

NGUGI, WINIFRED W.

UNIVERSITY OF NAIROBI  
LIBRARY  
P. O. Box 30197  
NAIROBI

THIS THESIS HAS BEEN ACCEPTED FOR  
THE DEGREE OF LLM 1994  
AND A COPY MAY BE PLACED IN THE  
UNIVERSITY LIBRARY.

LEGAL ILLITERACY IN KENYA:  
A CASE FOR THE RIGHT TO LEGAL LITERACY

A THESIS IN PARTIAL FULFILMENT  
OF THE REQUIREMENTS OF THE MASTER OF LAWS (LL.M.)  
DEGREE OF THE UNIVERSITY OF NAIROBI.

MARCH, 1994

FOR USE IN THE  
LIBRARY ONLY

## DECLARATION

This thesis is my original work and has not been presented for a degree in any other university.

NGUGI, W.W. W.W. Ngugi

DATE 15th October 1996

This thesis has been submitted for examination with my approval as university supervisor.

PROF. A. A. ESHIWANI 

DATE 16th October 1996

## TABLE OF CONTENTS

Dedication	(i)
Acknowledgements	(ii)
Table of Statutes	(iii)
Table of Cases	(v)
Abstract	(vi)
Introduction	(viii)
The Research Basis	(ix)
A: Data sources	(ix)
B: Literature review	(x)
C: Hypothesis and Assumptions	(xiii)
Chapter 1: Legal Literacy: Its Meaning, Significance and Study Approach	
1.1 The Issue	1
1.2 Legal Literacy: Towards an Understanding of Its Meaning	6
1.3 The Relevance of Legal Literacy to Development	11
Chapter 2: Knowledge and Communication of Law: Policy, Law and Practice	
2.1 Policy	20
2.1.1 The Colonial Era	20
2.1.2 Post-Colonial Era	30
2.2 Law	35
2.2.1 The Presumption of Knowledge of Law	35
2.2.2 The Constitution	41
2.2.3 The Legal Profession	43
2.3 Practice	49
2.3.1 Governmental Effort	49
2.3.2 Non-Governmental Effort	52
Chapter 3: Legal Illiteracy: A Survey of Karidudu	
3.1 Introduction	59
3.2 A: Employment	62
B: Economic Activity	66

## **DEDICATION**

To KIEYA our daughter...  
an inspiration and a delight

## ACKNOWLEDGMENTS

I wish to thank my Supervisor, Prof. A. A. Eshiwani for his diligent supervision, patience, and useful comments and criticism.

I am also grateful to Prof. Kivutha Kibwana, Janet Kabeberi - Macharia, Murtaza Jaffer, Victoria Kattambo and Anne Kyalo for availing me valuable material on the subject. Their help is particularly appreciated in view of the scarcity of available literature on the subject. I also thank Edith Mneney, Christine Agimba, Faiza Ngatia and Ciuri Ngugi for taking the time to discuss various aspects of the study.

Special thanks to Mrs. Miriam Musau and Mrs. Serah Ngonyi for laborious hours spent in typing the Thesis and presenting it in its neat state. Victor Kamau's input in the word-processing is also acknowledged with gratitude.

And to my husband for his love, untiring support and encouragement during the time of writing, I am especially indebted.

Thank you ALL.

## TABLE OF STATUTES

### KENYA STATUTES

Advocates Act, 1961 (Chapter 16)  
Advocates Act (No. 18 of 1989)  
African Christian Marriage and Divorce Act (Chapter 151)  
Chiefs Authority Act (Chapter 128)  
Constitution of Kenya (Revised Edition, 1992)  
Co-operative Societies Act (Chapter 490)  
Criminal Procedure Code (Chapter 75)  
Crown Lands Ordinance, 1920  
Employment Act (Chapter 226)  
Government Proceedings Act (Chapter 40)  
Hindu Marriage and Divorce Act (Chapter 157)  
Industrial Properties Act (No. 19 of 1989)  
Interpretation and General Provisions Act (Chapter 2)  
Judicature Act (Chapter 8)  
Kadhis Court Act (Chapter 11)  
Landlord and Tenant (Shops, Hotels and Catering Establishments) Act  
(Chapter 301)  
Law Society of Kenya Act (Chapter 18)  
Local Government Act (Chapter 175)  
Marriage Act (Chapter 150)  
Mohammedan Marriage and Divorce Registration Act (Chapter 159)  
Penal Code (Chapter 63)  
Public Order Act (Chapter 56)  
Registered Land Act (300)  
Registration of Business Names Act (Chapter 499)  
Rent Restriction Act (Chapter 296)  
Sub-ordinate Courts (Separation and Maintenance) Act (Chapter 153)  
Trade Disputes Act (Chapter 234)  
Trade Licensing Act (Chapter 497)  
Workmen's Compensation Act (Chapter 236)

## APPLIED LEGISLATION

Indian Transfer of Property Act, 1888 (Group 8 Applied Acts)

## SUBSIDIARY LEGISLATION

Advocates (Remuneration) Amendment) Order, L.N 121 of 1984

Native Tribunal Rules, 1911

Native Tribunal Rules, 1913

Native Tribunal Rules, 1930

## FOREIGN STATUTES

Kenya Colony Order-in-Council, 1921

Price Control Ordinance (Chapter 309 of the Laws of Tanzania)

Race Relations Act, 1968 (c.71)

Rules Publication Act, 1893 (56 and 57 Victoria c.66)

TABLE OF CASES

Kisau wa Muiga v. R (1912) 5 E.A.L.R.50

Kumwaka wa Mulumbi (1932) E.A.L.R.364

R v. Bailey (1800) 168 E.R.651

R v. Barronet and Allain (1852) 169 E.R.633

R v. Karoga wa Kiregi and 53 Ors. (1913) 5 E.A.L.R.50)

R v. Kimutai arap Mursoi (1939) 6 E.A.C.A.117



## ABSTRACT

The focus of this study is on the status of legal literacy in Kenya, both in terms of policy and in reality. The study seeks to examine government policy and the law itself with regard to popular knowledge and communication of the law. It also seeks to evaluate the effectiveness of measures, both governmental and non-governmental, that currently exist to communicate the law to the people of Kenya. Further, the study attempts to assess the actual levels of legal literacy by way of a limited field survey done in Karidudu, a poor urban area in Nairobi. Finally, the study explores the potential media through which law can be communicated to the public.

Conceptually, the discussion starts from the premise that law has an important role to play in development and is capable of being used in its liberative function to empower the poor and the disadvantaged to improve their bargaining position in society. An assumption made in this study is that some functional knowledge of law is essential if law is to fulfil this liberative function. A further assumption is that law is not in itself mystical. It is capable of being framed in such a manner as to be understood. It is also posited that the individual has a right to know the law and that the state has a corresponding obligation to communicate the law to the individual.

An examination of government policy, as it will be evident later, reveals that legal literacy has not been a priority concern of policy makers in Kenya. This is borne out by the lack of any definite policy on the same. It is practically evident also in the legal postulation which presumes knowledge of law on the part of the individual. The combination of lack of policy and of adequate measures to communicate law have resulted in the populace being largely unaware of the law and their rights. Consequently people are unaware that law can be used to further their interests in society. From this state of things it is argued that in order to alleviate the legal literacy situation in Kenya the state should first, lead the way by formulating a clear legal literacy policy and then follow it up with a vigorous programme for communication of basic law on a nation-wide scale. The implications of this call, such as the costliness of the undertaking have been reflected upon.

Chapter 1 of the study delineates the issue, that is it defines the concept of legal literacy and its significance and discusses the relevance of legal literacy in a development context. This chapter lays the conceptual foundation of the study. Chapter Two examines government policy and law regarding knowledge and communication of law. The Chapter also analyses the relevant legal provisions with a view to ascertaining if the law grants a right to know the law. Measures that currently exist to communicate the law are also examined. Chapter Three comprises a discussion of the findings of a field survey on legal literacy levels conducted in Karidudu, a slum area in Nairobi. In Chapter Four suggestions are made of possible measures that can be taken in order to communicate law. The Chapter also highlights some constraints that may arise in the endeavour to enhance legal literacy. A conclusion summarises the study.

## INTRODUCTION

In developing countries there is a great need to utilise all available resources towards the goal of development. This is necessary not just in facilitating economic growth but also in the endeavour for the improvement of all aspects of human life.

Law appears to be one such resource not only because it is the highest form of articulation of policy but also because it has a liberative potential which can be utilised to enhance the advancement of the disadvantaged in society. This may be by facilitating access to certain services or by providing rights and machinery for their enforcement. In this context legal literacy, that is general knowledge of the law by the populace, becomes an important factor if the people are to take advantage of the benefits conferred by or arising out of the law.

At present Kenya is undergoing a process of democratisation with the advent of political pluralism, a system premised on transparency and accountability in government and in the public arena. Legal knowledge by the general public would be an invaluable asset in this exercise as, among other things, it would prepare the people to make informed political choices.

The question arises as to whether the general public in Kenya does actually possess legal knowledge adequate for utilising law as a resource for development. If not, how can such knowledge be acquired? One factor to consider here is government policy regarding popular knowledge of the law. There is also need to evaluate the adequacy and appropriateness of measures that exist to communicate the law. Examination of the above issues leads to an inquiry into what action needs to be taken should the situation be found to be unsatisfactory.

This study attempts to discuss this problem and its related issues. Chapter One lays the conceptual foundation by defining the issue and its significance and by underlining the relevance of legal literacy in a developmental context. Government policy, legal provisions and the practice as regards knowledge and communication of law are examined in Chapter Two. Chapter Three analyses the findings of a field survey on legal literacy levels in Karidudu, Nairobi. Chapter Four is a discussion of measures that can be taken in order to enhance legal literacy in Kenya. Concluding remarks are then made.

A major difficulty experienced during this research was the scarcity of written material on the subject of legal literacy. In an attempt to alleviate the situation I wrote to a number of organisations abroad requesting relevant material (see Appendix II for contents of the letter and the names of the organisations). However, no response was received from any of them. I therefore had no alternative but to resort to the little material locally available. This deficiency is reflected in the use of limited and not so recent data as the mainstay of the study.

Before embarking on a fuller discussion of the issue I shall first lay down the research basis of the Thesis. This will include a summary of the source of data, a review of the relevant literature and a statement of the hypotheses and assumptions from which the Thesis proceeds.

## THE RESEARCH BASIS

### A: DATA SOURCES

Most of the data for this study was gathered through library research. Secondary sources such as books, journals and seminar papers were perused. Primary sources, including statutes and government papers and reports were also resorted to. In addition a limited field survey was conducted in Karidudu, Nairobi in order to augment the library research.

The aim of the survey was to establish the level of legal literacy in the area. The survey was conducted through a thematic questionnaire. Details of the survey and its results will be discussed more fully in Chapter Three.

As this study is concerned with the use of law as a resource for the poor, the field survey had, logically, to be based on poor people. More specially, the target of the survey was the urban poor. The reason why Karidudu was chosen was because of the poverty prevalent there. Its socio-economic conditions were seen as fairly representative of other poor areas in Nairobi. An additional reason was that I already had some contact with the area and thus was quite acquainted with the situation on the ground. I also knew some people there whom I thought would be useful for purposes of introduction.

The reason why a second research base was not chosen was mostly due to limitations of time. Since I considered Karidudu to be fairly representative of other poor areas I therefore decided to use it as my only base.

It is admitted that the majority of Kenya's poor population is to be found in the rural areas. However, the poor in the urban areas are also a marginalised section of Kenya's population. As the survey was not intended to be a comparison of legal literacy levels between rural and urban populations and as no research has been done on legal literacy levels among any segment of the urban poor, it seemed appropriate to do a survey in a poor urban community. Moreover, people in urban areas generally tend to be more enlightened than their rural counterparts due to greater exposure. If, as was assumed, there is legal illiteracy in urban areas, then it could be fairly implied that in rural areas there is at least as much, or greater, legal illiteracy. A survey in an urban area was therefore thought to be in order.

The survey was not intended to be a profound scientific enquiry but rather an impressionistic one. It was only intended to bring out insights into the relevant issues of the study, primarily people's knowledge of the law. Karidudu should therefore not be viewed as a case study but rather as a random sampling of a base intended to elicit the conclusions one would reach by carrying out this inquiry anywhere in Kenya.

It should be noted that I had a relatively short time to do all the research. The brevity of time affected both the breadth and depth of the study and limitations in the discussion arising therefrom are acknowledged. Thus the field survey comprised only fifty(50) questionnaires-(see Appendix 1).

## B: LITERATURE REVIEW

There is a general dearth of literature on legal literacy, not only in Kenya but also in other parts of the world. This may partly be due to the fact that legal literacy has for a long time been viewed as part of the wider area of legal assistance to the poor and not as a concern in its own right. However, a small body of literature is emerging, particularly in countries where active measures to promote legal literacy have been taken.

In India, Bhagwati has recorded the rampant lack of awareness by the poor of their legal rights and the effect this has on their access to justice (Bhagwati, 1977). Dias and Paul have written on the importance of legal resources in strategies by the rural poor to change the conditions of poverty in which they live. These writers emphasise the place of knowledge of the law in the development of such strategies. They have thus discussed ways of generating knowledge of law among the rural poor as an aid to their struggle for development (Dias and Paul, 1985).

The women's movement has also recognised law as an important factor in understanding the subjugation of women and also in developing strategies aimed at improving their position. Awareness by women of the law and legal rights has thus been seen as crucial in the struggle for women's emancipation. Legal literacy is increasingly the topic of seminars and conferences on Women Law and Development.

Thus Kuenyehia considers the role that law can play in empowering Ghanaian women in their struggle for development and discusses the challenges and obstacles that the lawyer faces in attempting to bring legal services and legal education to these women. She emphasises the need for legal education programmes to be relevant to the women's legal needs (Kuenyehia, 1990).

Butegwa discusses the economic, social and cultural obstacles faced by Ugandan women in the exercise of their legal rights even after they have become aware of their rights and emphasises the need for legal literacy programmes to not only disseminate law but also play a role in the removal of these obstacles (Butegwa, 1990). Tsanga has reported on the activities and strategies of action research projects in the form of a pilot paralegal scheme and a legal literacy scheme initiated in Seke, a rural area in Zimbabwe (Tsanga, 1990). It should be noted that the above examples of literature on women are given by way of illustration, as the present study does not focus on legal literacy for women specifically.

In Kenya however, the paucity of literature is even more marked. There is very little written directly on the issue of legal literacy. In particular there is a scarcity of written material on the role of knowledge of law for empowerment, and of statistical data regarding the level and extent of legal literacy.

While there is literature on women as a disadvantaged group focusing on their proprietary rights (Gutto, 1975) and legal status (Gutto, 1976), it has not investigated the question of awareness by women of legal provisions concerning them. Other researches which aim at ascertaining women's legal needs do not specifically investigate legal awareness levels<sup>17</sup>.

Though there has been acknowledgement of the importance of knowledge of law in various spheres, such as in the observance of the rule of law (Wako, 1986), in the exercise of civil and political rights (Kuria, 1986) and in meaningful law reform (Kattambo, 1984) there has been a lack of in-depth study on legal literacy. Thus for example while Gutto (Gutto, 1976) identifies lack of awareness of rights as one of the causes of women's disadvantaged position he does not dwell on the issue.

The limited literature with some bearing on legal literacy in Kenya will now be briefly discussed. Ooko-Ombaka<sup>18</sup> in outlining the role of the Public Law Institute in educating the public on their legal rights emphasises the importance of knowledge of law for purposes of empowerment of disadvantaged people. The strength of his work is that it puts the problem of ignorance of rights in its historical and socio-economic context. However, the scope of this work is necessarily limited as it is merely an outline of the work of one organisation.

Mutungi's<sup>19</sup> contribution is his recognition of the importance of law if law is to serve the purposes of development. However, it lacks the support of empirical data regarding knowledge of law and its impact on development. The above two sources are articles in literary journals and are therefore limited both in scope and in volume.

Okoth-Ogendo's work is relevant in that while it does not specifically deal with legal literacy, it shows up the problems caused by lack of proper communication of legislative provisions intended to bring about social change. His study also contains limited relevant data based on a survey of criminal prosecutions in Nyanza District.

Ochola's work (Ochola, 1990) is one of the few studies that have focused on legal literacy. It discusses the merits of legal literacy and the dangers of the presumption of knowledge of law. It also outlines the contributions of non-governmental agencies in promoting legal literacy and

suggests methods for communicating the law. This work is important as an introductory study. However its weakness is that it lacks both a firm theoretical framework and an empirical base.

The only study that has attempted to gauge the awareness of law and legal rights is by Butegwa (Butegwa, 1989). The study, conducted in Embakasi in Nairobi District and Samia in Kakamega District investigated women's awareness of their legal status and rights in the areas of matrimonial property, child custody, marriage and domestic violence. The overall picture that emerged was the widespread lack of legal awareness among women. While Butegwa's study is important and relevant, there is need to conduct research among other categories of people than women, and with regard to other aspects of law.

This study seeks to make a pioneering effort by focusing specifically and in considerable depth on the issue of legal literacy. The contribution that it seeks to make over and above the existing literature is, firstly, the provision of a conceptual framework for the issue of legal literacy. Legal literacy is seen in the context of the role of law as a resource of empowerment. Secondly, the study provides empirical data on the extent and level of legal literacy derived from both men and women respondents in areas of law that have not previously been investigated. Thirdly, the study attempts to develop an argument for the right to legal literacy. This is a task that, to the best of the writer's knowledge, has not previously been embarked upon. Finally the study engages in an in-depth discussion of how the problem of communication of law may be dealt with.

All in all it is hoped that the study will contribute to filling up the lacuna in knowledge in this area.

### C: HYPOTHESES AND ASSUMPTIONS

One of the hypotheses of this study is that the law in Kenya does not lay a legal or constitutional obligation on the state to make the law known to its citizens, nor does it provide a right to the individual to be informed of the law. On the contrary, an obligation is laid on the individual citizen to find out for himself what the law is. This hypothesis is expected to be proved in Chapter Two.



Secondly, it is expected that an examination of government policy and attitude toward legal knowledge will reveal that the government has not identified legal literacy as a priority concern and has formulated no clear policy concerning it. The government has also not provided appropriate and/or adequate means of communicating the law to the people. The hypothesis will also be proved in Chapter Two.

Thirdly the study expects to find that as a result of the lack of policy and of adequate means of communicating the law, Kenyans are generally unaware of normative provisions of the law, their rights under it and the machinery for protection of those rights. They are also generally unaware of their capacity to protect their interests under the law or how to use it effectively in the furtherance of their aspirations. Consequently Kenyans have been unable to use law as a resource of their empowerment towards the objective of development. The study will attempt to prove this hypothesis in Chapter Three.

In this study several assumptions have been made. The first assumption is that law is important as a resource of empowerment and can be used in its liberative function to help people improve the quality of their lives.

The second assumption is that knowledge of law is essential if law is to be so used in its liberative function. Thirdly, the study assumes that law is knowable, that law is not in itself mystical but is capable of being framed and promulgated in such a manner as to be understood.

A fourth assumption is that due to the importance of law, an individual has a right to be legally literate, that is to know the law. This right imposes a corresponding obligation on the state to formulate policy and provide machinery and resources for generating legal awareness among the population.

I shall now proceed to discuss the research issue and to define the concept of legal literacy, showing its significance and relevance in a developmental context.

**CHAPTER ONE**

**LEGAL LITERACY: ITS MEANING, SIGNIFICANCE  
AND STUDY APPROACH**

## 1:1 THE ISSUE

In the development process constant changes occur which affect the process of interaction amongst members of society. Due to these changes the state is required to formulate laws, both substantive and procedural, in order to govern change. It appears that demands for development usually spur a proliferation of laws (Seidman, 1978:6). Further, it becomes important for the legal system to devise ways of addressing the problems arising from the development process.

The importance of law as an instrument of social change in a developmental context can be highlighted by looking at some of the attributes of law. Law provides the framework for policy and is itself the highest form of articulation of policy. It can create, enforce and coordinate systems of obligations. It also provides certain rights, and machinery for enforcement of these rights. Further, law can be used to facilitate access to services. Most importantly, law, even if not always visibly so, is frequently the force that underlies power relations (Dias and Paul, 1985: 68).

In the context of power relations, law can serve two functions. It can, or may often be, used repressively by those who wield power in furtherance of their own interests and to maintain an unjust status quo. However, law can also be used in a liberative manner to challenge unjust social relations and to enhance the advancement of the disadvantaged in society (*Ibid*). Law can thus become a source of empowerment and therefore contribute to individual development and ultimately national development.

However, law cannot make any significant contribution to social change or be used in its liberative function if it is unknown. This is particularly so for countries like Kenya where law is often used or viewed as a means to bringing about social and economic development. If the legal system is to play a key role towards the execution of a country's policies, it is crucial that a substantial amount of its prescriptive content be known and understood. It is arguably true that a citizen who knows nothing of the existence of a particular law can only comply with it by accident (Mutungi, 1973: 11). Likewise, law cannot be used in a liberative manner by individuals or groups to

enhance their positions unless they are generally aware of the relevant legal provisions and how these influence their own positions.

The question therefore arises as to whether the Kenyan populace is aware of the provisions of law and of the law's significance to development.

The Kenya legal system, like the English one, is based on the principle that knowledge of law has to be presumed. The presumption of knowledge of law is expressed in the Latin maxim ignorantia juris non excusat which is translated as ignorance of the law is no defence<sup>1</sup>. The presumption of the knowledge of law also finds expression in the principle of notice, which postulates that laws once published are deemed to be known to all both procedurally and in content. The main reasoning behind the presumption of knowledge of law is that the law represents no more than the norms generated by the society itself and reflects the ethos and values of society. Law is thus seen as emanating from the society within which it operates and is indeed a reflection of the spirit of a people (Plucknett, 1956: 307).

The circumstances that prevail in Kenya cast doubt over the validity of the presumption. Kenya inherited the British legal system<sup>2</sup> whose underlying socio-cultural values are alien to Kenya's peoples. The norms of the legal system hence cannot be said to have been generated by the Kenyan society itself. The laws are written in English which is a foreign language not understandable by the majority of Kenyans. The situation is exacerbated by the high rate of illiteracy in the country.<sup>3</sup>

The law itself is couched in complex terminology and is thus unintelligible to the majority.

Moreover, the bottleneck structure of the Kenyan educational system is such that the University of Nairobi's Faculty of Law, the only one in the country, produces only small numbers of law graduates every year. Legal education is thus monopolised by a small professional elite<sup>4</sup>. In the affluent Western societies lawyers play a useful role as information brokers about the workings of the legal system (Seidman, 1972: 17).

However, in Kenya the paucity of lawyers both in numbers and in distribution coupled

with the fact that the majority of people cannot afford legal fees, means that legal services in Kenya are largely inaccessible to most. Lawyers in Kenya cannot therefore play the role of information brokers.

In the traditional African societies, where legal norms were generated in and from the society itself, there was "automatic" assimilation or internalisation of the substance of such norms. The customary laws of the community were assimilated from childhood through such means as songs, folklore, legends, riddles and puzzles and did not need to be formally communicated (Kenyatta, 1970: 99-101). However, in present day Kenya where the law has a foreign base and cannot be assimilated or internalised in a similar manner it is posited that the substance of law has to be actively disseminated to the people if it is to be known.

Despite the presumption of knowledge of law the official communication of laws in Kenya falls far short of what is requisite. To begin with, the process of law-making by Kenya's Parliament is hardly ever attended by publicisation. Pursuant to the principle of notice, once a law has been passed and notice of its coming into effect is given in the Kenya Gazette, the perceived official responsibility to publicise the law seems to come to an end. Yet the readership of the Gazette is generally confined to lawyers and the higher cadres of bureaucratic officials. Still less is there any effort to communicate to the public the masses of law embodied not only in statute but in the inherited common law and judge-made decisions. Subsidiary legislation is also only published in the Gazette. The statute books do not themselves contain provisions for dissemination of the laws once passed. Moreover, in the rural areas where the public frequently comes face to face with bureaucratic officials, a study by Okoth-Ogendo indicates that communication of legal phenomena comes in a distorted manner which does not result in knowledge of the prescriptive content of legislation (Okoth-Ogendo, 1978: 444 et seq).

It is a thesis of this study that the combination of a legal system with a foreign base which presumes knowledge of law and the lack of communication of law to the people has resulted in ignorance of law among the population.

This ignorance has far-reaching implications in a country where the majority of the population are poor. This is clearly evident in the judicial arena. Most litigants in Kenya are unrepresented as they cannot afford legal fees and as alternative legal services are not readily available. Although the Kenya Constitution grants the individual a right to be heard before a court of law<sup>5</sup> this right has little value to those who due to ignorance cannot conduct their cases competently and are therefore unable to protect their interests.

Ignorance of the prescriptive content of law also means that people may be prosecuted for acts or omissions which they do not know are unlawful but whose unlawfulness they are presumed to know. A study by Okoth-Ogendo, for instance, found that as many as 48% of persons prosecuted in Nyanza for agricultural crimes had no prior knowledge of the criminal content of their acts (Okoth-Ogendo, 1978: 37).

