

" WELFARE OF WOMEN AS MOTHERS AND WORKERS WITH
A CLOSE LOOK AT THE CO-OPERATIVE SOCIETIES"

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PREFACE

If one walks around the villages during the day, you will notice women working in the field or drawing water, probably with a child she is looking after nearby. At the same time, a look at the nearby shopping centre will reveal one or two men or even more 'discussing over a few beers' one then is left to wonder why this is so and why it is allowed to happen. In the evening a visit to different homesteads will disclose the mother preparing dinner and at the same time washing the children while the husband takes a nap or sits by the fire; or is in fact 'discussing over a few beers' at the shopping centre. One again wonders why this is so.

In the urban areas, life is not very different. In the evening at the "Estates", the wife is usually cooking and washing the children while the husband probably watches his favourite programme on television. All this reveals that women have more "duties" than their husbands though somehow the latter are the heads of the households. Recently a number of women have climbed up the ladder to achieve National Status others have become National heroes, who are accorded more respect and admired more by the public than their male counterparts. This means that women can no longer be ignored by our community. Thus whether we men like or not, women will soon occupy their rightful place in society without necessarily waiting for our approval.

ACKNOWLEDGEMENT

It is indeed impossible to achieve anything without being assisted by others in one way or the other. Some would help you while others will attempt to thwart your efforts. The 2nd category of persons are not usually acknowledged though in fact they did assist me, unknowingly of course by giving me more determination. However there are those who helped me directly. In the forefront was my supervisor Mr. Gutto S.B.O of the faculty of law without whose strict guidance, it would have been impossible for me to know which direction to follow. As it is, he gave me the backbone and I fitted in the flesh.

The typing of this dissertation as you all know is compulsory this is a task that Miss Virginia Kabogo undertook without any charges whatsoever. I do not know how to thank her for her service but I hope a solution will be found in due course.

There are others who kept me company through the long nights and whose efforts cannot be ignored. This include relatives and friends and of course he said Miss Virginia Kabogo I also thank them. Others have been willing to help but never got that chance. I cannot forget my parents for having brought me to where I am and lastly but not least, my God for keeping me alive.

MBAI B.M

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WELFARE OF WOMEN AS MOTHERS AND WORKERS WITH A CLOSE
LOOK AT THEIR PARTICIPATION IN THE CO-OPERATIVE SOCIETIES

I N T R O D U C T I O N

PROBLEM/STATEMENT; CONCEPTUAL FRAMEWORK AND STRUCTURE

This is a research into the socio-legal problems of women who do not only serve as mothers but also as workers. Among these would be the problem of being double workers where a woman is engaged in paid labour while at the same time she has to provide the services necessary for the welfare of her family (family labour). Further I will investigate what legal safeguards there are if any, for such women and what further improvements should be made to facilitate their full participation in whatever fields they opt for.

The concept "working mothers" will not be limited to mother who are specifically engaged in paid labour but will be extended to include those women who would engage in paid labour but have not been able to do so due to their family commitments; those women who had been engaged in paid labour but due again to their family commitments are forced stop, and would want to re-enter employment and women currently engaged in paid labour. This is the meaning the term has been given by the international labour conference.¹

The women who serve as mothers and paid workers have thus a dual responsibility which would further require the examination of two situations. The first situation is when a woman is a mother who has to provide the services that go with the role. Secondly such a mother could be engaged in wage-labour in which respect her services to the family will be over and above her scope of employment. The problem of such women will be examined in an attempt to determine what they encounter, a process which will culminate in ways and means that could be used to ease these problems. The data drawn from field survey in coffee estates in and around Nairobi regarding workers numbers etc will be used.

These will be broken down into six categories with a view of establishing that the majority of such labour force is composed of women. Further, I will establish whether the category of women with family responsibilities among the female workers is treated specially.

The necessity for such women to provide services back home after the official working day arises from the fact of their incapacity to employ helping hands back home. This is done to the fact that an ordinary coffee farm's labourer's pay (if we may take this as an example) is shs 11.70 per day.² It is not difficult to understand why such wages are retained at such low rates if one bears in mind that our society is a capitalist dominated one whose essence is to maximise profit with a minimum of expenses. The capitalist farm owners through their employers unions ensure that this is so and the state legislative machinery is employed to effect this.³ This attempt to retain the working class poor thereby ensuring a continued labour supply. In the process the labour product is expropriated by the employers. This system is not peculiar to the independence era as it originated from the colonial political economy. Again here the state was instrumental in coercing Africans into the Europeans farms through the introduction of such measures like the hut tax.⁴ Criminal sanctions were also used to effect this.⁵

To understand why 'our' independent government still employs similar tactics, it is important to appreciate the fact that most of our politicians for instance own the said coffee estates. Not to mention that the propertied class would have similar interests to safeguard; the most important being to ensure that a continued cheap labour supply is guaranteed.

The paper will also seek to suggest ways and means which can be employed to ease the women's double role and improve their standards of living. For example alternative provision for the family service such as the introduction of child care centres is seen as one of the needed facilities not to mention better salary scales.

The paper also ventures in inquiring whether there is any discrimination on the kinds of jobs offered to women and whether infact our laws facilitate the said discrimination and if so, what changes should be effected by our parliament or in situations where it might not be very willing by the society to remove such discrimination.

A similar research was carried out in Belgium in 1975⁷ among others.⁸ The recommendations contained in such researches, will be used as guidelines in attempting to offer solutions for the problems identified in this study by way of conclusion

The desertation will be divided into several chapters.

CHAPTER ONE

Employment Act. This being the core of our labour legislation will require to be examined first. Together with this, I will also examine 'Regulations of wages and conditions of Employment Act cap 229'.⁹ I will venture to establish whether or not the two statutes discriminate between sexes and further whether or not they give sufficient opportunities to a woman worker to engage in all sectors of our community. The rights if any under the acts will be examined. I will further seek possible instances where the acts have (or can) be used for or against such women in practice, thereby examining the effect of such use. Under the chapter I will also discuss any by-laws if any made under the acts by those so empowered as it will appear necessary.

CHAPTER TWO¹⁰

This will have three sections:-

- a) Maternity leave and benefits
- b) Child-care
- c) Housing

In (A) I will consider whether the maternity leave and benefit given in both private and public institutions are sufficient and what improvements if any are needed if they are not.

(B) will be an attempt to see how children of such mother workers can be helped and what services should be established

for such children and by whom, to enable the mother workers to participate fully in the country's labour force without necessarily subjecting them to the double role.

(C) will be an examination not only of the house allowances (if any) given to such women, their sufficiency and (or) insufficiency, but also where actual housing system has been provided whether such residence is sanitary or not.

CHAPTER THREE

This will focus on co-operative societies. Most of our rural agricultural area is population who engage mainly in cash crops growing are members of one co-operative or the other. This is because by the established practice their produce is sold through the said co-operatives as individual sales would be impossible due to the amounts of the produce. This chapter will examine who is actually registered in such co-operatives i.e. is it the wife or the husband and who in fact toils over the said produce. Again I will examine women's leadership if any in such co-operatives and the societies act.

CHAPTER FOUR

This will comprise the conclusions and recommendations.

EMPLOYMENT ACT - CHAPTER 226 - LAWS OF KENYA

"The proclamation of 1975-1985, as the decade for women by the United Nations organisation testifies to the growing role and responsibility of women in social development; to their striving for contributing towards ensuring that equality and the right to a peaceful life free from social oppression and economic exploitation. The women of many countries of the world even more widely and actively take part in public work, making their creative contribution to the material, social and moral progress of mankind".¹

By 1981, women constituted over one third of the world's labour force (556 million).² It would then be disastrous to ignore their contribution to the world labour force. This will need safeguards to ensure their full participation in Kenyan labour so that at one time we can say like Brezures, proudly that "a big gain of the soviet people (Kenya) and real socialism in our country is the achievement of genuine equality for the woman in all spheres of political, social and cultural life supported by the constant concern of the state for the further improvement of her conditions at work, everyday life and rest and the fulfilment of her duties as a mother. In our country, for the first time in the history of mankind, the woman the full measure of her ability, harmoniously combines competent and broad participation in all spheres of the development of our society with the upbringing of her children. The socialist state of the entire people will further do everything so that the woman, an equal member of our society has the most favourable conditions of life and work for the all round development of her personality."³

The valiality of this statement is not our concern here. Our concern is its specification on the states role over the harmonisation of the woman's role as a worker and a mother. The surest way of doing this would be by use of sanctions as contained in particular enactments.

Since the core of the Kenyan labour legislation is the Employment Act. It is therefore intended to discuss it in this chapter. However, it is important to note that the Employment Act deals with persons who are employed for wage (salary) be it monthly or for a particular piece of work. But it does not cover self employed women or other persons who work either in their farms or are engaged in business. Thus I will start my discussion with women working in the rural areas (in their small holdings) before checking on the Act for any safeguards if any.

This is because Kenya is not a highly industrialised state such that it will offer many job opportunities as are found in the industrialised countries. Thus "as in other non-industrialised societies, females have low rates of participation in the modern sector. In 1976 women constituted 16% of the wage labour force. Most of the females employed in the modern sector are concentrated in a few occupational groupings - (unskilled work) teaching and secretarial are the most feminised".⁴ However, to say that women form lesser proportion of workers than men is consciously or unconsciously an ideologically motivated justification for their exploitation.

Kenya being principally an agricultural country would have most of her labour force concentrated in that area. This would either be for cash crops or subsistent farming. Since most of the large estates are owned by either multinational companies⁵ or the particulars and local tycons, the peasants are left with subsistent farming. This is largely because "at independence hand remained the most important source of economic sustenance. The land that had been expropriated during the colonial period from the africans was immediately confirmed to the legally belonging to the expropriators."^{5b} This meant that any effort to make the land revert to the indigeous citizens was legally made very difficult ---- in the event of continued repressive rural laws, the only few women who have benefited from the post colonial superstructure are those who belong to the privileged class either by virtue of birth, marriage or educational

Land parcels that are registered to date are too small to cater for the steadily expanding families. The burden falls on the shoulders of women who remain to utilize crude, technology in exploiting the soils that are becoming more and more unproductive. It is not difficult to understand why peasant women were left in the reserves to toil this "Land". In the first place, it was believed that men had a better chance of procuring a job in the urban areas than women. This was in fact encouraged by policy and laws as will become clear when I examine the Employment Act itself. Secondly, traditionally most of the farmwork had been done by women and children. Further by 1969, the number of illiterates in Kenya was 7,972,287 out of a population of 10.5 million and of which 54.4% were women. Since most of the jobs in the urban areas and in which women can be employed are clerical, due to the restrictions in the Employment Act, then obviously illiteracy would be a major handicap.

As already indicated the women left in the rural areas have to work with ^Rachaic low technology implements of production in the fields, very commonly carrying heavy loads and water supplies which are difficult to get. As a result women are often not only exposed to constant physical exhaustion but also to certain diseases including premature infirmity.² I now turn to the woman who is employed for wage and who then would be covered by the Employment Act. These would usually be those with some education as they would most likely be employed in urban areas as secretaries, teachers, nurses or in the civil service. However, there is a considerable number of illiterate women employed in the so called informal sector in the urban areas as sweepers, messengers etc. Even for those educated, education has not been particularly geared towards women's improvement of their status. Although the rapid expansion of the educational system in Kenya has increased the number of females being educated at all levels, but as compared to men it has not brought a relative improvement in female education opportunities. "Greater enrolment of girls at the primary stage in recent years has been offset by the failure of the educational system to provide women with access to scientific and technical training has re-oriented in this direction.

