

**THE RIGHT TO LAND, CLEAN WATER, FOOD AND SHELTER: A  
CASE STUDY OF THE GENDERED EFFECTS ON SQUATTERS OF THE  
CONSTITUTION'S FAILURE TO ADDRESS THESE RIGHTS IN  
MOGOTIO, KENYA**

**Abstract**

**Squatters, especially poor illiterate women, are particularly vulnerable to breaches of their human socio-economic rights to access land, clean water, food and shelter. This dissertation explores how the Kenyan State's persistent neglect of squatter settlements exacerbates the harmful effects of the breaches of these crucial rights, especially the right to own land, which are protected by certain regional and international Human Rights instruments which are binding upon Kenya. Through the use of gender-sensitive methodologies (including the Grounded, Women's Law and Human Rights Approaches) and several complementary data collection methods, evidence is collected, analysed and presented through the eyes or 'lived realities' of women squatters, who silently suffer their shocking and deteriorating living conditions. Finally, several legal, policy, administrative and other reforms and recommendations are suggested to help improve their plight.**

**BY**

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**A Dissertation submitted in partial fulfillment of the requirements for a Masters  
Degree in Women's Law, Southern and Eastern African Regional Centre for  
Women's Law, Faculty of Law,  
University of Zimbabwe**

**2008**

**DECLARATION**

I **Grace Nyongesa** certify that this thesis is my original work; it is an honest and true effort of my personal research. I certify that the work has not been presented anywhere else before for any other thesis.

**Signed**.....

**Date**.....

This dissertation was submitted for examination with my approval as the University Supervisor

**Signed**.....

**Date**.....

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**Date**.....**Signed**.....

## **DEDICATION**

This work is dedicated to the following most important people in my life;

**Malcolm Achola and  
James Otieno Achola**

My wonderful and lovely sons for being strong for me, and for their hard work, discipline, resilience and academic excellence displayed during my absence.

**Lillian Nyongesa**

My wonderful sister for her care and love to my children in my absence and for encouraging me throughout the course.

**Mr & Mrs R.P Nyongesa**

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Universal Declaration of Human Rights (UDHR)

Vienna Declaration and Platform for Action



## ACRONYMS & ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
CBS	Central Bureau of Statistics
CDN	Catholic Diocese of Nakuru
DC	District Commissioner
ESCR	Economic Social and Cultural Rights
ID	Identity Cards
IDP	Internally Displaced Persons
IT	Information Technology
HIV	Human Immune Virus
KSH/Ksh	Kenya Shillings
KHRC	Kenya Human Rights Commission
KNHRC	Kenya National Human Rights Commission
MDGs	Millennium Development Goals
MOH	Ministry of Health
MP	Member of Parliament
NGOs	Non-Governmental Organizations
PHO	Public Health Officer
STIs	Sexually Transmitted Infections
TB	Tuberculosis
TBAs	Traditional Birth Attendants
UN	United Nations
URTIs	Upper Respiratory Tract Infections

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## **CHAPTER ONE**

### **Introduction**

This dissertation is based on research that was carried out in the Mogotio area of Kenya. The research topic was entitled the **The Right to land, clean water, food and shelter: A case study of the gendered effects on squatters of the Constitutions' failure to address these Rights in Mogotio, Kenya**. In Kenya much emphasis has been put on Civil and Political Rights to the exclusion of Economic, Social and Cultural Rights. The Government of Kenya is a signatory to the Millennium Declaration made at the United Nations Millennium Summit in September 2000 adopting the Millennium Development Goals (MDGs) with clear targets for reducing poverty, hunger disease, illiteracy, environmental degradation, and discrimination against women by 2015. This thesis looks at how the inaccessibility to some of these rights affects squatters living in Mogotio Kenya with a view to making necessary recommendations.

The findings and analysis are based on what was established on the ground. The dissertation is divided into six chapters. Chapter One covers the background of the research and why the topic was selected; it also spells out the objectives of the research, the assumptions made, the questions formulated as well as the demarcation of the study area. Chapter Two reviews literature related to the research topic, the human rights framework in support of the research topic, as well as a study of how two other jurisdictions have dealt with the justiciability of these rights. Chapter Three is the framework of the research. It deals with the methodologies that were adopted, and how the methodology informed the method that was used in conducting the research. Chapter Four deals with the discussion and analysis of the findings. Chapter Five discusses the emerging themes and their implications for the research. Chapter Six presents the conclusions and recommendations of the study.