Another result of ignorance of law is that rights, benefits or remedies which exist under common law, welfare legislation and the Constitution are not taken advantage of. While it may be argued that factors other than knowledge, for instance financial ability, are relevant to the enforcement of rights knowledge must still be the starting point. Further, not only is there ignorance of legal remedies but also the inability to recognise situations as ones calling for legal solutions. Lack of knowledge of facilitative law also means that people are unable to make rational choices or decisions, even in matters which affect their own livelihood or personal status. Mutungi, for instance, found that among groups of businessmen in Kiambu, Nyeri, Thika and Kitui, practically none knew the characteristics, requirements or relative merits and demerits of companies, sole proprietorships or partnerships as forms of alternative business enterprises.(Mutungi, 1973: 30)<sup>6</sup>.

Unawareness of the law also impinges on law and administrative reform as it adversely affects the capacity and ability of Kenyans to influence or propose changes in the legal system and in the operation of the legislative, executive and judicial process (Ooko-Ombaka, 1985: 175).

The problem of legal illiteracy is therefore significant. Firstly ignorance of law severely restricts people's access to the legal system and their effectiveness within the legal system. Further, it limits their capacity to exercise rational legal choices or to use law and the legal process for their own advancement. Legal illiteracy in a very direct way impinges on individual development and ultimately on national development. For this reason there is need to study the issue comprehensively in order to assess the depth of the problem and also to explore ways of dealing with the problem.

## 1.2 LEGAL LITERACY: TOWARDS AN UNDERSTANDING OF ITS MEANING

A very narrow definition of legal literacy would be knowledge of a country's existing laws. On a wider scope, however, the idea of awareness of rights and duties comes in and legal literacy may then be defined as constituting general "knowledge by the citizenry of a country's existing law and consciousness of the rights and duties under such laws" (Ochola, 1990: 1).

However, just as general literacy is aimed towards certain ends so legal literacy must be directed at certain objectives. The following definition of literacy is thought to be more instructive in this regard. Literacy is:

"Ability to read and write; progress; self-sufficiency; hope; the shortest distance to social and economic development".<sup>7</sup>

From the above version literacy is conceived as consisting of more than just the imparting of formal skills of reading and writing; rather literacy is seen as offering the way to progress. Individuals with literacy skills can, for instance, avail themselves of new information and ideas from the print media, are more likely to participate in, and benefit from, health and agriculture education programmes and are generally more in control of their own lives. Literacy thus aims at improving people's lives, thereby moving them closer to their development goals.

In the same way, a consideration of the objectives of legal literacy should go into conceptualisation of the term. Knowledge of legal provisions is only useful if it helps towards attainment of certain goals. The goals of legal literacy should be determined by reference to the conception of law and its function in development.

At a conference in 1989 in the Philippines on strategies for legal literacy of women<sup>8</sup>, law was seen as a weapon that may be used to advance the women's interests. Legal literacy was viewed as a legal strategy for bringing about social transformation and the



uplifting of women's status. In pursuance of this the goals of legal literacy programmes for women were held to be the following:

1. transfer information on the content of the law from one person to another;
2. critically evaluate the inadequacies of the law;
3. research and evaluate information as to whether the law protects or denies women their rights;
4. raise consciousness on the socio-economic and political realities and their rights and to enable women to act for change through legal or extra-legal means;
5. be conscious of women's psychological distance to law and lack of mental and physical access to it; and
6. promote collective legal action by women through their organisations and mobilisation to solve actual legal problems.<sup>9</sup>

The above goals are perceived in terms of the role of law in the women's struggle for equality and development.

If law is viewed as a tool that can be used for the empowerment of poor people resulting in improvement of their lives, then some knowledge of legal provisions is important only if it will help in the attainment of the goal of empowerment and development.

It is therefore thought that knowledge of law is only helpful if it helps people to become cognisant of their rights and duties, of the machinery for the protection of those rights, and know how to use such machinery. Further, knowledge of law should help people make rational choices and decisions in their fields of endeavour in as far as these interact with law. Knowledge should also enable people to detect lacunae or unjust provisions in the law and to use law to mobilise and lobby for its reform. In short, literacy in law should enable people to use the law to improve their lives.

The above analysis suggests that legal literacy has two basic components, namely education and action; in other words - conscientisation and mobilisation. The following

view is an example of the Asia-Pacific feminist approach to the education aspect of legal literacy:

"Legal literacy includes the giving of information on the contents of the law. Knowledge is made available to women by telling them their rights, their possible courses of action on particular situations and their alternative rights. It also touches on what the law ought to be vis-a-vis what the law is". Furthermore, it entails routine group discussions with members of the academe, professionals and women themselves. It ensures collective review of issues and the law."<sup>10</sup>

One of the aims of education on the law is to raise people's consciousness on their situations and how the law relates to these situations. Knowledge of rights and of machinery for their enforcement is aimed at making people assertive of their rights.

The statement that knowledge is power is embracingly relevant in the context of legal knowledge. Existing systems of education impart knowledge, and therefore power, to specific segments of society. This is also true of education in law.

An important function of the knowledge of law is that it helps to remove feelings of alienation from the law that the poor often have. Rahman of the International Labour Organisation in analysing the impact of law on landless farmers found that as the farmers engaged in social analysis and investigation they progressively acquired greater knowledge of their legal rights and thereby the perception of deprivation from them. Sharing this perception among themselves stimulated them into action. There was thus a transformation from a state of alienation rooted in ignorance - first into awareness that the power (right) was theirs by virtue of law and then into an act of exercising that power.<sup>11</sup>

Thus knowledge of one's entitlement helps to replace feelings of alienation, resignation and dependency with a new awareness of one's dignity and rights. Even where the law is defective or oppressive, knowledge of this at least creates awareness of the reality. One then knows the limitations of law and can make decisions as to whether and how far to use law to achieve one's aspirations.

The second main component of legal literacy is action. The aim here is to encourage people, once their consciousness is aroused, to do something about their conditions, to use their knowledge of law to improve their conditions. Therefore not only should people be educated on their rights and machinery for enforcing them but also on how to go about setting such machinery in motion in specific instances. Where there are shortcomings in the law the aim is to get people to start the processes for its change.

The result of the conscientisation process is that it can stimulate action. Such action may be aimed at realising rights, remedying abuses of power or pointing out deficiencies in the law. It may take the form of recourse to the courts, sending deputations to present demands to relevant government officials, publicising contradictions and grievances, and other such tactics. Action may also focus on the initiation or development of income-generating and other self-help activities using existing legal framework.

Rahman aptly sums up the interplay of the "education" and "action" elements of legal literacy in the experience of landless workers in Asia:

"Law and legal knowledge which they acquired .... constituted strategic elements of conscientization and mobilisation of the people. This gave them concrete issues around which participatory, collective activity could be focused."<sup>12</sup>

The functional dimension of legal literacy is crucial. While knowledge of law can be gained, in part, by learning about "rules" found in statutes, regulations, court-made doctrines and other sources, this is only one aspect of knowledge of law. More important is knowledge of the flexibilities that are available through the process of interpreting law. Knowing how to manipulate law-making processes towards one's own group values and objectives is a most important aspect of knowledge of law (Ooko - Ombaka, 1985).

The kind of legal knowledge that is relevant for empowerment is therefore not literal or formal but functional. It involves the acquisition not only of formal knowledge but also of skills which enable people to understand law and to use it effectively to

promote their objectives. The present study is thus concerned with legal literacy of a functional kind.

A further clarification can now be made. In this study legal literacy is discussed with exclusive reference to laymen. Lawyers are, by implication, not addressed. Lawyers by virtue of their training and practice are deemed to possess sufficient knowledge of law, and of means of finding information about law to enable them to use law for the articulation of legal rights. Indeed, law is their means of livelihood. Moreover, lawyers often belong to the affluent segment of the society. The present study is concerned with the use of law for empowerment of laymen who in the Kenyan context are also mostly poor people.

### 1.3 THE RELEVANCE OF LEGAL LITERACY IN DEVELOPMENT

In order to underline the importance of knowledge of law in development, it is necessary to highlight the role of law as a tool for empowerment, that is, how law can be used to help the poor and disadvantaged to realise their aspirations and to improve their quality of life.

In saying that law can be used as a tool of improvement, it is admitted that law is not always neutral and may (and often does) favour one class over classes. For instance certain categories of people, such as workers, consumers and the poor may not enjoy the same legal protection as employers, manufacturers and others belonging to a different socio-economic class.

Further, it should be recognised that the passing of law by itself does not cause change. Mechanisms for effective enforcement of law must be put in place and utilised. This is so especially bearing in mind that institutions or practices rooted in tradition tend to resist change imposed by the law. The foregoing notwithstanding, it is our argument that the law can play a useful role in enhancing the development of the poor and the disadvantaged.

The discussion that follows is aimed at illustrating some ways in which the law can be utilised as a resource for positive change.

Law in its operation in society is inextricably connected with power and politics. Law, even if not always visibly so, is frequently the force that underlies power relations. In the context of power relations two contradictory phenomena about law appear. On the one hand it is used - consciously or unconsciously - by those who wield power to maintain the status quo. This is the repressive function of law. On the other hand, law can be used to challenge unjust social relations and practices and to enhance the advancement of the disadvantaged in society. This is the liberative function of law (Dias and Paul, 1985:68.)

The use of law in its repressive function is quite evident in society. In Kenya Okoth-Ogendo has demonstrated how the settler community used law, to appropriate the best land for itself and to systematically underdevelop the African reserves (Okoth-Ogendo, 1990) through the passing of the Crown Lands Ordinance, 1920. Law was also used to obtain a steady supply of cheap African labour and generally to create a repressive "law and order" system designed to subjugate the Africans. In the post colonial period colonial legal and administration structures have largely been perpetuated thus resulting in the retention of the authoritarian orientation of administrative authorities. Thus law and the pretext of law have been used by the police and other administrative authorities to abuse people and render them impotent politically, for instance through the use of such statutes as the Chiefs' Authority Act (Chapter 128) and the Public Order Act (Chapter 56). Law may also be used to maintain unjust relations of land tenure or employment, as happens in countries with policies of racial discrimination.

Let me turn to the liberative function of law, which is the focal point of this discussion. One of the reasons why law may be used in a liberative way is because of its dual nature. While there are aspects of it that confer power on the ruling classes (and hence the possibility for its abuse), there are also aspects that provide for limitations of power. Western legal ideology, for instance, protects not only property related interests but also a "human" interest in freedom from arbitrary exercise of power (Tigar, 1977: 321). The American and French constitutions declare that liberty, fairness and justice ought to be protected by a regime's legislature and its judicial tribunals. These concepts have found their way into most Third World legal systems mostly through the process of colonialism, if not in observance at least in principle.

Further, "law" comes from many sources and in many forms. State law is a source of power for officials but it is also a source of limitations on power and, often, a source of entitlements for citizens (e.g. labour welfare laws, tenancy protection laws and land reform legislation). However, sources relevant to the needs of the poor go beyond the terms of official legislation and "rules" laid down by court decisions. The constitution and the ideology and doctrines which inform it are very relevant. Other sources of law

include principles of natural law (e.g. all people are endowed with the same basic rights), and other jurisprudential concepts such as the rule of law, ultra vires, and natural justice. International law, notably covenants which proclaim the existence of universal human rights, is another source. Such covenants, universally declared and ratified by one's own government, are increasingly important to poor and oppressed people. Examples include Conventions of the International Labour Organisation and covenants which proclaim the existence of rights to basic needs such as shelter, food, and education.

Law thus becomes a potential resource for the poor. Depending on the need at hand, all these sources of law can be used for various purposes.

Tigar discusses the uses that can be made of law to aid groups that have rejected an existing system as illegitimate and who seek revolutionary change. According to him, attempts may be made to modify the substance of the law or to apply its terms (when ambiguities appear) in ways that are to the dissidents' advantage. Formal laws may also be reformulated as "maxims of prudence" to minimise the harmful consequences of lawlessness. Jurisprudents and legal ideologists will be called upon to evaluate the extent to which the system's rules can accommodate the dissidents' claims to justice (Tigar, 1977: 315). However, when it becomes clear that the insurgents' demands cannot be accommodated within the brigand's legal ideology, the insurgents break into open conflict with it and reject its legitimacy, substituting for it their own legal ideology.

The present study, however, is not concerned with the use of law as an instrument of revolution. Rather it looks at the use of law as a resource for empowerment within the existing legal system. By empowerment we mean the process by which the poor and disadvantaged acquire the means by which to improve their conditions - socially, politically and economically. Any changes necessitated by this process would be within the existing legal and political order.

There are various purposes for which law may be used in the above sense as a source of empowerment. For instance, law may be used to claim entitlements provided by the terms of the law of the state but denied in practice; in the same tenor, the law may be used to expose contradictions between prevailing exploitative or repressive practices and existing legal principles. It may further be used to denounce corrupt, oppressive or lawless administration and to secure redress against abuses of power by those charged with administering justice, notably local police and judicial officials. Other purposes include the articulation of claims for recognition of rights, such as the right to equal treatment, the right to be heard and to participate in governmental decision-making, as well as the pressing of demands for substantive and procedural legal reforms.

Studies by the International Centre for Law and Development indicate that law can be used (and is being used) by grassroots and social action groups to organise group economic activity and to resolve, amicably, intra-community disputes without spending scarce community resources on advocates' fees and court costs (Dias and Paul, 1985:69).

It is acknowledged that invocation of law in itself provides no assurance that officials, landlords and other targets of complaints will respond with sincerity, let alone conform, but may in fact retaliate with force. However, knowledge of law is still crucial as it helps the victims of illegal dealings understand that they are wronged, that they are right to demand a remedy. This kind of knowledge, by itself, offers some basis of power to control the conduct of the wrongdoer.

Collective action is important if law is to be used as a resource. In the Philippines, collective indigenous organisations of the rural poor have developed strategies whereby they use law to change their conditions of poverty. Such organisations because of the numbers of people involved have the advantage of being able to aggregate financial resources and to provide confidence and security to their members. Law is important in the very formation and development of such organisations as it is



used to secure legal personality and in the formation of contractual and other obligations.

A good illustration of how law can be used to advance legal rights is the experience of the people of Kagawasan in the Philippines. These people, had lived on government lands for years but were abruptly told that they were "squatters" and ordered to move out as the government intended to lease the lands to various businesses for purposes of industrial development. However, the Kagawasan people learned from a sympathetic lawyer that the government officials had the legal discretion not to lease their homelands and also had the power (if they chose to exercise it) to lease the lands to any other group. These people, who depended on these lands for their development, then formulated and pressed their superior legal claims to possession of the lands and by collective action were able to make government officials recognise the compelling justice of those claims. After this victory the Kagawasan people went on to demand and obtain government aid in developing health care and other facilities for their community (Dias and Paul, 1985:73).

A Kenyan example may be given to illustrate how the use of law can protect people's interests. In October 1989 a city magistrate's court made an order that a residential block in a low-income estate in Nairobi, Hamza estate, be closed after the landlords had pleaded guilty to a charge of failing to comply with a public health official's notice to close down uninhabitable premises under the Public Health Act. The nine tenants had been given fourteen days within which to vacate the premises. These tenants had lived in the block, consisting of one-room units, for a long time - some for as long as ten years. They were all poor, with average monthly incomes of KShs.1,500 (approximately 30 U.S. dollars) and with families to support. If the magistrate's order were to be carried out the nine tenants would have had to seek accommodation elsewhere at higher rents, perhaps amounting to half their monthly income, which they could hardly afford. In their desperation the tenants chanced upon the Kituo Cha Sheria (Legal Advice Centre), a legal aid organisation, and presented their grievances. They were saved from eviction after the Centre successfully applied to the High Court for the closure order to be set aside on the grounds that it had been wrongly made.

More than a year later the tenants were still living in the premises (Sunday Nation, October 28, 1990).

While the effectiveness of collective action is acknowledged it is thought that there is also scope for persons acting in their individual capacity to use law for empowerment. For instance, "welfare" laws such as labour welfare, consumer protection and tenant protection legislation may be used by individuals to redress their grievances or enforce their rights. The constitution can be used to challenge illegal or unjust practices. Facilitative laws, such as business law and the law of contract may also be used, particularly in economic activity, to secure legal personality, access to credit and in the formation of contractual obligations.

I shall now discuss the relevance of legal literacy to development in Kenya. If knowledge of law can be used to improve people's lives then legal literacy is important to development. This is because development is about improvement. At this point it is pertinent that we clarify our concept of development. The meaning of development has been a subject of controversy. The orthodox "classical" school of the late 18th and 19th centuries led by Adam Smith and Ricardo saw development purely in terms of output and production. Increase in output was equated with growth and hence development. Macro-economic indicia such as the Gross National Product and income per capita were used as the chief measures of a country's development. This thinking dominated development planning in the Third World through the 1950s and early 1960s (Kitching, 1989:16).

However, the orthodox theory has been challenged by other theories. For instance it has been thought that the equitable distribution of output in society is a crucial aspect in assessing development. Other groups such as the International Labour Organisation have postulated that development must be concerned with meeting basic needs such as food, clothing, shelter, health and education. From the mid - 1980's onwards the conception of development has gone even further to include such aspects as the level of individual liberty in a country and the establishment of democratic institutions such

as a free press, and free and fair elections. Cumulatively, these later theories approach development from a humanistic rather than a purely growth oriented point of view.

This approach, as expressed in the passage below, is acceptable to this discussion and is adopted hereafter:

"Development must be concerned with the quality of life and must lead to individual freedom and security as well as the full realisation of the potential of man".<sup>13</sup>

The Kenya Government in its policy statements has adopted the above approach. It was stated in the 1989-1993 Development Plan that:

"Progress, ... means not only material well-being but a general improvement in the quality of life for all Kenyans".<sup>14</sup>

One of the problems that the majority of Kenyans face is poverty, demonstrated by poor health and low nutrition standards, lack of housing and low educational levels.

There is a great need in Kenya to improve the economic base in order to tackle these problems. In this connection it has been recognised that self-help activities are crucial to the raising of people's standards of living.<sup>15</sup>

At the collective level this involves the formation of indigenous self-supporting groups engaged in income- generation activities and projects such as education or health care. In Kenya the spirit of collective self-help espoused in the motto "Harambee" has been instrumental in the formation of such groups as welfare associations, co-operative societies and women groups.

Law is an important resource in the formation and sustenance of such groups. Firstly, knowledge of law is important in the securing of the legal personality of such groups. It is important for the groups to know the various kinds of legal entities that are available under the law and thereafter to make rational decisions as to how to register in-order to secure their best interests.

Further, as groups become more active, there is greater contact with the wider spheres of society which necessitates the entering of contractual or other obligations instead of the informal practices used for purely intra-group activities. This again requires knowledge of the requisite law.

The government of Kenya has declared a shift of focus to the rural areas<sup>15</sup> but due to a combination of factors, including leakages in delivery systems and inefficient administration, the rural poor often do not get the benefits intended for them. Indigenous groups can exert pressure on the relevant authorities aimed at ensuring that benefits intended for the rural folk do reach them.

At the individual level, business activity in the jua kali (informal) sector, is increasingly gaining importance in the country's economy. For the person in business, knowledge of laws relating to business is important. There is need to know the various modes that business can be carried on, such as companies and sole proprietorships, and their relative advantages and disadvantages. Business persons are also likely to enter into various contractual obligations such as leases and agency agreements and therefore need to know the rudiments of the law relating to such obligations.

In the judicial arena ignorance of procedural rules of court and of substantive law means that most people, being unrepresented, are unable to put up a good case or defence even where they have one. Knowledge of court procedure and of substantive law relating to their cases would therefore help people in filing of their cases or defences. Both the individual concerned and the judicial process would be assisted and this would contribute to better administration of justice.

Land in Kenya is a commodity of both economic and emotional value. Almost daily there are land transactions involving sales, purchases, subdivisions, mortgages and leases. These involve a labyrinth of procedures such as obtaining the consent of the Land Control Board (in the case of agricultural land), searching title, preparation of transfer documents, presentation for stamp duty and registration which leave many

people confused. Ignorance of procedures may sometimes also render transactions void.

There are also problems experienced by tenants and employees. The pertinent issues relating to legal illiteracy on the part of these groups of people will be discussed later on in this study.

However despite the fact that certain laws provide rights and machinery for their protection, there are still laws that are outmoded, oppressive or unjust. For women discriminatory laws and practices still exist. The needs of categories of people such as the handicapped, children and consumers are largely unmet by the legal system. Sometimes one cannot get very far with the law as it is. Nevertheless, knowledge of the inadequacies of the law can result in pressure for its reform. Indeed knowledge of law must be the starting point for efforts to change it for the better as it is only then that people are able to recognise deficiencies and point them out.

That knowledge of law promotes general enlightenment and awareness of society cannot be gainsaid. Ooko-Ombaka's opinion, with which I agree, is that in the final analysis, the surest bulwark against infringement of public rights is a legally educated public (Ooko-Ombaka, 1985: 175). The above examples serve to show how law may be used to cause positive developments in society. Creative use of law can help in improving the quality of people's lives, thus promoting development.

## **CHAPTER TWO**

### **KNOWLEDGE AND COMMUNICATION OF LAW:**

#### **POLICY, LAW AND PRACTICE**

## 2.1 POLICY

### 2.1.1 THE COLONIAL ERA

The colonial government did not formulate any direct policy on legal literacy. However, a look at its policy regarding the legal system and legal education, together with an examination of the development of the legal profession will be useful in shedding light on the inclination of the colonial government with regard to popular knowledge of the law. This examination is intended to be brief. It should at the same time be borne in mind that policy on those matters has to be seen in the light of the general colonial attitude and policy regarding Africans.

Kenya became a British Protectorate in 1895 and in 1920 achieved a Crown colony status. The rationales for colonialism were the search for raw materials, the need for new markets and the need to create new avenues for capital. Colonialism thus aimed at economically exploiting the colonised land and its people. Such an aim was logically inimical to the social and economic progress of the indigenous people of Kenya.

Indeed, economic and political development were looked at from a European perspective. Measures, including legal ones,<sup>1</sup> were taken to advance development with little or no regard for Africans who were seen primarily as a source of labour for European agriculture. Their needs and welfare were consequently subordinated to those of the settlers (Ghai and McAuslan, 1970:96).

The colonial justification for a non-development policy for Africans was that the African was impervious to efforts to improve him as his intellectual capacities could not accommodate rapid change.<sup>2</sup> The colonialists hence developed the trusteeship doctrine which held that the British were holding the country in trust for the Africans until the latter 'came of age'. The African was regarded as a child who could not be allowed to decide for himself what was best for him (Sheffield, 1973:18).

This paternalistic attitude towards the Africans permeated the colonial policy of administration of justice. A dual system of justice was set up, one for Europeans and Asians, and the other for Africans.<sup>3</sup> The first system comprised a Supreme Court with subordinate courts below it, staffed with English speaking personnel and applying English law. The adversarial system, with its emphasis on legal representation, was followed. The African court system consisted of native tribunals. The native tribunals were introduced by the Native Tribunal Rules, 1913 and developed further by the Native Tribunals Ordinance, 1930. These tribunals were staffed by Africans, who were either traditional court holders or nominees of the colonial government. It should be noted that the tribunal system was not a part of the judiciary but was an extension of the provincial administration. Under the 1930 Native Tribunals Ordinance no advocates were allowed into the Tribunals.

While they had jurisdiction in English type criminal law, the tribunals were largely supposed to apply the different customary laws of the various tribes in Kenya. The colonial authorities wanted to keep Africans from the influence of other types of laws, and particularly from English procedural law. Even while applying customary law the tribunals were to do so "according to substantial justice and without undue regard to technicalities of procedure and without undue delay."<sup>4</sup> As Munoru has commented, the provision regarding "technicalities of procedure" is surprising coming from the British who have always believed that justice is often hidden in the complexities of procedure (Munoru, 1973:2).

This exclusion from the English type of law, and especially from English procedural law, was justified on the ground that Africans could not understand the British notion of justice.

The Africans, chafing under the legal order, wanted an integrated system not so much because they were convinced of the justice of the British system but because they increasingly regarded their own system as an overt indication of the second class



justice meted out to them, and the English system available to the immigrant as another unjustified privilege for the immigrant. (Ghai and McAuslan, 1970: 164).

It was not until 1967 that the court system was integrated. With the passing of the Judicature Act and The Magistrate's Courts Act<sup>5</sup> the old separation of courts on racial lines was removed. However, under the Kadhi's Courts Act,<sup>6</sup> jurisdiction in Islamic law on personal matters was retained by the Kadhi's courts. It is however thought that the integration of the court system came rather late in the day. It is my submission that the long period of segregation had taken its toll and had the effect of alienating the African people from the English type of legal system. Their main exposure to it had been in the criminal arena, where they were usually on the wrong side of the law.

Further, the integration of the court system was accompanied by a restatement of the reception of English law whereby customary law was relegated to the bottom in the hierarchy of laws.

The foregoing now brings us to colonial policy regarding legal education. Education in general was equally characterised by racial bias on the part of the colonialists. Apart from early missionary efforts, education for the Africans came as an afterthought and was only provided to serve the interests of the colonialists.