Women have lost grounds in the availability of high quality secondary education and in their proportion of university education. Both of which have significant implications for the future --- the rapid expansion of educational system has failed to reduce social inequality because greater equality because greater equality of educational opporutunities had itself depressed social expectations associated with most levels of education.¹¹ Be it as it is, the theory of resources¹⁰ still subsists in our homes. This is more so especially with the introduction of the western capitalism way of life in our society. The theory as it relates to family decision making has it that the influence of each patner in the marital relationship depends on the resources she or he brings to the marriage in the form of education, income, occupational status, family position and contracts outside the family. Presumably the better educated, more affluent, higher social status, more well connected and more pretigiously employed a woman is, the greater her oppourtunities would be for making her views prevail within the family. However, even where spouse appear relatively set, the male will more often than not dominate in most aspects and family decision matters. Thus, "the critical factor determining whether women retain their independence and, or influence in family decision making may be amount of income they contribute to the family's maintenance and not the levels of education they may have achieved. Ofcourse the twe are related: research on the determinants of wages have pointed to education as the single most important variable ----- Income may be a more critical resource than education for two reasons. First, many of the decisions involve expenditures, and second, a separate source of income confers, an option of withdrawal from the marital union if the situation becomes intorelable"

Rural?
In moral areas as already indicated women continue to have less security of tenure, their plots are smaller sized and have to toil on them with no access to modern technology or to any agricultural training programmes.

I now turn to the wage ^{earning?} canning women who are supposedly protected by the Employment Act. Here, women's share in the African labour force while never high, has been reduced from 17.52% to 11.55% by 1973; and as in many other societies women in the wage sector remain concentrated in less prestigious and lower paying jobs. Women also suffer from significantly higher rates of urban unemployment than men.¹² Anderson further argues that ¹³women's economic prospects, while unequal in the past may be increasingly so in the future. The late development of education for women brought large numbers of female primary and secondary school graduates onto the job market as opportunities were dwindling. Since women are proportionately fewer at each stage of education system and are disproportionately concentrated in non-technical, non-scientific and non-professional fields, they seem poorly positioned to compete in a more selective may income synonymous with the rejection of the types of educational qualifications most women have to offer. Thus, " -- The ideology of equality of opportunities constitutes the justification for the existence of considerable social stratification".¹⁴

The women who opt to seek work in the urban areas have again more problems than the rural job seekers. This is especially so when the police state apply the notorious Vagrancy Act.¹⁵ The Act makes it a crime to be poor in the urban areas since it provides for the arrest of all vagrants, a definition which is wide enough to cover the unemployed. These are supposed to be repatriated by a court order to their home districts, for a period of three years. This not only does it deprive such persons the right to seek a job but equally overpopulates the reserves whose resources have, as it were already been exhausted so much so that the same has necessitated the immigration of the 'vagrants' to the urban areas. Common experience has established that women are the victims of the so called "Police Swoops" than men.¹⁶ This is not hard to understand in view of the fact that women again find it more difficult to find work in the urban areas. The work and getting it, if they so at all, is usually patrols. Further there is the tendency to assume that any woman unescorted is a prostitute

This is especially so at night. It is not surprisingly then that women on their own have been refined service in the so called international hotels in our cities. When this is faced by a young lady straight from school, they end up engaging in dubious means of attaining their daily bread. Eventually then, one will become a mother who has no secure source of income whatsoever.

As if this is not bad enough, the Kenyan male dominated parliament for all its wisdom, or lack of it, decided to withdraw even the small support offered through the colonial legislation by appealing the Affiliation Act in 1969.¹⁷ The putative fathers can now walk scotfree after placing the unfortunate unemployed woman into a mother position. Though repeal did away with this protection or at least ensure a way in which such mothers would find employment to support the innocent child born or, to be born, out of such circumstances created by our society. One is then only left to wonder as to the designs of parliament in so doing. The purported protection offered by the Employment Act is practically non-existent in a capitalist state where a job opportunities are not particularly many. Even if a woman was to attempt to rely on them, (if they be of any practical material importance at any one time). She can always be gotten rid of one way or the other.

I will now venture to examine specific sections in the Acts and probably analyse decisions where the Act is supposed to have been used to safeguard the 'rights' it offers. It will be clear that infact the Act is a handicap rather than protection. If I may examine some general provisions before coming to the ones specifically dealing with women, it will help to lay a background. My first attention was drawn to the meaning given to the term 'task' in the defination section of the Act. 'Task' in the Act means such amount of work as can in the opinion of an authorised officer be performed by an employee in an ordinary working day.

Any person who has had any close dealings with agricultural Estates will know that this is the term mostly used and employed to exploit women labour to the maximum.¹⁸ The said authorised officer need not be an expert in the human capability as long as he is authorised by the farm owner¹⁹ to issue such. It is obvious that his main concern will be the benefit of the employer and anyway in most cases he could be getting ^{direct?} divert orders from him. Since then his sympathies² does not lie with his fellow workers, the 'task' need not be reasonable in the so far as it reaps more in form of labour resources. The Act does not say how this is to be determined but does offer a 'remedy' for the employer for instances where the task has not been completed. Thus section 5(1)(9) provides that where the task has not been completed, the employer has the option at the end of the day to pay the worker in proportion to the amount of the task which has been performed or the employee may be allowed to complete the task the following day. This is a direct allowance to exploit workers working capacity without any remedy in instances where the task is excessive but with protection to the employer if the task is not completed. To this extent then the section becomes superfluous if it was meant to be any protection to workers.

The Act not only seeks to exploit labour resources amongst the workers but appears to aim at retaining them in that position. This is in its attempts to restrict the employer from assisting the worker in a financial crisis by refusing him any remedy for the recovery of any advances which are # more than the amount of one month's wages of such employee; or two months if the employee has a written contract of service.²⁰ The rationale of this rule cannot be understood unless one understood, unless one understands the capitalist mode of production. The basis of capitalism is to maximise profits with a minimum of expenses. For it to thrive state intervention is used to safeguard the landlords and the berencracy? in an attempt to retain the majority of the people in poor positions is guaranteed one sure way of doing this is to remove any possibilities for such a worker to be dependent on himself.

By advancing him money, he may be facilitated to open a small business which eventually may allow him to leave his work. The persons affected most by this section are obviously women workers who have family responsibilities and may urgently need more money than she has, for such family requirements as may arise from time to time. The meagre wages are not even enough to cater for one person. Thus giving saving alternatives to such women as may be argued is not only unrealistic by insulting.²¹ In instances where a married woman's husband decides not to provide any assistance to his family, the wife's only remedy is to seek maintenance from the courts. This is because the employer is forbidden from limiting or attempting to limit the right of an employee to dispose of his wages in any manner whatsoever.²² The Act then ignores the welfare of the employee's family and takes him as an individual first and last. Obviously, it would be far much easier for the women deprived of the assistance of their husbands by the former's deliberate designs to go to his employer and have a section of his salary deducted for the family maintenance. Maintenance proceedings in a court of law are bound to be long. This is again an expensive process in that it might require the assistance of an advocate. Furthermore after such court proceedings, there is the likelihood of a total family breakdown where the husband feels the wife is going too far with her demands for assistance. Family breakdowns should be discouraged if we are to have a stable community.

In other instances, the Act provides for instances of deductions from wages.²³ These are allowed in so far as they are not more than a half of the wages earned. The Act does not exempt women with family responsibility or men falling under the same category. Deductions valid as per any other law are allowed. Incidentally the Act has no equivalent provision for increments. It is under this section that labour unions and government schemes are allowed to deduct money for their operation in the fields where no one needs them.²⁴ Under the same section, the employer may deduct from the said wages a reasonable amount for any damage or loss of

any property lawfully in the possession or custody of the employer occasioned by the wilful default of the employee. It is left to the owner to decide whether the 'loss' caused was wilful or not, unless the employee is bright enough to seek court intervention.

"If at the trial the complaint appears to the magistrate to be frivolous and vexatious the party complaining shall be guilty of an offence".

Workers can easily be coerced by under the threat of such Provisos because they are not sure what a magistrate may think of their complaints especially where the magistrate could be an employer in his own right. I now turn to particular sections dealing with women. Section 25(1) says:- "No woman or juvenile shall be employed between the hours 6.30 p.m and 6.30 a.m in any industrial undertaking". This section has outlined usefulness in the sence that its enactment was influenced by the contention that women need 'protection' like children because it was generally assumed they are incapable of looking after themselves. At the present time, we have already seen situations where women have family responsibilities as much as men. The act rather than limit the field of work for such women ought to seek ways and means of increasing them. Section 30 equally restricts the employment of women in underground work. The effect of these sections is to deprive women their right to choose what and where they want to work without according equivalent alternatives.

In so far as the Act does not prohibit, the employment of men in any field, I would say then that these are discriminating safeguards. It is worthy of note that the term 'industrial undertaking' as used in the Act covers a wide range of employment opportunities. To mention but afew, this includes factories construction work, maintenance, demolition, transportation by ventures etc. These areas practically covers most if not all of the areas where wage labour is to be found. It would appear then that the act was purposely attempting to restrict the employment of women to agricultural fields which then do not constitute industrial undertakings. The only rationale I can deduce a deliberate attempt to again

ensure a continued labour supply in the agricultural estates which anyway are mostly owned as seen elsewhere by the same M.Ps who now as the Legislative, turn themselves into a self-constituted employees against themselves!! This is a mockery of the workers' position. As if this is not enough, the Act makes it an offence to employ women in the prohibited areas and entreullies its prejudice against female capacity by reiterating that if such die white under such employment, the employer is guilty of an offence.²⁵

The reasons as to why women should be more accessible to death than men in the said premises are yet to be given. However, any right thinking member of our society will agree with me that sex is the wrong yardstick to use while assessing death possibilities. The sections however serve to elaborate the even more urgent wheel for a revival of our labour legislative. Recently, some established institutes have started training women in some of the 'prohibited' areas.²⁶ These women will obviously seek employment after completion of their studies and needless to say the sections may be used against them. The time limit (between 6.30 p.m and 6.30 a.m) is an obvious manifestation of male chauvinism where husbands feel its the duty of their wives to warm their beds while they drink outside or probably the fear of sleeping alone. But if the wife can sleep alone while the husband is on night shifts, there is no reason why the reverse should not happen. The prohibition again assumes that women's capacity to work dwindles with daylight and would not as such be expected to produce as much men labourwise at night. The option should be left to her to decide whats best in her circumstances as she knows best about herself. This again is a handicap which has no practical significance.

S.56(J) Empowers the minister to prohibit absolutely or subject to conditions the employment among others of women in any specified trade or occupation. This is merely a further attempt by the male dominated legislature to ensure that any area that they might have overbooked will be controlled through the minister.

This rather than helping women is indeed a further restriction to their search for work. It is in this understanding that scholars have argued that the parliament in arming the minister was legislating in the interests of the employers although providing the necessary ideological front that it was legislating for the workers.²⁷

I now turn to chapter 229 of the laws of Kenya.²⁸ I will draw attention towards sections 12 and 13 which I feel are the ones that concern workers and have particularly been used against women. By virtue of the two sections, the minister is empowered to make orders by way of subsidiary legislation regulating the basic minimum wages and housing allowance below which employers must not provide for their employees. ^{UP?} Up to 1976, these powers were used to prescribe lower wages for women than men.²⁹ The current use of the sections is to retain minimum wages at very low rates until some scholars have argued that "The general wage levels have been set very low to ensure high profit margins for the capitalist employers in addition to the already favourable monopoly market situations created for them through regulations and investments agreements".³⁰

The current basic minimum consolidated wages for adults for lowest job grades, a category under which most women fall due to their lack of education or necessary training are Nairobi/Mombasa shs 456/- per month Nakuru/Kisumu and other towns shs 418/- per month other urban areas shs 266/- per month.³¹ In the agricultural industry the rates are:-
 Adults in 'unskilled labour category shs 215/- per month;
 skilled labour category shs 273/- per month³²

This does not include coffee growing areas where the minimum wage has been fixed at shs 304/- per month for 26 working days.³³ As it clearly indicative of these figures, not only are they unreal to the Kenyan situation but appear to be calculated to stand as a guide for the bourgeois infiltrated labour unions to bear in mind while negotiating with the employer over collective agreements.