### **Background of the Research**

A "squatter" according to the Concise Oxford Dictionary is a person who settles on new, especially public land without title; a person who takes unauthorized possession of unoccupied premises.

A "squatter settlement" is considered as a residential area in an urban locality inhabited by the very poor who have no access to tenured land of their own, and hence "squat" on vacant land, either private

or public. The terms 'slums' and 'squatter settlements' are often indicators of a crisis in housing. The presence of slums and squatter settlements in a society is a clear indication of the failure of the society and government to provide adequate habitat for human development (Brian A and Sandhu R1995:19). The term 'squatter settlement' is used to indicate housing that is either the result of illegal occupation or has been developed in an unauthorized fashion (World Bank 1992). The presence of squatter settlements and slums are good indicators of lack of land ownership rights and of a housing crisis.

My interest in studying squatters, especially their social and economic rights, was inspired by my visit to Mogotio on a workshop organized by the Catholic Diocese of Nakuru (CDN) in 2006, mainly for providing pro bono legal services to sisal plantation workers. During the field tour we were taken through the squatter settlement where I had an opportunity to interact remotely with some squatters. We arrived in a van and when they saw it and recognized that it belonged to the Diocese some gathered around it hoping that there was food or clothes for distribution. From the brief discussion with the squatters I learnt that water was a major problem for them.

I reflected upon and evaluated my own experience and my memory was thrown back to my life as a student in India. Having grown up in Nakuru town I remember that the water supply at the time was quite good and we used to take it directly from the tap without having to boil it. When I went to India did the same thing until I contracted amoebiasis, which I later learnt was caused by intestinal worms due to poor sanitation, caused by faecal deposits in water.

This interested me and I decided that I wanted to get to know more about what health issues affected the squatters due to consuming water that had faecal as well as other effluent deposited in it. Personal experience in relation to my research topic offered useful values and kept me focused on my research topic.

The CDN staff who were taking us around mentioned, in passing, the plight of the squatters but at the time I did not give it much thought because little detailed information about them was given to us. Having gone through the social justice class and having been exposed to social and economic rights, my choice of this research topic was born.

When I set out in the field to do this research my initial topic was centered on the right to clean water, food and shelter as basic human rights. However, whilst in the field it emerged that lack of land ownership was at the core of the problems the squatters in |Mogotio were experiencing. My research topic as well as the assumption were changed to capture lack of land ownership as an aspect of investigation.

### **Statement of the problem**

Squatter settlements have become very common in Kenya today. Various reasons have given rise to these kinds of settlements. In order to appreciate the issues giving rise to squatter settlements in Kenya, it is important to look at the historical land issues which have translated into what is now preferably called historical land injustices affecting Kenya.

Apart from being administrative, British colonialism in Kenya was accompanied by massive and widespread land alienation for the benefit of settler agriculture. Colonial legislation was then enacted to legalize this process, which saw individuals being given titles as holders under the colonial system. Settlers were given a lease for land some for 99 years while others for 999 years and to date big chunks of land are still owned by them.

The 1<sup>st</sup> post independent government of the late President Jomo Kenyatta, and successive governments inherited colonial legislation protecting the rights of the land titleholders. The current Constitution negotiated at Lancaster House in London provides for the elaborate protection of private land without reference to the history of how it was acquired. Failure to address this issue has led to serious grievances which have resulted in an on-going national crisis which results in frequent tribal clashes. The post independent governments adopted a 'willing buyer, willing seller' method of acquiring land from the settlers, instead of the compulsory acquisition method.

The Draft Constitution of Kenya, which was rejected at a referendum in 2005, recognized the problem of these historical injustices and required the government to address them effectively. It was to be done in recognition of the fact that equitable access to land is an essential precursor for

economic development in Kenya as most primary and secondary activities such as agriculture and pastoralism among others are dependent on land.

The Draft National Land Policy developed by the NARC government recognized the problem of squatters as being an historic one and required the government to address it urgently. Various studies of the land question in Kenya have established linkages between the problems of poverty, insecurity and landlessness<sup>1</sup>.