For the colonialists realised that it was necessary to educate a small cadre of Africans in order to perpetuate a more productive menial class. Also needed was an enlightened cadre to support the administration as government clerks and messengers, and to effect the "indirect rule" policy as chiefs and headmen. Even then, the education was to be as rudimentary as possible, to tailor them for the lowest rung in the social, economic and political ladder. Again, the myth of the African's intellectual inferiority was used as justification. The education system for Africans was therefore marked by deprivation and neglect with African schools having the poorest facilities and the lowest educational levels.

The worst neglected area was perhaps legal education. Upto 1960 there were no facilities for legal training in East Africa, indeed in the whole of Africa. This was due to a deliberate policy of the colonial government to curtail legal education for Africans. As a matter of policy, no scholarships were given to Africans to study law. The first Kenyan African lawyer, Argwings Kodhek, had to go to England on the pretext that he was going to study economics (Jackson, 1970: [ix]).

The first African from Kenya to go to England with the declared intention of studying law did so in 1954.<sup>9</sup> By this time the colonial government had changed its attitude of opposition to one of near apathy. However, anybody who wished to study law had to do so either in Britain or in India and had to use his own resources as the government still did not provide scholarships to Africans to study law. The cost of legal studies abroad was prohibitive for all but the most affluent Africans.

The effectiveness of the colonial policy is seen in the extreme paucity of African lawyers in the colonial era. As at Independence Day Kenya had only six African lawyers (Munoru, 1973: 7). The position in the other two East African countries was equally dismal.<sup>10</sup>

Two reasons were advanced in official circles for this policy of denying Africans legal education. First, it was said that Kenya needed doctors and agriculturists more than legal technicians. Secondly a view was advanced that Africans wished to study law as a preparation for a career in politics (Jackson, 1970: 1).

The latter reason would seem to me to have been the more sincerely held one. While it may not necessarily have been true that legal studies would be a preparation for a political career, yet knowledge of law can result in conscientization which in turn can lead to political agitation. Such agitation was clearly something not to be encouraged by the colonial government.

With the advent of independence, it having become clear that Kenya could no longer be a "white man's country", it was realised that measures had to be taken to alleviate the situation. In 1960, a committee on legal education was appointed by the Lord Chancellor in England. This committee, headed by Lord Denning, had the task of making recommendations regarding the development of legal education in Africa.

The Committee's view was that legal education in East Africa should be uniform and should not follow the English dual system. Its recommendation was for qualification through a law degree from a faculty of law followed by one year of practical training, as opposed to qualification through articled clerkship.<sup>11</sup>

The Tanzania government responded to the committee's recommendation by passing an Act in February 1961 establishing the University College of Dar-es-Salaam as a constituent college of the University of East Africa. A law faculty was then set up in the new college.

In Kenya matters were not so plain sailing. There was disagreement between the Government and the Law Society as to the method of qualification to adopt. The Government was in favour of university training while the Bar preferred articled clerkship coupled with attendance at a School of Law. The Government accepted the latter method only as additional to the former method, which resulted in a dual system of entry into the profession (Ghai and McAuslan, 1970: 395, 396).

In 1970, however, a Faculty of Law was established at the University of Nairobi and after talks between the Government, the University and the Bar, it was agreed that the law degree from that University would be the basic qualification for entry into the profession, though other legal qualifications would still be recognised.

Legal education for Africans in Kenya thus came in the twilight of colonial rule. The Africans' deliberate exclusion from legal education meant that in colonial times the

chief actors in the shaping of the legal profession were the immigrant races, namely the Europeans and Asians.

The legal profession in Kenya developed as part of the elite colonial society. Its leaders were the leaders of the Asian and European communities in public and political affairs, and the bulk of its work was for these communities. According to Ghai and McAuslan:

"The Bar had been deliberately excluded from professional contact with the African part of society in 1930, and inevitably afterwards, its interest in that part of society and its problems waned." (Ibid:402)

It is thought that even if there had been no deliberate exclusion, the interplay of class interests would have had the same result.

The development of the legal profession was characterised by a struggle to obtain the privilege and powers of self-government similar to those of English solicitors. This trend is especially marked from 1949 when the Law Society of Kenya Act<sup>12</sup> established the Law Society as an incorporated body.

One of the features of the 1949 Act was a tightening of the monopoly of legal practice. It became an offence to prepare documents relating to movable and immovable property in the expectation of being paid for doing so if one was unqualified. Thus the profession made sure of retaining a near-monopoly of work in connection with transactions in registered land and preventing a class of land brokers or firms of non-lawyers or both lawyers and non-lawyers providing a cheap service to the owners of registered land (Ibid:388).

The only infringement of the monopoly of the Bar was the continued existence of vakeels (lay advocates) who, on giving bond for good behaviour could be licensed by the Chief Justice to appear in Muslim subordinate courts.

In 1952, by amendments<sup>13</sup> to the Advocates Act and the Law Society of Kenya Act, both of 1949, membership to the Law Society became compulsory. An advocate was required to pay a subscription to the Law Society at the same time as he paid for his annual practising certificate, and the latter would not be issued by the Registrar until the subscription had been paid. A closed shop was now thus given to the lawyers' "trade union". This had the effect of strengthening the monopoly by the Bar of legal practice.

In 1961, a new Advocates Act was passed.<sup>14</sup> Among the new provisions was one prohibiting all forms of undercutting, that is charging lower fees than those prescribed. The Minister, introducing the Bill in the Legislative Council, admitted that the provisions against undercutting were different from those in England but stated that "we do not think (undercutting) proper in the present context of Kenya".<sup>15</sup> No reasons were given for this. At the Committee stage of the Bill, where an amendment was introduced to stiffen provisions against undercutting still further, it was made clear that the prohibition against undercutting was extended to undercutting as a form of legal aid.<sup>16</sup>

The 1961 Act also introduced harsher provisions against unqualified persons. Though these did not extend to public officers, or persons employed by advocates, such as their clerks, the general effect of these provisions was to increase the occasions when it may be necessary to use the services of an advocate.

The results of all these changes was such an increase in the privileges and powers for the Bar that it achieved a position of greater monopoly and self-government than the solicitor's profession in England.

The detachment of the Bar from the African part of the population is shown in its lack of concern about the shortage of African lawyers. The 1961 Advocates Act had virtually eliminated the future of lawyers qualified in Commonwealth countries outside

the United Kingdom to come to Kenya and practise here. While much concern was expressed about the effect of this provision on Irish and Asian lawyers there was no equivalent concern for the lack of African advocates, and the need to produce some as soon as possible. If anything, considerable hostility was shown to those African advocates who had graduated from the University College of Dar-es-Salaam.

There was hardly any mention of the problem of legal aid and advice for the poor, and then only as a subsidiary argument for allowing Commonwealth lawyers to practice in Kenya.<sup>17</sup> And no mention was made of the adverse effect on legal aid that the provisions against undercutting had. Such little legal aid as existed was not widely publicised so that few people could take advantage of it. (Ibid: 400).

The Bar seemed to feel more at home in British traditions and practices than in the realities of Kenyan society. Kenya was perceived still as a white man's country and the solution to problems experienced by the Bar was seen to be in becoming more English. For instance in the debate regarding the issue of Irishmen and Indians coming to practice in Kenya there was copious reference to the law and practice in England and India (which followed English law and practice). These references were used as if it were self-evident that the position in England and, to a lesser extent in India, should be reproduced in Kenya with no variations (Ibid: 394-395).

It should be noted that the Law Society's campaign for more and more privileges and its entrenchment as part of the elite were accepted by the colonial government. Thus the changes that were brought about by the 1949 Acts and subsequent amendments had the sanction of the government. It was only in the debate over the kind of legal education to be established in Kenya that there was a serious clash between the government and the Bar. But, even then the Bar compromised its stand in order to retain its acceptability with the government. Ghai and McAuslan have commented that the Bar had concluded that so long as it confined itself to proposals for technical law reform and its own organisation and self-government and did not, as a corporate body,

become involved in contentious political issues, it would keep on the right side of government and usually get its way.

To the extent that the government assented to the Bar's wishes and actions, the development of the legal profession in Kenya can be accurately described as forming part of colonial policy.

Although the colonial government did not make direct policy on legal literacy, its policy on the legal system and legal education had negative implications on legal literacy. The development of the legal profession to which the colonial government gave its assent, also had negative implications for legal literacy.

First, the segregation of the legal system along racial lines had the effect of keeping Africans from English law and procedure. This kept them unaware of the institutions and workings of the English legal system, and of concepts imbued in English jurisprudence, such as the rule of law. They were also thus kept ignorant of their rights, recognised and protected by law, such as the right to life and liberty, the freedoms of conscience and expression and the right to property. As already mentioned, the integration of the court system in 1967 was accompanied by a restatement of the superiority of English law over customary law.

Secondly, the exclusion of Africans from legal education meant that Africans as a population group were deprived of legal knowledge. Not even a small class of people versed in the law was allowed. Even after colonial attitude to legal education turned from hostility to near apathy, scholarships for legal study were still not being granted to Africans. The extremely small number of African lawyers at independence testifies to the effectiveness of the deprivation. For instance in 1968, out of 292 practising advocates, only 11 were Africans (Ibid 403).

The legal profession, as we have seen, was dominated by Europeans and Asians who were detached from the African population and its problems. Africans generally had little or no contact with lawyers. This further entrenched the alienation of Africans from the law.



### 2.1.2 POST-COLONIAL ERA

The major post-colonial policy statements are usually comprised in Development Plans and Sessional Papers. These, therefore, form a natural starting point in an examination of policy documents.

Upon perusal of these policy documents the most striking thing one finds is the absence of legal literacy as a concern. No reference to it, or to communication of law in general, is made in Sessional Paper No. 10 of 1965<sup>18</sup> which laid the first framework for planning policy in Kenya. Nor is there any such reference in all the Development Plans, from the earliest to the most current. This is in contrast, for instance, to primary issues such as the environment, which was accorded recognition as early as 1965 in the already mentioned Sessional Paper No. 10 of that year. All subsequent Development Plans have given recurrent recognition to the environment and similar matters as a subject of concern.<sup>19</sup>

Until the 1989-1993 Plan (the latest) there seems to have been no formal recognition, save for a cursory mention, of the importance of access by the citizenry to public information. However, the said Plan did somewhat highlight the importance not only of formal education but also of public information. The Plan stated that:

"..Man is the principal agent of change and the main beneficiary of development. However, to contribute effectively to the development process, man has to be provided with the opportunity to gain knowledge, skills and other relevant sources". (Kenya, Dev. Plan 1989-1993: 10.96)

Education and training, not only formal but also informal and non-formal, were seen as an important vehicle of transmission of information. Besides education and training, other methods of information flow such as radio, television, the cinema and others were also recognised as important (Ibid. 10.97).

It was promised in the Plan that people would be provided with information regarding their actual and potential contribution to social services through cost-sharing, and on health, nutrition, family planning, weather forecasting for agricultural activities, air and sea travel, and scientific research and development (Ibid).

It should be noted that despite the recognition of the importance of information on public matters, law did not feature in the list of public information to be communicated.

Recently, the President of Kenya called on Members of Parliament and others in high political office to call meetings for the purposes of explaining government policy to the people. Law forms an important component of policy as it is usually used both to articulate policy and to give effect to it. Perhaps this was the opportune moment to include legal measures and rules in the agenda of those called upon to explain government policy. However, there is no indication of that being the case. Indeed, such meetings have usually degenerated into forums for empty rhetoric, self-congratulation and mudslinging.<sup>20</sup>

Let me focus on education policy to see what impact it has had on legal literacy.

Since independence, the development of education has always been given high priority. Education has been seen as one of the most important vehicles for facilitating development because of its "enlightenment" output.

Due to colonial education policy, at independence the number of schools were few and their enrolment levels low. The government immediately set about increasing the number of schools and encouraging greater enrolment. There was also concern about the high level of adult illiteracy. An adult literacy campaign was therefore instituted with the ambitious goal of total eradication of illiteracy.<sup>21</sup>

At independence, education was seen almost solely in terms of the material benefits it brought. For instance education was perceived as the means through which jobs and income could be obtained. This view was explained in Sessional Paper No. 10 of 1965 thus:

"At Kenya's stage of development, education is much more an economic than a social service. It is our principal means of relieving the shortage of domestic skilled manpower and equalising economic opportunities among all citizens." (Kenya, SP 10 1965: 11)

Emphasis was laid on formal education and the acquisition of certificates. During this period, there was a total lack of any legal content in the school syllabi at both the primary and secondary levels. At the tertiary level, i.e. in colleges and the university, there was and still is a limited amount of study of law subjects in courses such as accounting and business administration. However, the subjects are usually restricted to those directly related to business, such as Company Law, Commercial Law and Contract Law. Further, the style of teaching of these subjects imparts only formal knowledge of technical legal rules and is not geared towards creating awareness of legal rights.

In recent years the government's philosophy on education has changed somewhat. Education is not now seen purely in terms of jobs and income; its role in the shaping of a national ethos and culture is receiving increasing attention. In the 1979-1983 Development Plan (the fourth) it was stated that education would be made more relevant not only by increasing emphasis on skills which enhance income-earning opportunities but also by promoting more constructive lifestyles for Kenya's youth (Kenya, DP 1979-1983: 5.93).

In the 1989-1993 Plan it was stated that the education system should aim at producing individuals who are properly socialised and who possess the necessary knowledge, skills, attitudes and values to enable them to participate positively in nation-building (Kenya, DP 1979-1983: 9.45).

According to the said Plan, the principles upon which Kenya's education philosophy is currently based are environment conservation and enhancement, agriculture, national culture, population control, Harambee and Nyayo philosophies, sense of nationalism, patriotism, self-reliance and self-determination (Ibid).

The 1979-1983 Plan stated that a better understanding of basic technologies as well as environmental education would be incorporated in the curricula. No mention was, however, made of the inclusion of law in the curriculum.

In the mid-1980's the government of Kenya, in line with its new orientation, introduced the 8-4-4 education system which lays emphasis on acquisition of relevant skills and attitudes geared to self-reliance. This system introduced subjects which were not in the previous system. These include government, social education, ethics, environment studies and business education, among others.

An examination of the 8-4-4 primary and secondary school syllabi reveals only three subjects with some limited legal content, namely History and Government, Social Education and Ethics, and Business Education. In History and Government, under the topic 'Developments Since Independence' there is a section on the three arms of government, the Independence Constitution, constitutional amendments since independence and the Bill of Rights. The section is presented in a merely descriptive way with no element of analysis or exposition. It is also very sketchy, with the section on the Bill of Rights for instance taking no more than 15 lines <sup>22</sup>. Given that this section is taught in Form Four, the year immediately preceding entrance to university, it is thought that the treatment of the topics is too shallow. Further the section should be seen in the light of the stated general objective of the syllabus, which is to instil a sense of patriotism and good citizenry, as opposed to creating legal awareness.

The course in business education has a section of forms of business organisations, which outlines the basic characteristics, strengths and weaknesses of sole

proprietorships, partnerships, companies and cooperatives. In a general way the legal requirements of the various organisations are given.<sup>23</sup>

It should be noted that business education and history and government are optional courses. Hence not all students are able to appropriate even the limited legal knowledge available. The 8-4-4 system is supposed to impart relevant knowledge and skills for self-reliance. It is my view that this system of education has not given enough attention to legal knowledge as comprising part of knowledge relevant for self-reliance. Even where some limited legal knowledge is offered, since the legal education process does not continue after school, whatever benefits may be derived at school are thereafter minimised or watered down.

From the above discussion, it is evident that the government has formulated no definite policy on legal literacy. Perhaps this is intentional, bearing in mind that legal knowledge usually brings with it conscientisation and awareness of rights which can result in political awakening, and demands for rights.

While the government has recently recognised the importance of dissemination of public information, law has not been seen as one of the immediate areas which the public ought to be informed about.

Further, the government's concern about education and general literacy has not extended to legal literacy. While it is admitted that literacy work is important in itself, and a literate public is easier to educate on the law than a largely illiterate one, still the government's efforts on literacy have not been made with the avowed intention of fostering legal awareness. Any benefits in that direction are, therefore, purely incidental.

## 2.2 LAW

Having examined government policy, both colonial and post-independence, on legal literacy, the discussion now turns to an examination of the law. The discussion first deals with the legal rules regarding communication and knowledge of law and then examines the constitution. There then follows an analysis of the social orientation and legal framework of the legal profession as it relates to legal literacy.

### 2.2.1 THE PRESUMPTION OF KNOWLEDGE OF LAW

By virtue of the "reception clause", Kenya adopted the common law of England, doctrines of equity and statutes of general application in force in England on 12th August, 1897.<sup>24</sup> The general provision for the reception of English law in Kenya is now encapsulated in section 3 of the Judicature Act (Chapter 8, Laws of Kenya).

By virtue of this reception, the legal rules regarding communication and knowledge of law resemble English ones. These legal rules are ignorantia juris non excusat and the "Public Notice" doctrine. In this section the two rules are collectively referred to as the presumption of knowledge of law. A brief exposition of the rules is now given.

#### (a) Ignorantia Juris Non Excusat

This Latin maxim literally means "ignorance of the law is no excuse". Under this maxim, mistake as to what the law is affords no excuse for failure to comply with the law. The rule is incorporated in criminal law, that is the Penal Code (Chapter 63, Laws of Kenya) as follows:

"Ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence unless knowledge of the law by the offender is expressly declared to be an element of the offence."<sup>25</sup>

Implicit in the maxim is the assumption that everyone knows the content of the law - hence ignorance is not to be pleaded as a defence. The maxim and its underlying assumption have obtained wide acceptance in Kenyan courts.<sup>26</sup> A case that illustrates the problems raised by the said assumption is R v. Karoga wa Kiregi and 53 others.<sup>27</sup> Members of a Kikuyu Kiama (council of elders) sentenced to death two men suspected of witchcraft. The Kiama acted in the belief that its deed served to preserve its people from destructive supernatural powers and was thus laudable. Unknown to the elders, the Kiama's jurisdiction to try capital offences had been removed by the colonial government under the Native Tribunals Rules, 1911. Though ignorance of the law was not raised as a defence, it was clear that the Kiama had acted in ignorance of the law. It was nevertheless found guilty of consequential homicide.<sup>28</sup>

An almost identical case is Kasau wa Muiga v<sup>29</sup> where again the Kikuyu Kiama sentenced an alleged witch to death without realising that their jurisdiction had been removed. The Kiama based its claim to jurisdiction on powers which it had "from the beginning of things". The eight members of the Kiama were, however, sentenced to death for their act.

In England, from where we inherited the rule, the plea of ignorance of the law has been rejected even where it was clear that the accused not only did not know the law but had no way of knowing it. Thus, in the case of R v. Bailey<sup>30</sup> though it was impossible for the accused to know the law because that law was passed while he was on the high seas and he committed the offence while there, he was still not allowed to plead ignorance of the law.

The rule applies equally to aliens, who have no way of knowing the law, as in the case of R v. Barronet and Allain<sup>31</sup> where a Frenchman unsuccessfully pleaded ignorance of the English prohibition of duelling.

The rationale for the rule seems to be in the common law where law is seen as representing no more than the norms generated by the society itself, and as reflecting its ethos (Plucknett, 1956: 307). The criminal law in particular is said to be an expression of the society's established judgements and values. Every socialised individual will, therefore, know the norms of his society which themselves constitute law (Ibid).

Despite the injustice that has at times resulted from this rule, the rule has had its proponents. Holmes, for instance, justified it on the grounds of public policy. He put the rule on the same footing as the law's indifference to a man's peculiar temperament or faculties. According to Holmes, to admit the excuse of ignorance of the law would be to encourage ignorance (Holmes, 1881: 48).

To Glanville Williams the rule is a useful weapon as it has the effect of compelling people to learn the standard of conduct expected of them. To him, the most effective way of bringing a rule to the public notice is by convictions reported in the public press (Williams, 1953: 385). It would seem that Williams conceives of the "ignorantia juris" rule only in terms of the criminal law, which is but one facet of the whole body of law.

However, even in England where the rule originated, its rationale is not supported by reality. First, although a substantial part of the common law, such as commercial usages and customs, evolved within society, much of English law did not. Indeed it is a matter of dispute whether and to what extent the criminal law is an expression of community morals. Further, a lot of legislation, far from evolving out of society, is passed with the aim of changing society's values. An example is anti-discrimination legislation such as the English Race Relations Act, 1963.

While the danger of allowing everyone to plead ignorance as a defence is admitted, the question remains why such a plea is rejected instantly even where it is clear that the accused had no means of knowing the law, as in Bailey's case. Besides, the rules of



evidence have been used effectively in ascertaining knowledge of facts (for instance in a charge of handling stolen property).<sup>32</sup> It is my view that the same evidentiary rules can be used in determining whether the accused had knowledge of the law in question.

The untenability of the rule is even more marked when the rule is adjudged by Kenyan conditions. In the first place Kenya's legal system is largely a transplantation of the British one. By virtue of the reception clause a large body of English law was received into Kenya. Further, most of Kenya statutes are copies of either English or Indian statutes.<sup>33</sup> The institutions of justice are based on English models. Kenya's law cannot therefore be said to be an expression of the social mores of Kenya society, as the law was imposed on Kenya's people, often in disregard of their own wishes.

(b) "Public Notice"

By virtue of the reception clause, the relevant statute of general application as regards communication of the law is the Rules Publication Act of 1893.<sup>34</sup> This statute provides that statutory instruments come into operation only after their publication.

In Kenya, publication means publication in the official Gazette unless the statute provides otherwise. Section 9(1) of The Interpretation and General Provisions Act (Chapter 2, Laws of Kenya), provides that subject to the provisions of subsection (3) of the section, an Act assented to by the President comes into operation on the day on which it is published in the Gazette.

Under subsection (3) the date of operation of an Act or a part of it may be written into the Act itself or in some other law, or may be given by notice in the Gazette.

The rules regarding the publication of subsidiary legislation are similar. Section 27(1) of the said Act provides that all subsidiary legislation shall, unless otherwise expressly provided in a written law, be published in the Gazette, and shall come into operation

on the day of publication, unless it is enacted either in the subsidiary legislation or in some other written law that the subsidiary legislation shall come into operation on some other day.

Under the doctrine of public notice, once the prescribed procedure for publication has been complied with there is deemed to be notice of the particular statute or subsidiary legislation. In the case of Kenya therefore, the publication of statutory instruments in the Gazette or the enactment of the date of operation in the instrument or in some other law is deemed to be notice to all. In other words, the printing of the law by the Government Printer serves as communication to all. This is so regardless of whether or not the subjects are actually reached by such mechanisms, whether or not they understand the content and irrespective of the number of copies actually printed.<sup>35</sup>

One of the reasons given for the doctrine of notice is that it is impossible to notify everyone of the law. While it is appreciated that considerable effort and cost would be involved in communicating the law to the public, still it is thought that this is not an impossible task.

The other argument for justifying the doctrine is that the people are presumed to know the law through their Parliamentary representatives at the passing of the Acts (Allen, 1966: 469-70). This argument is clearly a fiction as the Parliamentarians' knowledge of the laws being passed cannot in actual fact be imputed to their constituents. Further, as already mentioned, a large portion of Kenya's statutes were either received from England or copied wholesale from English or Indian Acts before independence and were not therefore really passed by Kenya's Parliament.

The doctrine of public notice presupposes a literate citizenry, knowledge of the language in which communication is made, and a sufficiently wide circulation of the relevant publication. These conditions do not obtain in Kenya. The rate of illiteracy is high, with about 50% of adults unable to read or write. The Gazette is printed in

English. A high proportion of people do not understand English in any form, much less the complex legal terminology used in statutory instruments. The Government Printer does not go out of its way to advertise itself or its publications; the circulation of the Gazette is generally restricted to law firms, bureaucratic officials and high level business concerns. Further, the existence of only one site of publication, Nairobi, makes the Gazette virtually inaccessible to non-Nairobi dwellers except those that may subscribe to the Gazette.

According to Fuller (Fuller, 1967: 9) the presumption that everyone knows the law is a legal fiction and is apparently intended to escape the moral principle that it is unjust to visit the legal consequences of an act upon a person who does not know the law (Ibid. 53). This fiction is thus of an apologetic nature. It apologises for the necessity of attributing to the acts of parties legal consequences that they could not even remotely have anticipated (Ibid 84). Indeed, some of those propounding the presumption of knowledge of law admit the fictitious nature of the presumption.<sup>36</sup>

And yet it has not always been seen as necessary that the presumption should operate in all cases. In classical Roman jurisprudence ignorance of law was not always an invalid plea; it was valid in some cases at least. (Phillimore, 1856: 96). For instance ignorance of law was a valid plea for minors, women, soldiers and all who were beyond the reach of legal advice and information. It was also a valid plea when the person insisting upon it sought to save himself/herself from loss, though it was not valid when the object was to acquire gain (Ibid).

The above example demonstrates instances where the plea of ignorance of law was admitted in order to meet the ends of justice. This suggests that it is possible to have a legal system where the presumption of law is qualified to meet the needs of the population and in this way the above example is of relevance to Kenya.

## 2.2.2 THE CONSTITUTION

The ignorantia juris maxim and the doctrine of Public Notice impose an obligation on the recipient of the law to find out what the law is, as he/she is deemed to know it and cannot plead ignorance as an excuse for not knowing it. No right is given to a person to be informed of such law.