The obvious example here is the minimum wages in coffee areas whose only difference with the other agricultural areas is shs 31/-. Thus ofcourse mere exploitation if one is aware of the fact that coffee sells more and much higher than any other agricultural product in the country.

It is with these naked exploitation that the employment act as already seen seemingly attempts to "protect" women by discriminating against them. One, the has to understand these conditions, pretences and frontlines before they can fully appreciate the problems encountered by such women. But a theoretical analysis of the Act is not in itself sufficient. Needless to say for the provisions in the act to be effective they must be practiced in ordinary life. Its one thing to have a problem posed by a theory in a book and another where the theory is actually live. As it is then, it is almost inevitable in my discussion that I examine instances where the Act has been put into practice. Whether this be for or against the employment of woman either in specific cases or in general will be clear after such examination. This however, will be dealt with in chapter two of this paper shich I hope will contain specific incidents and instances as the case may be, in that it will be devoted to the areas largely affecting female workers as females due to the biological set up and secondly as workers.

A. MATERNITY LEAVE AND BENEFITS

To appreciate the need for paid up maternity leave for women, it would be important to accept that the particular role of chile bearing in any society is for the general good of that society. This then calls us to accept that the child born is not merely a child of the mother concerned but also of the society at large. This of course flows from the understanding that there to be a society in the first place there has to be people. The employer therefore should not views childbearing women discriminatively but rather as assets whose energies are required for the continuity of society and who should be encouraged. This section will examine whether such encouragement has been present among the employers and further what the practice is.

The substantive law that provide for maternity leave in Kenya is the Employment Act (34) Section 7(2):

"A woman employee shall be entitled to two months maternity leave with full pay:-

Provided that a woman who has taken two months maternity leave shall forfeit her annual leave in that year."

The effect of the proviso strictly speaking is to reduce the maternity leave to one month with full pay in instances where the woman could have gone for her annual leave even if she had not, she would lose any benefits accruing from the annual leave. This is one of the major weaknesses of the section. It appears to give with one hand and actually takes with the other. It would further appear that even where an employer is willing to give the normal two months without forfeiting the annual leave, the government is out to discourage him. This is clear if one looks at the implications of the Waruhiu Committee (35).

Formerly the practice in the civil service was that an expecting mother would get her two months maternity leave with full pay plus the annual leave. The Committee noted this and recommended that the Government should strictly follow the provisions of the Employment Act it noted (36):- "The Ndegwa Commission held the view that female officers should not be granted paid maternity leave. They pointed out that although women have to be given equal opportunities in Employment, that could only be

justified where the overall cost of female labour was equal to cost of male labour. The commission felt that where the cost of female labour was higher, because of the provision of paid maternity leave there would be a tendency to look for male labour. They further argued that where service was broken because of maternity leave, efficiency suffered."

It is not clear why the Waruhiu committee decided to quote this reasoning. The Report does not explain any such necessity and it is left to us to determine what the purpose was. It would appear from the context that the purpose was to justify the insistence of the forfeiture of annual leave in the civil service. The argument advanced above was firstly used by Ndegwa Commission to exclude paid maternity leave. Now that the Employment Act provides for it, the Waruhiu Committee is using the same argument to limit the period of such paid leave. Of course this is a similar trend of a class protecting same interests at different times. Thus it recommended (37).

"The Employment Act recommends two months maternity leave with full pay and forfeiture of annual leave for that year. However, the practice in the civil service is that female officers are granted two months leave and in addition, they are granted annual leave in that particular year. The government in this case has been very generous. We consider that female officers in the civil service should not be treated differently from those in the other sectors." Thus "In view of this, and having regard to the provisions of the Employment Act to limit the paid maternity leave, I submit it was the wrong usage. The Act as in the case of the other statutes is supposed to offer minimum standard guides and not maximum. The private sector, which the committee purported to rely on is itself not so rigid when it comes to the application of the Act. My own n revealed this especially when it comes to the forfeiture of the annual leave.

In an interview with a Miss K. A. Ambao (38) I learnt that her Company (Caltex (Kenya) Ltd. does not forfeit the annual leave but actually pays three months maternity leave. Annual leave could only

be interfered with here where the mother cannot return to work after the exhaustion of the three months and she needs more days. These could be deducted from her annual leave or alternatively she could take unpaid leave.

Likewise, sister Fenwick F. , Matron in charge of Gertrudes Garden Children's Hospital (39) had the same procedure only that the Maternity Leave was the statutory period of two months.

From the experience of these two private institutions, it would appear that the Commission's argument that annual leave is forfeited in all private sections has no substance. The only reason I can deduce for the use of such justification is to protect the employers, members of the commission being among them.⁴⁰ This is in so far as it affords a front for the limitation of Paid maternity leave to what's provided by the Act.

Before the enactment of the Act, the employers could give any period of paid maternity leave but in most instances none was given of the period was less than two months. This explains then the necessity of the Act in imposing the minimum period, but not the maximum. Such necessity again arose in light of the fact that even our courts had no hard down period and usually agreed with the Employers on whatever period the former has given. This is illustrated by several decisions before the operation of the Act.

In the Industrial cause No. 61 of 1974 (41), Among the issues in dispute was maternity leave benefits. The court came to the concession that the respondents offer for the time being (the period offered for paid maternity leave) was just and fair under the circumstances and therefore awarded

"One month maternity leave with full pay to female employees with two or more years of service with the respondents plus an additional two months unpaid leave".

This infact was not even an award but rather confirmation of what the Company had been practising all along.

In yet another industrial dispute the period offered was again different from the above case.- This was in industrial court cause No. 60 of 1974 (42). It was held here that maternity leave was to be treated as sick leave. This was not beneficial to the Mothers in that sick leave is offered for fixed days per year. Once a mother has had maternity leave or sickleave

whichever comes first, she cannot claim the other. The leave adjudicated by the court here was to be paid at the rate of thirty days on full pay and thirty days on half pay. This clearly is not sufficient and only succeeded in creating a further disparity in the courts recognition of maternity leave. I therefore submit that the purpose of the maternity leave provision in the Employment Act was to eliminate such disparities by setting up a minimum requirement. The conclusions then reached by the Waruhiu Committee were in the total ignorance of these findings.

The question that now arises is whether the period of two months offered by the Act is sufficient for the mother to return to her employment. It would be interesting to examine the period offered in other countries before any conclusion can be reached. Finland provides for 174 working days as the full paid maternity leave. (This is for those working in their public service). Bulgaria, British Columbia, Democratic Republic of Germany all offer six months leave with full pay. (43) These however are among the developed Nations who could be said to have more resources than Kenya. But this argument need not bother us here. If we accept that the bulk of employers is made up of foreign investors or partnerships between foreigners and the local bourgeoisie, (44) which are supported by "Public Corporations". These foreigners are the same people in the so called developed countries. It would be justifiable to submit that the profits reaped in Kenya are the ones that help in the provision of longer leave periods in their countries which they deliberately restrict the Kenyan period to compensate for such. If two months is not sufficient to the European woman, to recuperate, then biology has not yet proved that African women in Kenya recuperate faster and therefore need lesser time. It is unfortunate that even where a woman needs more time probably due to complications in child bearing no assistance is forthcoming from the employers. In most instances, she can only take up unpaid leave. The courts policy in Kenya has been to effect this.

Thus, in the Industrial Cause No. 30 of 1977 (45) among the issues that were to be adjudicated upon was the maternity leave. A clause contained in the employment agreement stipulated that:- "An employed woman shall be entitled to unpaid leave up to a maximum of 12 weeks subject to the employee producing a medical certificate signed by a medical practitioner or a person

acting on his behalf in charge of dispensary or medical centre.

Provided that:-

- m 1) Childbirth in respect of an employed woman shall not be deemed to be sickness and the employer shall not be required to meet medical costs incurred thereon;
- ii) An employed woman in receipt of maternity leave shall not incur any loss of privileges during such period. This provision was upheld by the court except to the extent as amended by the relevant provisions on maternity leave: forfeiture of annual leave, disqualifying the woman from claiming sick leave for the period after the expiry of the two months thus the court did not recognise instances where a woman cannot return to work as required due to complications that are not her own doing. The effect of this is to discharge the employers from any liability to cover any charges and expenses reasonably incurred as incidental to child bearing other than the two months salary. The government as an alternative does not offer any other assistance.

In Austria Legislation provides that in the event of such circumstances, the woman may claim a special leave (46) as of right following maternity leave. The period laid down here is twelve months. The beneficiary should receive payments in the form of unemployment benefits these may also be allowances under a special parents insurance scheme (such is not existent in Kenya) at the same rate as sickness benefits. In Belgium, Public employees and teachers may have up to two years leave of absence while in Tunisia a woman official may be given up to ten years leave of absence (unpaid but supplemented by the government grants lime in Austria, if she has children under five years of age or needing special care (47).

In other countries not only the need for such leave is recognised but also leave for a woman to look after a sick child or a relative. This is one area where the law in Kenya completely ignores. A woman employee in Kenya may get a few hours leave to take a child to hospital but would not get leave to look after such a child. In Poland (48) up to sixty days paid leave per year

may be taken to look after a sick child. Most of the other countries have a shorter period. Federal Republic of Germany provides for five days while Sweden provides for between twelve and eighteen days.

In some cases, statutory provision in Kenya have been used against the woman and effected by the Industrial court. This was the case in the Industrial cause No. 30 of 1968 (49). The issue here was the unreasonable termination of the employment of Mrs. Hannah Ngundo Maina among others. It was established in evidence that due to sickness before and after maternity leave, "Mrs. Maina was off duty for most of the time on medical grounds from about the middle of December 1966, up to date of termination of her service on 31st May, 1967. She was paid her salary due to her during this period and was allowed sick leave as laid down." The sick leave was however allowed to run concurrently with her maternity leave. Though the operative statute here was the Regulation of Wages (Hotel and Catering Trades Order 1967 (50), the court could not find any evidence showing that her services were terminated in accordance with section eleven of the said Act. This was because she was not given a months notice or salary in lieu thereof. Even with the realisation that the woman was sick due to maternity after effects, the court held that it:-

"Finds that the respondents were entitled to terminate her service and that there was no victimisation or unfair labour practice but that the requisite notice of termination of her services was not given to her. The court accordingly finds that she is entitled to a months salary in lieu of notice and so awards." If medical grounds are not sufficient reasons for being absent from work so that where a woman's employment is terminated due to such, it cannot be said to be victimisation, then I frankly do not know, what victimisation means in this context.

