised by *de facto* one-party rule, which was formalised through a 1982 constitutional amendment making Kenya a one-party state and outlawing any alternatives to the ruling party, the Kenya National African Union (KANU). The prohibition extended beyond party formation to outlawing of all political activity that was perceived as a threat to the KANU regime, enforced through a plethora of laws limiting civil and political freedoms such as the right of assembly and expression. During this period, groups that might be described as belonging to the rights advocacy camp consisted mostly of underground movements that communicated their message through clandestine distribution of literature that was branded “seditious” by the government and banned.⁵ The most visible response of the participatory development camp was through “people’s participation” initiatives that were housed within church-based organisations, taking advantage of the fact that religious forums were about the only political space that the one-party state did not overtly clamp down on. Two such initiatives were the Catholic church-based Development Education Leadership Teams in Action (DELTA), and Training for Transformation, both of which drew from liberation theology (Hope, Timmel and Hodzi 1984). Ultimately they proved too radical even for the church hierarchy and were disbanded.

In the late 1980s, spurred on by a favourable post-Cold War international climate and the attendant pressure from Western governments on the KANU regime, rights advocacy groups as well as other key actors such as religious leaders and professional organisations (such as the Law Society of Kenya) focused their energy on openly agitating for a multi-party system. This agitation, along with campaigns for legal reform to repeal repressive laws (such as those allowing detention without trial) defined rights advocacy groups well into the early 1990s. The legal restriction on party politics was lifted in December 1991.⁶ This opened up not only political party activity but also a proliferation of NGOs working on human rights, focusing largely on civil and political rights and relying exclusively on external funding and with tenuous connection to grass-roots constituencies. On the participatory development side the late 1980s marked the birth of Participatory Rural Appraisal (PRA) as a distinct practice and community of practitioners. This offered a counterpoint to the government’s District Focus for Rural Development policy which was top-down in its implementation. However, the radical politics of the DELTA era began to tone down and the

⁴ This historical outline relies primarily on an account given by one of the co-authors, Mwambi Mwasaru, whose career for the last 26 years has straddled community participation in development, human rights advocacy, and facilitating the formation of grass-roots networks.

⁵ See also Mutunga (1999: 4).

⁶ The restriction was lifted through repeal of section 2A of the constitution in December 1991.

role of these groups in the macro-political process waned as PRA and the broader discourse of community participation got gradually absorbed into mainstream development programmes of bilateral aid agencies and service delivery-oriented NGOs (Cornwall, Musyoki and Pratt 2001). It was not until the late 1990s that this sector began to get politicised once more, a change that we attribute partly to the fact that they could not ignore the momentum that was building up for constitutional change and the accompanying demands for better protection of citizens' rights, and partly to the influence of the shift toward advocacy and rights-based approaches in international development NGOs such as Oxfam, CARE and ActionAid who are key players on the Kenyan NGO scene.

Since the mid-1990s a cross-section of rights advocacy groups and religious organisations have led initiatives for an overhaul of Kenya's constitutional structure primarily in order to dismantle the machinery of one-party rule and allow for genuine political transformation. However, many constituencies within civil society – such as women, pastoralists, religious groups, and persons with disabilities – are riding on this wave of reform to demand the inclusion of their specific concerns. The KANU government finally agreed to initiate a comprehensive reform process in 1997⁷ (Mutunga 1999; Cowen and Ngunyi 1997). At the initiative of Prof. Yash Ghai who chaired the Constitution of Kenya Review Commission, the reform process drew from previous civil-society led initiatives to come up with a broadly representative process preceded by a sustained nationwide civic education campaign. The constitutional reform process (which is ongoing) has provided opportunities for collaboration between groups in rights advocacy and groups working in participatory development. One example of such collaboration is the Basic Needs are Basic Rights campaign which has been working to ensure the expansion of rights in the new constitution to include economic and social rights such as education, shelter and health, which have hitherto been treated as “development concerns” and kept out of the bill of rights.

The next section examines more closely the views of participatory community development practitioners on their relatively recent engagement with the discourses of rights and rights-based approaches to development and how these views are reflected in their work.

3 Practitioners of participatory community development engage with rights

Community participation has been, for the most part, the domain of community development groups. Practitioners of participatory methodologies have often been accused of being too narrowly focused on the micro context of projects and of having little engagement with the macro politics of the broader policy environment. This suggests that they have missed opportunities for empowering people to demand

⁷ See www.kenyaconstitution.org (accessed 16 October 2004).

greater accountability from political institutions and to become aware of and claim and defend their rights. Some participatory community development practitioners recognise this criticism as an accurate characterisation of their work in the past, until roughly the mid-1990s.⁸

Around the mid-1990s, in the run-up to the Copenhagen World Summit for Social Development (1995), prominent international development organisations such as ActionAid, CARE and Oxfam responded to this criticism by explicitly adopting a rights-based approach in their work, and by boldly taking on a policy advocacy agenda. In interviews with officials from three international development NGOs working in Kenya (namely ActionAid, CARE and Oxfam) we asked what they thought a rights-based approach adds or could add to the practice of development. The responses were mixed. On the one hand a rights-based approach was seen as having informed a shift in their own attitudes on the relationship between them and the communities. As one CARE official expressed it, a key feature of a rights-based approach has been the realisation that CARE is not doing communities (e.g. refugees) a favour, ‘so we do not run the programme as if we have absolute discretion’.⁹ A rights-based approach requires acknowledgment of the existence of entitlements which in some areas of work, e.g. humanitarian programmes, are clearly spelled out by international principles. As one official put it ‘people’s rights and entitlements become the starting point, not what our organisation capacity is’.¹⁰ Another official expressed it as follows:

When we are focusing on needs, it is alright to provide half a glass if half a glass is what we have. But in RBA, if the principles state that people are entitled to a full glass then we have to provide the full glass. But in practice, in the context of limited resources, I do what the budget allows me to do. The only difference is that now I am aware that I am falling short of the standard.¹¹

CARE officials also emphasised that a rights-based approach means that their work is not simply about “provisioning”. Rather it is about “facilitating”, because the emphasis now is on equipping people to take responsibility.

CARE officials also identified a rights-based approach with greater awareness of the agency’s broader obligation to let people know what their entitlements are. This obligation to inform must be fulfilled even if the agency is not in a position to fulfil those entitlements fully, in which case it must take on the

⁸ Interview with Peter Kisopya, (Programme Coordinator, Operational and Pastoral) Oxfam, Nairobi, 12 August 2002.

⁹ Interview with Jackson Thoya, (formerly Programme Officer in charge of Reproductive Health and HIV/AIDS programme, CARE Western Kenya), Nairobi, 8 April 2003.

¹⁰ Interview with Barasa Chaungo, (at the time Project Manager, Garissa Pastoral Partnership Project; formerly in charge of Water and Sanitation Project, Dadaab refugee camp) CARE-Kenya, Nairobi, 28 April 2003.

¹¹ Interview with Jackson Thoya, (former Programme Officer in charge of Reproductive Health and HIV/AIDS), Western Kenya, Nairobi, 8 April 2003.

additional role of informing the people about other actors – such as the state and international organisations – whom they could approach to meet the shortfall.¹²

On the other hand, however, there was also some scepticism on three grounds:

- Is a rights-based approach simply a re-naming of the basic needs approach, and would such re-naming make any difference at a practical level?
- Is the language of a rights-based approach necessary if we can achieve our goals by simply giving a political edge to the participatory strategies we have always used, by engaging more constructively and critically with government structures and facilitating communities' demands for space?
- If a rights-based approach brings with it the working methods that have characterised the professionalised elitist practice of rights advocacy, are we not in fact risking less participation of marginalised groups?