Therefore the Constitution should at this stage be examined to see whether there is any basis for a right by the individual to be informed of the law.

There are two provisions in the Constitution that directly confer on the individual the right to information, namely sections 72(2) and 77(2)(b). These fall under chapter five of the constitution which contains the Bill of Rights. In section 72 there is a prohibition of arbitrary arrest or detention. Sub-section (2) thereof goes on to provide that a person who is arrested or detained shall be informed as soon as reasonably practicable, in a language he understands, of the reasons for his arrest or detention.

Section 77 deals with a general rights of an accused person. Under sub-section (2)(b) of that section, every person who is charged with a criminal offence is entitled to be informed as soon as reasonably practicable, in a language he understands and in detail, *of the nature of the offence charged.*

### 2.2.2 THE CONSTITUTION

The ignorantia juris maxim and the doctrine of Public Notice impose an obligation on the recipient of the law to find out what the law is, as he/she is deemed to know it and cannot plead ignorance as an excuse for not knowing it. No right is given to a person to be informed of such law.

Therefore the Constitution should at this stage be examined to see whether there is any basis for a right by the individual to be informed of the law.

There are two provisions in the Constitution that directly confer on the individual the right to information, namely sections 72(2) and 77(2)(b). These fall under chapter five of the constitution which contains the Bill of Rights. In section 72 there is a prohibition of arbitrary arrest or detention. Sub-section (2) thereof goes on to provide that a person who is arrested or detained shall be informed as soon as reasonably practicable, in a language he understands, of the reasons for his arrest or detention.

Section 77 deals with a general rights of an accused person. Under sub-section (2)(b) of that section, every person who is charged with a criminal offence is entitled to be informed as soon as reasonably practicable, in a language he understands and in detail, of the nature of the offence charged.

Under section 72(2) the information required to be given to the arrested or detained person is merely the reason for the arrest or detention. Such information does not really contain any legal content. Under section 77(2)(b) the information that a person charged with an offence is entitled to relates to the "nature of the offence charged". Such information is usually contained in charge sheets prepared by the prosecution. The charge sheets normally state the act or omission alleged to have been committed and the section of the Penal Code or other law being contravened. There is not usually a statement of what the actual provisions of the law in question are.

The right to information conferred by sections 72(2) and 77(2)(b) is therefore not a right to information on the law.

Even where in a given case some legal content is concluded, such content only comes after the fact, that is after the person has already been arrested. Further, any legal content included is only incidental as there is no requirement under the constitution to give information on what the law is.

Sections 72(2) and 77(2)(b) for the above reasons do not provide any constitutional right to be informed of the law, even in the limited spheres of arrest, detention and criminal charges.

A perusal of the rest of the Constitution does not reveal any recognition of such a right as there is no provision that deals with the subject.—It would therefore seem that the Constitution does not address itself to the issue of legal literacy. Knowledge of law by the citizen does not appear to have been regarded by the drafters of the Constitution as important in the protection of fundamental rights and freedoms.

### 2.2.3 THE LEGAL PROFESSION

With the establishment in 1970 of the Faculty of Law at the University of Nairobi increasingly greater numbers of Africans are being trained for the legal profession. The profession is no longer the preserve of Europeans and Asians and indeed is now composed mostly of Africans. By an amendment of the Advocates Act in 1989 only Kenya citizens may be admitted as advocates.<sup>37</sup>

However, despite Africanisation of the profession, the elitist orientation of lawyers that existed in the colonial days has persisted. Lawyers, upon graduation and entry into practice, soon become absorbed into the elite class of Kenyan society, with comparatively high incomes and life styles. By virtue of their social standing they become removed from the conditions of the rest of the population.

In my view, the training of lawyers contributes in large measure to this. Firstly, university education in Kenya has generally perpetuated the colonial orientation where education was aimed at producing an elite class. Legal education is no exception. The curriculum at the University of Nairobi Law Faculty closely follows conventional British university legal education. The concern is more with technical legal rules than with the relation of those rules to society. The study of law in its social context is neglected and law students are ill-equipped with the ability or inclination to grapple with Kenyan or Third World problems.

Recently, however, some attempts have been made to make legal studies more in tune with society. For instance Criminology was introduced in the Faculty of Law in 1987. In May 1989 the courses Women in the Legal Process and Children and the Law were included in the law curriculum. These will be offered during the final year of the four-year Bachelor of Laws degree programme (Kabeberi-Macharia, 1990: 45). Despite these innovations the law curriculum remains overwhelmingly formalistic.

During the one-year post university training at the Kenya School of law, various works on English solicitors' code of conduct and ethics are used. The code of professional conduct and ethics for Kenyan advocates is itself derived from the English model. At the School of Law and afterwards, the term "learned friends", denoting a clique whose abilities, vocabulary and manners are set apart and superior, is in vogue. In the early post-independence years formal dinner dress was worn at meal times.

Legal training, particularly at The Kenya School of Law, is geared towards the needs of private practice where the clientele consists largely of the business and professional sector. The effect of lawyers' training is the fostering of alienation from the common people. Despite the increase of the number of lawyers since independence the ratio of lawyers to the population is still small. In 1988, the lawyer client ratio was 1:20,000.<sup>38</sup> The present position is not any different. The scarcity of lawyers in absolute figures is exacerbated by their demographic distribution. Most lawyers are to be found in the large towns such as Nairobi, Mombasa and Kisumu. Only a minority opts to practise in the rural areas and even where they do, their clientele is composed mostly of the rural elite. As the majority of Kenya's population live in the rural areas and are poor, this means that only a small proportion of the population is able to use lawyers' services.

The situation is made even worse by the fact that lawyers' services are costly. The fees set by the Advocates Remuneration Order, pursuant to The Advocates Act, high in themselves, are only a minimum; higher fees may be, and are, charged.

It will be recalled that in the colonial era undercutting was prohibited by law and that the prohibition extended even to undercutting as a form of legal aid. The prohibition remains to this day. Under section 36 of the present Advocates Act, any advocate who holds himself out or allows himself to be held out, directly or indirectly, as being prepared to do legal work at less than the remuneration prescribed by the Order is



guilty of an offence. Thus undercutting, which can act as a means of aiding those who cannot pay the full fee prescribed by law, is made a criminal act.

Yet the profession, while prohibiting unofficial forms of legal aid, has not taken the initiative of setting up a comprehensive and cohesive system of legal aid. Free or subsidised legal service is left to the few lawyers who will accept pauper briefs<sup>39</sup> or solicitously forego legal fees. The Kenya Chapter of the International Federation of Women Lawyers (FIDA) has also recently begun a legal aid clinic for women which is, however, still in its early stages and serves only small numbers of women.

Further, under the code of professional conduct champertous agreements, that is agreements whereby the payment of fees is conditional upon the outcome of the case, are prohibited.

The legal profession has further ensured its monopolisation of legal services. First, the Law Society has created a closed shop of the profession. Membership to the Law Society is directly related to admission to the profession as one cannot obtain a practising certificate without at the same time belonging to the Society. And only those who have been admitted to the Roll of Advocates can be admitted to the Society. This effectively shuts out members of the academic fraternity who have not attained the School of Law qualification and all those non-advocates who have gained considerable experience in legal matters through working in law firms or in the government.

Secondly, monopolisation is ensured by omitting from the purview of "unqualified persons" the whole array of para-legal personnel. Unqualified persons are those who are not qualified to act as advocates.<sup>40</sup>

Under section 34(1) of the Advocates Act an unqualified person is prohibited from directly or indirectly taking instructions or drawing any documents relating to the

conveyance of property, the formation of any limited liability company, or partnership agreement or its dissolution.<sup>41</sup> Further, he may not take instructions or draw any documents for the purpose of filing or opposing a grant of probate or letters of administration, or for which fees are prescribed by the Remuneration Order or relating to any other legal proceedings.<sup>42</sup> Only wills or other testamentary instruments, and transfers of stocks or shares containing no trust are excepted from the prohibition.

An unqualified person may not accept or receive, directly or indirectly, any fee, gain or reward for the taking of instructions or the drawing of documents which are prohibited by section 34(1). Any such money received is recoverable as a civil debt.<sup>43</sup>

The above provisions regarding unqualified persons go even further than in England where estate agents are allowed to do certain kinds of conveyances.

Under section 31 of the Kenyan Advocates Act unqualified persons are not permitted to act as advocates or as such to cause summons or other process to issue or to institute, carry on or defend proceedings on any one's behalf. Such conduct is designated contempt of court and is a criminal offence, carrying the severe punishment of a fine of up to KShs.25,000 or two years' imprisonment or both.<sup>44</sup>

There is also a prohibition of advocates sharing profits with unqualified persons and of touting, i.e. soliciting by unqualified persons.<sup>45</sup> Pretending to be an advocate or using a description implying that one is qualified as an advocate is also an offence whose penalty is the same as that of section 31.<sup>46</sup>

The above provisions regarding unqualified persons effectively reinforce the monopoly of the legal profession over legal services. They exclude persons who do not belong to the exclusive closed shop from undertaking legal matters.

The provisions also mean that no room is left for "para-legals" (i.e persons with some limited legal training or skills) to assist ignorant or indigent people in legal matters. This contrasts sharply with a country like Indonesia where prukah bambu (bush lawyers) are even more numerous than trained lawyers.<sup>47</sup> In India lay vakeels are allowed to represent people in the lower courts.

Under the Law Society of Kenya Act (Chapter 18) one of the objects for which the Law Society of Kenya was established is "to facilitate the acquisition of legal knowledge by members of the legal profession and others" (emphasis mine). The term "others" can be understood to include the general public. While the Law Society can by virtue of being represented in the Council of Legal Education, be said to have contributed to the acquisition of legal knowledge by members of the legal profession, it has not made any efforts towards facilitating acquisition of legal knowledge by the general public. The only contribution that may be attributed to the Society is that it was a co-founder, with the National Council of Churches of Kenya, of the Public Law Institute. One of the objectives of the Public Law Institute is to provide legal education to the public and its efforts in the promotion of legal literacy will be discussed later on in this Chapter. However, The Law Society is not involved in either the funding or the staffing of The Public Law Institute and does not therefore play any active role in the Institute's affairs.

It is acknowledged that individual lawyers and, to a lesser extent, the Law Society have played an important role in the move towards political pluralism. However, their activities have not specifically included the imparting of legal rights awareness to the public.

In conclusion, the orientation and development of the legal profession in Kenya has worked against the acquisition by the layman of knowledge of law.

First, the elitist orientation of lawyers has alienated them from the majority of the population. Serving the needs of the affluent, the lawyer's field of operation is removed from the bulk of society and from social problems, particularly those arising from poverty.

The scarcity of lawyers in numbers and in geographical distribution coupled with the costliness of their services also means that only a small proportion of people is reached by them. In the course of consulting with a lawyer, it is possible for the layman to obtain a grasp of the nature of his/her legal problem and the solution to it. Lawyers can thus play the role of information brokers. However, Kenyan lawyers by virtue of their general inaccessibility are unable to play that role. Further, some lawyers make the law seem even more complicated than it is in order to increase clients' dependency on them.

The monopoly by lawyers of legal services and legal information excludes lay people from performing the role of legal advisors or disseminators of legal knowledge. Thus under Kenyan law a legal clerk may not for gain take instructions to help a person incorporate a company, effect a transfer of property or draw a plaint, among other things. This has serious implications for legal literacy. One of the most effective means of enhancing legal knowledge among the masses is the use of para-legals to advise people on their legal rights and to help them solve their legal problems, e.g. by helping them to draw legal documents. These activities are likely to be caught by section 34, and others, of the Advocates Act and would attract criminal sanctions. Yet The Kenyan Bar has not taken the initiative of offering legal aid and disseminating legal information to the masses.

## 2.3 PRACTICE

### 2.3.1 GOVERNMENTAL EFFORTS

As already seen, the government of Kenya has not addressed legal literacy as a problem and has formulated no policy on it. The position of the law is that people are presumed to know the law irrespective of whether or not the law is adequately communicated to them.

We shall now examine what efforts, if any, the government has made towards dissemination of legal information to its citizens.

One governmental attempt to educate the public on the law was through a radio programme, Radio Lawyer, which was taken over by the Attorney-General's office from voluntary effort. The programme, which was started in the mid-1970's, sought to impart to the public relevant legal information, including legal rights. One of the shortcomings of the programme was that it was in English which meant that only a small proportion of the public could benefit from it. The programme is no longer on air, having been phased out in the early 1980's.

The most cohesive governmental attempt towards legal literacy is by the Women's Bureau. The Bureau is a department in the Ministry of Culture and Social Services and was established to coordinate the activities of women's groups. It also provides training programmes for women's groups leaders. The Bureau in recognition of the importance of law as a tool of women's development began its legal programme in 1985.

In that year, the Bureau, in conjunction with the Public Law Institute, a non-governmental organisation, initiated the Women's Rights Awareness Project. The first programme in the Project was a public awareness campaign on violence against

women. The device of a poster, displayed in public transport vehicles and other public places, was used to generate debate. However, it became evident that it was difficult to communicate such a sensitive topic through such a medium. The organisers realised the need to research into the issue of violence before an effective public education campaign could be launched (Kabeberi - Macharia, 1990:41).

In 1987 the Bureau and the Public Law Institute held a seminar on Women, Law and Development in Mombasa. After the seminar three task forces were established one of which was a task force on Community Based Legal Education. Project proposals were written for the purpose of soliciting funds from donor agencies.

The two organisations have under the said Community Based Legal Education Programme initiated legal education projects in the Kibwezi and Kiambu Districts whose aim is to create legal awareness among women through seminars organised for leaders of women's groups. Before the seminars, the project coordinators conducted a 3-day seminar to determine the legal needs of women. The women were given a chance to voice their legal problems. The survey found that the most common legal problems included property rights, issues related to the sale of land and the existence of the Land Control Board, marriage laws, succession laws, children's rights and general civil and criminal procedures (*Ibid.* 42). After the survey, a workshop was organised to train the women in research and communication skills.

It was planned that three seminars would be conducted in each area within the year. However, due to shortage of funds, only one seminar each has been held in the two Districts.

The final phase of the project will involve writing and producing simplified legal materials. This has not yet been done. Lastly, an evaluation of the project will be conducted.

In January 1990 the Bureau and the Public Law Institute launched a one year project to focus on general legal education and on violence against women. The project activities were to include legal rights education workshops targetted at different levels (including training the police on violence against women) and comprehensive legal education programmes in the communities of Vihiga, Lamu, Kitui and Kawangware. There are also plans to develop simple educational materials and pamphlets on "Violence Against Women" for these projects (Ibid). The goals of the projects have largely not been realised.

The Bureau's efforts at enhancing legal awareness are commendable. However, an obvious limitation of the Bureau is that since it is a body concerned with women's issues, its work in legal literacy has mainly centred on women. Further, as the Bureau was not instituted primarily to deal with women's legal issues, legal literacy does not constitute the bulk of its work but is only a small component.

Another weakness of the Bureau is that as the government has not formulated any policy on legal literacy, the activities of the Bureau do not have any objective point of reference. Rather its activities depend on the subjective factor of the motivation and vision of the particular leaders of the Bureau. Further, it would appear that legal literacy work by the Bureau is not funded by the Government. Indeed, several of the programmes have stalled as the Bureau has waited for funds from foreign donors.

Though the Bureau is a government body, in matters relating to legal awareness it has worked in conjunction with the Public Law Institute, a non-governmental organisation. To that extent, therefore, its work may not be termed purely governmental.

The government's efforts in enhancing legal literacy efforts have been minimal. It has displayed half-heartedness by discontinuing the Radio Lawyer programme which was poorly cast in any event. The work of the Bureau, though laudable is marred by lack of funds as the state has not allocated money to legal-literacy work. The Bureau, due to its nature and functions has centred on women. Further, only a small fraction of the country has been covered under the Bureau's legal literacy projects.

### 2.3.2 NON-GOVERNMENTAL EFFORTS

As a result of the prevailing inadequate governmental response to the problem of legal illiteracy, voluntary efforts have been made towards transmission of legal knowledge and arousal of rights awareness. The following is a brief examination of these efforts.

#### (a) Public Law Institute

The Public Law Institute is a non-governmental public interest agency one of whose objectives is to provide legal education to the public.<sup>48</sup> It sees a legally aware public as the surest bulwark against infringement of public rights.

The Institute, upon its formation in 1985, therefore embarked on a Legal Education Programme. The projects initiated by the Institute in conjunction with the Women's Bureau have already been discussed above. In addition to those projects, the Institute has published a "pocket" version of the Kenya Constitution. It has also translated the Constitution into Kiswahili.

#### (b) Kituo Cha Sheria (Legal Advice Centre)

The Kituo's basic function is the provision of free legal services to people who cannot afford the services of lawyers.

The Kituo aims at fostering awareness and educating clients about the law by involving them in their cases. For instance, its clients aid in investigating or obtaining certain information needed for their cases from the police, the courts, and other sources. The Kituo also encourages class action suits such as tenant and landlord grievances; joint filing helps to promote organisation among people with a common problem (Ibid 43).



The Kituo also works with non-governmental and church organisations who request information about the law. The Centre has now secured sufficient funds to start a Public Education Unit and is in the process of publishing rights education materials for the general public. It is also currently working on a project for training para-legals.

(c) Women's Legal Education Task Force

During a workshop in 1989 on "Women Law and Development" held by the funding agency OXFAM in conjunction with OXFAM Rural Project Partners, an interest in women's legal rights was revealed. The workshop recommended that simple legal materials be developed in collaboration with women's groups.

The Women's Legal Education task force was established after the workshop and this task force is currently conducting field research in women's legal problems. The task force realised the danger of presuming what women's legal problems are. Its research thus involved discussion by women of their own problems. Once the legal materials are prepared they will be disseminated to the target groups.

(d) Church of the Province of Kenya Diocese of Eldoret

In 1990 the Church of the Province of Kenya Diocese of Eldoret initiated a Legal Aid and Education Programme whose aim was to educate the public in legal rights. The target of the programme was the ordinary citizen.

Some of the methods intended to be used for the programme were seminars and workshops, including workshops for women's rights awareness. The programme also planned to develop pamphlets and booklets using illustrations as an aid. <sup>49</sup> It should, however, be noted that the usefulness of pamphlets and booklets is limited as these can only be used by those who are literate. The programme started with its base in Nakuru but later on moved to Nairobi.

(e) Oxford University Press

The Oxford University Press has started a "Know the Law" series where lawyers from the University of Nairobi, the private sector, the government and the Judiciary are commissioned to write booklets on the law. The target is the general public and the issues dealt with are those that are relevant in the day to day life of the individual.

The current series includes booklets on land law and disputes, the rights of an arrested person, employees' rights, child custody and maintenance, and fundamental rights and freedom.<sup>50</sup> Materials on matrimonial property rights, co-operative law, family law, succession and insurance law will soon be published (Kabeberi - Macharia, 1990: 44).

A positive feature of the series is that the books are reasonably priced. They are written in English. While an attempt is made to keep the English as simple as possible, the fact that they are in that language puts them out of reach of all Kenyans who are not literate in English, or even those who are semi-literate in it and whose grasp of syntax and vocabulary is low. A need may arise to translate them into Swahili and other vernacular languages.

The books might have been easier to understand and more useful in practical terms if, in addition to laying down the legal rules and principles, they also used situational examples depicting common legal problems and how to go about solving them. The absence of the latter, in my view, derogates from their functional usefulness.

There is also a question of how widely read the booklets are. Kenyans have a reputation (though not empirically proved) for being poor readers of serious books. There is a need for more active publicisation of the books' existence and of the benefits of reading them.

(f) Partnership for Productivity

Partnership for Productivity is a non-profit small enterprise development agency. Its main objective is to increase the productivity and ability of small rural and para-urban entrepreneurs to successfully manage their business (Awino and Kaduru, 1983:3). The agency realised that one of the major problems encountered by many small scale enterprises and small farmers is the almost total lack of knowledge about business management, including the legal framework of business activity. These poor people suffered due to ignorance of their legal rights or their inability to gain effective access to advice.

In 1980 Partnership for Productivity started a Law in Development Programme aimed at giving legal services to the rural poor in parts of Western, Nyanza, Rift and Central Provinces of Kenya. The programme involved teaching the rural population using chiefs, women's groups, village polytechnics and other institutions as forums. The programme sought to develop functional knowledge by people of their rights to enable them to assert claims. It further sought to develop collective means of articulating claims and also the ability of groups to function. (Ibid 40)

The agency has also developed a handbook called A Handbook for the Layman on the Scope of the Law and the Role and Jurisdiction of Courts in Kenya.<sup>51</sup> As the title suggests, it is targeted at the layman. The English used is simple.

(g) The Mass Media

There are also attempts by the mass media to make the layman more familiar with the law.

For instance the Daily Nation carries a Monday column called "Law". This column consists of excerpts from judgements of High Court or Court of Appeal decisions.

However, the judgements are presented almost exactly as they were handed down by the courts and there is no attempt to simplify or explain them. Thus this column is of little use to non-lawyers. It is mainly treasured by lawyers who, in these days when reporting of cases is almost non-existent, find the judgements useful as judicial precedents.

In the Standard on Sunday newspaper there is a column entitled "Law and Society". This column attempts to relate law to society, for instance by showing the relevance of a particular piece of legislation. This column by virtue of its brevity does not really deal exhaustively with the issues it tackles. Further, the column can only be understood by the person with a good grasp of English. It should be noted that there are no similar columns in the Swahili newspapers.

There are also columns in the daily newspapers which in the course of discussion on other issues give some information on the law. Examples are the business and finance columns in the Daily Nation's "Business Week".

On television, the hilarious programme "Vioja Mahakamani" dramatises criminal court procedure. The trials usually involve poor people engaged in petty crimes and is thus relevant to the poor. However, its comical nature may have the effect of overshadowing its message. Also ownership of television sets in Kenya is generally confined to the affluent.

## CONCLUSION

Non-governmental efforts in the area of legal literacy have displayed innovation and are to be commended.

However, the above examination of these efforts gives an impression that there is more talk and paper planning than action on the ground. But even where there is action, there are still various matters which cause concern. The first is there is a problem of lack of co-ordination among the non-governmental agencies. This brings in the danger of duplication of efforts. Lack of co-ordination also means that there is no cohesion in the aims, content and message of the programmes. Each one tackles the problem from the point of view of its needs without any uniformity as to goals and objectives.

The approach and scope of the particular agencies are also restricted by the specific nature and aims of the agencies. For instance the Women's Bureau, which caters for women, will generally only promote legal literacy programmes for women.

Further, the research and activities relating to legal literacy have only penetrated a few areas of the country. This is due in large measure to the limited personnel of most agencies, who can only manage one or two programmes at a time. Lack of funds is another problem faced by these agencies. Programmes are often crippled by shortage of money.

The agencies also face the problem of developing appropriate ways of disseminating legal knowledge. Illiteracy is in this context a great hindrance. The high level of illiteracy, especially in the rural areas, limits the means that can be used to communicate legal information. The usefulness of written materials is greatly reduced where a large proportion of the population is illiterate or semi-literate. However, this problem should call for higher levels of innovation rather than despair.

The problems faced by non-governmental agencies therefore compel the intervention of the state. The state is well suited because of its authoritative capacity to formulate and steer policy. Further it is capable of providing the machinery and infrastructure for achieving the goals set pursuant to policy. Such policy should establish a framework for programmes to deal with the problem on a nation-wide scale and on an on going basis, instead of the present haphazard style of the non-governmental agencies.

**CHAPTER THREE**  
**LEGAL ILLITERACY:**  
**A SURVEY OF KARIDUDU**

## INTRODUCTION

This Chapter is a discussion of the findings of a field survey on legal literacy done in a slum area in the eastern part of Nairobi called Karidudu. Administratively, Karidudu forms part of Ruaraka Ward of Kasarani Division.<sup>1</sup> Situated between the industrial part of Ruaraka and the Kariobangi area, it is a low-lying sprawling valley with the Nairobi River forming a natural boundary with Kariobangi. Karidudu has a population of about 10,000 people.

Karidudu is a low-income area. Housing is very poor, consisting mainly of rows of small mud or timber houses. There is no drainage system and human and domestic waste flows freely in rivulets down to the Nairobi River. There are no streets, no lighting and no piped water. Most of the inhabitants are labourers at the factories in industrial Ruaraka. The remainder either carry out petty trading such as hawking, operating kiosks and selling vegetables, or are involved in jua kali artisanry, as carpenters or metal fabricators. A few relatively more affluent people own bars, lodgings and butcheries. There is only one small dispensary and one nursery school. The only two primary schools are situated in Kariobangi and Ruaraka. Literacy among adults is either non-existent or very low.

The research sample consisted of fifty respondents, men and women, living and working in Karidudu. The selection of the sample was random though an effort was made to cover as wide a range of people as possible in terms of age and occupation. The survey was conducted through a questionnaire (see Appendix I). Due to low literacy levels all but three of the questionnaires were administered by a research assistant and myself. There was other information gathered through observations beyond the questionnaire input, which will also find expression in the study.

A major limitation experienced during the survey was time. This explains the smallness of the sample and also affected the depth of the survey. The limitations in the discussion arising from this are acknowledged. However, it is hoped that the general



patterns that emerged will be at least indicative of the general situation regarding levels of legal literacy in Kenya.