### **Main Aims of the Study**

The main aims of the study were set out as follows:-

- To ascertain the extent to which the squatters' rights to food, shelter and clean water are affected as a result of lack of land ownership rights; and
- To get a deeper understanding of how the Constitution's failure to address these rights affects squatters in Mogotio.

### **Specific Objectives of the Research**

Having set out the main aims the specific objectives were then set out:

1. To examine how the lack of land ownership rights impacts on the squatters' right to clean water, food and shelter.
2. To evaluate how inaccessibility to clean water, food and shelter affects squatter living in Mogotio.
3. To find out the impact of the government's failure to constitutionalise the right to clean water, food and shelter and its effect on squatter living in Mogotio.
4. To make recommendations for necessary law reform for access to land, clean water, food and shelter for squatters living in Mogotio
5. To assess the gender dimensions in inaccessibility to land, clean water, food and shelter on squatters living in Mogotio.

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<sup>1</sup> Kenya Land Alliance, "National Land Policy in Kenya: addressing Historical Injustices 2004"

### **Assumptions**

The following assumptions which were to inform the study were then formulated.

1. The lack of land ownership by squatters affects their right to clean water, food and shelter.
2. Squatters in Mogotio do not have access to clean water.
3. Squatters in Mogotio have difficulty in accessing food.
4. Squatters in Mogotio have poor shelter.
5. The failure to access land, clean water and food has diverse gendered dimensions on squatters living in Mogotio.
6. Women's special needs, as traditional carers/stewards of land, water, food and shelter are greatly affected if not factored into law.
7. The silence in the Constitution on land, clean water, food and shelter as basic human rights renders the Government legally unaccountable for its failure to ensure the provision of these rights.

### **Research Questions**

The following research questions were then formulated based on the above assumptions.

1. Does their lack of land ownership affect the squatters' rights to access clean water, food and shelter?
2. Do squatters in Mogotio have access to clean water?
3. Do squatters in Mogotio have access to food?
4. Do squatters in Mogotio have decent shelter?
5. Does the failure to access land, clean water, food and shelter have diverse gendered dimensions on squatters living in Mogotio?
6. Are women's special needs, as carers/stewards of land, clean water, food and shelter greatly affected if not factored into law?
7. What is the effect of the Constitution's silence on access to land, clean water, food and shelter on squatters living in Mogotio?

### **Demarcation of the Study**

The findings in this study are confined to a research carried out in Mogotio. Mogotio is located in the Rift Valley province, which is the largest of the 8 provinces in Kenya. Mogotio borders Rongai



constituency. The total population is about 30,000 according to the Central Bureau of Statistics (CBS). The Nakuru District Part of the town, due to boundary divisions, lies in Nakuru District and the other part in Koibatek District. Mogotio constituency has 21 locations with Mogotio township in which the research was conducted being densely populated. It is predominantly inhabited by members of the Kalenjin (tribe) area however other major tribes in the area include the Kikuyu, Luo and Luhya.

There exist two major health facilities in Mogotio town, the Mogotio Health Center which is owned by the Ministry of Health and the Mogotio Catholic Dispensary which is owned and managed by the Catholic Diocese. A big chunk of land (about 40% of the land in Mogotio) is owned by one Greek settler (Mr. Horn) on which he does sisal farming. Much of the data collected from respondents (about 95%) was obtained from squatter settlements (on private land) now named by the squatters as *Akatorong'ot*<sup>2</sup> and *Kapsigiroi*<sup>3</sup>, whilst some was collated from squatters living on private land owned by a Greek Settler.

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<sup>2</sup> This is a Turkana word which means a rocky area. The area is rocky and not arable

<sup>3</sup> This is a Kalenjin word 'Sigiroi' means a Zebra, there were so many Zebras on this piece of land. The land was demarcated by Kalenjin elders for girls who got children out of wedlock. They would be sent to live there because they were a disgrace to the family.

## **CHAPTER TWO**

### **Review of Related Literature and Human Rights Instruments**

#### **Introduction**

Several works were reviewed in this chapter to get an in-depth understanding of the socio-economic and cultural rights set out in the International Human Rights Instruments. In addition to this, works were reviewed to establish the contradictions, gaps and aspects which were covered with regard to right to land, water, food and shelter. It is evident from the reviewed literature that there had been no study to date which has investigated the situation of the squatters' access to land, water, food and shelter rights at Mogotio.