On other occasions, the Employment Act has been used for the benefit of a woman employee whose services were terminated for similar reasons. This was in the industrial cause No. 31 of 1978 (51). The issue here was the termination of services of Mrs. Roase Anyando Omondi. Anyango had been employed by the respondents on 2nd March 1976 as a junior clerk earning K.Shs. 400/- per month. Her services were terminated on 3rd September 1976 on allegations that her

performance was unsatisfactory. The chief industrial Relations Officer had found as a fact that she had completed her three months probation and that the alleged warning were never in writing. Further Anyango was pregnant and that maternity leave is normally asked for on the seventh month of pregnancy circumstantial evidence established that her services were terminated to avoid granting her two months maternity leave with full pay. The Industrial Officer had recommended that three months salary be paid as compensation rather than reinstatement. The Court also found as a fact that no written warnings had been given and that on 26.8.76 she had written to the respondents General Manager and the Managing Director requesting for a salary review. On the morning of 3.9.76 she had asked for maternity leave, and on the same day she was served with termination at its decision, the court quoted the Employment Act Section 7(2) and took notice of a letter written by the respondents which acknowledged that they served her with notice to quit "because she had asked for maternity leave." It held that even where the Employer had complied with notice requirements the court will interfere:-

- "(i) when there is want of good faith;
- (ii) when there is victimisation or unfair labour practice;
- (iii) when the management has been guilty of a basic error or violation of principles of natural law and;
- (iv) when on the materials the finding is completely baseless or perverse".

Judge Saeed R. Cockar further said:

" The Court would like to state that employers should not victimise female employees when they ask for maternity benefits that have been granted to them through legislation. The court will not allow an employer to deplete women employees of their rights which have been given to them by Law."

It is not in every case that the evidence is as straight forward. Employers would look for reasons that would influence the court in their favour while essentially they are seeking to deprive a woman of such benefits. However, this is a positive step forward and it is our sincere hope that the industrial court would effect such rights as it did above.

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CHILD - CARE (FACILITES)

The nature of children is such that they depend on the adult members of the society for both maternal and non-maternal needs. Child-Welfare has been considered to be a most important consideration which any human society should have towards its very young. (52)

"In traditional settings, very young children help look after their younger siblings. This however is within a network of communal living and responsibility such that somewhere in the background or close by there is an adult, perhaps a grandmother, who oversees everything, withing the continuing breakdown of the communal life mutual supportiveness that existed is ^{dwindling?} dividling fast. Alactating mother manager and the managing director requesting for a salary review. On the morning of 3rd September 1976, she had asked for maternity leave and on the same day she was served with termination notice in the afternoon. In reaching at its decision, the court quoted the Employment Act Section 7(2) and took notice of a letter written by the respondents which acknowledged that, they served her with notice to quit "because she had asked for maternity leave". It held that even where the employer had complied with notice requirements the court will interfere:-

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Judge Saeed R. Cockar further said:-

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Was not expected to dig for as long as a non-lactating one and so on. But with the entry of mothers into formal employment sector, the time of living and returning home is controlled by external forces. A mother can only stay home on a "hunch" that something is not quite right with her baby at the risk of losing her job..... yet in most families mothers need to work to help supplement the family income." (53) Now that the traditional setting no longer subsists as explained above, the need for child-care facilities is greater if the mothers are to be afforded sufficient time and opportunity to involve themselves with their jobs. The child care facilities I have in mind are those that will cater for young children particularly those to whom the absence of such facilities would require the mother to stay home with them. This arises in the theoretical understanding that a duty to support and maintain is universally recognised as resting upon parents of such children. Usually such duty rests on the father primarily but partially or entirely upon the mother, under some circumstances.

"The parental duty is said to be a principle of Natural Law and is everywhere acknowledged as at least a moral obligation of parent towards their children, for having brought them into being..... that parents duty may be rested also upon the interests of the state. (54) Different countries have taken measures to effect child care facilities.

In the United Soviet Socialist Republic, full responsibility for the organisation of facilities for children below school age lies with state organs; supported by public bodies, trade unions, cooperatives, undertakings and organisations. This system is adapted for the needs of the parents and the children. Children are cared for all round the year; except during public and statutory holidays. They may therefore spend time, twelve or twentyfour hours in the institution, 50% of the wide network of facilities belong to Local Soviets of workers deputies. These Institutions care for some twelve million children (1975) between the ages of two months and seven years. This constituted 40% of all the children in the country. (55). In Bulgaria, the decision to set up Community creches is left to the Local authorities which receive full financial from the state. These are designed for the children of persons employed by the administration or in small undertaking. However creches are also established in larger undertakings, in accordance with the National Legislation and on the basis of collective agreement. In such instances, the full costs are born by the undertakings.

The central authorities carry out overall reviews to ensure that the basic needs for child-care facilities are met and where necessary encourage the creation of new creches. The number of places in creches and kindergartens in this country increased from 16,000 in 1948 to 440,000 by 1974. In Sweden government contributions to such institutions take the form of loans and grants. The grants meet more than 60% of current expenses. This grant was nearly doubled recently as an extra incentive for the creation of new facilities.

In Mexico, the social insurance institute is required by Law to set up day Nurseries for the children of insured women in zones where the compulsory social insurance scheme operates. Employers pay the full premium for financing the service, irrespective of whether or not they employ any women on their staff.

Poland has a slightly different approach. Here measures have been taken to make available dayrooms providing pedagogical and recreational facilities for school age parents of working parents or from large families, and semi-boarding schools for the children of parents on shift work. In addition extensive facilities are provided for children during school holidays; semi-camps (one day arrangements from which the children return home for the night) with food, sports recreational and cultural facilities, as well as summer and winter camps outside their place of residence (56).

The International Labour Organisation Conference (57) was of the opinion that child care services and facilities should be provided "at reasonable charges or free in case of need." State subsidies in most countries, its acknowledged constitute one of the most effective means of promoting the building and operation of the facilities and it is not surprising to find therefore that as a rule parents contributions cover only a small part of the running costs, (in the countries mentioned above) of services created by public bodies, by employers or by voluntary organisations. In Cuba and the German Democratic Republic, no fee is charged whatsoever although in the latter parents pay for the meals provided. In some of the other countries the fee is based on the parents income. Thus in Sweden the daily fee per child varies between 1 - 34 kronor. Many governments further provide that child care facilities be provided free of charge in certain low income or other categories of families;

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or tax deduction or special grants are provided for to cover the fees which would normally be paid by the parents. In Austria, an allocation amounting to half the actual costs of child care facilities is paid to women who because of their family responsibilities would not otherwise be able to take up or retain a job; full costs may be covered if it is important in the interest of the employment situation; that the woman should be employed. In other countries such money is given as tax-rebates. Such tax rebates are not sufficient if exclusive and other facilities are usually concurrent.

Where the tax-rebate system is practised, it covers only those who earn over a particular amount.

In Kenya low income earners such as farm labourers are not taxed directly and the question of tax need not even arise. The only relevant statutory provisions in Kenya is contained in the Local Governments Act. (58) Section 152(1) says:-

"A Municipal Council may with the consent of the Minister establish and maintain schools and Educational Institutions including boarding blocks and Hostel." Though this provides for the creation of Educational institutions including boarding blocks, it has one major weakness in so far as working women are concerned; it does not provide for the creation of child care facilities which are necessarily not academic. It is debatable as to whether this empowers the Municipal Council to create institutions other than educational ones. However the City Council has nursery schools but these any way are educational institutes. Furthermore this would only cover the urban areas and even then would only cater for children mostly above 3½ years. Section 152(3) provides:-

" A Local Authority other than a Local Council may subject to such condition as the minister may prescribe provide nurseries to assist persons and children of persons ordinarily resident in its area in their education and maintenance at any school or educational Institution within or without its area." This provision can be used to assist mothers who cannot otherwise be able to provide sufficient education to their children, due to lack of finance. But even though this is possible, it does not in anyway make it easier for a mother with young children who have yet to attain school age to attend to her job. Thus it is submitted that child care facilities divorced from educational institutes are required for this purpose.

The only form of such care facilities (not necessarily for education) available in Kenya and in fact restricted purely to the big urban centres like Nairobi and Mombasa are

kindergartens. This however are not particularly favourable to working mothers as the prices charged are obviously meant for the rich. (59) The result is that working mothers in the urban areas in most cases end up sending their children back to the reserves to be fostered by parents and/or relatives.

This is what Nelson N. calls manipulation of Kinship ties. (60) He writes that women in towns manipulate their kinship ties by "..... sending their children to the rural areas to be fostered by relatives, usually their own mothers

.....women sending their children to their mothers in the rural areas is new and it is a direct undergrowth of women raising children without a husband. 35% of the women with children in my survey had one or more children being fostered, by a relative. The reason given were economic .

(it is cheaper to feed to child in the rural areas and there is no rent to pay there); Ideological (a belief that city lives corrupt a child or rural children do better in school).

What Nelson does not appear to have understood is the fact that these women would not be sending their children to the rural areas if there were alternative child facilities in their area, which are either free or cheap to the extent of their capacity to pay.

The problem does not stop here. Even in instances where a child may fall sick, and is hospitalised, the Mother has to stop all her work to "Sleep" with the child in hospital. Even within the urban areas, the only hospital in Nairobi that has an entirely children constituted ward is Aga Khan Hospital. This however caters for children over the age of one and a half years. The only children Hospital of its kind in Kenya is Gertrudes Garden Children Hospital. (62)

This caters for only seventy children at any one time. The age there is between a few hours and fourteen years according to Miss Fenwick. The charges however are not exactly calculated to cater for working mothers as it is Kshs. 175/- per night excluding Laboratory, X-Ray and drug charges. Clearly in respect of the number of children that are catered for and the fees, the hospital is not sufficient to cater for all the social groupings there are in our Society. Thus I submit that the facilities available in Kenya are either inadequate or where they exist cater for the upper classes; working mothers then have little of any assistance from them and usually ends up having to think up their own schemes.

In this section I do not intend to examine housing problems in any particular area as I believe this has been done exhaustively by other researchers. (63) It is however a generally accepted fact that Housing problem is at its peak in Kenya right now and particularly in the urban areas. It is as a result of this that places like Mathare Vally have risen and will continue to exist until the problem has been solved. Though housing problem affects all persons working in the urban areas as low wage-earners, it will obviously affects working mothers more particularly those with more than one child and who are unmarried or even if married, the husband is not in a position to pay rents demanded by the unscrupulous landlords. Mr. Mutunga had this to say:-

"..... The landlord has a stronger bargain when there is a housing shortage. He charges rents which exceeds the value of the building under such circumstances. Thus cheating process is double. The tenant if a worker is cheated first when he not paid for this surplus labour (by the employer). He is cheated for the second time if the landlord charges and he pays, rent which is more than the value of the building." Mutunga sees this as an increased rate of the tenants exploitation. Whatever it is, it is clearly more oppressive to working women with family responsibilities in the urban areas. The governments contention is that as a safeguard against tenant exploitation by the Landlord, the provision of the Rent Restriction Act are sufficient. (64) But we all know that a person faced with nowhere to shelter her children would obviously opt for the landlords demands as opposed to statutory "protection" In reality therefore, the Act is useless in so far as the government does not provide alternatives accommodation to ease the housing shortage in the urban areas. Ghai and McAuslan have this to say (65):-

"The premises (that the function of the Law is to ensure equality of safeguards for Landlords and tenants and to keep an even hand between them) and its practice application presupposes an equality of urban sophistication on the landlord and tenant, that is equal participation in urban culture and all its ramifications, particularly an awareness of the civil role of Lawyers and a Knowledge of the contents of Rent control legislation though they may be vaguely aware of its existence, and they have practically no contact with Legal profession in its civil capacity. They are therefore totally unable to make use of the facilities provided for them. Landlords are well aware of this and thus despite the existence of criminal penalties attached to breaches of the legislation, they are ready to

disregard it with virtual impurity The Legislation..... as it exists at present, it is, and can only be, used by those tenants who come from the same broad class or social culture as landlords and who are familiar with Law, Lawyers and urban life. The tenants who are relatively new to urban life and are most in need of protection cannot obtain it under the present Legislation and its administration."

The last group would also include working women especially the low paid jobs who form the highest number of working mothers due to reasons explained elsewhere in this dissertation. (66).