The survey was primarily geared to, first, establishing the level of knowledge of law and legal rights in the area and, second, ascertaining the extent to which law has been used as a resource for improvement of people's lives. To this end, the questionnaire was calculated to elicit information about awareness of legal provisions and of rights, awareness of machinery for enforcement of rights or for redressing wrongs, willingness or ability to enforce rights or redress wrongs, and awareness of any injustices or lacunae in the law.

The questionnaire covered areas of law which were considered relevant to, the day today life of poor individual: viz in the areas of employment, business activity, law enforcement and administration agencies, tenancy and marriage. The questionnaire was accordingly divided into five sections corresponding with these areas.

It should be clarified that the kind of knowledge being tested was not of a technical nature. Rather, what was being sought was a general awareness of the operation of the law in the respondents' everyday lives. Thus, the questionnaire did not ask for such information as the specific names of Acts of Parliament, their sections or even their specific provisions. It also did not ask for questions whose answers were obviously beyond the ordinary person's reach, such as those relating to high level multi-lateral business transactions.

It is pertinent at this stage to clarify why the poor were targeted. Does it mean that the poor are legally illiterate primarily by virtue of their poverty and that, therefore, the rich are legally literate? No. The reasons for focusing on the poor were, firstly, that the study is concerned with the role of the law as a resource for improvement of poor people's lives. Secondly, the poor, by reason of their impecunity (and, therefore, lack of access to legal services) suffer greater handicaps as a result of their ignorance of the law. The study is, for these reasons, interested in the levels of legal knowledge among the poor.

However, this does not necessarily mean that the more affluent in society are legally literate, or that poverty is the only major cause of legal illiteracy. The mode of communication of law in Kenya and the lack of policy regarding legal literacy would seem to imply that the affluent are not better off to any great extent. Such evidence as there is would seem to support this. For instance Butegwa in her study of legal awareness of personal law by women in Embakasi, a middle class area in Nairobi, found that their awareness levels (which were low) were generally at par with those of women in Samia District, a poor rural area (Mbeo and Ombaka, 1989). And, as was mentioned in the previous chapter, Mutungi (1973) observed that a group of relatively well-to-do businessmen did not know even the fundamentals of business law. Perhaps more research is needed to form more definite conclusions on this matter.

Let us now discuss the findings of the survey.

## AREAS OF LAW COVERED BY THE SURVEY

### A: EMPLOYMENT

Of the 50 people interviewed, 16 were in paid employment. The questions in this section of the questionnaire dealt with membership of trade unions, termination of employment, injury in the course of employment and salary fixation. In addition, there were some questions to be answered only by female respondents. These dealt with aspects of sex discrimination in employment, such as equal pay, harassment due to pregnancy and unequal terms of employment.

The role of trade unions is to protect workers and champion their cause. While the strength of trade unions has been enormously eroded by the state (Ogolla, 1982), nevertheless, where one is unionisable, it is beneficial to join a relevant trade union. Even if members and non-members alike enjoy the fruits of collective bargaining, yet when it comes to dispute settlement, non-members are at disadvantage. For instance, an employee cannot, as an individual, take a matter to the Industrial Court; he/she has to go through a trade union.<sup>2</sup>

A striking thing was that only three respondents were members of trade unions. All but one of the non-members of trade unions displayed ignorance either of the existence of trade unions or of the procedure for joining them, although only a few explicitly admitted ignorance. Example of reasons given for non-membership were that the respondent was still learning on the job, or that he/she had not stayed long in Nairobi.

Regarding termination of employment under the Employment Act (Chapter 226), an employer does not have an unlimited right to terminate his employee's employment; the Act lists several grounds on which an employer may summarily dismiss an employee.<sup>3</sup> Examples of these are absenteeism, intoxication, insubordination and criminal conduct. An additional ground, not listed in the Act, is redundancy.<sup>4</sup>

The respondents were asked whether an employer has the right to terminate their employment prematurely (that is without the requisite notice). A minority were of the opinion that an employer has an unlimited right of summary dismissal, that he may dispose of an employee as he wishes. The majority, however, perceived that the employer's right is not unlimited. But most of them gave only one or two grounds for premature termination of employment, though there are about eight of them under the Act.

Despite some display of knowledge in the previous question, the respondents were not so knowledgeable in matters regarding the bundle of rights or of machinery for negotiating better terms of employment.

When asked what steps they would take if their employment was terminated prematurely, half of the respondents said that they would either take no action (that is, would leave their employment as ordered) or would try and persuade their employer to keep them. The latter action is unlikely to yield any fruit. Of the other half some would report the matter to the Labour Office. This option is provided for in the Trade Disputes Act (Chapter 234), where a trade dispute, which would include dismissal, is taken to the Minister in charge of labour (in reality the District Labour Office). Only three respondents - who were the only members of trade unions - said that they would refer the matter to their trade unions. This means that of the non-union members, only a small minority would take any kind of action upon termination other than trying to persuade their employer to reinstate them.

Regarding a pay raise, the only really effective way for non-management employees to get salary increases is by group action, either by making collective representations to their employers or by taking up the matter with their trade union. An individual negotiating a raise directly with his employer is unlikely to succeed, unless he possesses special skills not possessed by other workers. Yet most of the respondents said they would either do nothing but wait for their employer to increase the pay or would singly negotiate directly with their employers. Only a small minority would either negotiate collectively or go through their trade union.

With respect to injury in the course of employment, the Workmen's Compensation Act (Chapter 236) makes provision for the compulsory compensation of workmen injured out of and in the course of their employment.<sup>5</sup> Despite the compulsory nature of the scheme, less than a majority of the respondents said that they would seek compensation if injured in the course of employment. About a third thought the extent of the employer's liability lay in providing free medical treatment for them. The remainder said they would do nothing (e.g. "would just go home" or "would wait to recover") if injured. Their answers showed that they were ignorant of the existence of compensation and of procedure for obtaining it. Thus the majority would forego their rights to compensation, a situation which unscrupulous employers could well take advantage of.

Out of the sixteen employees interviewed, four were women. The small number of women employees is a reflection of the paucity of women in Karidudu who are in paid employment. Most are in the informal sector, mainly as vegetable or kiosk vendors or as dressmakers.

When the women employees were asked whether a man is entitled to be paid more than a woman for the same kind of work, all answered in the negative. Only one woman felt that an employer was entitled to sack a woman employee on account of her pregnancy. Asked what they would do if they were sacked for being pregnant on the job, three indicated they would take some action, either by going to the Labour Office or by pursuing the matter through a trade union. Only one woman, however, was a member of a trade union.

It would appear that these women have an innate sense of justice that there should be equal pay for equal work and that a woman should not be victimized on account of pregnancy while on the job. But their answers did not show knowledge of the principle of work of "comparable worth".

However, when it came to knowledge of the objective conditions in the work place, the women's performance was poorer. None except one (who belonged to a trade

union) knew that there was any difference in the treatment of men and women regarding house allowance.<sup>6</sup> It should be noted that two of the women respondents were teachers and therefore relatively well-educated.

None of the women knew the difference between a pension and a gratuity. On being asked whether they would prefer to work under contract or under pension, none of the women had any opinion on the matter as they did not know the difference between the two.<sup>7</sup>

In general, it would appear that members of trade unions are more aware of their rights in employment than non-members. For instance none of the trade union members said they would take no action if their employment was prematurely terminated; all indicated they would resort either to the Labour Office or to their trade unions. Regarding injury in the course of employment all said they would seek compensation. Indeed some of their answers showed knowledge of the procedure to be followed in seeking compensation. The explanation for this knowledgeability may be that the trade union acts as a forum for the education of its members in employment matters.

## CONCLUSION

In the area of employment there was a display of lack of awareness of existing institutions for the protection of employee's interests, such as trade unions, or of the benefits of such institutions. This lack of awareness has meant that workers have not used these institutions to protect their interests. There was also ignorance of relevant legal provisions and rights, and of machinery for the enforcement of rights. Due to this ignorance, respondents displayed inability to use established machinery to redress wrongs, enforce rights or bargain for better terms of employment.

Though the women respondents seemed to have an egalitarian attitude as far as equal payment was concerned, they showed ignorance of the terms of service in employment and of sex discrimination in those terms. They were thus unable to recognise injustice in the law. On the other hand the few trade union members showed a greater level of

awareness of employment law, probably largely due to the educative role of trade unions.

## B: ECONOMIC ACTIVITY

The section of the questionnaire entitled "Law Relating to Economic Activity" was answered by people who were in self-employment. Almost all the businesses were small scale, most of the respondents being tailors, hawkers and kiosk vendors.

A number of questions in this section dealt with registration of business. Generally speaking, business may take the form of a sole proprietorship, limited liability company, partnership or co-operative. Registration of business may be done under the Registration of Business Names Act (Chapter 499), the Companies Act (Chapter 486), or the Co-operatives Societies Act (Chapter 490). The two latter Acts, as their names suggest are concerned with registration of companies and co-operatives respectively, among other things. Under the Registration of Business Names Act every individual or partnership carrying on business under a name which is different from or is an addition of the names of the individual or partners is required to be registered under the Act.<sup>8</sup>

The choice of the form that a business takes should be guided by a knowledge of the characteristics and relative advantages and disadvantages of each form of business. For instance some advantages of a limited liability company are that it has separate legal personality and can own property, qualities which sole proprietorships and partnerships do not possess. A disadvantage of a limited liability company, however, is that its formation and operation entail more procedural requirements and statutory obligations.

The choice whether to register or not should also be influenced by considerations such as economic prudence and legal imperatives. For instance, as we have already seen, *certain kinds of businesses are required to be registered under the Registration of Business Names Act. Regarding economic prudence, it should be noted that banks usually require certificates of registration*

Out of 28 persons carrying on business, only three indicated that their businesses were registered. One was a partnership and two were sole proprietorships. All were registered under the Registration of Business Names Act. When asked the reason for the choice of registration, two answered that it was so that they could borrow money from the bank. One replied that the reason it was a sole proprietorship was because he had no one to team up with to form a company. These two answers are unsatisfactory for two reasons. Though the first answers showed good business sense ( the wish to obtain bank credit) the respondents did not address the question of choice of the form of registration but only dealt with registration per se. The second answer clearly showed ignorance as the business was being run with the help of the proprietor's children and could have been registered as a company or a partnership. Informed answers should have addressed the issue of the advantages or disadvantages of the various forms of business.

Apart from these three registered businesses the rest were all unregistered. One easily observable phenomena was a confusion regarding the difference between registration and licensing. Often when I asked a respondent whether his business was registered he would point to a license issued under the Trade Licensing Act (Chapter 497) as evidence of registration. Another point noted was that several of the businesses were using business names, yet these businesses were unregistered despite the legal requirement for registration.

A variety of answers were given for non-registration of businesses. Common ones were that the business was still small or that the respondent had no one to team up with. One respondent, who seemed comparatively well educated and well-to-do, said that he could not form a company as husband and wife are not capable of forming a company together which is an erroneous view as any two people can form a company. Ignorance of procedure for registration was specifically given as a reason by some of the respondents.

Quite apart from ignorance of procedure for registration, the answers given show glaring misinformation. For instance registration of a business has nothing to do with



the size of a business. Further a person can register a business even if he has no one team up with. If registration is required under the Registration of Business Names Act, it does not matter how many persons are carrying on business. Even more pertinent, a limited liability company may be registered by two persons are carrying on business. Even more pertinent, a limited liability company may be registered by two persons one of whom merely acts as nominee and does not actively engage in the business. The view that husband and wife cannot form a company is therefore evidence of glaring ignorance.

It should be noted that none of the respondents explained non-registration of their business by saying the registration was not required by law. Business registration laws are facilitative laws. Apart from certain cases where registration is compulsory, these laws merely lay a framework for the carrying on of business activity. Though it is usually expedient from an economic point of view to register, it is normally not obligatory to do so. Yet none of the respondents seemed to recognise this fact.

Under the Trade Licensing Act (Chapter 497) and Local Government Act (Chapter 175) certain types of business are required to be licensed. Examples of such businesses are wholesale or retail trade, shoe repairing, hawking and kiosk trade. Of the businesses which required licensing, less than a majority were licensed. This is so despite the compulsory nature of licensing regulations. However, another factor that could have influenced the lack of licensing may be wilful refusal due to the cost of licenses.

The growth of the jua kali (informal) sector has brought in its wake ingenious workmanship. There is thus a need for the entrepreneurs of real genius to protect their products from mass copying and to reap the benefits of their labour. Some respondents the nature of whose business might lead to innovations were asked what they would do if they made an invention. None of the answers indicated knowledge of the possibility or desirability of registering inventions or innovations under the Industrial Property Act (No. 19 of 1989).

The question whose answers showed some degree of awareness was that which asked the disadvantage of offering up land as security for a loan. Under the Registered Land Act (Chapter 300) and the Indian Transfer of Property Act, 1889 (which is applicable to Kenya) the chargor or mortgagor has a statutory right, upon default in repayment of a loan secured by immovable property, to realise the loan money by selling the charged or mortgaged property. Quite a large majority (68%) indicated that the main disadvantage of using land as security for a loan lay in the danger of the land being sold for non-repayment of the loan. The level of knowledge may be explained by the common occurrence of auctioning of charged or mortgaged property due to default in repayment of loans.

### CONCLUSION.

Persons in business have not utilized the legal facilitator of registration. This was because of ignorance either of procedure for effecting registration, of its economic importance or of the legal requirements regarding it. There was also ignorance of the various legal forms in which business may be carried out.

Further it was evident that in this sphere of business activity the respondents were alienated from the law. Apart from lack of registration, the majority of business were unlicensed. For all intents and purposes, business was carried on as if the law and legal imperatives did not exist.

### C: LAW ENFORCEMENT AND ADMINISTRATIVE AUTHORITIES

The first two questions in this section dealt with the rights of the individual in situations of arrest by the police.

Section 72(2) of the Constitution of Kenya confers on the individual the right to be informed of the reason for his arrest. While all those interviewed said that if arrested by police they would ask to be told of the reason for their arrest, none perceived that it was a constitutional right of the individual to be informed of such reason. Most of the

answers indicated that their purpose of asking would be a mere desire to know while some, in an exhibition of utmost trust of the police, said that a policeman cannot arrest them unless they had committed an offence.

In cases of arrest by the police, it is a right of the individual to ask for the official identity of the policemen involved. One is also entitled to ask for the policeman's warrant of arrest and also to be allowed to contact one person, such as a relative, a friend or a lawyer. Less than a majority of the respondents said they would ask a policeman anything else apart from the reason for the arrest. The total proportion of respondents who would ask enlightened questions, such as these just mentioned, was slightly less than a quarter.

Regarding policemen's right to search premises, section 118 of the Criminal Procedure Code (Chapter 75) gives magistrates power to issue a search warrant in order to facilitate investigation of offences. Under section 120 (1) of the said Code, a search warrant must be produced before a search is conducted.

When asked whether a policeman has the right to search their houses almost all the respondents (86%) said that the police had a right. However, only about a third indicated that it was the law that gave policemen that right. Most gave such answers as "Because they are the eyes of the government" or "Because they wear a crown". Thus the legitimacy of the policemen's authority was taken-for granted by virtue of their being government servants without recognition of the legal source of that authority. A large majority (72%) indicated that they would allow a policeman into their houses for purpose of search without asking for a search warrant. This showed ignorance both of the legal requirements of a police search and of the respondent's rights regarding such searches. A few, in a display of uninformed bravado, stated that they would not allow the police in even if they produced a search warrant.<sup>9</sup> Only a minority (26%) said they would ask for a search warrant before allowing police into their houses.

Incidentally, it emerged that police searches ("pekshen") for hidden chang'aa (illicit liquor) or for fugitive criminal suspects are a usual phenomenon in the area. The implication is that policemen in the area have taken advantage of the people's ignorance and conducted searches without complying with their obligation to produce search warrants.

The questionnaire also dealt with illegal arrest or confinement by the police. Under Kenya Constitution a person who is unlawfully arrested or detained by another person is entitled to compensation from that other person.<sup>10</sup> Under the common law (which is applicable to Kenya) where a person has been wrongfully arrested or imprisoned an action for malicious prosecution or unlawful imprisonment may be brought. Thus where a person has been arrested or imprisoned for an offence which he did not commit, redress may be obtained by demanding compensation from, or instituting a suit, against the Government in the person of the Attorney-General.

On being asked what they would do if arrested or imprisoned for an offence they did not commit, 35% said they would take no action. "I would just thank God and go home", "I would thank them" - ran some of the answers. These did not seem to perceive that their rights had been infringed upon and that redress was due to them.

A similar proportion of the respondents sensed the injustice of arrest or detention for an offence not committed. However, though this group would want to take some kind of action they were ignorant of the course to take. A good number said they would report the policeman to the police station. Such an action is unlikely to bear much fruit as the act was perpetrated by the very same people that the report is made to. Others said they would go to their Chief. Again the Chief is not the appropriate organ as he is part of the administration and is likely to support the police action. Besides, these bodies are not able to pay compensation to the aggrieved persons.

In short, a large majority of the respondents would not take any or appropriate action if wrongfully arrested or imprisoned, either due to ignorance of any infringement of rights or due to ignorance of procedure to be followed in instituting a claim.

Only 30% indicated they would take legal action, either by hiring an advocate to follow up the matter, or by filing a case in court. It should be noted that some among this category said they would want to take legal action but would not be able to afford the costs of such action. None of these showed any knowledge of the existence of the Kituo Cha Sheria (Legal Advice Centre), a legal aid agency based in Nairobi.

The questionnaire also had questions dealing with administrative authorities, specifically Chiefs and District Commissioners. The questions were intended more to gauge the respondents' awareness of injustice in the legal order than to test knowledge of the law per se.

The Chiefs' Authority Act (Chapter 128) is a statute enacted in the colonial era for the purpose of subjugating the Africans through "indirect rule". The Act gives Chiefs far-reaching powers. For instance, it authorises them to issue orders regulating the collection or receipt of money<sup>11</sup> and requiring people to appear before administration officers, or themselves, for any purpose in the interest of good government at any time and at any place within the Chief's jurisdiction.<sup>12</sup> These powers would include ordering people to attend harambees (fund raising meetings) and barazas (public meetings). During my research I learnt that it is a common occurrence for the Chief in Karidudu to order closure of all businesses and to require the residents' attendance at harambees and barazas. There is no law that gives District Commissioner the same kind of power.

But while it may be said that a Chief has the legal power to order people to attend such functions, these powers may be criticised as infringing on the constitutional right to freedom of movement.

In the questionnaire, the respondents were asked whether it is right for a Chief or a District Commissioner to order them to attend a harambee or baraza. A large majority felt it was right for these officials to make such an order. When asked for reasons for their answer most said that it was because they are "the eye of the government" or

"because they wear a crown". Others thought that the wananchi (citizens) should obey orders in return for the public services performed by these officials.

An interesting view point was that different considerations applied for harambees as opposed to barazas. This viewpoint maintained that harambees were voluntary in nature hence people should not be forced to attend or contribute to them. However, barazas were seen as a matter for the whole public and hence there was an obligation on all people to attend them.

Only 20% said that it was not right for the authorities to make the orders. The reasons given for their answers indicate that they felt the authorities by making such orders would be infringing on their rights.

Asked whether they would obey an order to attend a harambee or baraza 73% indicated they would obey. Only 13% said they would make an independent decision as to whether or not to go and a tiny majority(7%) would disobey the order. It should be noted that the proportion of those who would make an independent decision is smaller than the 20% who had felt that their rights were being infringing upon. Thus it would appear that a number of people would obey the order against their convictions. Indeed a number explicitly stated that they would obey the order but only because force might be used to compel them to obey if they disobeyed.

## CONCLUSION

There was in the main, unawareness by the respondents of their rights vis-a-vis administrative authorities. This lack of awareness of rights was displayed with respect to arrest, search and illegal confinement. This ignorance has meant that people have not been able to assert their rights. Indeed the prevalent attitude towards administrative authorities seemed to be one of unquestioning subservience. The legitimacy of the authority of administrative officials by virtue of their being government servants was taken for granted without any questioning as to the legality of their actions.

Even where some respondents perceived injustice in regard to orders of Chiefs or District Commissioners, nevertheless there was a feeling of impotence in the face of the force used to back up the orders.

Incidentally, it was noted that some respondents gave lack of finance as a hindrance to their taking action to enforce rights. However, none of these respondents seemed aware of the existence of institutions like the Kituo Cha Sheria (Legal Advice Centre) or the Public Law Institute to which indigent people can take resource.

#### D: TENANCY

This section of the questionnaire dealt with increases of rent and eviction, two very common problems in the urban areas.

The first question asked whether a landlord has the right to increase the rent of his premises and, if so, under what circumstances he has the right.

The circumstances under which a landlord may increase rent depend on whether the tenancy is a controlled or a non-controlled one. Controlled tenancies are created by the Rent Restriction Act (Chapter 296) and the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Chapter 301). These two Acts seek to protect the interests of poor tenants against arbitrary rent increases, evictions or prejudicial alterations of other terms of the tenancy. The Rent Restriction Act covers residential premises for which the standard rent is Ksh. 2,500 or less<sup>13</sup>. Chapter 301 covers certain categories of business premises. One cannot contract out of a controlled tenancy. The two Acts establish Tribunals to deal with disputes arising from the controlled tenancies.

In controlled tenancies certain restrictions are imposed with respect to increase of rent. The Rent Restriction Act lays down the circumstances under which an increase of rent is permitted. These are where rates (including water, light or conservancy charges) have become payable or have been increased, where the landlord has incurred

expenditure on improvement or structural alteration of the premises, or incurred expenditure in connection with installation or improvement of a drainage or sewerage system, or in connection with the reconstruction or repair of a road<sup>14</sup>. The Rent Restriction Tribunal established under the Act has to be notified of the increase.

Chapter 301 does not specify the circumstances when rent may be increased but it still provides restrictions in that before an increase is made notice must be given to the tenant in the prescribed form and the matter can be taken to the Business Premises Rent Tribunal for determination.

In contrast with controlled tenancies, in non-controlled ones there are no restrictions on increase of rent. Where the tenancy agreement is in writing, the increase may be regulated in writing. In unwritten tenancy agreements notice is usually sufficient in either case the landlord's hands are not tied.

From my observation during the survey, all the residential premises were controlled tenancies. Most of the houses are made of mud or wood. Rents are in the range of Kshs.200.00 and Kshs.500.00 and are thus well within the Kshs.2.500.00 limit. Investigations could not reveal whether or not the business premises were controlled but my view is that it is unlikely that the tenancy agreements were in writing or if so were for periods longer than five years. They would thus be within the purview of Chapter 301.

When the respondent were asked whether a landlord has a right to increase rent all but one correctly stated that the landlord has such a right. However on being asked in what circumstances the right may be exercised, more than a third felt the right is unlimited and may be exercised at any time. The reason mostly given was that it is the landlord's house and he can therefore do as he wishes. There was no recognition whatsoever of the existence of controlled tenancies.



The answers given by nearly half of the respondents showed ignorance of the legal prerequisites for increase of rent. Examples of answers given were that the landlord may increase the rent according to the cost of living or if he has not increased rent in a long time. Again these answers gave no cognisance of the existence of controlled tenancies. Also while it is true that in non-controlled tenancies the landlord is free to increase rent as he wishes, nothing was said of giving notice or of the terms of the tenancy agreement. Only a small minority showed some knowledge of legal restrictions in respect of rent increases. Many of the answers here cited improvement of the premises or increase in water charges as grounds justifying increase of rent.

The second question dealt with a landlord's right to evict a tenant. Once again the circumstances under which a landlord may lawfully evict are dependent on the status of the tenancy. Where tenancies are non-controlled, they are terminated upon the expiry of the tenancy (if the tenancy was for a fixed period) or in accordance with the terms of the tenancy agreement. Most tenancy agreements will stipulate a period of notice of termination of the tenancy. In oral agreements the tenancy is terminated by either party giving notice. In any event the tenant should not be ejected without a court order to that effect.

In the case of controlled tenancies the landlord's right to terminate a tenancy is restricted by the terms of the relevant statutes. The Rent Restriction Act lays down eight grounds justifying termination of the tenancy while Chapter 301 recognises six. Examples of these are non-payment of rent, breach of a tenancy obligation, where the tenant is a nuisance or annoyance or where the landlord intends to occupy the house for himself or his family, among others. In any event, there must be an order from the relevant Tribunal before the tenant is ejected from the premises.

In response to the question whether a landlord has the right to evict a tenant 80% thought he had such a right. The 20% who answered in the negative were clearly ignorant of the legal position as all landlords have a right, though qualified, to evict tenants.

When asked in what circumstances such a right accrues, a small percentage were of the opinion that tender of notice by the landlord was sufficient to warrant eviction. These respondents were thus unaware of the existence of controlled tenancies and the restrictions thereof. The remainder thought that the landlord needed to have some reason for evicting the tenant; most cited non-payment of rent or annoyance or nuisance caused by the tenant. Though there are a good number of grounds recognised by the relevant statutes, very few respondents mentioned more than two grounds and none mentioned more than three. None of the respondents made a distinction between the legal position regarding controlled tenancies and that regarding non-controlled ones. Further, none mentioned that a court order must be obtained before the tenant can actually be ejected from the premises.