This last point was given a lot of weight. An Oxfam official expressed it as follows:

I see a potential conflict [. . . with the] practice of participation. RBA has been done mostly through advocacy campaigns; through networks coming together, holding workshops in hotels and issuing statements, meeting ministers etc. The campaigns have not become a mass movement. The rights-based approach cannot work without voice. For RBA to work you cannot ignore [. . .] popular movements for people to advocate for themselves. Involvement of the poor in policy advocacy campaigns is something that needs to happen in order for the RBA to make sense.¹³

A CARE official simply stated that the rights debate has not yet become “a people’s debate”.¹⁴

This mixture of enthusiasm and scepticism shows that there is ongoing reflection among the “ground staff” of major international development organisations, rather than wholesale adoption of the rights agenda “from the top”. It suggests that perhaps one key contribution that a rights-based approach makes to the practice of community development is the shift in thinking that it engenders among practitioners.

Based on the experiences of the groups we interacted with it is possible to draw out five ways in which groups working in community development (particularly those already pursuing a participatory approach) bring in a rights perspective into their work:

- Re-orienting the focus of their programming around the attainment of specific rights or the empowerment of a particular group of marginalised or vulnerable people;
- Explicitly applying the international human rights framework in their work;

¹² Interview with Jackson Thoya, *ibid*; interview with Barasa Chaungo, (at the time Project Manager, Garissa Pastoral Partnership Project; formerly in charge of Water and Sanitation Project, Dadaab refugee camp) CARE-Kenya, Nairobi, 28 April 2003.

¹³ Interview with Mohammed Elmi, (then Kenya Country Director) Oxfam, Nairobi, 12 August 2002.

¹⁴ Interview with Muhoro Ndung'u (then Assistant Country Director), CARE-Kenya, 10 April 2003.

- Deliberate efforts to enable voice so that communities can engage with government (thus giving effect to the right to participate);
- Helping partner CBOs to develop more participatory and legitimate internal governance structures (which addresses issues of inequality and discrimination), and;
- Building alliances and networking with civil society groups working in the area of human rights.

We discuss each of these five aspects in the remainder of this section.

3.1 Re-orientation of programming to attain specific rights for specific marginalised groups

ActionAid has gone the furthest on this aspect, programming its work around specific rights campaigns. ActionAid has three global campaigns running on the right to food, the right to education and the rights of people affected by HIV/AIDS. The Kenya country office has two additional national level campaigns; one on children's rights and another known as the "basic rights campaign", which is working toward incorporation of social and economic rights into the revised constitution, a draft of which is currently being debated in parliament.

ActionAid Kenya states that one of its values is 'solidarity with poor and marginalised people'. ActionAid has been explicit about attributing poverty to unequal power relations, and therefore speaking of it as a violation of rights. ActionAid views a rights based approach as a powerful tool for challenging those unequal power relations:

Poverty is caused and perpetuated by a diverse set of power relations that deny life-skills, assets and resources to people. These deprive them of their basic needs and are violations of their basic rights. The core causal mechanisms for the violation of rights are inequity and injustice particularly in the distribution of, and access to, resources.

(ActionAid Kenya 2002)

This stance is exemplified in some high-profile campaigns that ActionAid has recently undertaken. In one campaign in the coastal region ActionAid has worked with other groups in the Coast Rights Forum to help secure better compensation and proper environmental impact assessment for the benefit of communities in an area earmarked for titanium mining by a Canadian firm.¹⁵ In the Western Kenya region the Sugar Campaign for Change has helped sugar farmers to organise and influence revision of the Sugar Act so as to allow for greater representation of farmers on the sugar board which in the past has made key decisions in the regulation of the sugar industry without direct representation of sugar farmers. We refer to the campaign in greater detail under Section 3.3 below.

¹⁵ For detailed discussion of this campaign see Ojiambo (2002).

Oxfam acknowledges that unlike ActionAid, they have not programmed their work around rights, but they have categorised their work into five thematic areas, each of which impacts a specific rights concern. The five thematic areas are: sustainable livelihoods, education, gender and diversity, the right to be heard (people's right to organise and exercise voice and demand governmental and aid accountability) and protection (humanitarian). Oxfam has not been as active as ActionAid in pursuing a "rights campaigning" strategy due to concern that Oxfam's involvement in high-profile global campaigns could distract the organisation from what it does best – hands-on engagement with communities at the grass-roots level. Nonetheless, Oxfam does get involved in some campaigns and for that reason it has decided to scale up its planning from the country level to the regional level so as to more easily pool its work in the five thematic areas into a broader and more coherent policy advocacy agenda. Kenya, for instance, belongs to the HECA – Horn, East and Central Africa region which covers 11 countries. Country strategic plans have been replaced by a Regional Business Plan, and all work that is undertaken must contribute to the five thematic areas.¹⁶ The challenge of figuring out how to 'work globally while retaining its responsiveness to local needs' (Oxfam GB 1998) is something that Oxfam has to do on an ongoing basis as it re-orientes its programming to impact the five key areas of rights.

Like Oxfam, CARE Kenya does not programme its work around rights campaigns. Rather, CARE Kenya seeks to integrate a rights framework into its existing Household Livelihood Security approach through its *Nuru* strategy, thus defining its work as being about achieving the minimum conditions for living with dignity.¹⁷ The integration of livelihood security and rights means, according to one official, that their work becomes oriented toward enabling the right to self-determination at the personal and household level – in the sense of enabling people to make decisions on their own well-being, through securing the resources that make that possible.¹⁸

CARE also states that the advocacy role it has assumed as a result of the shift to RBAs inevitably means that CARE will have to stand by the communities they serve, even if this sometimes requires taking positions against their donors and partners. This stance was illustrated in a stand-off between CARE and United Nations High Commissioner for Refugees (UNHCR).¹⁹ For Kenya Women Workers Organisation

¹⁶ Interview with Mohammed Elmi, (then Kenya Country Director) Oxfam, Nairobi. 12 August 2002; Interview with Peter Kisopya, (Programme Coordinator, Operational and Pastoral) Oxfam, Nairobi, 12 August 2002.

¹⁷ The *Nuru* Strategy is a statement of strategic intent by CARE Kenya for the five years from 2000 to 2005. It aims to achieve measurable and sustainable impact on poverty through working at the community level and influencing policies. See www.care.or.ke/nuru/index.htm

¹⁸ Interview with Muhoro Ndung'u (then Assistant Country Director) CARE Kenya, 10 April 2003.

¹⁹ The standoff was over refugees who had crossed into Kenya from Tanzania at Ifo transit point. They had set up a makeshift camp, and the UNHCR was keen on closing it down and getting them out of the country, under pressure from the Kenyan government who did not want to receive them. There was an unspoken policy not to provide them with any services, so as not to encourage them to stay. CARE staff in the Refugee Assistance Project, at the risk of losing their jobs, wrote an advocacy paper arguing that UNHCR had a duty to work to improve the services in the makeshift camp in recognition of the refugees' rights as human beings. The UNHCR could not be complicit in a policy of neglect. It was up to the Kenya government to look for diplomatic ways of solving the crisis, but in the meantime the refugees' needs had to be provided for because they had rights as human beings. Interview with Barasa Chaungo, CARE-Kenya, Nairobi, 28 April 2003 (at the time Project Manager, Garissa Pastoral Partnership Project; formerly in charge of Water and Sanitation Project, Dadaab refugee camp).

(KEWWO) this has meant making a concerted effort to seek out rural women in the informal and agricultural sector and help to organise them since they have long been ignored by mainstream trade unions.

3.2 Explicit application of the international human rights framework

Among national groups working in community development it is more common to find a general reference to the underlying values and principles identified with human rights, rather than to specific conventions or standards. These underlying values and principles include non-discrimination, equality, accountability, active and meaningful participation of the people affected, and the integration of material sustenance concerns with political freedom.²⁰ We observed that explicit reference to international human rights standards is almost the exclusive preserve of international organisations such as ActionAid, CARE, PLAN and Oxfam. Humanitarian relief and emergency work in CARE, ActionAid and Oxfam makes explicit reference to international conventions, primarily the Refugees Convention. ActionAid's campaigns on education and children's rights draws from the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child. In the case of ActionAid's food rights campaign, there is more reference to international trade agreements than to the human rights framework, but the application of those international trade agreements impacts rights such as the right to a sustainable food supply (see ActionAid, no date).