The only "alternative" which is in essence not an alternative is to refuse the tenancy. But of course human beings need shelter and more so a working woman with a family to look after. Mutunga had similar views on the Acts. (67)

"The Acts also serve as powerful ideological and Political tools in the hands of the African Petty-bourgeoisie. To the urban worker the story is always that he has an Act which protects him from unlawful acts of the landlord. Under the Acts he can complain to the police etc..... It is an open secret in Nairobi, for example, that the controlled premises diminishes everyday because of the development mania that has gripped the city. The tenant purchase schemes are constantly turning out many decontrolled premises. The Acts might come to serve as gommicks to wink the tenants and hide the new feature in the housing scene which needs control. The tenant purchase schemes houses.

"clearly all is not well in the housing scene in the urban areas. Section 9 of the Employment Act provides. (68)

"Every Employer shall at times at his own expense provide reasonable housing accommodation for each of his employees either at or near the place of employment or shall pay the employee such sufficient sums as rents, in addition to his wage or salary as will enable such employee to obtain reasonable accommodation." Provided that a party may be excluded by the Minister from the operation of the section. Most companies opt for the 2nd alternative. This is because it is cheaper and in most cases will be agreed between it and the employees union. (69)

The main problem here is that the amount agreed does not take into consideration other provisions in the Act dealing with such essentials as water. (70) or in effect the housing shortage subsisting not to mention the landlords exploitation. Furthermore the persons responsibility elsewhere is immaterial. Thus working mothers are not accounted for even where they are the

not bad enough, the practice has been that married women are not eligible for any housing allowance. This was noted in the working committee's report when it wrote. (71)

"The current regulations regarding housing for married women officers are in our view somewhat discriminatory. While we do not consider it appropriate to extend eligibility for housing to a married woman officer who lives together with a husband who is already housed out of public employment, we recommend that a married woman officer whose husband is not public servant should be eligible for housing privileges in respect of her employment. Where both husband and wife are both in the public service we recommend that their housing be determined on the basis of the spouse who qualifies for the better allowance we also recommend payment of house allowance to a married woman who divorced (and obviously cannot then be said to be married) or separated from her husband following a court order, or whether she is separately awaiting for determination of divorce or separation proceedings actually pending before a court of law which ~~has~~ has jurisdiction to hear and finally determine the matter."

But for how long will women's rights be qualified by those of men? when employed in the civil service the spouses were not employed as man and wife but as competent individuals who had no obligation to each other. It comes to the duties of their employer. It would appear then that getting married while both parties are working in the civil service is economically detrimental and to this extent I submit, The practice undermines the marriage institution in our country even after the Wamhiu recommendations.

The university of Nairobi has its own ways of calculating housing allowances. This is done in grade form and it would appear that the lower one is in ~~xxx~~ grade category, the cheaper he or she is supposed to rent. (72) But from where the University has no idea. The allowance rate from Kshs. 200/- to Kshs. 500/- for grade one - four which forms the core of low wage earners in the University. For Owner-Occupier house allowance this range between Kshs. 2,500/- to Kshs. 4,000/-. For senior staff, this amount can be as high as Kshs.. 10,000, all per month. The absurdity of this is that the tendency is not to help those who do not have houses to own one, but where one has a house, he is paid to live in it. Whether one has family responsibility is again immaterial as all that matters is the grade. The Purpose of I submit with all due respect is none other than to maintain the status quo in the university. As regards married women, their fate is determinable in presence of special circumstance. (73)

Generally they are not eligible for House allowance unless it is shown that the spouses are staying apart (The husbands employer has to certify that the parties are actually staying apart). or in instances where the husband is a student at the university. The third ground is vague and impossible to prove. This is where there exists "true" facts of the incapacity of the husband to support the wife. For instance if unemployed and has no other source of income. The problem here is that the determinate authority will be the administration rather than an independent body. How does one prove that he is unemployed in circumstances where he is looked at suspiciously as only calculating to win the house allowance? In light of this, I submit that at least the Waruhiu recommendations would be more favourable here.

In instances where actual housing has been provided, I will shift from the urban areas to the rural areas. I have picked on a sisal village provided by a particular farm in the Rift Valley as a model example. This is the so call BANTA Village.(74) situated about thirty kilometers from Nakuru Town but appears to be a million miles from any civilization. The children of the village were and probably still are:

"In the most appalling and accusing state of miserable health and dress that I have ever seen..... Their clothes were rags, hanging in strips from them, filthy, dirty, totally inadequate. One young boy of about five ran about dressed only in a tiny coat at least two sizes too small for him his belly distended in malnourishment. Except for his coat he was completely naked. Equally, "Every single woman, man and child that I saw seemed to have been struck by some diseases it seemed incredible that an entire village could be so ravaged by such terrible poverty, be clothed in irreparable rags, be victims of such unforgivable hunger."

Banta village forms the housing accommodation typical of the one offered by sisal farmers in Nakuru. Labourers in other areas may be in a slightly better position but the basic are ~~xxxx~~ the same. The necessities of life are not provided for which make life unbearable to such workers. The houses themselves in Naita were actually a collection of mud huts erected by the workers themselves. But since constructed on the employers land, they are reckoned to be accommodation provided." Like in most other villages the water tap is only one. Worse still, its turned off in the morning and no water can be drawn until the tap handle (which is removed) is returned by the company in the evening. Medical facilities are utterly

non-existence. One has to travel to Nakuru 30 kilometers away for any medical assistance. Sanitary facilities are equally non-existence for as Wamwere found out, people dig their own latrines. In Banita Village or, use the plantations. Clearly all is not well here and never was. Women are in the worst position. One Woman interviewed explained that there is great trouble in getting maternity leave especially if the infant dies at birth. She had failed to collect any pay for the days she had been ~~in~~ hospitalised during a Miscarriage because

"You must come back with alive baby if you want to get paid". One can then understand what a woman who is a sole breadearner of her family has to go through here. The conditions are Impossible and completely inhuman. There is no chance of survival unless the whole organisation, of such farms is remodelled drastically to bring in human elements.

After the examination of maternity leave and benefits, child care facilities and housing as they relate to women members of our community one is now better positioned to understand their position as workers and Mothers in our society. Throughout, it has been established that most of the findings do not favour women workers. However it would be unsatisfactory if I do not examine an area, which I feel women could be better positioned still than they are.

This is an area that does not concern women as formal (wage) employees. But rather an area which concerns them as "participants" and or "beneficiaries". This would mostly concern rural women involved in agriculture. Thus, the next chapter would be devoted to agriculture co-operatives with particular reference to women involvement in them.

CHAPTER THREE.WOMEN AND THE CO-OPERATIVE MOVEMENT.

This Chapter intends to cover agricultural Co-operatives and their relations with female members. It should be noted that this will neither be a conclusive nor exhaustive research on agricultural Co-operatives in general as I will restrict myself to the factors that concern Women.

The substantive Law that deals with agricultural Co-operatives in Kenya is the Co-operative Societies Act, Chapter 490 laws of Kenya.

This does not define what a co-operative is but merely explains what would be registered as a co-operative section five of the Act thus says:

- " Subject to the provisions of this Act,
- A society which has for its objects
 - The promotion of the economic interests
 - of its members in accordance with co-operative principles, and
 - which in the opinion of the Commissioner is capable of promoting
 - those interests, may be registered as a co-operative society
 - Under this Act with or without limited liability." Logically flowing from this is the fact that a co-operative then will be a society registered after the commissioner is satisfied that it is capable of promoting the economic interests of its members. How he does this is his own business as he has the absolute discretion. Co-operatives then can only be defined in light of their objects. It is with this understanding that people like Hans H. Munkner (75) have advanced the same argument.

Hans argues that, the co-operative society's special objective is the promotion of the economic interest of the members through services rendered by the co-operative to the members enterprise or households. The co-operative enterprise is financed and managed by the members hence the members make it possible through their own personal and financial contributions that the co-operative enterprise can produce services which the members again can use in order to promote their own enterprise or households, as a self-help measure.

In co-operative societies, the person of the member and the members personal links, both to the co-operative group and to the co-operative enterprise are of primary importance. The Capital contribution of members is necessary too, However, main emphasis lies on the members active participation in the life of the co-operative enterprise by the member in his capacity as a customer. The common objectives can only be achieved if the members as co-owners and co-directors of the co-operative enterprise use the services which they produce jointly for the promotion of their own enterprises or households.

Thus the members are at the same time co-owners and customers of the Co-operative enterprise. This dual role of the members of Co-operative Societies in which owners and customers are identical is often referred to as the principle of identity. But Co-operative societies are not restricted to Kenya alone.

Thus, it has generally been argued that in Africa, "--primarily Co-operatives

at the local level have become but a new arena for social economic and political processes that are already in motion, so that the Co-operatives essentially reflect symptoms. Weaknesses in the Co-operatives may thus be signs of other ills which lie well outside the Co-operatives or even outside the local community itself! (76) Needless to say these forces are at work in our Capitalist society. Therefore, it would be logical to say that the Corruption, discrimination and exploitation of women as found elsewhere in other co-operative societies. This fact, I hope, will be established in the course of the discussion.

Africa has not had a lot of experience with co-operatives. This is due to the fact that until recently, much of her was under the Colonial rule. Further, much of Africa is economically poor. Therefore, most of the projects suffer from lack of capital and Co-operatives are no exceptions. It is not surprising then that the history of Co-operatives here has not been a very successful one. There has been much specific and extensive failure and disillusionments throughout the continent. It is not by accident then that Anthorpe agreed with Marvin miracle when the latter wrote:-

"Probably, well over half of all co-operatives attempted in tropical Africa have been failures in the sense that they could not make profit to sustain or expand the original membership. In some Countries, (e.g Ivory Coast and Niger) almost all Co-operatives composed of primarily small scale farmers have died because of deficits or lack of active members, or both:-

In recent years-- and even the countries with well known successes (e.g. Cameroon, Uganda, Kenya and Tanzania) seem to have suffered a conspicuous number of failures----

where government initiative set up the co-operatives in the first place, many inquiries at the local level indicate that popular support at the grass-root would not be strong enough to sustain such co-operatives if a new governmental decision was to reverse the earlier policy, where the society started as a spontaneous and voluntary expression of ambition and aspiration at the grassroots, in many cases, by the end of the decade the initial energy had spent its force, or the organization had so grown in scale and had become so bureaucratic (77) in its characteristics that active and effective popular participation was excluded and the sense in which it was a co-operative to begin with had ceased to be relevant. (78).

In Kenya misappropriation of members funds has reached a point where unless it is checked, the co-operative movement is doomed. Numerous cases, of fraud and dishonesty and, or favouritism to committee members has been witnessed. Due to poor management, many of the agricultural societies have been paying out of their members too low a proportion of the proceeds realised from the products sold. Just as important inefficient societies have failed in performing valuable services, such as the supply of Credit, for their members. This infact was noted by the government itself in an attempt to find out what was crippling the societies in the country. (79) Recently, the ministry of co-operative development interdicted 13 Officers for alleged "grabbing". This was disclosed by the permanent Secretary who also noted that the movement has a number of

" Self proclaimed God-fathers who were more concerned with protecting their positions rather than rendering genuine services expected from them by the members.-- There had been instances where delaying tactics had been used in granting Loans to farmers -- it is useless to have Co-operative Societies that did not serve the interests of their members." (80-).

These complaints have affected women population in Kenya in that even where not directly registered, any fall in the husbands income or even the community itself would reflect on women since they do not live in isolation.

The Co-operative societies Act does not discriminate between male and female members who are registered in any particular society. However, its indirect discrimination will come to light as it relates to women who thought not registered members do actually labour for the products tentered to the societies. This is particularly so with the sections dealing with loan family and disposal of produce to the society. (81).