Judging from these answers, it would appear that the respondents were guided more by feelings of what should happen rather than by knowledge of the legal position in the matter.

Next, the respondents were asked what they would do if their rent was increased. The majority said they would comply with the increase if they could afford it or move out if they could not. Another group said they would try and negotiate with their landlord while others would take the matter to the Chief. Only a minority of 14% said they would seek redress if the rent increase was unjustified.

The respondents were then asked what they would do if they were evicted from their house. The largest group making up nearly half of the respondents indicated that they would comply with the eviction. They said that they would leave the premises and look for alternative accommodation. The reasons given for their answers were that it was the landlord's house and he could do with it as he wished, or that the tenants had no alternative but to move out. This shows ignorance of their rights and options under the law. About one third said that if evicted they would report the matter to their Chief or the police. A small minority said they would seek redress in court.

The last question, addressed to all the respondents, asked whether they knew of the existence of any court that protects the interests of tenants. The majority said they knew of such a court. However, most of these said they did not know its name or its location. A few knew the court by the Kiswahili names "Korti ya manyumba" or "Korū ya nyumba". The latter term is the correct Kiswahili term. Only two people called it either the Rent Tribunal or the Tribunal.

An interesting thing is that despite the relatively large number who said they knew of the existence of a court that protects tenants' interests, only a very small proportion (14% in the case of rent increase and 12% in the case of eviction) would seek redress in court. It would seem that there was unwillingness to take matters to court despite knowledge of the Tribunal's existence. This in my view is in part due to an inability to set in motion the court machinery owing to ignorance of the steps to be taken to do so. For instance about half of the tenants had only heard of the court but did not even know its name or its location. Such people would be unlikely to know the modalities of filing a complaint in the court. Another explanation is that the legal system is alien to them. They would therefore prefer not to have anything to do with it. The assertion is supported by the fact that a large group of tenants would seek extra-legal means of redress, such as going to the Chief or to the police.

It should be noted that none of the tenants showed any awareness of the existence of the Kituo Cha Sheria, yet the Kituo has its base in Nairobi.

## CONCLUSION.

There was general ignorance of legal provisions pertaining to the tenant-landlord relationship and, in particular, of the restrictions of landlords' rights in controlled tenancies. The respondents were also largely ignorant of their rights and options under the law and of machinery for their enforcement. Due to this, legal measures have not been used to protect tenants from the caprice of landlords.

Even where the existence of the Rent Tribunal was known there was an apparent unwillingness to recourse to it. This may be attributed first to ignorance of procedures necessary to set in motion the court process, and second, by the respondents' alienation from the law as manifested by the tendency to recourse to extra-legal measures rather than legal ones.

#### E: MARRIAGE AND PERSONAL STATUS

Family law in Kenya is complex and reflects the cultural and religious diversity of Kenyan society. There are four systems of law, namely statutory, customary, Mohammedan and Hindu.

Under the statutory system marriages may take place under the Marriage Act (Chapter 150) and the African Christian Marriage and Divorce Act (Chapter 151). Registration of marriage under these Acts takes place either in a place of Christian worship before a church minister or in a civil registry before a Registrar of Marriages. Under these Acts marriages are monogamous; no spouse may marry another person during the lifetime of the other spouse unless there has been a decree of divorce. Also one cannot convert to another system of marriage during the subsistence of a statutory one.

Customary marriage takes place under the various customary traditions of the Africans people of Kenya. Hence there is no uniform format of marriage though payment of bride price is usually the seal of the marriage. Customary marriages are potentially polygamous.

The Mohammedan and Hindu systems of marriage are ordered after the religious traditions of these religions. These marriages are governed by the Mohammedan Marriage and Divorce Registration Act (Chapter 159) and the Hindu Marriage and Divorce Act (Chapter 157) respectively. Mohammedan marriages are potentially polygamous (up to a maximum of four wives at a time) while Hindu ones are monogamous.

One of the questions posed to the respondents was whether they knew the various systems of marriage law in Kenya. In the course of interviewing it was realised that none of the respondents knew the accurate terms for the systems of marriage law. Indeed, most people did not understand what I meant by "system of marriage law" so I decided to rephrase the question to: "Do you know the various systems or means that people use to get married?"

Common answers to this question were "church wedding", "going to the DC"(an erroneous reference to marriage registrars), and "paying bride price according to our customs". These were, however, deemed acceptable for purposes of the questionnaire as they indicated some knowledge on the part of the respondents. Seventy three per cent knew between one or two means of getting married while 27% named three such means.

Both groups saw the church ceremony and civil registration as two distinct systems of marriage, while in reality they constitute one system. Only two people, one of them a Muslim, knew the Mohammedan system. None mentioned the Hindu system of marriage and none named all the four systems correctly.

In my view, the significance of this state of affairs is that marriage is seen as a way of life and not in terms of systems of law. When people get married they do not see themselves as conforming to any particular kind of law but only as doing what seems natural to their lifestyles or customs.

Next the respondents were asked whether if they lived with another person (of the opposite sex) without going through any ceremony they would consider themselves married. This question was aimed at gauging the perceived relevance of law and legal requirements in marriage and marital status. The legal position is that the common law can presume a marriage between a man and woman where there has been cohabitation for a considerable period and the public regards them as man and wife<sup>15</sup>. About one-third answered in the affirmative while the remainder replied in the negative. In the course of the interview I gathered that most respondents considered cohabitation (or

"ndoa ya mapenzi") as unacceptable because it was disrespectful to parents. Many of the older people considered that bride price had to be paid in order for marriage to be valid.

It would seem that for a considerable number the legal requirements of marriage are not perceived as relevant. Those who answered the above question in the negative would appear to be influenced by societal norms and expectations rather by legal imperatives.

As already mentioned, statutory marriage, which includes registration of marriage in a Christian church, is monogamous under the relevant states. Bigamy is indeed a criminal offence under the Penal Code.<sup>16</sup> The respondents were asked whether a man who has been married in church has a right to marry another woman. A few respondents were of the opinion that such a man has the right to marry another woman as he has the right to what he wants. A similar number thought that it depended on the particular sect or that if the couple was childless the husband had the right to marry another woman. These two groups were obviously ignorant of the legal position.

A large majority were of the opinion that a man married in church has no right to marry another wife. However, it is interesting to note that for them the law of the land had nothing to do with the matter. To them the reason bigamy was not allowed was that the church forbids it or that the law of the church does not allow it. While it is true that Christian doctrine forbids bigamy, the legal consequences of bigamy accrue not because of the church prohibition but because it is prohibited under the state law. Only 10% either gave an unqualified "No" or said that the law prohibits it.

Under the Subordinate Courts (Separation and Maintenance) Act (Chapter 153) a wife is entitled to obtain separation, including custody of children, and/or to receive maintenance from her husband where there has been constructive desertion or cruelty on the part of the husband. A question was addressed to women respondents as follows: "If you have been married to a man and he sends you out in order to marry another woman, what would you do? Why?"

Of the women interviewed, sixty percent would go away as ordered by their husbands. Reason given for this answer were that there was nothing the woman could do but leave, or that it was the man's home and she therefore had to obey. Thirty three percent said they would seek help from their Chief or the village elders, either in a bid for reconciliation or so that the woman could get custody of the children. Only seven percent said they would go to court.

Most women were therefore ignorant of their rights and of protection accorded to them by the law. For those who wished to take some action, extra-legal means were preferred; even then those women did not think of the possibility of seeking maintenance from their husbands.

The last question dealt with apportionment of matrimonial property upon divorce, The respondents were asked whom they thought should, in the event of a divorce, take property acquired during marriage. In divorce proceedings the court usually apportions the property acquired during marriage in accordance with the parties' monetary or indirect contribution to its acquisition.

More than a third of respondents thought that the property should be taken by the man. The reasons given for this view were that the man is the owner of all the property in the home, or that the woman did not play a part in its acquisition. A tiny minority thought that the woman should take the property. Over forty percent said the property should be apportioned between the two for the reason that they acquired it together. Other answers varied. Some people thought that it depends on whether it was a church wedding or a traditional one, while others felt that the spouse who takes the children should get the property. Others were of the opinion that the woman shares it if she has been earning money while still others thought that it depends on which spouse is in the wrong.

From the above it would appear that the views of a considerable number have been influenced by the traditional attitude that a woman can own no property. But there is also a large degree of egalitarian thinking which regards the woman as entitled to some

share in matrimonial property, although whether this thinking is influenced by awareness of the legal position is questionable.

## CONCLUSION

There was general ignorance of the workings of the law in the marriage institution. Systems of law and their legal consequences were largely unknown. There was also ignorance of rights under marriage. Apart from ignorance there was an exhibition of detachment from law in the marital sphere evidenced by people's resort to extra-legal means for the solution of their marital problems.

Marriage seems to be perceived as a way of life and not in terms of systems of law or legal rights and obligations. It also emerged that traditional values and norms have influenced people's attitudes.



## CONCLUSION

The overall picture that emerged from the survey was that the respondents were generally ignorant of the law in regard to the areas covered by the survey, namely employment, business activity, law enforcement and administrative authorities, tenancy and marriage. There was general lack of awareness of the relevant legal provisions, of the legal frameworks of facilitators and of the general workings of the law as regards the above areas. The respondents also displayed ignorance of beneficial provisions in the law and of the legal rights contained in such provisions, as well as ignorance of the machinery for the enforcement of those rights and of institutions existing for the protection of their interests.

The result of this ignorance is that respondents have on the whole not been able to use established machinery to redress wrongs or enforce their rights. Rights have not been asserted due to either ignorance of their existence or ignorance of the process by which such rights may be enforced. The respondents also showed an inability to use existing institutions for the protection of their interests. Legal facilitators have also not been utilised primarily due to ignorance of their existence or of their benefits.

In addition the survey offered insights into the attitude of the respondents towards the law. From the survey it appeared that the respondents were, in the main, alienated or detached from the law. For instance, business is carried on and marital relationships entered into for all intents and purposes as if the law and legal imperatives did not exist. Alienation was also exhibited in the tendency by the respondents to prefer extra-legal means of solving problems. Related to detachment is an attitude of subservience to law enforcement and administration authorities.

In my view, there is a relationship between ignorance of law and alienation or detachment from the law. When people are ignorant of law, and therefore not able to avail themselves of benefits conferred by the law, they tend to become suspicious of it. Law thus becomes something to be feared; involvement with it is to be avoided as

much as possible. This alienation drives them further away from law and steeps them into deeper ignorance of law and its workings.

From the foregoing it can be concluded that due to ignorance of legal provisions and legal rights and the resultant inability to use law for their benefit and for the protection of their interests, the people of Karidudu have not been able to use law as a resource for the improvement of their lives in either the economic, civic or social spheres of life. If development is, as in this study, conceived in terms of improvement of the overall quality of life, it can then be said that the people of Karidudu have not used law as a tool for their development in the areas covered by the survey.

**CHAPTER FOUR**

**PROPAGATION OF LEGAL KNOWLEDGE AND  
ITS IMPLICATIONS**

## 4.1 INTRODUCTION

This study has all along argued that the law is an important resource for development and that general knowledge of law by the populace is essential if law is to be such a resource.

The Kenya Government's declared commitment to a development that concerns itself with the uplifting of the quality of life further legitimises the need for popular knowledge of law. However, the actual state of affairs departs from this desideratum.

There is a legal presumption that everyone knows the law. Yet the formal methods used to publish or propagate the law are unsatisfactory and inadequate. They do not give laymen real access to the laws. Legal knowledge and legal skills are monopolised by professional lawyers whose high fees and social orientation place their services out of the reach of the ordinary people.

The Government has formulated no formal or direct policy on legal literacy and has not made significant efforts, if at all, to effectively disseminate legal knowledge. There, however, exists voluntary effort by non-governmental agencies. But this has been unco-ordinated and on the whole far inadequate.

The discussion in the previous chapter, gave us some insights into the general ignorance of law among the people on such basic - day issues of life in an urban setting emerged that as a result of this ignorance people have not effectively used law as a resource for their own development, and indeed, they feel alienated from it.

It is this state of ignorance which compels advocacy of the view that there is need for law to be communicated to the people in a continuous systematic and adequate way - indeed on a nationwide scale. This begs the questions: who should assume primary responsibility for the propagation and what methods should appropriately be used?

This chapter examines these issues, underscoring in the process some of the challenges involved in communication of the law within the matrix of the social, economic and political factors attendant to propagation of such an enormous undertaking. While offering no panacea, the chapter is intended primarily to provoke thought on these concerns.

#### 4.2 RESPONSIBILITY IN THE PROPAGATION OF LAW

The central issue under this sub-part is this: Who should assume the principal role of communicating the law to the people? Should it be the Government, non-governmental agencies or both?

The Government has, or ought to have, the principal obligation to communicate the law to its citizens. The first reason for this is that the state is the principal source and promulgator of laws. By and large, laws originate or are initiated by the Attorney-General and are then passed by Parliament. Ultimately they are implemented by the executive. It is therefore arguable that the entity that promulgates laws should be the one to make them known.

Secondly, the state is vested with the responsibility of ensuring the welfare and development of its citizens. The Kenyan state has already declared its commitment to development. If knowledge of law does contribute to development, as it has been argued, then the state has the obligation of striving to ensure that its citizens know the law.

Thirdly, only the Government has the capacity for the needed resources, in terms of personnel, finances and administrative machinery, that are required for a nationwide campaign for legal literacy.

As regards non-governmental agencies they too have a role to play. But they have limitations that curtail their capacity to take the principal role of propagating legal knowledge.

The first is their size. With a few exceptions, most non-agencies are small. The average non-governmental agency will comprise a small secretariat and a few field personnel as contrasted with a typical government department which will usually have a far larger number of employees. Non-governmental agencies in general therefore do not have the

personnel or organisational resources required to launch a nationwide legal literacy campaign.

Secondly, non-governmental agencies are of varied nature, each with its separate and distinct purposes, goals and outlook. Indeed, attempts to neatly categorise these agencies have been unsuccessful (Kabiru, 1985). This means that each agency has its priorities which are in turn determined by the purposes for which it was formed, as well as by its socio-political orientation. Thus a relief agency will render relief service, whereas a primary health agency will concentrate on health matters. As such the objectives of most non-governmental organisations would appear to exclude the goal of legal literacy propagation.

Further, these agencies usually operate on a "project" basis - with most projects lasting for an average of three years. The nature and magnitude of legal illiteracy dictate that communication of law must be a continuous process and not limited to dot-projects. Non-governmental agencies also usually operate on a regional.

Finally, these agencies being non-governmental, do not have the benefit of bureaucratic machinery and networking that the government has. These give the Government the advantage of dispersion and nationwide linkages.

It therefore appears that it would be imprudent to leave the bulk of propagation of law to non-governmental organizations. This, however, is not to say that the agencies should play no part at all. They, as well as individuals, should play a supportive or complementary role. This suggests that their role should fall within the ambit of Government policy and plan of action with the primary responsibility falling squarely on the Government.

Instead of the presumption that everyone knows the law, there ought to be an entitlement on the part of the citizen to be informed what the law is. This entitlement may be translated into a right to know the law, or a right to legal literacy. This right

flows from the political obligation of the Government to communicate the law to its citizens.

To talk about the right to know the law immediately raises certain questions. What would be the content of such a right, who would enjoy it as against whom? Does the holder thereof have any duties? Can it be enforced? Let me now examine these issues.

To start with, the right should be enjoyed by individuals against the state. Reasons for this have already been given. The right should entail, at the minimum, an obligation on the part of the state to formulate definite policy on legal literacy. Such policy would set out priority areas of law to be communicated, and the government agencies to be used.

Responsibility would also be laid on the state to search for appropriate methodology for communication of law and to set up and effect programmes for actual dissemination of legal information. The right also lays an obligation on the state to allocate funds specifically for legal literacy programmes.

At the same time it should be noted that in order for the right to be effectively exercised, it is incumbent upon the right holders to ensure that they avail themselves the opportunity to know the law. If for instance, the radio is used as a medium of communication of the law, it would seem that the individual must ensure that he tunes in and listens to the relevant programme on the radio.

It is, however, admitted that there are certain weaknesses related to the realisation of the right. For instance, one assumption inherent in the right is that people will have both the ability and the willingness to avail themselves of the opportunities to know the law.

This assumption raises certain questions. If, for example, the radio is to be used as a medium of communication, is there any assurance that the audience population possess radio sets in the first place, that the sets are fitted with batteries and, further, that the audience actually tunes in and listens to the programmes. Similarly, if

newspapers were used to communicate the law there is the question of whether people can read and also whether they can afford to buy the newspapers. These problems must be seen in the context of the deeper issues of illiteracy, poverty and general underdevelopment in our society.

Another limitation is that due to the wide scope of the law it is impossible to communicate all aspects of law at once. This means that the propagation has to be in stages and that priority areas have to be identified. Realisation of the right can therefore only be achieved gradually and through long-term programming.

However, these weaknesses or limitations should not mean invalidation of the right to know the law. The mere recognition of the right does give a basis for holders of the right to make demands on the state to establish machinery and favourable conditions for the realisation of the right.

Moreover, there is hope that the right can be realised even prior to the establishment of a nationwide system of communication. For instance, in the judicial arena people could be allowed to plead ignorance of the law as a defence in some instances, e.g where the doctrine of strict liability does not apply. Such a plea could then be accepted if it was proved that the person so pleading had no knowledge of the law in question. Rules of evidence would be applied to determine the veracity of the plea.

Another way of realising the right would be to write into statutes a requirement for the communication of the statute, preferably specifying the method of communication. An example of a statute with such a requirement was the Tanzanian Price Control Ordinance (Chapter 309 of the Laws of Tanzania) which provides that any order or notice issued by the Price Controller was to be communicated to the public or to the persons by whom it was intended to be obeyed. This was to be either by notice in the gazettes or newspapers in the area where such persons resided, by public notice in such area, or by letter addressed to any concerned individual (Seidman, 1972: 19).



Where a requirement to communicate legal provisions is written into a statute, the onus should be on the person obliged to communicate to prove that communication did take place. Thus if it is proved that the relevant provision was not communicated then the individual concerned should not suffer detriment or punishment for failure to comply with the provision.

### 4.3 POLICY AND METHODOLOGY OF COMMUNICATION OF LAW.

#### 4.3.1 POLICY

The appropriate methodology for communicating law, it is imperative that a coherent and distinct government policy on legal literacy be developed. Methodology should not be seen in isolation from the policy or philosophy that underlies any communication programme. This is because the policy or philosophy adopted has a direct bearing on the kind of communication methods used.

Policy is also important as it provides the framework for the setting of uniform goals and priorities, determination of content and coordination of activities. The importance of policy has, for instance, been expressed by agricultural extension workers in Kenya. Complaining that one of the problems they faced in communicating agricultural information was lack of a national science policy, they pointed out that the absence of such a policy meant that research priorities were set by the research workers themselves, resulting in duplication of efforts or distortion and divergence due to lack of co-ordination (Wapakala, 1975:27-30).

In addition formulation of policy would enable legal literacy goals and objectives to be stated in authoritative terms and would also provide the necessary logical connection between general development policy and legal literacy.

However, there are certain problems and issues that the formulators of legal literacy policy have to grapple with if legal literacy is to become an attainable goal in Kenya.

The first relates to the need to convince the recipients of the need for knowledge of law. It has been recognised that where the content of a message aims at changing peoples' behaviour it is necessary that the people perceive the need for such change (Molnos,1972: 128, 129). The majority of the Kenyan population, particularly in the rural areas, are pre-occupied with survival. As was noticeable from the field survey, they are generally alienated from the law and do not perceive its importance to their

everyday lives. It is, therefore, crucial, that people are made aware of the importance of law in their lives and hence the necessity of knowing the law. Unless this is done, communication of legal information may well fall on deaf ears.

Another problem relates to general illiteracy. A high illiteracy rate inhibits legal literacy firstly because illiterate people generally have narrower horizons and lower perception of issues. Secondly, illiteracy limits the usefulness of written materials as channels of communication.

The language barrier is also another relevant issue. Appropriate language is a crucial factor in communication as it is impossible to reach an audience with a message unless the language being used is well understood by the people. In Kenya English as the official language is the medium of communicating technical information including law. Yet it is only well understood by a minority.

In the face of these problems the question naturally arises as to what the most suitable communication policy to adopt should be? The following are suggestions of some communication principles that may lend themselves to adoption in a communication policy.

The particular communication philosophy adopted in any communication programme has a bearing on the kind of methods used. For instance, top-down communication approaches are usually accompanied by communication methods that are not sensitive to the nature of the audience or to its needs. For example, development programmes imposed on the people from above tend to run into problems as the people for whose benefit the programmes are intended do not always identify with the programmes (Balcombi, 1976:14). Such programmes often presume the people's needs without any consultation with them as to what their real needs are. This may result in alienation and apathy on the part of the people. A case in point is a mobile film Rudini Mashambani<sup>1</sup>, which dealt with agricultural development. While the film was well appreciated in agriculturally suitable parts of Kenya it failed to have meaning and impact when screened for pastoralist nomads in the Eastern Province of Kenya (Mwaura, 1980:50).

The mistake is usually made by communication agents such as extension workers or broadcasters in conceiving of communication work as a one-way traffic which simply involves sending out a message to a recipient. It is then assumed that a defined information input will automatically lead to a defined response (Fuglesang, 1978:23,32). This idea, as illustrated by the above example, does not usually work well because it fails to respond to the recipient's needs, thereby alienating him or her. Communication should instead be viewed as involving a two-way process. The recipients of information should be seen not as consisting of a passive mass but as active and responsive human beings. This therefore requires that the communicator learn to listen to the audience and strive to be sensitive to its needs. It is, therefore, important that the audience has a chance to participate, as far as possible, in the communication process.

A communication approach that seeks to meet the real, rather than the presumed, needs of the audience requires research geared at actually finding out from the audience what it perceives its needs to be. A problem attending such research is heterogeneity. Kenya's people have widely divergent cultures, traditions and languages, as well as differing degrees of economic advancement and modernisation. There is also the gap between rural and urban areas. How can satisfactory audience research be conducted?

While this difficulty is appreciated, it should be noted that not each and every village has to be individually studied. Already there are in existence socio-cultural studies of all the Districts in Kenya<sup>2</sup>. It is possible to draw up profiles, based on the existing studies, of communities with similar ethnic, cultural and ecological characteristics. Research into legal needs can then be conducted on that basis.

With regard to the issue of language, there are in Kenya numerous local languages reflecting the diversity of ethnic groupings. It would be near impossible to communicate the law to each person in his/her own language. Fortunately, Kenya does have a language which is largely spoken by the majority - Kiswahili. Further, Kiswahili

being a folk language does not have the elitist connotations that English has. Kiswahili is, therefore, a suitable and ready means of communicating the law.

Local languages may, however, still play some role. The Kenya Broadcasting Corporation has a number of vernacular radio stations using the major local languages. If radio were widely used as a medium of communicating law, there would be scope for using these local languages. Even if not everyone would be reached in this medium, the majority would.

It is also important to consider in what form the law itself should be communicated. Law is usually presented in statute books, judgements and textbooks in very technical language which can only be largely understood by professionally trained lawyers. And yet the aim of communicating the law to the public is to enable the layman to know and understand it sufficiently for him/her to use it for the improvement of his/her life. The question then arises as to whether the law should be communicated in its "pure" technical form, or whether it should be simplified. A related issue is whether simplification would cause the law to lose its essential character as law.

In my view, it is necessary to present the law in a simplified manner if the layman is to understand it. This would mean that legal jargon favoured by lawyers, such as Latin phrases and maxims, certainly have to be omitted. Simplification also implies that statutes should not necessarily be spelt out word for word; rather the gist of the legal provisions and their import should be emphasised. It is admitted that in the process of simplification there would inevitably be some "loss" of content in the law.

However, such "loss" is considered to be not to be fatal provided that the basic import of the law is understood. An important task of communicators of law must therefore be that of transforming technical legal information into ordinary language understandable by the ordinary citizen.

A further question is whether to communicate all areas of law or only some of them. As may be appreciated, the corpus juris is very wide and it would be virtually

impossible to communicate all subject areas of law at once. Choices would have to be made as to priorities.

Priorities should be determined by reference to the needs of the people. This suggests that areas of law that have the greatest bearing on people's everyday lives should be given first priority. Some of these areas are those dealt with in the field surveys in this study - i.e. employment and business activity, tenancy, succession, marriage and constitutional rights. Pertinent needs in the rural areas might relate to land registration and land ownership, and access to agricultural credit. However, there should not be a glib presumption of what people's legal problems and needs are. Efforts should be made to actually find out from the people what these are.

Consideration should also be made of who the communicators of law should be. Professional lawyers have the advantage of already being in possession of the requisite legal knowledge. However, their social orientation may render the majority of them unsuitable as communicators. It would therefore be appropriate to train lay people as "para-legals" for the task of communication. In order to have a rich interplay of ideas and experience it is thought that these para-legals should be recruited from a variety of disciplines such as education, sociology, community work and others whose work involves direct interaction with people. There should be co-operation and co-ordination between all the personnel involved in different stages of the communication process.