An observation we made in relation to international standards in general is that country level staff felt quite free to adapt them when they felt that a rigid application would not lead to a just outcome from the perspective of the communities concerned. An example of this is the application of the SPHERE standards by CARE in its Refugee Assistance Project. The SPHERE standards are agreed upon by agencies working in humanitarian relief (these include UN agencies as well as international NGOs). Using international agreements that guarantee basic social and economic rights such as food, water and shelter as the starting point, they spell out in detail minimum levels of entitlement such as the daily water ration (see SPHERE 2004: 51-102), the daily calorie intake and daily protein intake. In Dadaab refugee camp in Northern Kenya, CARE rejected UNHCR's rigid application of the SPHERE standards concerning water rations because UNHCR's application of the standards failed to take account of the fact that these particular refugees (from Somalia) had livestock with them and so the standard ration was simply insufficient.²¹

²⁰ This list of basic principles underlying the human rights framework draws from the work of the UN High Commissioner for Human Rights, and is becoming accepted in academic and practitioner circles as a fair statement of the minimum features that a rights-based approach to development should embody (see Office of the United Nations High Commissioner for Human Rights 2002).

²¹ Interview with Barasa Chaungo, CARE-Kenya, Nairobi, 28 April 2003 (at the time Project Manager, Garissa Pastoral Partnership Project; formerly in charge of Water and Sanitation Project, Dadaab refugee camp). See also Chaungo (2002).

3.3 Deliberate efforts to enable engagement with government through facilitating the right to participation

Enabling voice for accountability' emerged as central to the manner in which the groups defined a rights-based approach. We draw from the work of several groups, among them Oxfam whose work incorporates the "right to be heard" as one of its key areas of work. From Oxfam's work in Kenya two examples show how they have supported communities to engage with government in claiming their rights. The first is a campaign by the residents of Kibera in 2002, which they supported as part of their work on education, under a programme named Kibera Slum Education Programme (see Oxfam GB 2002).²² Kibera is the largest informal settlement (slum) in sub-Saharan Africa. Although there are city council schools in the formal residential areas nearby, the Kibera children cannot afford them because prior to the introduction of the free primary school education policy by the National Rainbow Coalition (NARC) government in January 2003 schools were allowed to charge indirect fees (such as contributions to the building fund). Since January 2003 there is stiffer vetting of such charges to ensure that they do not become a disguised payment of school fees which would exclude poor children from primary education.

For several years the Kibera slum residents have relied on non-formal schools built through the community's own efforts. Their schools are considered informal and are not recognised by the government because they do not conform to the Ministry of Education guidelines on physical infrastructure, for instance the requirement that the school must be constructed on a minimum of five acres of land, which the slum communities cannot afford. Since the ministry does not recognise the schools the government does not post teachers to those schools or pay their salaries. The communities must raise their own funds to staff and equip the schools.

In addition to providing direct support to these schools and helping strengthen Parents and Teachers Associations, Oxfam supported the residents' campaign for formal recognition of their schools, arguing successfully for abolition of the distinction between formal and informal schools on the basis that such a distinction only stigmatises the children in the schools described as informal. Instead, the government should recognise and complement the initiative taken by poor communities. They also argued for an end to the indirect charges that keep poor children out of primary schools that are in theory free. This second issue has been rendered less significant by the NARC government's policy of free universal primary education, which has restricted and regulated school boards' power to levy charges such as building funds. This has opened up poor children's access to schools previously unavailable to them. Oxfam provided funding to help mobilise Kibera residents to prepare a detailed petition to the ministry of education. Oxfam's support also enabled the staging of high profile events such as marches and discussion forums with education officials.

The second example is drawn from Oxfam's work in Wajir district, a pastoralist region. Oxfam successfully lobbied the government and supported the community to demand that a pastoralist

²² See also interview with Mohammed Elmi, (then Kenya Country Director) Oxfam, Nairobi, 12 August 2002.

representative sit on the District Development Committee so that their concerns are taken into account. In the same district, the government's provision of veterinary services was inadequate, and in fact in some areas it was virtually non-existent. These areas were serviced by community animal health workers. Although their role is well understood and valued by the communities, the government completely ignored the important role they play and provided them with no support at all. As a result of an Oxfam-supported campaign,²³ there is now explicit government recognition and licensing of community-based animal health workers, and they receive skills training and basic tools and supplies for the job.

Oxfam believes that building the capacity of communities to organise and engage with the relevant institutions is a basic component of a rights-based approach:

The future lies in interest groups – e.g. pastoralists' networks and unions. But they also need to improve their own internal governance. And the role of NGOs such as Oxfam is to nurture such networks, particularly those that belong to marginalised groups so that their voice can have an impact.²⁴

ActionAid too has adopted this strategy of supporting communities to engage with government, including seeking appropriate laws and policies in areas the communities regard as priorities. The ongoing campaign with sugar farmers in Western Kenya is cited both within and outside ActionAid as a major success.²⁵ ActionAid teamed up with the Centre for Governance and Development to support SUCAM. The sugar industry, which is the mainstay of the economy of Western Kenya, has been in crisis. Since the late 1990s the industry has witnessed the closure of sugar factories, non-payment of farmers' dues, an influx of cheap imported sugar by well-connected businesses that evaded payment of customs duty thus driving down the price of locally produced sugar, and mismanagement of the Kenya Sugar Authority.

The government had for a long time ignored calls for a new law to regulate the sugar sector. Through the Centre for Governance and Development (CDG) and ActionAid's Western Kenya regional office, sugar farmers and other stakeholders, such as factories, research institutions, and local politicians came together to launch the campaign in 2000. They decided to draft a new Sugar Act and challenge the government to adopt it. The government got wind of it and decided to hurriedly draft its own Sugar Act in 2001 to pre-empt the campaign's draft. The government's draft was full of defects, but the campaign decided that it was imperative for them to engage with it, because if they chose to reject it they would play right into the hands of government and the businesses that had vested interests against any reform in the sugar industry. One of the campaign's main victories is that it successfully challenged the governance structure of the Sugar Board that had been proposed in the government draft. The government proposal

²³ The campaign also had the support of other agencies such as SNV (a Netherlands development agency), ActionAid and Codaid, as well as the research input of the University of Nairobi's Institute of Development Studies.

²⁴ Interview with Mohammed Elmi, (then Kenya Country Director) Oxfam, Nairobi, 12 August 2002.

²⁵ The information presented here on the Sugar Campaign for Change (SUCAM) draws from an extensive interview with the campaign chairman, Peter Kegode (Nairobi, 13 August 2002) and from the campaign website www.kenyalink.org/sucam

was that the 11-member board would have only four farmers' representatives, who would be appointed by the minister. This would mean that the board would have quorum to pass decisions with or without the farmers' representatives' vote. The campaign successfully increased farmers' representation to seven, and also successfully introduced the requirement that the representatives should be directly elected by the farmers. The saga of the sugar industry is still unfolding but the case lives up to ActionAid Kenya's characterisation of "fighting poverty" as being about challenging unequal power relations and ensuring equitable distribution of resources (ActionAid Kenya 2002).

SUCAM is a good illustration of the gradual shift in the approach of community development organisations to their work, toward greater engagement with macro level political processes and demand greater accountability from institutions that determine the distribution of resources. This shift is inevitable once practitioners of community development take seriously the notion of people's rights and entitlements as the starting point for their work.