S.40 (1) - " A registered society shall not make a loan, nor allow any Credit to any person other than a member." The exception here is where the Commissioner of Co-operatives gives authority in writing.

A member is a person over eighteen and is resident within or, occupies Land within the society's area of operation who is registered as a member. (82). To be registered in itself is not enough. This is because:-

"No member of a registered society shall exercise any of the rights member unless he has made made such payment to the society in respect of membership or has acquired such interest in the society, as may be prescribed under this Act or under the bylaws of the society." (83).

But how many members of a family are registered in one society? In my rearch through several interviews with my neighbours back home at Githunguri division, I learnt that it was only one member of each family who is so registered.

This meant that it is only that one person who will benefit under the hope that he will extend these benefits to the others.

The other unfavourable section deals with monopoly of a particular product by one Co-operative. This will then mean that the farmer cannot sell his/her produce else-where even if the society is rigged with malpractices and corruption. Further, any member of the family cannot sell the produce other than through the society, thus through the one registered. This is under Sec. 48(1)-

"Upon application by any registered society which can show that its members in the whole of Kenya, or in any particular part of Kenya, produce at least Sixty per cent of all the agricultural produce of a particular kind produced in Kenya, or in that part, as the case may be, the minister may, by notice in the Gazette, require that each producer of that kind of agricultural produce, in the whole of Kenya, or in that part, as the case may be, shall sell such kind of agricultural produce produced by him to or, through that society, whether he is a member or not."

The area am dealing with grows Coffee and rears dairy cattle. The Co-operatives in question then are two, Kenya planters Co-operatives union (with smaller Co-operative affiliate to it) and the Kenya Creameries Co-operatives Society (also with smaller co-operatives affiliated to it). Here even where a family had not enrolled in the society as per the section the return would be to fore them to or, stop producing the product. Obviously the second alternative is not an alternative at all. All producers then will be forced to

register one person each from every family and as it is clearly known its not in many families that a decision on money earned and gained would be free for discussion, leave alone sharing.

In Rural areas, Decisions on how land is to be utilized remains firmly in the hands of the man, and a woman. "cannot dispose of even a sheep on her own.

The main income such as from cashcrops as tea and coffee, pyrethrum or es to the men, the majority of whom spend it irresponsibly on and other women. This causes distress in the rural areas where the have no other means of acquiring income." (84)

is not then unusual to hear complaints that the peasant women in the rural areas are in the inevitable situation of being actually the effective farmers but are not remunerated according to their efforts it would not be far fetched to say that to that extent, they live in selfdom to their husbands. It is as a result of this understanding that E. Wachtel (85) holds that women as a group are disadvantaged in comparison with men in terms of their economic opportunities. Their ability to earn a reasonable livelihood independently is restricted and the relative disadvantage doesnt lessen even in the urban context, leave alone in the rural areas. Given their meagre resources, collective activity makes sense. pooling, funds to get a workable capital sum for a particular purpose.

en with this disadvantage on their part, it is noted that:

.. in societies without substantial accumulations of wealth, operating at near survival levels, women's economic contributions are critical and crucial to the maintainance of the community. As class structure begins to emerge and technical implements fostering intensive cultivation evolve, women's work and to become more privatized and nelegated to a domestic clint. Work confined to the domestic sphere is lesser in Public value and greater in value to members of a household unit. As such if one examines the social values accompanying changes in agricultural and Labour developments, usually associated with modernization, the status of women is predicted to deteriorate.... A crucial indicator and variant of economic contribution is the degree to which they control the goods they produce, or the degree to which women are economically independent and autonomous" (86)

The central theme here is women's control over the product they produce. I have argued above that women, majority of whom are the ones that actually lend the fields have no control over the sale of the produce. This is especially the case in cashcrops which have to be mancteted through the co-operatives has been discussed elsewhere. But it was made clear that it is the person registered who gets paid and mostly it is the husband. Susan Abboth (866) in a research conducted in Kagongo village(87) found that makes dominate the domestic sphere; they are the heads of households and make most decisions in a wide range of domains, as well as control all major sources of income and decide on its distribution and disposal. Women are viewed as having full control in very few areas. These, she found out were only what subsistence crops to plant and misciphining. School-age daughters ofcourse there are women who 'rule' over their husbands but there are looked at unfavourably by the rest of the community . (88) As regards actual work on the fields Achola O. Paha (89) equally found that women are found to carry greater workloads particularly with feed crops in areas where hand holdings are small and where agricultural production is small or scace and generally unsuccessful. As task traditionally done by men (e.g. Fishing, hunting etc. change or are eliminated by technological innovations or such changes as cutting back the forest reserves and new game laws, the result may be a stable or rising demand on female labour with how income she further maintains that the shift in the division of labour results in women expending a good deal of labour on economically unrewarding tasks while men tend to shift to higher income farming or migrate elsewhere to take up non-farm work. In this instanle, even where small scale cash crops are grown, they are left to the women to look after while men try their lack elsewhere.

It is then unfortunate that husbands will exercise final control over any monies gotten from such produce. Achola in relation to this found that;

"A woman can sell farm produce in small quantities freely without consulting her husband, and she generally decides on how to spend any income accruing from her own efforts, especially from the sale of produce from her own fields. She has to consult her husband when large sales are concerned, and if he plays an active role in farming, she probably has to consult him on the sale of products they have farmed together A woman cannot sell cattle, sheep or goats without consulting her husband or next male kinsman, even where she bought the animals from her own resources. (90)

It would appear that the only remedy for women in these instances is to be registered as a member of the co-operative society other than her husband. But in reality, there are very few women registered as members in any one given society. In my own research, (91) I found that the number of women registered were less than a quarter of the whole figure. Most of these were widows; divorcees or wives who have been deserted by their husbands but allowed to be registered by them on the understanding that they would not demand any further maintenance on the whole, very few married women were registered as such. When asked who actually does the manual work, they usually agreed that it is essentially them, probably with a few employed hands where the husband can afford. The husband if he does help at all would normally be in spraying or pruning in case of coffee, while the wife and the children weed, pick and sometimes prune and spray as well.

In an interview with Elsie Garfield (92) who had been working on three co-operatives (one - cotton and two coffee), I learnt that her findings were basically the same as mine. The membership of women in the co-operatives she studied was a mere 15% though she found out women farm managers in and around the co-operative areas at least amounted to 30%. She noted that there were no women leaders in these co-operatives. This is an area essentially dominated by men. All these factors constitute a form of an anti-climax to women's participation, in valuable farming. It is not uncommon to find women refusing to tend cash crops. To this extent, membership in co-operatives ventures I submit has had the effect of serving as a constraint to women's involvement in the economy. I therefore agree with Pala A. when she says that;

"Although they (women) contribute considerably towards the production and preparation of these cash crops, the person who has title to the land on which the crops are grown, usually a man is the co-operative member and receives the cash payments. Most families are able to work out how much income should be spent with reasonable ease, but a number of women would prefer a formal arrangement where the person who produces the crop is paid rather than the registered hand holder." (93) This was as concerns the Nyanza Gulf and the Lake Victoria area. But even in Nandi, and logically in the rest of our ethnic groups, the trend is the same. Among the Nandi; Regina Oboler (94) found that if we pick a product like milk, traditionally the morning milk was set aside to be drunk by the men of the family, while the evening milk was to be consumed by the women and children. Something of this conception was carried through into the modern setting, in that morning milk which is sold to the Kenya Creameries Co-operative is thought of as belonging to the husband. The afternoon milk is for consumption by the family, though it is said to belong to the wife, in that if there is any extra milk over and above what can be consumed by the family, she is free to sell it and use the money for her own needs. The right of the wife to control the afternoon milk may be negated, however, if there are very large number of cows. In such a case, the afternoon milk must also be delivered to the K.C.C.; and money coming from the sales of milk to the K.C.C. is usually thought of as belonging to the husband.

In tea growing areas , the findings were the same. (95) She found out that tea being a major cash crop is considered to be the property of men. In fact, it may even be registered in the wife's name, but the money coming from it is not usually hers, but goes to the husband. She found out as a fact that the wife has no intrinsic right to own tea since the husband is the owner of the plot and anything permanent that is planted on it therefore is his. The theme that the wife cannot plant her own tea because the land belonged to the husband was constantly reiterated by those interviewed.

Registration however does not appear to be the solution to this problem as seen from the above example. In one way or the other, the husband will always be able to extract the money from the wife. Concensus then between the two is very necessary. Even when women own the land in question , the social reality is that most of the community tend to disregard them as engaged in areas only for men. It is not surprising then that when Chelagat Mutai (97) interviewed Ms. Christine Chabor, the latter complained that the interest of the other large scale farmers, the men , was that she should fail so that they can prove that women are not capable of running large farms like theirs. The men had gone as far as the Agricultural Finance Corporation in Nairobi in an attempt to stop officials from giving her a loan. Further, they refused to hire out machinery to her. Being determined as she put it, she eventually not only got the loan but also bought her own machines. But it is not every day that one finds such determined women. Most of them even though determined would also lack the necessary capital to start on their own even where they have land. Be it as it may, women's agricultural role must be improved and their work remunerated. This is in light of the understanding that " It is time we stopped talking about giving women an opportunity to participate in national development. The fact is that women have always been and will continue to be a significant force in national development. What they need is not more involvement and a recognition of their involvement and measures to facilitate and lessen the drudgery of their role in development. (98)

The measures referred to in this quotation would be for instance the improvement of co-operatives to the extent that they lessen the problems highlighted in this chapter, or alternatively suggest other areas that would be treated in the next chapter on conclusions. Further, it is clear now that the state of women's discrimination is much more than that is generally acknowledged by the authorities. From the foregoing chapters, discrimination and frustrations are the order of the day culminating in deprivation of what rightly belongs to them through co-operatives unless there is an immediate change is effected, women will soon loose even the little faith (if any) left in male dominated enterprises. They then will end up isolating themselves and forming their own groups or societies where non-exist. This will appear to be a revolt against men, much of which will undermine marriage institutions. The next and last chapter will seek such means.

CONCLUSIONS AND RECOMMENDATIONS

Different problems that face our women community have been examined. I have gone at length to establish the fact that peasant women working on their husband's small scale farms in the rural areas have to work with Arabic tools, toil over hand that has been exhausted and therefore generally unproductive; and finally overwork themselves due to lack of any other assistance.

Working women in the urban areas are in no better position. I have established that they more often than not get the low paying jobs; are not at times victimised when they fall pregnant and claim maternity leave, and further that the Employment Act, which is supposed to protect them is either insufficient or discriminating. For general interest, I have explained how a spouse's income determines ^{is} he/her influence in decision making at home, a fact which makes it necessary for a woman to so contribute

Maternity leave is equally inadequate. Further, special leave either following the expiry of maternity leave or for taking care of a sick member of a family does not exist in Kenya. As if to worsen the situation, the civil service commission found it necessary to strictly apply the provision of the Employment Act.

As regards housing, this is a household problem in the urban areas. Houses are scarce and where available, are either too expensive in rent or are too small to house a large family. Child care facilities are none existent in Kenya. This is particularly so far the majority of families who cannot afford the extra expensive kindergartens. Even where a child falls sick and is admitted in hospital, the mother would be required to 'sleep' with the child. Obviously for a single parent, this is disastrous and she has to rely on her relatives while so 'admitted'.

In co-operative movements, I have explained how women are the real workers, but are not remunerated.

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This usually frustrates them, thereby discouraging them from fully participating in agriculture as a result of which the National production of foodstuffs is affected and considerably reduced.