Legal communicators should be equipped not only with legal information but also with relevant communication skills. In this regard it is pertinent to note that learning methods used for children are not necessarily suitable for adults. Further, some methods lend themselves to communication better than others. For instance, the use of case examples is a more effective way of relaying a message than a monotonous recital of legal provisions. Legal communicators therefore have to be innovative and creative in their techniques of communication.

Once a communication policy has been set and strategies devised, it is important that review of both the policy and strategies is undertaken periodically, firstly to ensure that the policy is in keeping with the needs of the people, and, secondly, to assess the efficacy of the strategies.

#### 4.3.2 METHODOLOGY

An already mentioned, communication should be regarded not as a one-way process of "shooting" information at an audience. It must be taken as a two-way process involving active and responsive human beings. Accordingly, the nature of the audience and its needs are critical factors. Participation of the audience in the communication process as far as is possible is also desirable. A consideration of these matters is relevant in the choice of media, and of the setting of communication programmes.

The question may arise as to whether legal education programmes should aim at reaching the whole population en masse, i.e. to an unorganised audience. On the other hand should such programmes be targeted at specific groups? It is pertinent to note that some legal issues, such as constitutional rights, affect the whole population while others affect only specific communities or groups of people. For instance, women or industrial workers as specific categories of people may have peculiar legal needs. It would therefore seem that there is a place for both approaches, depending on the legal subject area at hand.

Generally, the mass media such as radio and television lend themselves to reaching large portions of the population at once as they are able to sweep across distances, while face-to-face communication methods are more useful for specific groups of people.

The setting of communication programmes is also important. Most Kenyans are preoccupied with the daily activities necessary for survival. It would therefore be difficult and unrealistic to draw them away from these in favour of daily legal education lectures, for example. Legal education programmes should, therefore, be integrated, as far as possible, into day to day living. For instance, where media such as radio or films are used, attempts should be made to utilise these media during less busy hours such as the evenings.



Further, there exist in Kenya a wide range of community based fora which provide ready channels of communication. These include women's groups, public gatherings (barazas), and literacy classes. Advantage can be taken of these fora by incorporating a legal literacy agendum in them, thereby reducing the problem of drawing people away from their chores. These fora are especially relevant in a developing country like Kenya where lack of finances may impede utilisation of expensive media such as television.

The following is a discussion of some methods which may be used to communicate law. It is admitted that these methods are not original and the discussion only gives suggestions as to how the different media may lend themselves to creative use in the communication of law. In evaluating the usefulness of a medium, regard will be had to such factors as the numbers reached by the medium, scope for audience participation and feedback, cost and availability.

The methods are divided into two broad categories. The first category is what is commonly called the mass media. These media reach large numbers of people at a time without any face to face encounters with the audience. The second category refers to methods which involve face to face encounters.

## MASS MEDIA

### (a) Radio

One of the greatest advantages of radio is its capacity for dispersion of information. In this way it is able to reach large numbers of people simultaneously. Further, it can communicate to illiterate people or those with rudimentary levels of education. A further advantage is that radio is already a popular medium in Kenya. Indeed, from casual observation radio is most popular with the illiterate and the less educated, particularly in the rural areas, as it is often the only medium through which they come into contact with the outside world. Even where literacy levels are high, the scanty circulation of newspapers in the rural areas adds to the popularity of radio. In addition, radio can be listened to without distracting the listener from his or her work.

Major corporations, such as Eveready and East Africa Industries, find captive listeners and participators in their weekly radio advertising programmes<sup>3</sup> presented in Kiswahili. Their programmes seem to owe their popularity to the fact that people are allowed opportunity to participate, by asking questions and having them answered, and by airing their views. These programmes also use comedy episodes to get their messages across.

Radio is also quite widely available in Kenya. In 1985 there were 1.6 million radio sets for a population of approximately twenty million people<sup>4</sup>. Assuming that each radio set has an average of seven listeners, this meant that more than half of the population had access to a radio. When this is compared to the television ownership figures for the same year (100,000 television sets for the whole country)<sup>5</sup> it is evident that there is greater availability of radio than of television. Radio sets are also much cheaper than television sets.

However, despite the relatively wide availability of radio, it is still true that not everyone has access to it as its cost is beyond the reach of many people. Even for those who possess radio sets there is the problem of cost of batteries. Poor transmission in the more remote areas of the country is also a problem. Another disadvantage of radio is that, being largely a one - way medium, there is a limitation of participation and feedback from the audience. However, despite these weaknesses, radio would still have more audience capacity as a medium of communicating law to the people than any other considered here.

Efforts can be made to tackle the problem of audience participation and feedback by, for instance, allowing members of the audience to ask questions, either during the programme itself or through the mail, and to narrate their real life experiences. Greater participation can also be fostered by the use of local radio stations as these allow local people to identify with the programmes and provides scope for addressing the specific problems faced by particular communities. The vernacular radio stations already in existence in Kenya would be useful in this regard.

A dilemma that faces development-oriented communicators is that people generally turn to the media for entertainment and not for lectures. This underlines the need for such communicators to be interesting in order to capture the attention of their audiences. For instance, in the Philippines the Communicators Foundation of Asia realised that radio listeners did not exhibit much interest in panel discussions, speeches or lecture type talks. Rather the most popular programmes were "soap opera" radio dramas. The Foundation therefore decided to use the form of "soap operas" to convey development messages. In this way their programmes were able to capture the interest of radio audiences and at the same time to educate them (Hermano, 1976: 68,69). Radio dramas are also popular in Kenya and could have potential as a form of propagation of legal knowledge.

Where discussions are used as a form of communication care should be taken to avoid dry exchanges between professionals as these do not usually excite much interest, particularly from the illiterate or those with low levels of education. On the other hand use of real life or case studies in discussion can lend vitality and credence to the discussion. Other forms of communication would include radio spot announcements. These are useful for highlighting particular aspects of a message which is being relayed in more detail through other media.

Another issue that needs consideration is the question of availability of air time for legal literacy programmes. In countries such as Kenya where the state controls radio, this would not be a problem as the state can readily avail the time if it considers legal literacy a priority issue. However, where radio is privately owned and controlled, the state would have to buy air time on an equal basis with other programmes.

(b) Films

One advantage of films as a medium of communication is that because of their use of visuals, colour, motion and sound they are able to involve all the senses, thus capturing attention. Another advantage is that films overcome the barrier of illiteracy. Further, films are useful in generating discussion among the audience of the message content.

Mobile films are very popular in Kenya, particularly in the rural areas. Audience at any one time run into thousands. In 1976 a record crowd of 45,000 people at one show was recorded in Nyanza Province (Mwaura, 1980:49). The popularity of film has not waned in present times.

However, the disadvantage of films is that they are expensive to produce. Another problem is that only the major towns in Kenya are equipped with cinema halls. Unavailability of electricity is also a hindrance. The screening of mobile films in Kenya is primarily undertaken by the Kenya Film Corporation, a government body, and by Factual Films Limited, a private company. However, the system is not well developed and film circuits tend to be sporadic and erratic. If mobile films are to be an effective way of communicating law, then the system would have to be rejuvenated to ensure that, as far as possible, film circuits are regular and frequent.

Films for communicating law can be in the form of short documentaries which can be shown together with regular commercial films. In these documentaries practical demonstrations can be given, for instance, on how to solve specific legal problems. Communication films can also take the form of regular entertainment. These films can incorporate a teaching element by choosing themes which highlight the importance of law and the dangers of ignorance of law. They may depict problems caused by ignorance and solutions to problems through exercise of legal knowledge.

(c) Television

Television, like radio, has the power to over-come distance and to reach large numbers of people at the same time. Television also has a significant advantage over radio because of its use of both sight and sound. It can, therefore, be used for demonstrations because the communicator can be not only heard but also seen.

However, the use of television would be hampered by the paucity of television sets in Kenya. As already indicated, the ownership of television sets is very low. Television sets are also expensive, with the average set costing the equivalent of 500 U.S. dollars

sets are also expensive, with the average set costing the equivalent of 500 U.S. dollars while the average income of most Kenyans is about 50 U.S. dollars per year. This, coupled with the dearth of electricity in rural areas, puts television out of the reach of the majority. Sets are usually concentrated in the major urban centres and are owned by the middle and upper income classes of people. Television has, therefore, remained largely a medium for the elite, who in any event are more likely to afford the services of lawyers.

Save for the above constraints television would be a very effective medium. It could perhaps still be used but with the knowledge that the majority of people would not be reached.

(d) The Print Media

The printed word endures. Written materials can be read and re-read at convenience, thus allowing for fuller understanding of messages and the preservation of materials considered important.

However, the major shortcoming of written materials, such as newspapers, is that their use is limited to those who are literate; they, therefore, do not benefit illiterate people.

As regards newspapers, a further limitation is that in Kenya those newspapers with the highest circulation are in English, which is not understandable by the majority. Kiswahili newspapers have a comparatively lower circulation, while there are very few newspapers in vernacular languages. Newspapers are also expensive. The English dailies cost Kshs.20.00 and the Swahili ones Kshs. 6.00. This puts them out of the reach of the majority of Kenyans.

It might be possible to produce newspapers specifically for legal literacy purposes. However, apart from the cost, a likely problem would be that of ensuring distribution even in the remotest parts of the country.

Pamphlets have an advantage over newspapers in that the presentation of material can be brought down to the level of the semi-literate, particularly through the use of diagrams or cartoons to illustrate points. Case examples of situations, for instance depicting a legal problem and its solution, can be effectively used in pamphlets.

A further strength of pamphlets is that they narrow down issues and highlight them in a graphic form. A pamphlet can in this way be produced to highlight a specific issue such as succession, tenancy rights or constitutional rights. Pamphlets have been successfully used in a number of African countries for legal literacy purposes, particularly in Zimbabwe and Uganda.

Posters can also be used. Posters usually combine words and pictures designed to produce an eye-catching effect. They are useful for drawing attention to an issue and generating discussion. However, a limitation of posters is that by their very nature, they cannot give much information about an issue. They, therefore, have to be reinforced with other methods in order to make the greatest impact. There is also the question of cost, given the very large audience to be reached.

#### FACE-TO-FACE COMMUNICATION METHODS

The advantage of face-to-face communication methods over the mass media is that the communicator is in actual contact with the audience and can see and be seen by them. Opportunity is, therefore, availed to members of the audience to ask questions and have them answered. They, in turn, can contribute their own ideas. Thus there is both feedback and participation.

Examples of methods involving face to face encounters include seminars, workshops and lectures. A further advantage of these methods is that they can operate within the framework of already existing fora such as public meetings, women's groups, farmers' cooperatives, and trade union meetings.

Face-to-face methods can be enriched by the use of visual and teaching aids for illustration. Such aids may include slides and cine-slides (which combine sound and vision) and such simple devices as flipcharts and blackboards.

Drama can also be used during face to face encounters. A positive attribute of drama is that it is able to excite interest and at the same time convey a message. Drama was one of the methods used by Ugandan Government during its campaign to educate the Ugandan people on the constitutional process (Butegwa, 1990). It was also effectively used in Zambia to highlight the plight of Zambian women in succession matters as they lobbied for reform of inheritance laws (Mushoka, 1990:74).

In face-to-face communication it is important that the communicators have a deep and, if possible, first hand knowledge of the problems and needs of their particular audience. Indeed, it would be preferable, whenever practicable, that the communicators integrate themselves into the community in which they are working so that they are accepted as part of the community, and not viewed as strange outsiders. This, no doubt, requires dedication on the part of the communicators.

Despite the advantages of face to face communication methods, they have the shortcoming of not being able to reach large numbers of people at a time, as compared with the mass media. Further, effective use of these methods entails much time and expense as personnel have to be recruited and trained. The planning of itineraries would also present challenges as communicators endeavour to cover as much of the country as possible.

Nevertheless, face-to-face communication methods are an important and useful means of communication.

#### 4.4 THE WIDER IMPLICATIONS OF LEGAL LITERACY

If legal literacy were to be accorded the attention and seriousness advocated in this study, what implications would that have on Kenyan society?

In the wake of the democratisation movement in Eastern Europe, many African countries, Kenya included, have entered a phase of political pluralism with emphasis on transparency and accountability in Government and the public domain.

Knowledge of law brings with it conscientisation and awareness of rights and entitlements as well as general enlightenment about the society. Given the move towards democratisation, general knowledge of law is necessary as a means of sensitising people of their rights, and of the workings of Government. This is likely to help them make rational political as well as personal choices. Legal literacy would thus be an asset in the democratisation process, quite apart from its relevance to other aspects of development.

However, it is recognised that before propagation of law can acquire nationwide proportions, certain changes in society have to occur. For instance, it would be necessary to have a generally literate society. Illiteracy limits the range of methods for communication of law as written materials cannot be effectively used. A literate public would facilitate the use of a wider range of communication methods. Further, literacy usually results in a higher perception of phenomena and better analysis of issues which would have positive effects on the promotion of legal literacy. For these reasons it would seem that a vigorous literacy campaign should precede, or at least accompany, efforts to promote legal literacy.

It should, further, not be assumed that people are already aware of the importance of law in their lives, or that they would necessarily welcome attempts to communicate the law to them. The general population in Kenya, particularly the poor, is already preoccupied with the daily chores of life. Legal literacy campaigns might be seen as an unwanted intrusion in their lives. The populace would, therefore, have to be sensitised



to the relevance of law to their own development in order that knowledge of law may be seen as needful and a priority.

Promotion of legal literacy does also have economic implications. A sustained national strategy for communication of law would require an outlay of large sums of money, running to millions of shillings. Since Kenya is a poor developing country the government might not be able to implement legal literacy programmes all at once. Implementation would have to be in stages.

The financial investment required might also mean that the Government, in the face of compelling demands of development such as health and education, may not make legal literacy a matter of top priority. It is likely to include it among other development concerns that need to be tackled in due course. Nevertheless it is still strongly felt that the issue of legal literacy should not be shelved. It is an integral and catalytic part of development.

The financial constraints faced by the Government may necessitate canvassing for aid specifically earmarked for legal literacy work from donor countries and agencies. Yet a negative aspect of such aid is that there is a tendency by donors to impose conditions for aid, which might prejudice the country's approach to the development and implementation of a legal literacy policy. Even though some of these conditions, such as those emphasising transparency and accountability in government, may be seen as positive, aid conditions generally tend to impinge on a nation's independence and sovereignty.

Knowledge of law usually results in greater awareness of rights and entitlements. However, the question arises whether legal knowledge can by itself change the people's situations. Will mere knowledge reduce poverty and provide resources? The answer is really in the negative. While legal knowledge can provide greater access to resources and produce more assertiveness in claims for enforcement of rights, it does not provide wealth or reduce poverty in real terms. As long as the existing socio-economic structures remain there will always be the possibility of feelings of

frustration on the part of people who know their entitlements and yet cannot have them in full.

A related question is whether the Government can cope with or accommodate all the demands that might be made on it as a result of legal conscientisation. If not, then it may be unlikely that the government, faced with the possibility of such demands, would be willing to provide legal knowledge to its people.

In considering the effect of legal literacy on the enforcement of rights or the seeking of redress, one ought also to bear in mind the weaknesses of the present legal system. It cannot be doubted that possession of legal knowledge provides greater access to the legal system, for instance by enabling people to present their cases in court without need for lawyers. However, even with these advantages, legal literacy cannot in itself eliminate the difficulties caused by the slowness, costliness and formalistic nature of the court process and other extra-judicial processes. This might perhaps imply the need to search for quicker and less formal mechanisms for dispute settlement as an augmentation to the provision of legal redress.

Finally, the implications of legal literacy on the legal profession also need to be considered. A pertinent issue in this regard is the would-be marketability of lawyers.

The enhanced accessibility to the legal system brought about by knowledge of law would have significant effects on the legal profession. First, the present alienation from law caused by ignorance would be diminished. Further, legal know-how would enable people to do things in the legal sphere that they would not otherwise be able to do. The net effect would be a lessening of the present helplessness in regard to law, hence a reduction in people's dependency on lawyers.

There would, no doubt, be sections of society, such as the urban elite and the rich, as well as high level business associations, which would still prefer to consult with lawyers. For others the need for professional legal services might be occasioned by high stakes on life or liberty, such as in criminal charges of murder, manslaughter or

treason. However, for the bulk of people for whom fees are hardly affordable, a functional knowledge of the law would be a liberating force.

In order to survive as a professional group, lawyers would have no alternative but to adapt themselves to such a changed situation. First, they would have to lower their fees as they would no longer hold a monopoly over legal knowledge. This would in turn necessitate reform in their mode of practice. For instance, hitherto prohibited practices such as undercutting and soliciting would probably need to be allowed. Rules against unauthorised practice by unqualified persons might also have to be modified. There would also be much less likelihood of lawyers preying on their clients' ignorance by charging exorbitant fees or outright cheating.

Lawyers would also need to broaden their horizons and be willing to work in areas and among groups of people, such as the rural poor and marginalised urban dwellers, whom they have hitherto been able to ignore. The range of their work may also have to change from the formalistic client/advocate relationship to one that is more community-based and whose focus is on service to people's needs rather than mere maximisation of profits.

It is to be expected that lawyers would not allow such in-roads into their monopolies and privileges without resistance. The legal profession is, therefore, not likely to be overly enthusiastic about or supportive of a vigorous and widespread legal literacy campaign.

In view of these constraints it would appear that full attainment of legal literacy, important though it is, is not likely to be realised in the foreseeable future.

Further, it may be predicted that until such time as the Government is able or willing to make legal literacy a priority, the non-governmental agencies will continue playing a greater role in the dissemination of legal information. However, it is thought that even if the Government were not to take a lead in legal literacy work, it should at least

formulate a legal literacy policy to provide a framework within which the non-governmental agencies can operate.

Finally, those committed to the cause of legal literacy should pursue it, the present constraints and difficulties notwithstanding.

**CHAPTER FIVE**  
**CONCLUSION**

## 5. CONCLUSION

The promotion of legal literacy has not been conceived as a priority by policy makers in Kenya, both in the colonial era and in the post-independence period. Although the colonialists did not make any policy on legal literacy, the segregation of the legal system along racial lines and the disallowing of legal education to Africans had negative effects on legal literacy as it alienated Africans from the English system of justice and denied them access to legal advice or information from legal technicians. Moreover, the colonial government assented to the development of a legal profession dominated by Europeans and Asians which was raised in an elitist tradition with enormous privileges and monopolies and was, therefore, unwilling to serve the legal needs of Africans.

Likewise, an examination of post-independence policy statements reveals that the Kenya Government, despite its declared commitment to wholistic development and literacy, has not formulated any definite or clear policy on legal literacy. No mention is made in those policy statements of the acquisition of legal knowledge by the citizenry. Although there has been a recent introduction in the school curricula of subjects with some legal content, the usefulness of these subjects is watered down by the fact that the legal content is very limited and is not geared towards creation of rights awareness, and by the fact that this educational process does not continue after schooling.

Although the legal profession is now predominantly composed of Africans, the elitist orientation of the profession has remained with legal training being primarily geared towards private practice at the service of the few who can afford legal fees. More significantly, the profession has through the use of legal sanctions, which the state has impliedly assented to, created a closed shop with a monopoly over legal knowledge and legal services. The law on its part, through the ignorantia juris maxim and the "Public Notice" doctrine applies the legal fiction that everyone knows the law. An obligation is thus imposed on the individual to find out for himself/herself what the law is. Yet no corresponding constitutional or legal obligation is imposed on the state to

inform the citizenry of the law or of its rights. The only official means of communication of law, namely publication in the Kenya Gazette, is totally inadequate in the Kenyan context due to illiteracy, lack of understanding of the English language, and the complex and foreign nature of the law.

Not surprisingly in view of the lack of policy, there have been only minimal efforts by the government to disseminate the law to the public. Voluntary efforts at dissemination of law, though commendable, are scanty, unco-ordinated and inadequate.

There is thus a combination of official silence regarding policy on legal literacy, a legal profession that is inaccessible to most Kenyans, a legal system that presumes citizens' knowledge of the law and a lack of appropriate or adequate means of communicating the law. This coupled with a complex legal system whose norms have on the whole not been generated by Kenyan society, has meant that the law and its workings have remained alien to the majority of Kenyans.

The indications on legal literacy levels from a field survey in Karidudu, which dealt with basic areas of law such as employment, tenancy, civil rights and marriage, are that there is general ignorance of the law as well as alienation from it. The result of this is that people are largely unaware of how to take advantage of favourable legal provisions for the protection of their legitimate interests, the enforcement of their rights or generally in the furtherance of their aspirations. Law has, therefore, not been effectively used as a resource for empowerment.

This situation compels the need for action by the state. As the principal originator and promulgator of laws the state should initiate a nationwide campaign for communication of law to the public. It is thought that there exist methods which can be creatively used in this process once a legal literacy policy has been set. There are, however, some constraints which can come in the way of such a campaign, among them being general illiteracy, poverty of the masses, financial strain on the government, and potential resistance by lawyers. It is, however, still felt that these constraints

notwithstanding, legal literacy is such an intergral part of development that it should not be shelved.

A pertinent question raised by this study is what are the rationales or policy considerations for the lack of governmental commitment to legal literacy? Why has the government not even committed itself to making any policy on the matter?

Kenya inherited, and has perpetuated, a capitalistic mode of operation which depends for its success on the maintenance of the existing socio-economic status quo. Knowledge of law is usually accompanied by a sharpened awareness of rights, assertiveness, and a heightened perception of injustice. This can result in agitation and lobbying by the masses not only for reforms in the law but also for changes in the political and economic equation. It is the fear of such concientization that made the colonialists deny legal education to Africans. In post-independence Kenya legal education is provided only to a small class of legal professionals whose socio-economic interests and elitist orientation tend to ensure that they maintain the status quo.

In view of the demands likely to be made on the government by a legally literate public it may be questionable whether the government can really be expected to apply itself to the advancement of legal literacy. It may, therefore, be reasonably predicted that until such time as considerable pressure is exerted on the government, voluntary efforts by non-governmental organisations will in the foreseeable future continue to play the more significant role in the endeavour to enhance legal literacy in Kenya.



NOTES

CHAPTER ONE

1. The maxim is explicitly referred to in Section 7 of the Penal Code (Cap. 63 Laws of Kenya). Note however that under Section 7 the rule does not apply where knowledge of the law is expressly declared to be an element of the offence. For further elucidation of the maxim see Broom, H. A Selection of Legal Maxims, 10th ed. (London, Sweet & Maxwell, 1939).
2. See Section 3 of the Judicature Act (Cap. 8 Laws of Kenya). The sources of Kenyan law are listed as the Constitution, all other written laws (including specified U.K. Acts of Parliament, the substance of English common law, English doctrines of equity and statutes of general application in force in English on the 12th August, 1897). The application of African customary law is severely limited. In reality customary law is only relevant in personal law matters and in land law under the Magistrates Courts Act (Cap. 10).
3. The exact illiteracy rate at present is difficult to ascertain. However figures obtainable from the 1979 Population Census (Kenya, 1979 Population Census Report (Nairobi, Government printers ) would indicate illiteracy rate of adults over 15 years of age to be 50 % . A report by the Daily Nation of Tuesday, September 7, 1993 cites data from the Central Bureau of statistics that put the literacy percentage in 1988 at 54%. It is likely that this rate has lowered since then due to factors such as lack of funds, insufficient facilities, shortage of adult literacy teachers and a high rate of school drop outs.
4. The lawyer-client ratio in 1986 was 1:20,000 mainly concentrated in Nairobi and Mombasa, see Ooko-Ombaka, "Legal Aid in Kenya: Past, Present and Future" Paper presented at the Law Society of Kenya Conference, 26th-28th February, 1986. Alternative means of qualifying to practise law, such as

obtaining a law degree from another country, or by apprenticeship under section 13 of the Advocates Act (Cap. 16 Laws of Kenya) are very limited.

5. Section 77(1) of the Kenya Constitution. N.B.: However, that right is only afforded to persons charged with a criminal offence.
6. The shortcomings of relying on old data are acknowledged. However, such sources have been used due to scarcity of recent literature in this area.
7. Quoted from a poster by the Canadian Organisation for Development Through Education (CODE), American Librarian Association, 1986.
8. The conference was jointly sponsored by the Sengtro ng Batas Pangtao (BATAS) and the Asia Pacific Forum on Women, Law and Development (APWLD) in November 1989.
9. Alternative Law Forum, Vol. VI, No. 1, First Quarter 1990.
10. Ibid.
11. Rahman, "The Roles of the Significance of Participatory Organisation of the Rural Poor in Alternative Strategies of Development" in Participatory Organisations of the Rural Poor as Vehicles for People - Centred Development (ICLD 1986). Quoted in Dias, C.J. and Paul, J.C.N., "Developing Legal Resources for Participatory Organisations of the Rural Poor" in Third World Legal Studies - 1985 (International Third World Legal Studies Association and Valparaiso Univeristy School of Law), p. 24.
12. Ibid.