So far this emerging shift has only focused on the accountability of government institutions. It is only a matter of time before communities use these same opportunities for the purpose of questioning the very NGOs and professional groups that are facilitating those opportunities. In fact, this has already begun to happen. In a CARE-supported horticultural farming initiative in Makueni district, farmers demanded and now have a right to inspect CARE's books of account relating to the initiative. In some areas in which CLARION has worked, such as Meru district, people have formed "people's parliaments" at the local level which pressure the local MPs and other authorities to take appropriate action. However, they have gone beyond this set of actors to approach "youngish professional people" from the area to ask them what they have (or could) put back into their communities. The CLARION official we interviewed said he saw no reason why these same forums cannot be used to demand accountability from an even broader set of actors including aid organisations and private enterprises, which would expand the conventional arena of human rights accountability.²⁶

3.4 Helping partner CBOs to develop more participatory and legitimate governance structures

It would be a major shortcoming for an organisation to claim to be employing a rights-based or participatory approach, yet work with CBOs whose structures embody exclusion. Oxfam takes this view:

When we are working with CBOs we question their representational structures. If there are just a handful purporting to speak for others, the fact that they are pursuing rights that are undoubtedly important does not make them representative. In order for the rights-based approach to make sense, participation is key. We must ask how they run; if they say they hold an Annual General Meeting, we ask who actually comes to the meeting.²⁷

²⁶ Interview with Lawrence Mute (then) Programme Officer, 14 August 2002, CLARION, Nairobi.

²⁷ Interview with Mohammed Elmi, (then Kenya Country Director) Oxfam, Nairobi, 12 August 2002.

In the sugar campaign ActionAid facilitated grass-roots level elections to elect zonal representatives to constitute the farmers' committee on the campaign itself. This was crucial to ensuring internal legitimacy in recognition of the need for broad inclusion in a campaign that covered a large constituency – about five million sugar farmers.

3.5 Alliance-building and networking with human rights groups

In acknowledgement of the fact that they do not have experience in rights advocacy, groups such as ActionAid, Oxfam and PLAN have sought to link up with the groups that have this expertise. Similarly human rights groups have sought out community development organisations as partners in their efforts to “root rights” in communities. Conversations with people in both camps point to successes and failures in these networking endeavours. One success story is the Sugar Campaign which successfully combined CGD's legislative expertise with ActionAid's strong grass-roots base to make the campaign very broadly representative and difficult for politicians to discredit or dismiss, and at the same time very focused and informed in its analysis of existing legislation and in its proposals for reform.

Many of the people we interviewed were of the view that although in recent times there have been more opportunities for networking these have remained largely confined to one-off initiatives, such as the Basic Rights Campaign which brings together 12 organisations campaigning for the inclusion of economic and social rights into Kenya's draft revised constitution. Another opportunity presented itself in the form of the Poverty Reduction Strategy Paper (PRSP) process. Outside of these initiatives, day-to-day interaction is virtually non-existent, and participation in each other's events is rare. But as a CLARION officer pointed out, the experience may be different at the local level. For instance grass-roots level facilitators working for CLARION may have a lot to do with local community development workers in the area:

There (i.e. at the community level), people from different backgrounds converge. [. . .] They may not make distinctions in the same terms as we do. But at our level we tend to be a closed group.²⁸

Several people identified the two main challenges that stand in the way of effective alliance building and networking. First, these distinctions are already written into the way other organisations relate with the NGO sector. One person we interviewed gave an example to illustrate how the NGO Council reinforces the categories. The NGO council had been holding consultations with NGO groups to popularise certain proposed policies. The council would invite the groups in turns – today the “human rights and governance” sector, tomorrow the “development” sector. Donor funding is also structured along similar lines, so the categories solidify around specific projects and institutions, and people become invested in them because everyone wishes to protect what they have been doing.

²⁸ Interview with Lawrence Mute (then) Programme Officer, 14 August 2002, CLARION, Nairobi.

Second, there is mutual mistrust. Some incidents narrated to us suggest that some of the community development groups were wary of rights advocacy groups, whom they saw as too confrontational. CLARION held discussions with Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) over a period of roughly one year, about integrating rights into GTZ projects but the relationship never took off:

We agreed that we would go and see what they are doing. We would start with their projects in the coast province. We even bought tickets. Then at the last minute they called and cancelled and we never heard back from them. Our guess is that since they work closely with the government they probably saw us as a potential threat to their relationship with government.²⁹

A third factor that hinders alliance building is perceived conflict in the values that guide the respective organisations. KHRC's experience with a proposed collaboration with PLAN in the Thika area illustrates this:

the challenge of partnership with such other organisations is whether they buy into a rights agenda – so that they don't just do service delivery and perpetuate the very dependence we are trying to get away from [. . .] [W]hen we got to know of their [PLAN's] mode of operation it wasn't appealing to us. Through their sponsorship programme they pick a child, educate him/her, build a house for his/her family without challenging the structural causes of poverty. So it's not uncommon to see islands of well-built houses in a community with poor housing.³⁰

Interviews with PLAN confirmed that previously, country directors were fearful about the political climate and did not want to take on any advocacy work. Now things are beginning to open up. There is a feeling that the environment is more conducive and so within PLAN there is now an interest in developing partnerships with organisations that have been doing advocacy for longer, such as the Girl Child Network, ActionAid, UNICEF, Chambers of Justice and Muslims for Human Rights (MUHURI).³¹

4 Rights advocacy practitioners engage with community participation

The general picture emerging is that two factors have contributed to an emerging trend toward greater community participation in the work of groups working in the area of human rights. First, the shift to an integrated approach to rights – from an almost exclusive focus on civil and political rights to an integration of economic and social rights. Second, the shift from a top-down approach to shaping rights advocacy agendas, toward an approach that is informed by community priorities. These shifts are reflected in Kenya Human Rights Commission's Vision 2012 whose focus is on “rooting rights” in communities. It

²⁹ Interview with Lawrence Mute (then) Programme Officer, 14 August 2002, CLARION, Nairobi.

³⁰ Interview with Wambui Kimathi (then) Assistant Director, Kenya Human Rights Commission, 15 August 2002. PLAN now does combine its child sponsorship work with community capacity building, but sponsorship is still its mainstay and that is what the organisation is known for.

³¹ Interview with Masheti Masinjila, (then) Gender and Child Rights Advisor, PLAN Kenya, 15 August 2002.

is also reflected in views expressed by the Centre for Law and Research International (CLARION) and the Centre for Governance and Development (CGD) in commenting on the change in their approach to civic education:

We asked ourselves, ‘Instead of doing civic education as a “stand-alone” activity, how can we get accepted into dealing with issues that people are already organising around? E.g. protest by coffee farmers. How can we build on existing struggles against poverty?’ We’ve been thinking about this but we don’t think it has matured yet.³²

The CGD spoke of the entire practice of rights as needing to be informed by people’s own experiences and knowledge:

The notion that a rights-based approach is about telling people about rights is mistaken. It’s more effective to start from letting people identify and analyse their problems and then come up with their solutions. It’s about figuring out who is responsible for what. Sometimes they realise that they themselves are responsible for some of the things [. . .] The important thing is to facilitate people’s own understanding of their entitlements; helping to remove what constrains their potential. It’s about facilitating a discovery of the root causes, and then facilitating the search for solutions. The biggest challenge is to avoid creating another type of dependency, where people begin to view you as the “rights giver” since you are the one telling them about their rights.³³

But this shift in thinking is relatively recent. For the most part, the work of groups involved in “human rights” has been largely a “professional” (mostly legal) practice, and some of them are only beginning to re-evaluate their strategies to make their work more participatory. The dominant working style is that a few expert organisations take up advocacy initiatives on behalf of those affected by various human rights violations. “Self-advocating” by the affected communities has not been prominent, neither has the nurturing of such a capacity in the communities been on the agenda of the professional organisations. The principles that have informed a participatory approach in the work of groups engaged in community development, as well as the methodologies and tools that have been developed in that arena have not, until very recently, found their way into the work of human rights groups.

In order to improve the prospects for deepening community participation in rights advocacy work, these organisations will have to work at balancing out the dominance of professionals, particularly legal professionals, and getting them to embrace the values, attitudes and behaviours that underlie participation. This is crucial for re-defining their relationships with grass-roots communities and popular movements. Based on our observations and on remarks made by members of grass-roots groups, negative attitudes manifest themselves in several ways:

³² Interview with Lawrence Mute (then) Programme Officer, 14 August 2002, CLARION, Nairobi.

³³ Interview with Gichira Kibaara (then) Chairman, 2 September 2002, CGD, Nairobi.