After examining the problems facing women workers in our community, it would be doing injustice to the society if I do not seek ways and means, through which such problems can be eradicated or at least lessened to help them bear the burden on them. It has already been made clear that a spouses influence in her/his home will depend on the economic contribution she or he commands in the homestead. This then calls to the society to recognise the part played by our women in its development, most of which is not necessarily remunerated, so as to amount to economic contribution. Thus, a woman's work ^{is} in the homestead should be recognised as an important contribution to that homestead and the community at large.

The society should further endeavour to remove the low opinion that it generally has on women. Thus in the urban context, a woman who walks into a hotel 'unescorted' should not be viewed as a prostitute. Infact, I believe the government should take measures against such obvious prejudices by denying a licence to the hotel concerned and, or, enact laws that will check such. Equally, unscrupulous men who seek to exploit our unfortunate girls and in the process impregnant^{te} them should be made to pay. This can either be through the introduction of the affiliation Act or alternatively afford state support for such matters. There is no other way we can hope to eradicate prostitution in that when such girls fall into such positions, they have no other means of support. They equally have to live and whether the government uses the vagrancy act or not, in so far as it does not offer any alternative means of livelihood there is no hope.

The other major handicap is the employed^{ment} act. This should be modified to fashio^sn a better society. The use of 'task' in the act leaves alot to be desired. It has been argued that 'ta is to be decided by the employer or his agent.

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This means that there is no uniformity in any particular area for the same kind of work. This ought to be the case. One way of doing this is by appointment of a committee composed of both workers and the employers. This then will cover a particular area; or a particular crop. Thus if for instance we use coffee areas, such a committee will inter alia decide how many trees a person should prune, or cultivate; etc. This may offer impartiality and fair play if properly exercised. The Labour Ministry could if need be stand as an appellate body if the task proves excessive or even a count of law. This, I believe would be a better deal than what we have given the circumstances in Kenya now. Since the employer has a remedy, where the 'task' is not completed in an ordinary working day, the employee should equally have one where it is excessive. This should be the case even where the 'task' was completed in the said ordinary working day if held to have been excessive. The employee should then be compensable for the work done over and above the proper 'task'.

The Limitations regarding wage disposal and lending are equally frustrating. There is no rationale in providing that employers will not be assisted in recovering monies lent to an employee if it exceeds a particular amount, unless it is to restrict such lending. Employers should without interest be allowed to lend as much as they want with legal means of recovering such to a worker is in need. Workers should be seen as human beings and not merely as Labour reservoirs that should be maintained as such. This should particularly be geared toward women with family responsibilities and who, in events of a major financial crisis might have nobody else to turn to other than the employer.

Equally where a married man has wilfully neglected his family, provision should be made for the attaching his salary; or part of it, which then will be given to the wife as maintenance. The workers themselves should be encouraged to form committees which will decide on such matters, what amount will be attached and if it should be attached at all.

It would then be up to the committee to recommend its findings to the employer who will be bound by such. This will ensure that the unnecessary court delays and costs are not incurred by our women for simple maintenance suits. If the man feels that the attainment is unfair, ofcourse he can seek the courts. Guidance at his own expense.

All the sections puporting to restrict by time, place of employment of type of work, a woman's chances of employment should be repealed. Its time we stopped equating women with with families. A woman, an equal member of our society should be allowed to choose where she wants to work and the time that is convinient for her to do so. It has already been found that these so called 'Safe guards' are nothing more than discrimination effected by prejudices. Equally the provision to section 45 which talks about frivo.ousness and vexatiousness of a complaint to a magistrate by a worker is a highly untimidating section. This should be repealed if fair play is to be expected in the labour market. Further an air of free atmosphere is necessary if the employees are to use the legal machinery meant for their use.

As regards the provision of maternity leave and benefits, parliament through the Employment Act must have intended to better women's position in Kenya. This then means that the two months provided for by the Act would not have been meant to be the limit but rather the maximum. Thus committees such as Waruhiu should not ignore this particular fact. The altitudes of such companies like Caltex in providing three months and still not forfeit annual leave should be encouraged. Infact this should be recommended as the minimum because if Caltex can pay, why not the other companies. The Employment Act was enacted and became operative in 1976. This is five years ago. This then calls for a change in the two months provided as we develop on. Further it is time we recognised that a woman's role in producing children is mainly what ensures the existence of any society. The society then owes its continued existence to women and should inturn provide some amenities for the services rendered

Thus when a woman cannot resume work immediately after the expiry of the maternity leave, and, or latter needs time to look after a sick child or close members of the family, provision should be made for her maintenance then. This could be in form of sick leave with full pay for a given time and half pay for the rest of the period for a given term. Alternatively the employees could be required to meet medical charges and any other expenses reasonably incurred, for instance travelling charges. This will ensure that women do not view their role unfavourably, or as a handicap where employed, and anyway the society will be meeting its proper share of expenses. This should be checked so that the employers do not use it against employing women. Thus even where proper procedure has been followed in terminating a woman's employment, the industrial court should be satisfied that there are grounds for such termination, and particularly where the woman is pregnant. Following procedure in itself should not be enough and absence of any reasons should be used to impute foul play.

It can be safely be concluded that child care facilities for an ordinary worker are non existence. This is particularly so for children who have not attained school age. This is a major handicap as already seen to our women workers. Normally where the family is too poor to employ a maid and there is no older relative to remain at home, an older child has to removed from school to look after the younger one if the mother must work for the family maintenance. Child care facilities are necessary if such mothers are to work and their older children attend schools. Such facilities could be maintained by the employers without regard to where they employ female workers or not. The government as an employer will also play its role. If there will be any feel at all, this should be as will be possible for any worker to pay without necessarily increasing his financial expenditure unreasonably.

Housing has already been highlighted as a major problem in the urban context. This is largely because most companies do not provide any houses for the workers but instead provide (where any) meagre housing allowances which cannot cover any rent. Recommending that house allowances be increased will not solve this problem particularly because the Landlords will probably increase the rents proportionately. This of course is due to the fact that the said Landlords are usually employers in their own rights. The only remedy then is for every employer to be required to provide housing facilities to his employees. This will reduce the housing demand and at the same time check unscrupulous Landlords. For the workers who opt to stay at their respective homes, they should be paid travelling allowance as an alternative but should not be paid to live in their own homes. If anything, every company should provide loans to encourage her workers to build proper homes for themselves.

In the rural areas, (Agricultural Estates) the Banita village experience should be condemned by all right thinking members of our society. This is inhuman and completely uncompromising. Such estates should be forfeited to the government and, or a body set up to run them so that human standards can be effected. Every estate owner should be required to provide sufficient housing facilities with Electricity and water throughout. Such houses should be big enough to accomodate a family and should then be allocated according to the size of families concerned. This will ensure that some of the profits reape from the workers labour is used for their existence in the world. This will further create better working atmosphere where the workers will also have a sence of belonging and therefore, lender his services responsibly.

Finally is the position of women in ^{relation?} vocation to co-operatives. It is clear from chapter three that most of the labour in such 'plantations' is done by women. It would be unrealistic to recommend that women be registered instead of their husbands so that they receive payments rather than the husbands. This is in light of the fact that husbands could use other means to procure the said money. Though the ultimate aim is to ensure that women get remunerated for their share of work, and have a fair share in deciding how such money is to be spent, this should not be in a way that will create or increase clashes at home. Thus male members in our society should be educated to appreciate their wives' labour, such that they can voluntarily allow them their fair share of the profits. Alternatively, separate property should be encouraged such that a wife has a legal basis over particular property and therefore the profits therein.

Generally then, the whole of the Kenyan community should be brought to appreciate the fact that women are equal members of our society. They are not second rate citizens only to be used as labour reservoirs. They therefore require equal treatment and a proportionate share of profits gotten from any enterprise the spouse engage in together. Further, they should also be recognised in their role at home which does not fall under either wage labour or enterprise. Such recognition will give women their right position in society and equally create conducive climate for peaceful co-existence at our homes.

4

FOOTNOTES TO THE INTRODUCTION

1. "Employment of women with family Responsibility"- International labour conference, 64th session 1978.
2. "Kenya coffee growers Association- Information circular No. 232- made in pursuance of the agreement between Kenya coffee growers association and Kenya plantation and agriculture union- Effective from 1st January 1981 for basis minimum wages elsewhere, see chapter one of this paper.
3. For a fuller discussion on the topic and the use of the parliament by the employers, see Gutto S.B.O- "The rule of law and the public in Kenya"- a paper prepared for presentation at the law society of Kenya (Mombasa branch) Seminar, Mombasa, 10th- 11th December 1980.
4. Introduced in 1901 by the HUTTOX Regulation of that year.
5. Master and servant ordinance No. 8 of 1906-had imposed penalties of imprisonment or fine for neglect of work for those already working.
6. To give but a few examples,
Mr. Njonjo owns IBONIA Estate - Kiambu;
Mr. Karugu owns HURRICANE Estate - Kiambu.
Mr. Matiba owns Ochards Farm Limuru.
Mr. Kiereini owns MAKIU Estate - Kiambu.
the list is not exhaustive.
7. National Social Science Survey/ Financed by the government and split up between all the Belgian universities to undertake.
8. E.6 The needs and preferences of working mothers as regards day - care facilities' Cyprus Government Research 1975.
9. Note that this chapter is not an intended analysis of the two statutes. Thus I will only concern myself with the relevant sections on the topic.
10. Chapter one having been purely analytical work on the relevant sections of the statutes therein mentioned, chapter two will be an examination of what actually happens in practice, when the sections are either ignored or in fact put in real use.

NOTES AND FOOTNOTES

1. Leonid Brezhnev - While addressing the participants of the United Nations World Conference on the decade for women in Copenhagen as contained in the "Soviet Woman" Magazine No. 9 of 1980.

2. Statistics as per the International Labour Conference - 64th Session 1978. Note, however, that these figures were presented to the Conference by the participants, such would only have got them from an equivalent of our Minister of Labour. Thus, the figures would at most include only the paid up workers. It is thus grossly undervalued as it excludes family labour.

3. Leonid Brezhnev - Supra.

4. Shadrack B.O. Gutto - "Education towards Social Justice in Africa" - Lecturer, Faculty of Law, University of Nairobi; Paper prepared for and read at the workshop on "Education and the Struggle for Liberation" - Lesotho, 29th June - 7th July, 1980.

N.B. Like in the above case, the figure presented again excludes family labour.

5. E.G. Kenya Cannery that owns the whole pineapple growing area in and around Thika Town.

5b. This was by virtue of Chapter Five of the Kenyan Constitution that safeguards private property. The only persons who had property worthy of protection were the former colonisers. Further, this was against any peasants who might reclaim their land.

6. Gutto S.B.O. - "Legal constraints of female participation in the economy" - a dissertation paper submitted in partial fulfilment of

- the requirements for Ll.B. Degree, Faculty of Law, University of Nairobi.
7. Ibid, Pg. 30. The number of literate females is low and even then these are absorbed mostly in Secretarial, teaching and nursing work.
 8. See - Report of the Regional Conference on education, vocational training and work opportunities for girls and women in African countries held at Rabat, Morocco, 20th-29th May, 1971 Pg. 31.
 9. Audrey Chapman Smock - "Women's Education and Roles in Kenya" working paper No. 316 July, 1977 - Institute of Development Studies, University of Nairobi.
 10. Ibid Pg. 47.
 11. Ibid Pg. 49.
 12. Ibid Pg. 51
 13. Ibid Pg. 62
 14. Ibid Pg. 70
 15. Number 61/1968 - commenced on 17th February, 1969 by virtue of L.N. 50/1969, notorious in the sense that it makes one a vagrant in his own country.
 16. See Gutto's - "Legal Constraints of Female participation in the economy " - Supra.
 17. Ibid Pg. 30.
 18. In an interview with the manager, Misarara Estate, a coffee farm in Kiambu District, I learnt that they use 'task' especially for non-resident labourers who cannot arrive at the Estate by 7 am as required
 19. Or the Manager as the case may be.
 20. S.4(7) - Employment Act.
 21. See Gutto S.B. - "The Rule of Law and the Public in Kenya" - Supra.
 22. S.4(9) Employment Act

23. Ibid S.6.

24. E.G. Kenya Gazette Notice No. 3851 which contained an order made under the Trade Disputes Act (Cap. 234) by the Minister of Labour directing every employer who employs not less than five members of the Kenya Plantation and Agricultural Workers Union to deduct such employess a sum of Seven Shillings in respect of the Trade Union dues.