13. Report of the Preparatory Committee for the UN Conference on Science and Technology for Development, U.N.G.A. 32nd Session, Supplement No. 43 (A/32/43), para. 19, p.36.
14. Government of Kenya, Development Plan 1989-1993 (Government Printer, Nairobi), p.38, para 2.18.
15. Ibid particularly pp 27-39, 2.3 Participation for Progress.
16. Office of The President, District Focus fo r Rural Development (Government Printer, Nairobi, 1987), and Government of Kenya Development Plan 1984-1988 (Government Printer, Nairobi).
17. Women's Bureau, Proposal on Community Based Legal Education Programme (Ministry of Culture and Social Services, 1989).
18. Ooko-Ombaka (1985).
19. Mutungi, O.K., "The Communication of the Law under Constitutions of Development" (1973) East African Law Journal 1.

## CHAPTER TWO

1. The Crown Lands Ordinance, 1902, the Outlying Districts Act, 1902 and the Crown Lands Ordinance, 1915 were passed in order to expropriate the best lands for the settlers. The Hut Tax Rules of 1901, the Master and Servant Ordinance, 1906 and the Resident Native (Squatters) Ordinance are examples of legal measures used to obtain cheap labour for the settlers.
2. See, for instance, the words of Sir Charles Elliot, a one time-governor of Kenya:

"His (the African's) mind is far nearer the animal world than that of the European or Asiatic, and exhibits something of the animal's placidity and want of desire to rise beyond the stage he has reached." Quoted in Lugard, 1923: 9.

3. There was also a court system for Muslims. The Kadhi's court exercised jurisdiction over Muslim natives in matters of personal status. It should also be noted that at the coast there were the Liwali and Mudir courts which exercised general civil and criminal jurisdiction over Arabs, Africans and Baluchis.
4. East Africa Order-in-Council, 1902, 5.20.
5. Nos. 16 and 17 of 1967 respectively.
6. No. 14 of 1967.
7. Section 3, Judicature Act (Chapter 8).
8. Ibid.
9. He was Kitili Mwendwa, the first African Chief Justice in Kenya.
10. At her Independence Day Tanzania had two African lawyers. Uganda was better extent. See Jackson, 1970, p.1.
11. Report of the Committee on legal Education for students from Africa (1961) paras. 51, 57, 60-62.
12. No. 10 of 1949.
13. Nos. 55 and 56 of 1952.

14. No. 34 of 1961, Cap. 16.
15. Debates co. 1040. Cited in Ghai and McAuslan, 1970, p. 393.
16. Legislative Council, Debates, vol. 88 (12 December, 1961 cols. 1209-1229 at 1225-1226 (Webb). Cited in Ghai and McAuslan, op. cit., p. 394.
17. Second Reading, Debates, vol. 1048-1054 (De Souza). Cited in Ghai and McAuslan, op. cit., p. 394.
18. Kenya, African Socialism and its Application to Planning in Kenya Sessional Paper No. 10 of 1965(Nairobi, Government Printer, 1965).
19. For example, in Chapter 2 of the Development Plan 1979-1983 and Chapter 8 of the Development Plan 1989-1993.
20. See The Daily Nation and other local daily newspapers for the months of February and March, 1991.
21. For example, it is stated in the Development Plan 1979-1983 that the government's goal was to eradicate illiteracy in Kenya 1983(see p. 187, para. 5.203 of the said Plan). However, the realisation of these goals has been elusive. Despite declaration of commitment to adult literacy, the programmes have been characterised by poor pay for adult teachers, lack of a scheme of service for them and poor facilities for the adult learners.
22. Kenya Institute of Education, History and Government Pupils' Book for Form 4 (Nairobi, Kenya Literature Bureau, 1990).
23. Kenya Institute of Education, Business Education Pupil's Book for Form 1 (Nairobi, Kenya Literature Bureau, 1990).

24. Kenya Colony Order-in-Council, 1921.
25. Section 7 of the Penal Code(Chapter 63).
26. For example, Leosoni alias Leonsion s/o Matheo v. R (1961) E.A.L.R. 364. Even where ignorance of law is not pleaded as a defence the courts' implied acceptance of the presumption that the accused knows the law is seen in R. Kumwaka wa Mulumbi (1932) 14 K.L.R. 137 and R v. Kimutal arap Mursoi (1939) 6 E.A.C.A. 117.
27. (1913) 5 E.A.L.R. 50.
28. In apparent recognition of the problems raised by the case, the sentences were reduced to one day's imprisonment and a fine of four rupees each.
29. (1912) 4 E.A.L.R. 103.
30. (1800) 168 E.R. 651.
31. (1852) 169 E.R. 633.
32. S. 322 of the Penal Code. It has to be proved that the accused knew the goods were stolen.
33. For example, Companies Act (Chapter 486), Partnership Act (Chapter 21).
34. 56 and 57 Vic. c. 66. See also Statutory Instruments Act of 1946( 9 and 10 Geog. 6, c. 36).
35. Mutungi (1973, p. 17) observes that notice and knowledge are treated as though they meant the same thing and cites Lewis, 1915, p. 264 for a discussion of the difference between the two.

36. Williams (1953, pp. 385-6) and Allen (1966) admit that the presumption is a fiction. Maule, J. goes even further in denying the truth of the presumption: "There is no presumption in this country that everyone knows the law; it would be contrary to common sense and reason if it were so." Martindale v. Falkner (1846) 135 E.R. 1130.
37. Section 12, introduced by Act. No. 18 of 1989.
38. Source: Ooko-Ombaka, O., "Legal Aid in Kenya: Past, Present, Future" (1988) p. 19.
39. A policy has been evolved by the courts, the Law Society and the Government to provide counsel to accused charged with murder and treason. See Ooko Ombaka (1988) loc. cit., pp. 12-14.
40. Section 9 defines a qualified person as one who (a) has been admitted to the Roll of Advocates, (b) is a citizen of Kenya, and (c) has in force a practising certificate.
41. Paras. (a) - (c).
42. Paras. (d) - (f).
43. However, the provisions of section 34(1) do not apply to a public officer (i.e. an officer in the Attorney-General's office or in local authorities, or a Registrar of Title) or a person employed by an advocate or acting within the scope of his employment.
44. Section 34 (2).
45. Sections 37 and 38 respectively.

UNIVERSITY OF NAIROBI  
PARLIAMENTARY LIBRARY

UNIVERSITY OF NAIROBI  
LIBRARY

46. Section 31.
47. Lev. D.S., "Bush Lawyers in Indonesia" in Ghai, Luckham and Synder (eds.) (1987).
48. Ooko Ombaka, O, "Education for Alternative Development: The Role of the Public Law Institute, Kenya" (1985).
49. From discussion in 1991 with Ciuri Ngugi, the then co-ordinator of the Programme.
50. These are: Wanjala, S.C., Land Law and Disputes in Kenya; Mutunga, W. The Rights of an Arrested and Accused Person; Okech-Owiti, The Rights of an Employee in Kenya; Kabeberi, J.W., The Child: Custody, Care and Maintenance; and Kivutha - Kibwana, Fundamental Rights and Freedoms in Kenya. All these are published in Nairobi by the Oxford University Press.
51. Awino, R. and Kaduru, G. (1983).

### CHAPTER THREE

1. When obtaining a research permit from the office of the President, I was under the impression that the village fell within Kariobangi; accordingly the permit was applied for and granted in respect of the Kariobangi area.
2. See section 8 of the Trade Disputes Act (Chapter 234).
3. Section 17 of the Employment Act (Chaper 226).
4. Defined in section 2 of the Trade Disputes Act.



5. Eligible employees are those earning Kshs. 4,500 and below.
6. Married women in the civil service (with the exception of a few parastatals) do not receive house allowance. N.B. With effect from January 1993 married Women will now receive house allowance unless they or their husbands are housed by the government or a public institution.
7. However, two of the respondents requested an explanation of the difference, whereupon one said she would prefer to work on contract and another on pension.
8. Section 4 of the Registration of Business Names Act (Chapter 499).
9. Section 120 (2) of the Criminal Procedure Code empowers the police to break into the premises if entry to or exit from the premises is not voluntarily obtained after a search warrant has been produced.
10. Section 72 (b).
11. Section 10 (m).
12. Section 11 (e).
13. Under this Act a controlled tenancy is one where either the tenancy agreement has not been reduced into writing, or where the tenancy period is for five years or less, or where the tenancy agreement provides for termination for reasons other than non-payment of rent or breach of other tenancy obligations.
14. Section 11.

15. See e.g. Hortensia Wanjiku Yawe V. Public Trustee (Civil Appeal No. 13 of 1976 [Unreported] and Anne Munini, John Kituo and Another V. Magret Nzambi (HCCC No. 75 of 1977[unreported])
16. Section 171 of the Penal code (Chapter 63). Admittedly, however, there is no record of any prosecutions under this section.

#### CHAPTER 4

1. Translated: Return to the Farms.
2. These are socio-cultural profiles of Kenyan Districts undertaken jointly by the Ministry of Planning and National Development and the Institute of African Studies of the University of Nairobi.
3. For example the programme called "Maisha Bora" (Good Life) sponsored by East Africa Industries and another entitled "Eveready Paka Power" sponsored by Eveready which are aired over the National Service of the Kenya Broadcasting Corporation.
4. UNESCO and IPDC, Draft World Communication Report, Part One Communication Statistics (1987), Table 3.3.1
5. Ibid Table 3.3.2
6. The price of the daily English newspapers is the equivalent of 30 U.S. cents while that of daily Swahili newspapers amounts to about 15 U.S. cents.

REFERENCES

BOOKS

- Allen, C. K. Law in the Making 7th Ed. (London, Oxford University Press, 1966).
- Awino, R. and Kaduru G A Handbook for the Layman on the Scope of the Law and the Role and Jurisdiction of Courts in Kenya (Nairobi, Partnership for Productivity, 1983).
- Balcombi, J. Communication for Social Development in Africa (Nairobi, UNICEF, 1976).
- Barrow J Freedom of the Press for Whom (Bloomington, Indiana University Press 1988).
- Committee on Legal Services to the Poor in Developing Countries Legal Aid and World Poverty (New York, Praeger Publishers, 1974).
- Dias, R. W. M. Jurisprudence (5th ed.) (London, Butterworths, 1985)
- Fuglesang, A. Applied Communication in Developing Countries (Uppsala, The Dag Hammarskjold Foundation, 1978).
- Fuller, L. Legal Fictions (California, Stanford University Press, 1967).
- Ghai, Y. and McAuslan, J.P.W.B. Public Law and Political Change in Kenya (Nairobi, Oxford University Press, 1970).
- Ghai, Luckham and Snyder (eds.) The Political Economy of Law (Delhi, Oxford University Press, 1987).
- Holmes, O. W. The Common Law (Boston, Little Brown, 1881).
- Jackson, T. A Guide to the Legal Profession in East Africa (London, Sweet of Maxwell, 1970).

- Kitching, G. Development and Underdevelopment: A Historical Perspective (London, Routledge, 1989)
- Maglagang, D. M. (ed.) From the Village to the Medium (Manila, CFA, 1976).
- Molnos, A. Cultural Source Material for Population Planning in East Africa (Nairobi, EAPH, 1972).
- Mwaura, P. Communication Policies in Kenya (Paris, UNESCO, 1980).
- OEF. International Women, Law and Development in Africa - WILDAF: Origins and (Washington, OEF International, 1990).
- 
- Empowerment and the Law (Washington, OEF International, 1990).
- Okoth - Ogendo, H. W. O. Tenants of the Crown (Nairobi, ACTS Press, 1990).
- Ooko - Ombaka, O. and Mbeo, M. (eds.) Women and Law in Kenya (Nairobi, PLI, 1987).
- Phillimore, J. G. Principles and Maxims of Jurisprudence (London, John W. Parker and Son West Strand, 1856).
- Plucknett, T. A Concise of History of the Common Law (London, Butterworths, 1956).
- Tigar, M. E. Law and the Rise of Capitalism (New York and London, Monthly Review Press, 1977).
- Williams, G. The Criminal Law: The General Part(London, Stevens and Sons Ltd., 1953).

### ARTICLES AND PAPERS

- Butegwa F. "Kenyan Women's Awareness of their Rights" in Ooko-Ombaka and Mbeo (eds.) (Nairobi, PLI, 1987).

- 
- "Country Status Reports - Uganda" in OEF International, Women, Law and Development - WILDAF: Origins and Issues (Washington, OEF International, 1990).
- 
- "Challenge of Creating Legal Awareness Among Grassroots Women" Paper presented at Women, Law and Development *Conference on Networking for Empowerment in Africa*, Harare, Zimbabwe, 26th February to 3rd. March 1990.
- Chanco, P. "Mass Media and National Development" in Maglagang (ed.) From the Village to the Medium (Manila, CFA, 1976).
- Dias, C. J. and Paul, J. C. N. "Developing Legal Resources for Participatory Organisations of the Rural Poor" in Third World Legal Studies - 1985 (International Third World Legal Studies Association and the Valparaiso School of Law)
- 
- "Educating for Alternative Development: Sharing Knowledge about Law" in Third World Legal Studies - 1985, *loc.cit.*
- Gutto, S. B. O. *Legal Constraints on Female Participation in The Economy* Unpublished LL. B. Dissertation, Nairobi, University of Nairobi, 1975.
- 
- The Status of Women in Kenya: A Study of Paternalism, Inequality and Underprivilege*, IDS Discussion Paper No. 235 (Nairobi, University of Nairobi, 1976).
- Hermano, T. Z. "The Soap, the Message and the Medium" in Maglagang (ed.) From the Village to the Medium, *op.cit.*
- Hiller, J. "Of Thomas Hobbes and Rumpelstilzkin" in Third World Legal Studies 1985, *loc.cit.*

- Kabeberi-Macharia, J. "Country Status Reports - Kenya" in OEF International Women, Law and Development in Africa, *op.cit.*
- Kattambo, V. "The Law Reform Commission: Some Perspectives of the Input of Women on Law Relating to Gender Issues" Paper presented at *OXFAM Workshop on Women, Law and Development*, Nairobi, 1984.
- Kenya National Examinations Council *KCSE: Regulations and Syllabuses 1989 - 1990* (Nairobi, Government Printers, 1990)
- Kim, H. B. "Legal Education for the *Pro Se* Litigant: A Step Towards a Meaningful Right To be Heard" (1987) 96 *Yale Law Journal*, 1641.
- Kinyanjui, K. *NGO'S contribution to Development*, IDS Occasional Paper No. 50 (Nairobi, University of Nairobi, 1985).
- Kuenyehia, A. "Legal Services and Education to Grassroots Women: Where are the Challenges and Obstacles?" Paper presented at *Conference on Networking for Empowerment in Africa (supra)*.
- Munoru, G. G. S. "The Development of the Kenya Legal System, Legal Education and Legal Profession" (1973) *EALJ*.
- Mushoka "Country Status Reports - Zambia" in OEF International, Women Law and Development in Africa, *op.cit.*
- Mutungi, O. K. "The Communication of the Law under Conditions of Development" (1973) *EALJ* 1.
- Okoth-Ogendo, H. W. O. "Development and Legal Process in Kenya: An Approach to the Analysis of Law and Rural Development Administration" Paper Presented at *Seminar on Law and Rural Development in Eastern Africa*, Kisumu, 18th -22nd of July 1977.

- Ong, G. V. "A Theory of Development Communication" in Maglagang (ed.) *From the Village to the Medium*, *op.cit.*
- Ooko-Ombaka, O. "Education for Alternative Development: The Role of the Public Law Institute, Kenya", in *Third World Legal Studies 1985*, *loc.cit.*
- 
- "Legal Aid in Kenya: Past, Present and Future", Paper presented at *Law Society of Kenya Conference*, 26th-28th. February, 1986.
- Seidman, R. B. "The Communication of Laws and the process of Development", (1972) 3 *Winconsin Law Review* 686.
- Seidman, A. W. and Seidman, R. B. "Theories of Law and Development" in *Reflections on Law and Development*, IDS Occasional Paper No. 29 (Nairobi, University of Nairobi, 1978).
- Tsanga, A. "Legal Education as Research in Zimbabwe" Paper presented at *Conference on Networking for Empowerment in Africa (supra)*.
- Wapakala, W. W. "Development of Agricultural Information to the Rural Population in Kenya", Paper presented at *Workshop on Communication for Rural Development*, Egerton College, Njoro, 9th to 12th September 1975.

#### UNPUBLISHED DESSERTATIONS AND THESES

- chola, A J *The Quest for legal Literacy in Kenya* (LL.B. Dissertation, Nairobi, University of Nairobi, 1990).
- koth - Ogendo, H.W.O. *The Political Economy of Land Law* (Ph.D. Thesis, New Haven, Yale University Law School, 1978).

**GOVERNMENT OF KENYA**

- Kenya, Development Plan 1969-1973 (Nairobi, Government Printer, 1969).  
Kenya, Development Plan 1974-1978 (Nairobi, Government Printer, 1974).  
Kenya, Development Plan 1979-1983 (Nairobi, Government Printer, 1979).  
Kenya, Development Plan 1984-1988 (Nairobi, Government Printer, 1984).  
Kenya, Development Plan 1989-1993 (Nairobi, Government Printer, 1989).  
Kenya, Sessional Paper No.10 of 1965, African Socialism and its Application to  
Planning in Kenya (Nairobi, Government Printer, 1965).  
Kenya, Sessional Paper No.1 of 1986, Economic Management for Renewal Growth  
(Nairobi, Government Printer, 1986).



APPENDIX I  
QUESTIONNAIRE

SECTION A: PERSONAL DETAILS

NAME: \_\_\_\_\_ OCCUPATION \_\_\_\_\_

SECTION B:

**Note:**           **If employed please fill in section on employment.**  
                      **If engaged in self-employment fill in section on economic activity.**  
                      **If in both employment and self-employment you may fill in both**  
                      **sections.**

LAW RELATING TO EMPLOYMENT

1.     Are you a member of a trade union? (tick where appropriate)  
                          YES \_\_\_\_\_           NO \_\_\_\_\_

If you are not a member, state reason(s) why \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2.     Does your employer have the right to terminate your employment prematurely?  
YES \_\_\_\_\_ NO \_\_\_\_\_

If yes, in what circumstances does he have that right? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3.     What steps would you take to stop or deal with this termination?  
\_\_\_\_\_  
\_\_\_\_\_

4.     What remedial steps would you take if you were injured in the course of your  
employment? \_\_\_\_\_  
\_\_\_\_\_

5. What would you do if you wanted a raise in your pay? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To women respondents (Qs. 6 to 9)

6. Is a man entitled to be paid more than a woman for the same kind of work?  
YES \_\_\_\_\_ NO \_\_\_\_\_  
Give reasons for your answer. \_\_\_\_\_  
\_\_\_\_\_

7. (a) Is an employer entitled to sack a woman employee on account of her pregnancy? YES \_\_\_\_\_ NO \_\_\_\_\_  
(b) What would you do if you were sacked for being pregnant on the job?  
\_\_\_\_\_  
\_\_\_\_\_

8. Are you aware of any difference in the treatment of men and women regarding house allowance? YES \_\_\_\_\_ NO \_\_\_\_\_

9. (a) What is the difference between a pension and a gratuity?  
\_\_\_\_\_  
(b) Would you prefer to work on contract or pension? \_\_\_\_\_

II. LAW RELATING TO ECONOMIC ACTIVITY

1. What kind of business do you carry on? \_\_\_\_\_

2. Is it registered? YES \_\_\_\_\_ NO \_\_\_\_\_

3. (a) If yes, what is it registered as (Tick where appropriate)  
SOLE PROPRIETORSHIP \_\_\_\_\_ LIMITED COMPANY \_\_\_\_\_  
PARTNERSHIP \_\_\_\_\_ OTHER \_\_\_\_\_

(b) What were the reasons for the choice of registration? \_\_\_\_\_  
\_\_\_\_\_

4. If your business is not registered what are your reasons for not registering it?  
\_\_\_\_\_  
\_\_\_\_\_
5. Do you have a licence for your business? YES \_\_\_\_\_ NO \_\_\_\_\_
6. What is the main disadvantage of offering up land as security for a loan?  
\_\_\_\_\_  
\_\_\_\_\_
7. Supposing you made an invention in your business, what would you do to enjoy it or the proceeds thereof? \_\_\_\_\_  
\_\_\_\_\_

SECTION C : LAW ENFORCEMENT AND ADMINISTRATIVE AUTHORITIES

1. If you are arrested by a policeman would you ask him to tell you the reason for the arrest? YES \_\_\_\_\_ NO \_\_\_\_\_  
Give reasons for your answer. \_\_\_\_\_  
\_\_\_\_\_
2. Would you ask him anything else? YES \_\_\_\_\_ NO \_\_\_\_\_  
If yes, what would you ask him? \_\_\_\_\_  
\_\_\_\_\_
3. Does a policeman have the right to search your house? \_\_\_\_\_  
Give reasons for your answer. \_\_\_\_\_  
\_\_\_\_\_
4. If a policeman came to search your house what would you do?  
\_\_\_\_\_  
\_\_\_\_\_

5. What would do if you were arrested or imprisoned for an offence you had not committed? \_\_\_\_\_  
\_\_\_\_\_

6. (a) Is it right for a Chief or a District Commissioner to order you to attend a harambee or a baraza? \_\_\_\_\_  
\_\_\_\_\_

Give reasons for your answer. \_\_\_\_\_  
\_\_\_\_\_

(b) If you were ordered by your Chief or District Commissioner to do so, would you go? \_\_\_\_\_  
\_\_\_\_\_

SECTION D : LAW RELATING TO TENANCY

1. (a) Does a landlord have the right to increase the rent of his premises?

YES \_\_\_\_\_ NO \_\_\_\_\_

(b) If yes, under what circumstances \_\_\_\_\_  
\_\_\_\_\_

2. (a) Does a landlord have the right to evict a tenant?

YES \_\_\_\_\_ NO \_\_\_\_\_

If yes, under what circumstances? \_\_\_\_\_  
\_\_\_\_\_

3. (to tenants)

(a) what would you do if your landlord increased your rent?  
\_\_\_\_\_

(b) What would you do if you were evicted from your house?

Give reasons for your answer \_\_\_\_\_  
\_\_\_\_\_

4. Do you know of the existence of any court that protects the interests of tenants?

YES \_\_\_\_\_ NO \_\_\_\_\_

If yes, which one? \_\_\_\_\_

SECTION E: LAW RELATING TO MARRIAGE AND PERSONAL STATUS

1. Are you married? YES \_\_\_\_\_ NO \_\_\_\_\_

If yes, under what system of law are you married?

\_\_\_\_\_

2. Do you know the various systems of marriage law in Kenya?

YES \_\_\_\_\_ NO \_\_\_\_\_

If yes, name them \_\_\_\_\_

\_\_\_\_\_

3. If you lived with a man/woman (as the case may be) without going through any ceremony would you consider yourself married?

YES \_\_\_\_\_ NO \_\_\_\_\_

4. Does a man who has been married in church have the right to marry another woman?

\_\_\_\_\_

\_\_\_\_\_

5. (To women respondents)

If you have been married to a man and he sends you out to marry another woman, what would you do? Why? \_\_\_\_\_

\_\_\_\_\_

6. If a man and woman divorce, who should take the property acquired during marriage?

Give reasons for your answer. \_\_\_\_\_

\_\_\_\_\_

**APPENDIX II**

Dear Sirs/Madams,

I am a postgraduate student at the University of Nairobi taking a Master of Laws (LL.M.) course. In partial fulfillment of my degree requirements I am currently engaged in writing a thesis entitled:- "Legal Illiteracy in Kenya : A Case for the Right To Legal Literacy".

The focus of my study is the status accorded, in law, policy and practice, to legal literacy in Kenya, and the relationship between legal literacy and development. I am starting from the premise that law can be used creatively as a resource for the improvement of the lives of people in conditions of poverty and oppression. Hence knowledge of the law is important if law is to be used in this way. I am also arguing a case for the right to be legally literate.

I am in the initial stage of writing up. While in the investigations stage of my research, it became apparent that there is a scarcity of literature in this area.

I would therefore be very grateful if you would send me material on legal literacy. I would particularly be interested in material that provides a theoretical and philosophical base for the concept of legal literacy. Also very useful would be literature which discusses the importance of law as a tool of empowerment, as would be information on the experience of other countries in legal literacy work.

In the event that you are unable to assist, I would request you to let me know the addresses of any persons or organisations that would be of help.

I look forward to your kind assistance

Yours faithfully,

ADDRESSES TO WHICH THE ABOVE LETTER WAS SENT

International Women's Right Watch  
IWRAW/WPPD  
Humphrey Institute of Public Affairs  
301 19th Avenue South  
MINNEAPOLIS, MN 55455  
U.S.A.

U.N. Branch for the Advancement of Women  
Room E - 1277  
Vienna International Centre  
P.O. BOX 500, A - 1400  
VIENNA  
Austria

International Centre for Law in Development  
77 United Nations Plaza  
New York, NY 10017  
U.S.A.

INTERLWORSA  
C/O International Centre for Law in Development  
77 United Nations Plaza  
New York NY 10017  
U.S.A.

Development Alternatives With Women (DAWN)  
I U P E R J  
Rua Paulino Fernandes, 32  
RIO DE JANEIRO 22270  
Botafogo - Brasil.

UNIVERSITY OF NAIROBI LIBRARY

SENTRO NG BATAS PANG - TAO

Centre for People's Law

Room 320, Philippine Social Science Center

Commonwealth Avenue

Diliman,

QUEZON CITY 1101

Philippines.