- Snubbing community level workshops or deliberative forums as a “waste of precious time”;
- Refusal by legal aid lawyers to attend community forums where movement members are discussing the issue, preferring to schedule meetings instead with two or three representatives in the lawyer’s office to prepare court cases on behalf of the movement;
- Dismissive attitude toward movement organisers as “illiterate women”; and
- Keeping tight-fisted control of the finances set aside for community activities and refusing to let the local organisers have any role in managing the finances.

In the remainder of this section we focus on the experiences of organisations that have begun to make a shift toward a more participatory approach to rights advocacy.

4.1 ‘You can’t put out fires forever’: the KHRC experience

The central element in KHRC’s current ten-year plan (Vision 2012) is a focus on “rooting rights” in communities. KHRC was formed right at the “official” end of repressive one-party rule (1992), therefore the architecture and culture of repression still remained. Therefore initially its primary focus was on violations of civil and political freedoms. Its primary methodology was the documentation of such violations so as to publicise them internationally. KHRC did not emerge out of a defined grass-roots constituency. Rather, it is a professional organisation whose ties to a defined local membership are limited. However, in the last two and a half years KHRC has been working to change this, and has experimented with various strategies for equipping communities to take up human rights advocacy. A senior official likened KHRC’s previous approach to that of a fire brigade, rushing to the scene single-handedly to deal with every problem, which she saw as unsustainable:

You put out this fire, then tomorrow there is another fire elsewhere. How many fires can we fight? Such an approach was necessary in the 1990s as it was a difficult environment politically. But the environment has now changed and as of necessity, the approach too has to change.

The key strategy employed thus far has been the training of community-based ‘Human Rights Defenders’ and the setting up of ‘Friends of KHRC’ within communities. The latter are teachers whom KHRC helps to develop teaching materials on human rights. The entry into the communities is made in one of two ways:

- Relying on KHRC’s monthly reports on violations (which draw largely from a review of the press) to identify pressing human rights problems in specific communities, then approaching the community to work with the commission on that problem;
- Responding to invitations by communities that are engaged in specific struggles.

In reflecting on this strategy, KHRC realised that they had a better and more sustainable relationship with the community in the latter case than in the former. Their most successful story involved working with

the Del Monte plantation and canning factory workers. The initial contact had been made by the workers' union, and now the agenda has broadened beyond labour rights to issues raised by the company's disregard of social responsibility, for instance failing to repair public utilities such as bridges damaged by their farm equipment.

Conversely, in instances where the commission had taken the initiative in approaching a community, the work tended to be viewed as "a KHRC project" and the people they trained as Human Rights Defenders saw themselves as working for KHRC and therefore had expectations of financial reward, for instance that they would be paid "sitting allowances" every time they had a meeting, an issue that has put the KHRC in conflict with some groups. KHRC realises that there is a need to balance between guarding against dependency and acknowledging that people are indeed sacrificing their time and energy, and in some cases foregoing the opportunity to earn an income in order to be involved in the rights work. KHRC is learning that it is not easy to achieve genuine community ownership of initiatives. The learning experience of negotiating relationships with communities is ongoing and is sometimes painful and chaotic.³⁴

The shift toward "rooting" rights has also necessitated a change in the way the organisation does its work. With the need to focus on a process of sustained engagement with communities KHRC has come to the realisation that it needs to take a programme approach, which is more long-term and open-ended, as opposed to a fixed term project approach. This has implications on planning and fundraising, since the focus shifts to supporting processes, as opposed to carrying out a defined project to its pre-designed conclusion. When it comes to supporting a process, the "completion schedule" is not clear, indicators are difficult to set, though the goals must be clear. KHRC has become aware of the need to find donors who are willing to be flexible in their funding. This is important because new needs that may not have been anticipated in the beginning arise in the course of engaging with a community, and it is very frustrating to say every time the community raises an issue, 'sorry we can't do that because it wasn't planned for'. KHRC therefore approached a pool of donors to put money into a Community Initiative Support Fund,³⁵ which would operate flexibly to respond to such issues without requiring the lengthy procedures of proposal writing and approval for every issue. Often the issue is urgent and the sums required are not big. One example given was a request to finance a postmortem examination. The community believed that the death of a trade union official who had played an active role during the Del Monte campaign was suspicious, but the police had refused to treat it as suspicious and they would not investigate. A Community Initiative Support Fund would enable KHRC to respond swiftly in situations such as this. It would mean that once KHRC assesses a community's proposed initiative and determines its viability,

³⁴ Interview with Wambui Kimathi (then) Assistant Director, Kenya Human Rights Commission, 15 August, 2002.

³⁵ So far one donor (TROCAIRE, an Irish organisation) has put money into the Community Initiative Support Fund. Others are warming up to the idea, but it still remains a small fund to facilitate low-cost community action. The fundraising for it needs to be intensified.

KHRC can support the community rather than abandon an issue that is important to the community simply because it cannot be funded from KHRC's regular budget.

Although this new orientation is at its infancy it marks significant progress for an organisation that epitomised a conventional elitist approach to human rights advocacy that never strayed far away from the capital and from a narrow definition of civil and political rights. Its Vision 2012 suggests that KHRC is committed to distancing itself from a metaphor that only ten years ago aptly described most Kenyan human rights NGOs: 'miniature replicas of their powerful counterparts in the North [. . .] on life-support systems provided by the North' (Mutua 1994). Hopefully Vision 2012 will achieve a genuinely transformed practice of rights that is truly inclusive.

4.2 Whose civic education? The CLARION and CGD experiences

CLARION is a research and advocacy organisation, well known for their activities in civic education and anti-corruption work. They have had to re-orient their thinking on civic education, and to shift from the general approach which concentrated on teaching people about electoral laws and the meaning of democratic leadership. Now the civic education curriculum makes a deliberate attempt to relate the content of civic education to local contexts, to the issues that are most pressing to each specific community.

This has been accompanied by a shift in the methods used, from primarily a lecture method to use of community theatre. CLARION has been working with a drama troupe based in Nairobi, but which travels to the districts in which CLARION is working and helps to build up and work with community-based theatre groups. CGD also uses theatre in its civic education work. Initially a Nairobi-based drama group would develop the script and then make performing tours in the six districts covered by CGD. The approach has since shifted to identifying local talent through youth groups and churches and then training the local groups to do the theatre performances themselves.

Like KHRC, CLARION and most groups engaged in civic education have realised that doing a 2–3 day training workshop is not effective. Instead, they have realised that it is better to train people who are resident in the community. Once these people are trained they in turn can carry out civic education on an ongoing basis. The training is continuous; following the initial training which lasts at least a week, then there is regular re-training "on the job". In choosing who to train CLARION developed criteria that include residency, local language, knowledge of local geography and history, a certain aptitude level and political awareness. These criteria eliminate the transient category of recent school leavers who would only be looking for something temporary to do and who are unlikely to remain in the community.

CLARION has been forced to make similar changes in its anti-corruption work so as to orient it toward facilitating community action to challenge corrupt practices, rather than continue its "research and publicity" approach. CLARION is famous for anti-corruption work since the release of their landmark survey report in 1994 (Kibwana, Wanjala and Owiti 1996), and their regular quarterly reports on corruption. If politicians and government officials were uneasy about a vocal NGO publicising corruption they are even more jittery about an anti-corruption challenge from the grass-roots. CLARION therefore

has had to develop strategies for stepping into the role of giving back-up to community activists who get victimised. These strategies include *ad hoc* organising of legal defences and posting of bail for arrested activists. CLARION was able to do so successfully in a case in Mwingi in Eastern Kenya where a group of teachers had been arrested for demonstrating against the grabbing of a public plot by the local Member of Parliament and councillors. But CLARION has not been able to respond positively in every such situation. The Programme Officer we interviewed suggested that CLARION needs to develop institutional structures and raise funding for this new role. Like KHRC, CLARION realises that this will call for greater flexibility in the financing of their work:

Another challenge is donors' strictness with budget lines. When you plan with the community in mind, you have to allow for flexibility; leave room for the design to change depending on feedback we receive from the community. This means flexibility in planning and budgeting. So there is some tension there.³⁶

A final observation is that a number of human rights groups, such as CLARION, have decided to adopt a membership-based structure, as a way of ensuring that a wider constituency has a stake in the organisation's work (CLARION 2000). This is a positive step, but it needs to be made clear what role the people who buy into membership play in shaping the agenda of the organisation. There is potential danger that these new membership structures could function more as a stamp of legitimacy to be displayed to external actors such as donors and politicians who question the NGO's mandate.