25. S.37 - Employment Act -Supra.

26. A practical example is Kiambu Institute of Science and Technology which is now training women in building works including masonry. A visit to the Institute revealed some girls in practical field-work in a construction site in Kiambu Town, who appeared to have no "deformity" as compared to their male counterparts. The University of Nairobi again has a number of female students in the Engineering and Science Faculties.

27. See Gutto - "The Rule of Law and the Public in Kenya" - a paper prepared for presentation at the Law Society of Kenya (Mombasa Branch) Seminar, Mombasa, 10th, 11th Dec. 1980.

28. Regulations of wages and conditions of Employment Act.

29. The last of these was the Regulation of Wages (General) Order. 1975 - L.M. No. 100/1974.

30. See Gutto S.B. - "The Rule of Law and the Public in Kenya" - Supra.

31. A detailed list was found unnecessary as the main aim is to show general disposition of female workers. However, for further interest see - Regulation of Wages (General) (Amendment) Order 1980 L.N. No. 72/1980 - Kenya Gazette Supplement - 1980.

32. Regulation of Wages (Agricultural Industry) Order, 1980 L.N. 73/1980 Ist Schedule.

33. Kenya Coffee Growers Association information circular No. 232 of 9th December, 1980 - This was implemented in persuance to an agreement

between Kenya Coffee Growers Association and Kenya Plantation and Agricultural Workers Union.

34. Cap. 226. Laws of Kenya.

35. "Report of the Civil Service Review Committee 1979-80" - as presented to his Excellency the President on Sept. 1980.

36. Ibid Par. 407.

37. Ibid Par. 408.

38. Personnel Relations Officer, Caltex (Kenya) Ltd. - Caltex House, Koinange Street, Nairobi.

39. Off Muthaiga Road, Nairobi.

40. It is probably not a coincidence that the Chairman of the Committee was none other than S. N. Waruhiu, who other than being one of the richest personalities in Kenya also holds the majority of shares in Waruhiu & Muite, Advocates, Company. I am not submitting that Waruhiu as a person was the sole beneficiary of the recommendation but rather the class of employers he represents.

41. Kenya Chemical Workers Union Vs. Vitafoam Kenya Limited as decided by Judge Saeed Cockar - Gazette Notice No. 55 .

42. Kenya Union of Food and Allied Works Vs. Gailey and Roberts. Gazette Notice No. 54.

43. "Employment following maternity" - as contained in "Employment of women with Family responsibility " - Supra.

44. For a full discussion of this phenomenon, see D. W. Gachuki's "Public Enterprise and Foreign Capital in Kenya: the Policy Environment" - a paper presented at the Conference on Public Enterprises, Institute of Development Studies.

45. Tailors and Textile Workers Union Vs. Garment Manufacturing Mass Production Group of F.K.N. Gazette Notice No. 1033.

46. "Employment following Maternity" - Supra.

47. It should however be noted that this information was supplied to the International Labour Organisation Conference by the governments

concerned. It is therefore likely to be exaggerated in an attempt to exonerate such governments, politically or otherwise.

48. "Employment following Maternity" - Supra.

49. Domestic and Hotel Workers Union Vs. Panafric Hotel Ltd. Gazette Notice No. 3453.

50. Legal Notice No. 189 of 1967.

51. Kenya Union of Commercial Food and Domestic Workers Vs. Kenya Kazi Guards Ltd.

52. For a full discussion on this, see P.K. Nganga - "Law Governing the Employment of Children in Kenya", a paper presented to the Seminar of Children and the Law in Kenya, organised by the Law Society of Kenya with the co-operation of the Institute of Development Studies, University of Nairobi. 13th, 14th July, 1979. - IDS OP. 35/1979.

53. Dr. Miriam K. Were and Fred N. Ojiambo - "Offences against Children" Pg. 4. Research paper, University of Nairobi Library.

54. Ibid Pg. I.

55. "Employment of Women with Family responsibility" - Supra Chapter on "Child - care services and facilities". The sub-section on "Organisation of services and facilities".

56. Ibid - same Chapter N.B. Footnote 47.

57. Ibid - Chapter on "parents fees".

58. Cap. 265 - Laws of Kenya.

59. A practical example here that I came across in my research is the Madari Kindergarten situated near Strathmore College in Nairobi. It caters for children aged between two and a half years and six years and charges KShs. 1,800/- per term. The maximum time that can be spent by a child is five hours per day and only in the morning section. Obviously, the fee is absurd and surely what does one do with infants under 2½ years

even if the price was fair? This appears to be first a business and only then does it attempt to serve educational needs.

60. Nelson N. "Some aspects of informal social organisation by female migrants in a Nairobi squatter neighbourhood: Mathare Valley" Paper I of "Strategies of female migrants to Mathare Valley" Pg. 12 University of Nairobi Library.

61. An obvious example is Kenyatta Hospital in the so called "Observation Ward". Due to lack of sufficient facilities here, you will often find the said mothers sleeping on the floor, not to mention that they are not sick themselves. This is also the case in most District and Provincial hospitals.

62. Supra.

63. To mention but a few, see:

- Mukui B. Gutto - "Rent controls in residential premises in Nairobi; some theoretical reflections". I.D.S.

- Patricia Atieno Adala - "An economic study of the housing market in Nairobi" - a research paper submitted to the Department of Economics, University of Nairobi in partial fulfilment of the requirements for the Degree of Masters of Arts in Economics in June, 1978

- Willy Munyoki Mutunga - "The Rent Acts and the housing problem in Kenya" a dissertation submitted in part fulfilment of the Degree of Masters of Laws, University of Dar-es-Salaam, 1974, etc.etc

64. Cap. 296 - Laws of Kenya.

65. Gar and MacAuslan - "Public Law and Political change in Kenya", Chapter One Pg. 79-80.

66. See Chapter One

67. Willy Mutunga - Supra Pg. 89.

68. Supra.

69. An example here is Caltex Company which only pays its junior

employees a standardised housing allowance of KShs. 140/1 and only where one is a member of the Trade Union concerned.

70. Section 10.

71. "Report of the Civil Service Review Committee" Supra Paragraph 395 Pg. 174.

72. University of Nairobi - "Internal Memo" from the Registrar to "All members of Staff in Grades 1 - IV" dated 22/1/1981.

73. Mr. Wangai - of the department of Registrar personnel.

74. Koige Wamwere (Hon) - Viva Magazine February, 1980 Pg. 22-28 - Report of his visit to the said village. This is the sole source of the information herein.

75. Hans H. Munker - "Six lectures on Co-operative Law" Pgs. 23-24.

76. Raymond Anthorpe - "Rural Development and planned change in Kenya: an Analytical review". As contained in "Rural Institutions and planned change" V.5 - An institute staff study for the United Nations Research Institute for special development. Geneva 1972 Pg. 10.

77. Typical examples of co-operatives that have fallen into this are many in Kenya. This inter-alia would include such as the Kenya Planters Co-operative Union, Kenya Co-operative Creameries etc. An interview with the grassroot members of these societies i.e. those peasants in the rural areas revealed most if not all do not know the bureaucratic leaders of these societies leave alone knowing where the head offices are. Thus they have no control whatsoever and to them, the society is merely a 'company' where they sell their produce. In one instance, the members of Githunguri Daily Farmers did not know that their committee members had borrowed individual loans on the societyps assets as security until they failed to repay!

78. Raymond Anthorpe - Supra Pgs. 8-9.

79. See Kenya Development Plan, 1970-1974 Government Printers Pgs. 276-277.

80. Speech delivered by the Permanent Secretary in the Ministry of Co-op Development while addressing a Seminar in Nyeri on March 22, 1981 as contained in "The Standard" Newspaper Monday 23rd, 1981 Edition.
81. S.40 restricts the advancement of Loans to members only while S.48 can be employed to restrict the sale of a particular product.
82. Ibid S. 14(I) (a) and (b).
83. Ibid S.17.
84. Chelegat Mutai - Report of her tour of the Rift Valley Province, Viva Magazine - February/March Edition 1979 Pg. 6-7.
85. E. Wachter and A. Wachter - "Groups and Co-operatives: Economic enterprises of Women in Nakuru Part 2". Working paper No. 190 I.D.S., @ O N September, 1974.
86. Standt Kathleen Ann - "Agricultural Policy, political power and women farmers in Western Kenya" - a thesis submitted to the Graduate School of the University of Wisconsin - Madison in partial fulfilment fo the requirements of the Degree of Doctor of Philosophy. I.D.S. 4 O N Pg. 77-78.
87. Chinga Division, Nyeri District
88. For a fuller discussion of this see Sussan Abboth - Supra Pg. 143.
89. Achola O Pala - "A preliminary Survey of the Avenues for and constrains of women in the development process in Kenya" - Discussion paper No. 218 I.D.S. - University of Nairobi.
90. Ibid Pg. 8-9.
91. The research area was a coffee society. Kiaria Coffee Co-operative Society in Githunguri Division of Kiambu District. I could not get to the members register as this was locked but from information gathered from those presence, I was able to come up with the estimate given
92. From the I.D.S. @ O N - She was working on her PhD thesis and had actually collected datas for three co-operatives but could not

disclose them as the manuscript had not been officially approved by her University.

93. Achola A. Pala - Supra Pg. 18.

94. Regina S. Oboler - "Economic Rights for Nandi Women" working paper No. 328 I.D.S. University of Nairobi Pg. 4.

95. Sussan Abbott - " Full time Farmers and week-end wives: changes and stress among rural Kikuyu women" - A thesis submitted to the faculty of the University of North Carolina at Chapel Hill in partial fulfilment of the requirements for the Degree of Doctor of Philosophy in the Department of Anthropology 1974 I.D.S. 4 0 N.

95. Regina S. Oboler - Supra Pg. 10.

96. Chelegat Mutai - Supra Pg. 9.

97. She owns approximately 800 acres of Wheat and dairy farming land in Eldoret.

98. Editors view on "the state of women's discrimination" commemorating women's day - March 8th as contained in February-March 1979 Edition of the Viva Magazine Pg. 15.

BIBLIOGRAPHY

1. Achola O. Pala- "Apreliminary Survey of the Avenues for and Constraints of women in the development process in Kenya."
2. Andrey Chapman Smoke -"women's Education and Roles in Kenya."
3. Employment Act.
4. Hans H. Munker - " Six Lectures on Co-operative Law."
5. International labour conference 64th Session 1978.
6. Raymond Apthorpe - "Rural development and planned change in Kenya."
7. Regina S. Oboler - "Economic Rights for Nandi women."
8. Report of the Civil service Review Committee 1979-80."
9. Shadrack B.O. Gutto.
"Education towards Social justice in Africa."
"Legal constraints of female participation in the Economy."
"The Rule of Law and the Public in Kenya."
10. Sussan Abbott- "Full time farmers and week-end wives: changes and stress among Rura Kikuyu women."