5 Participation and rights from the vantage point of grass-roots-level struggles³⁷

The examples of KHRC and CLARION speak to the experience of organisations that grew out of the vision of some professionals or experts, in a one-party political climate that was hostile. This climate meant that even though they did not have a demonstrable grass-roots base, the need for such organisations was rarely questioned. They had little difficulty securing funding from foreign donors, and they operated almost exclusively in the large urban centres. It is only with the changing political environment that they have been forced to reflect on broader inclusion and local ownership of their mandates. Hence the recent engagement with the question of community participation.

³⁶ Interview with Lawrence Mute (then) Programme Officer, 14 August 2002, CLARION, Nairobi.

³⁷ At the grass-roots level we did not use the concepts of "rights", "rights-based approaches" and "participation" as the organising concepts for our inquiry with them. Rather, the process involved listening and inferring from their articulation of their identity in relation to their struggle, the history of their struggle, their own understanding of what makes their claims legitimate, and what strategies they use.

Our findings suggest that in the case of organisations that are membership based, or whose structures have evolved from the ground up, issues of community participation in defining the mandate and shaping the identity of the organisation arise from the very beginning and are continually dealt with as the rights struggle evolves.

5.1 Sombera Dzumbe and the politics of defining a movement's identity and mandate

Our experience with Sombera Dzumbe in Kwale district, a grass-roots network in its formative stages, demonstrates the importance of questions such as 'who has authority to define the name and identity of the movement?' and 'who decides what the mandate of the movement will be?' These questions are foundational and are perceived as central to inclusion and exclusion from the movement.

Prior to 2002 what is now the interim committee of Sombera Dzumbe had only existed as a committee of representatives from eight village clusters whose function was to organise an annual exhibition at which all the villages benefiting from the Aga Khan Foundation's KRSP would exhibit their farm produce and other work. When relations with KRSP began to sour due to unfulfilled promises, the communities realised that since they had signed agreements with KRSP as individual VDO, there was no forum through which they could engage with KRSP in a more powerful collective voice as a community. The annual exhibition committee was the only forum that cross-cut all villages. Therefore committee members decided to expand the committee's mandate and began the process of transforming the committee into a network that would mobilise community members to speak out on the problems they were facing *vis-à-vis* the KRSP and also explore their potential to carry out the projects on their own.

While most people appreciated that a united voice was needed to speak against these problems, questions were raised about the unilateral expansion of the committee's mandate, particularly in villages that were not open to mobilisation efforts. These villages questioned how one committee could appear to be encompassing all the VDOs under its umbrella. One VDO chairman expressed this challenge in an analogy:

I have given you a basket and authorised you to pick vegetables from my *shamba* (garden/farm). You have gone off and filled the basket with maize and bananas. When you run into the owner of the *shamba* on your way out, what will you say? When you are sent to do something you need to do what you were told to do. If you need to do something else, you have to get permission. [. . .] Your work is to deal with the show [annual exhibition].

In response to such challenges to the legitimacy of Sombera Dzumbe, the members of the interim committee embarked on seeking that mandate one village at a time. Ultimately, in August 2003 a meeting of all VDOs endorsed Sombera Dzumbe as an interim body for spearheading the creation of a community-wide forum that would in the short term act as a bridge between community members and governmental and non-governmental development agencies. In the long term the forum would be a

registered body with the VDOs as corporate members. The body would have legal authority to negotiate and oversee any development initiatives involving its members so as to safeguard their interests. A draft constitution is already being circulated for comment. Thus, the conflicts over mandate that initially appeared to threaten the network in its infancy turned out to be an opportunity for establishing its legitimacy and galvanising the community for collective action to demand accountability from development actors.

In addition to challenges to the mandate, contestation arose also over the very name ‘Sombera Dzumbe’. The first part of the name refers to the act of climbing a coconut tree. The second part of the name is derived from Duruma family landholding customs. *Dzumbe* refers to the communal family farm; a family may have many sons with their individual farms (*makobo*), but there is an appointed day when the individual nuclear families come to work on the communal family farm. Everyone is then entitled to a share of the harvest from the communal family farm. The analogy was intended to evoke the image of villages “climbing up” or making progress together so as to reap collective benefit and continue to contribute toward the common good.

But during the “mandate seeking” meetings with some of the villages, and also at a joint reflection workshop in April 2003 with other community-based networks the interim committee of Sombera Dzumbe was taken to task over this name. Women from the Mombasa Tenants’ Associations saw the use of “dzumbe” (communal family farm) as problematic – does everyone feel an equal sense of belonging and entitlement in the dzumbe? Aren’t there some who come to it knowing that *hiyo dzumbe ina wenyewe* (that the dzumbe has its real owners)? It is common knowledge that ultimately only sons can claim full ownership of the dzumbe; daughters and wives cannot. Regarding the “sombera” part of the name, participants at the joint reflection workshop posed the question: who are the people who usually *sombera* (climb tall coconut trees) in Duruma culture? All agreed that this is an exclusively male occupation, and therefore that the image is very male-centred. The Sombera Dzumbe interim committee officials agreed there was need to have a more reflective discussion with members on the name of the organisation and the image it conveys about the movement and its leadership structure. They continue to use the name nonetheless. It seems unlikely that the name will change because in the space of a year and a half the nascent network has already won a number of victories in their tussle with KRSP on behalf of the communities³⁸ and Sombera Dzumbe is fast becoming something of a popular brand name with instant recognition.

These experiences at the grass-roots contrast with those of professional human rights groups and illustrate that the process of full and genuine participation in a rights struggle is as important as actual

³⁸ One of the key victories was the writing of a petition addressed directly to DFID (by-passing the Aga Khan Foundation) in June 2003, following a series of meetings with several villages. This forced the Aga Khan Foundation to hold negotiations directly with community representatives under the auspices of Sombera Dzumbe which the foundation had initially refused to recognise. Among the immediate results of this action was the payment of dues to village residents who had contributed their labour in the digging of water reservoirs, and the dismissal of the KRSP director who had introduced new policies, among them the decision to shelve the agreements entered into with Village Development Committees.

victories in the struggle itself. The fact that an issue is acknowledged to be important does not give a select few the mandate to advocate on behalf of those affected, nor does it take away the right of those affected to shape the course of the struggle.

5.2 Asserting a "right to participate"

Beyond concerns around internal legitimacy and participation in grass-roots level struggles, increased demands for genuine participation as a matter of right are being clearly articulated in communities' dealings with powerful actors such as government and development agencies. There is a discernible narrative about amplification of voice; from expressing protest at the margins to demanding an expansion in political space within relevant institutions. Grass-roots level struggles emphasise that rights are not simply about attaining tangible desired outcomes (such as piped water and a garbage collection system) but that rights are also about taking part in the processes that shape and achieve those desired outcomes: a right to active and meaningful participation in the process of shaping the realisation of rights, so to speak. This is best illustrated by the Mombasa council tenants' struggle. In the last ten years the Tenants' Associations have grown from *ad hoc* and reactive protest movements against illegal eviction and land-grabbing to a proactive and powerful force for demanding increased accountability and openness in the functioning of local government structures. The tenants perceive as important tangible outcomes such as regular maintenance of the council houses, delivery of basic services such as garbage collection, right to be reimbursed by the council if tenants undertake repairs;³⁹ and the right to have facilities for recreation, schooling and health within reach.⁴⁰ At the same time, however, they insist that these rights cannot be achieved or sustained unless the tenants also have the following rights:

- The right to speak freely and to meet freely to discuss issues concerning the estates.⁴¹
- The right to actively participate in the council's decision-making processes: planning and implementation of any projects in the estates;

³⁹ The standard council tenancy agreement requires tenants to seek permission from the council for any repairs to the premises. The council always denies permission. Tenants have no choice but to undertake the repairs anyway, then the council is under no obligation to reimburse since it did not authorise the repairs in the first place. When a tenant leaves they are not allowed to remove any fittings they may have added or replaced in the house, such as new windows, doors, toilet seats or sinks, presenting the tenants with a no-win situation (see Musyoki, Nyamu-Musembi and Mtsami 2003).

⁴⁰ Social halls, playgrounds and sports facilities that used to be in the estates have disappeared due to "land grabbing" – the irregular allocation of public facilities to private developers, a phenomenon that became commonplace in Kenya's urban centres in the 1990s.

⁴¹ The tenants felt that this was particularly important because previous efforts to hold meetings and protests had met with heavy handed reprisals from the council and provincial administration. Some tenants who were also council employees were threatened with dismissal; one Tenants' Association official was actually dismissed (see Musyoki, Nyamu-Musembi and Mtsami 2003).

- The right to sit in when the council makes tendering decisions so as to know how contracts are awarded, who they are awarded to, what their obligations are, and who in the council is supervising them and how residents can hold both the contractors and the responsible council officials accountable if they fail to fulfil their respective obligations;
- the right to be informed of any plans concerning the estate.⁴²

This integrated view of their struggle is further illustrated by the manner in which those involved in the struggle perceive the identity of their movement. They do not define themselves only as council tenants with inadequate housing, but rather as *wakereketwa*, a term they explained as follows: those who refuse (indeed are unable) to remain silent when *haki* (justice/ equity/ rights) has been denied, whether that denial affects them directly or affects someone else. For this reason, mobilisation efforts have enabled the struggle to grow steadily from a grouping representing three council estates to eleven of the 18 council-owned estates, with links to other community-based groups such as peri-urban communities with insecure land tenure. It is this broader concern with active and meaningful participation in council affairs that has broadened the impact of the tenants' struggle beyond the specific issue of housing to transformation of local governance.⁴³

Grass-roots demands for active and meaningful participation have also been made in dealings with development agencies. One illustration is drawn from the experience of communities in the areas of Kwale district in which the Sombera Dzumbe network is being formed. During the years 2002 and 2003 there arose conflict between the communities and the DFID-funded Kwale Rural Support Programme (KRSP) of the Aga Khan Foundation.⁴⁴ At the time of this research there was palpable bitterness over the fact that the communities had committed time and energy to detailed Participatory Rural Appraisal (PRA) exercises organised by KRSP in which the communities identified priority areas for project intervention. Based on the outcome of these exercises, detailed written agreements were entered into and signed between KRSP and each Village Development Committee, detailing what part each would play in implementing the projects; for instance, that when the Village Development Organisation (VDO) raises Kshs.25,000 for the Village Development Fund, the KRSP will match those funds. Most VDOs charged that KRSP had disregarded the priorities identified during the PRAs and gone against the agreements altogether. They felt that their participation in the process had had no influence whatsoever, KRSP at best offering projects on a "take it or leave it" basis, or offering nothing at all. An excerpt of views expressed in one of the communities gives a sense of this bitterness:

⁴² The council's decision to sell off Tudor and Mzizima estates in 1996 without informing the tenants was what triggered the tenants' organising in the first place (see Musyoki, Nyamu-Musembi and Mtsami 2003).

⁴³ For a more detailed discussion of the Mombasa council tenants' struggle see Musyoki and Nyamu-Musembi (forthcoming 2005).

⁴⁴ The programme is now known as Coast Rural Support Programme, having been expanded in 2002 beyond Kwale district to the entire Coast province.

Box 5.1 Excerpt from observation notes, Mazeras West, 23 April 2003

'Our farms are small, so we thought that business investments would be better for us. So we proposed to build rental accommodation, since we are strategically located on the Mombasa highway and close to the city. KRSP turned down the proposal because, they said, it would only benefit a few people, not the entire community. If we had proposed, say, a dairy project, more people would benefit by buying the milk and improving community health.

[The Aga Khan Foundation has a policy to the effect that any project they support should benefit at least 75 per cent of the households in a community.]

What guided our proposals as a village was a desire to have joint projects to deal with the problem of individualism/self-centeredness (*ubinafsi*) that is common here. During the PRA process we identified that, along with two other issues, as the main problems. The other issues were hunger and a difficult economy (inadequate income). Then we identified two ways of solving them. First, modern farming techniques, so as to maximise the productivity of our small farms and second business investments, since we are a peri-urban area.

We decided that the joint project could not be in farming, since that would not be viable given our tiny farms, which then meant that the joint projects would have to be in business and investment. That is how the idea of rental houses came about. When KRSP turned it down, we asked them to come and explain. They were still keen on the earth pans (small farm reservoirs) projects they have been promoting in other parts of the district. We told them we did not want to dig earth pans. On whose farm would we dig an earth pan? Each farm is no more than a quarter of an acre!

When they turned down the rental accommodation idea, we proposed a health clinic. We told them that it would benefit the community at large. Their response was that their programme deals with development. Health is dealt with by a separate programme – the Aga Khan Health Services. Still we did not give up or get tired. We went back to them and we proposed a dairy project even though it is not what we really wanted, but because they had turned down everything else. Now what we have heard is that they said it would be difficult to do it as a village project. They said we could look for our own loan and do it. We haven't discussed this. People have become demoralised and it's difficult for Village Development Committee members to even get people together to have a discussion. So until this moment Mazeras West has not had a single project with KRSP.'

Concerns of this nature were echoed in several other villages, which is what triggered the formation of Sombera Dzumbe. Following intensive mobilisation efforts among all the Village Development Organisations in the district and a petition sent to DFID by Sombera Dzumbe, the programme has now embarked on a series of consultation forums with Sombera Dzumbe, a network they had refused to recognise in the first place.

6 Conclusion

Kenyan civil society stands at a crossroads in the post-December 2002 political climate. There is heightened political awareness and assertiveness, accounted for partly by the long-drawn-out and much discussed process of constitutional change that has been, admittedly, one of the most broadly inclusive political processes that the country has seen. In this context, community-based movements are strategising to better organise to demand accountability from government and other key actors such as development

agencies and human rights NGOs that claim to be working on their behalf. Within their own movements there is pressure to ensure internal legitimacy and genuine representational structures. Professional civil society groups are also caught in a renewed search for legitimacy and definition of purpose. Among human rights groups this has taken the form of efforts to ground their work and orient it towards building capacities for self-advocacy by the affected communities. Among community development groups this has taken the form of a greater engagement with issues of macro-level political accountability, taking people's rights and entitlements as the basis for such engagement.

This is borne out by concrete efforts to engage in the re-creation of the legal and institutional framework so as to facilitate genuine accountability and respect for the rights of marginalised constituencies. Examples discussed in this paper include the legislative reform initiative undertaken by SUCAM, the Kibera informal schools campaign supported by Oxfam, and the constitutional reform proposals made by the Basic Needs are Basic Rights campaign coordinated by ActionAid. Along with inspiring stories from the grass-roots – such as the Mombasa council tenants who, since the mid-1990s, have succeeded in thwarting plans for irregular sale of the estates to private developers, and Sombera Dzumbe's initiative which has made a poor community more assertive in its engagement with a development agency – there is promise that civil society's role in challenging unequal power relations will be enhanced in this new climate.

Another encouraging trend is the emphasis on internal legitimacy both at the level of professional NGOs claiming to work “on behalf of” marginalised groups, and at the level of community-based mobilisation of those groups. Actors at both levels seem determined that the very efforts to facilitate realisation of rights should not, in their own structures, embody exclusion and lack of genuine participation. This would go against basic underlying values of a rights-based approach, namely non-discrimination and active and meaningful participation.

These trends suggest a gradual closing of the chasm between the practice of community development and the practice of rights advocacy, and therefore greater overlap in the discourses of rights, rights-based approaches and participation. This overlap holds promise for an integrated and sustained approach that is more effective in questioning institutional arrangements that foster unequal relations.

The prospects for the realisation of this promise could be improved in several ways. First, by re-defining the relationship between professional groups and grass-roots movements. The relationship needs to be one that is based on mutual respect and a willingness to learn from each other, not one that treats grass-roots groups as projects of the professional groups. Sombera Dzumbe, one of the three community-based networks we interacted with, was caught in this very struggle to assert its identity and priorities *vis-à-vis* a development agency that saw itself as a benefactor that could take unilateral actions in spite of clear agreements negotiated with the communities. ILISHE, the network to which the Mombasa Council Tenants' Associations belong had, on more than one occasion, had to fend off proposed collaboration with professional NGOs and networks that would have amounted to reduced autonomy in ILISHE's members' ability to set their own priorities. Ngua Mlambo on the other hand, through years of experience have developed very clear arrangements for partnering with other organisations.

Second, by strengthening the collaboration between rights advocacy groups and participatory community development groups beyond one-off projects or initiatives. It is therefore necessary to engage on a more sustained basis in partnership-building between these groups. Our work suggests that opportunities for such sustained engagement could be utilised through closer involvement in the work of autonomous grass-roots-based groups, who do not make a distinction between “doing rights work” and “doing community development”. They are keen to draw from as wide a range of expertise as is necessary to advance their struggle. For instance, the Mombasa council tenants in a strategising workshop identified the need for input both from human rights/legal organisations to help them learn about housing laws and regulations, as well as experts in urban planning, sanitation and environmental management to help them evaluate the viability of council proposals as well as help them come up with their own. At the same time, self-help groups within the estates are drawing development agencies in to help them respond to immediate needs such as the sinking of boreholes to address the lack of piped water.

Sustained collaboration among the various professional groups as well as with grass-roots groups could also contribute to definition of tools and methods for an integrated participatory and rights-oriented approach to social change. Human rights groups beginning to engage directly with communities are in search of tools and methods for integrating participatory approaches into their work. On the other hand, as community development groups embrace rights advocacy and the integration of a rights perspective into their programming, they are aware of the limits of conventional human rights advocacy methods. All are therefore faced with the challenge of adapting the tools in their respective fields and in each other’s field so that they are more suited to a more integrated approach. Therefore concrete and sustained engagement could go a long way to enable mutual learning.

Finally, a challenge that will need to be overcome is the absence of flexible funding to enable groups to take advantage of opportunities for collaboration when they emerge in response to community needs. There is a need to build an autonomous resource base that does not rely exclusively on rigid project-oriented donor funding. Efforts towards flexible fundraising, such as KHRC’s Community Initiative Support Fund, need to be complemented with community-managed endowment funds or some other sustainable arrangement.

Annex: Organisations' profiles

<p>1. Kenya Human Rights Commission (KHRC)</p>	<p>KHRC is a national membership human rights organisation. It was conceived in 1992 as a vehicle for transformation of Kenya's political and legal culture towards a more open, democratic, and people-centred society. KHRC areas of activity include documentation and reporting on human rights violation; paralegal training; outreach.</p> <p>To promote an integrated approach to rights: including not only individual rights and civil liberties but also economic and cultural rights. Its new focus is rooting rights in communities.</p>
<p>2. Kenya Women Workers Organisation (KEWWO)</p>	<p>KEWWO is a women's rights advocacy national organisation started in 1990. Its vision is of an improved society with informed and empowered working women. It has a membership of more than 6,000 women workers from formal and informal sector in 36 branches in 22 districts nationwide.</p>
<p>3. Ilimu Sheria Trust (ILISHE) in English Legal Awareness</p>	<p>ILISHE is a community-based umbrella organisation operating in the Kenyan coast province. It was started in 1993. Its goal is to promote the ethos of democracy and good governance, social equity and justice, empowerment towards alleviation of poverty and all values of a good and happy society. ILISHE work is largely engaged in mobilisation of grass-roots groups for action in order to agitate for their rights. Key campaigns include shelter and housing rights, land and mining rights.</p>
<p>4. Ngua Mlambo Development Trust (NMDT)</p>	<p>NMDT is a community-based umbrella organisation operating in Taita Taveta District in the Coast province. The Trust was born in 1999. It evolved from the work of World Neighbors (an International NGO) Taita Programme. The vision of the Trust is to have a society that is able to mobilise and manage locally available resources to improve its well-being. It has a membership of 131 self-help groups. NMDT focuses on community organising and leadership training; legal awareness raising and representation, resource mobilising and fundraising and advocacy.</p>
<p>5. Sombera Dzumbe (SD)</p>	<p>SD is a community-based initiative/organisation in its formative stages. The interim taskforce/committee is in the process of seeking a mandate from group members, as well as getting their views on what form of identity the group should have. The interim committee sees SD's vision as that of organising the communities to demand accountability from development institutions and the government.</p>
<p>6. Centre for Governance and Development (CGD)</p>	<p>CGD is a national policy research and advocacy NGO started in 1993. CGD works towards the realisation of a democratic political culture, respect for human rights and dignity and good economic governance. CGD's is committed to public awareness on responsible governance of resources and the need to hold corrupt and non-responsive institutions accountable.</p>
<p>7. Centre for Law and Research International (CLARION)</p>	<p>CLARION is an activist social and legal research national NGO, founded in 1993. Its goal is to contribute to the sustenance and enhancement of human rights, democracy and participatory policy processes. CLARION is committed to working with grass-roots communities to develop anticorruption mechanisms and strategies for enhancing public accountability.</p>
<p>8. Oxfam Kenya</p>	<p>Oxfam Kenya is part of Oxfam Horn, East and Central Africa and Oxfam International. Oxfam is dedicated to fighting poverty and related injustice in Kenya. Oxfam Kenya's focus is on capacity building for partner CBOs to engage in advocacy – a Rights Based Approach to Development. OXFAM is committed to enabling people to exercise their rights and manage their own lives.</p>
<p>9. ActionAid Kenya (AAK)</p>	<p>AAK is part of AA International and has been in Kenya since 1972. AAK concerns itself with issues of poverty and injustice and works within a rights-based approach. AAK vision is a society that is just, democratic and equitable in which all people can exercise their right to a life of dignity. AAK is committed to empowering the poor and their institutions while improving the policy, legal and institutional environment for poverty eradication at local, national and global levels. Though AAK has nationwide coverage most of its work in Western, Coast eastern and north-eastern provinces.</p>

<p>10. SNV Netherlands Development Organisation</p>	<p>SNV is an International NGO and has been in Kenya since 1983. SNVs goal is to enhance good governance by strengthening democratic institutions at local and Meso levels. SNV work is largely with pastoralist communities in the Rift Valley Province.</p>
<p>11. CARE Kenya</p>	<p>CARE Kenya is part of CARE Canada, which in turn is one of the ten National Members of CARE International. In Kenya CARE works towards poverty reduction and hopes to have sustainable impact on poverty. CARE Kenya works with the rights-based approach/programming. Core values guiding their work include Justice;- enjoyment of the human rights of the people they serve; Excellence;- to attain the highest standards in all they do; Commitment;- to the people they work with and encouraging others to hold them accountable to this commitment; and Respecting the dignity, worth, and right of every human being.</p>
<p>12. PLAN International Kenya</p>	<p>PLAN Kenya is part of PLAN International – a humanitarian, child-focused development organisation. It has been in Kenya since the early 1980s. PLAN’s vision is of a world in which all children realise their full potential, in societies, which respect people’s rights and dignity.</p>
<p>13. Catholic Relief Services (CRS) Kenya</p>	<p>An international faith based NGO who believes solidarity will transform the world to: cherish and uphold the sacredness and dignity of every person; commit to stand and practice peace, justice and reconciliation and celebrate and protect the integrity of all creation. CRS promotes integrated sustainable development.</p>

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