The International Commission of Jurists (ICJ) in their study "Enhancing women's Rights in Kenya" assessed the impact of the legal regime and government policies that promote or beset women's rights in Kenya. The Commission noted that, government policies and the legal regime are the key routes through which women would address their rights, yet practically they are used to frustrate and obstruct the rights of women (International Commission of Jurists 2003: ii).

Despite the fact that women constitute over 50% of Kenya's population they are the most illiterate and impoverished in the country. They are subjected to domestic violence, forced marriage, wife inheritance, female genital mutilation and only 5% own land, while 80% are employed or work on the land which they do not own (Gender Profile, February 2002). The above findings were very important because they gave me insights on the impact of the legal regime and government policies on the rights of women. This in turn encouraged me to find out the effects of the two frameworks on the rights of squatters in Mogotio to land, water, food, and shelter.

Unfortunately, in Kenya there are no comprehensive legal or constitutional guarantees towards the furtherance of gender equity and social justice. To worsen women's position they have no means to enforce their rights and most are not even aware of these rights. The constitution of Kenya is not handling the rights of women. Section 82 of the Constitution of Kenya however deals with non-discrimination on the basis of sex. Despite that the situation today essentially

remains the same. The law of succession also has loopholes. For example it notes that men have the absolute right on women's property while women have a life long interest in the property of the husband, she holds the property on behalf of the children and a widow's inheritance is terminated once she remarries (ICJ, 2003: iii). These legal irregularities empowered me with the need to assess the Constitutional position on the rights of Squatters in Mogotio to land, water, food and shelter.

The level of judicial activism in Kenya is very low. This is so because Kenya has ratified key International Instruments in regard to the advancement of women's rights notably CEDAW and the Beijing Platform for Action as a result one would expect a lot of activity on women's rights (Human Rights Watch, 2000). As a point of departure from this work I intend to find out the human rights instruments that Kenya has ratified with regards to squatters or impoverished people.

According to Dr. Khama Rogo the rights of women are overshadowed by "stereotypical gender roles which have been so deeply ingrained and glorified in language, education, the mass media and arts to an extent that even women have become desensitized to their own inferior portrayal"(Kibwana, K. 1995: ix). This observation by Dr. Rogo motivated me with the need to investigate the validity of such a conclusion with special attention to the rights of squatter women at Mogotio.

After the attainment of independence in 1963 the Kenyan government has attempted to address shelter challenges through various initiatives. The major efforts were visible through the designation of Sessional paper NO.5 on the Housing policy of 1966/67, the national strategy for shelter and other efforts embodied in successive National Development Plans (Ministry of Lands and Housing July 2004). These efforts at providing shelter encouraged me to find out the challenges which have led to the establishment of squatter settlements in light of the government plans as set out in the policies. In addition, I endeavour to examine the government's comprehensive legal efforts which give the government power to coordinate, guide, regulate, monitor and evaluate the provision of shelter.

In an effort to address shortage of houses in both rural and urban areas the National Housing Policy aims at;

- Enabling the poor to access housing and basic services and infrastructure necessary for a health living environment especially in urban areas;
- Encouraging integrated participatory approaches to slum upgrading, including income generating activities that effectively combat poverty;
- Promoting and funding of research on the development of low cost building materials and construction techniques;
- Harmonising existing laws governing urban development and electric power to facilitate more cost effective housing development;
- Facilitating increased investment by the normal sector , in the production of housing of low and middle income urban dwellers;
- Creating a housing development fund to be financed through budgetary allocations and financial support from development partners and other sources (Ministry of Lands and Housing July 2004).

My study intends to assess the extent to which the government has fulfilled these aims given the establishment of squatter settlements at Mogotio.

The vulnerable groups include the poor, women, children in difficult circumstance, and the elderly, displace persons and the handicapped. In this scenario the government will endeavour to accomplish the following;

- a) Involve the targeted groups at all level of project planning process. This will create ownership and therefore sustainability in the programmes or projects;
- b) Facilitate the creation of credit institutions and lending mechanism that will be accessible to all vulnerable groups, particularly the women the handicapped and the displaced. Housing co-operatives will be supported and encouraged to initiate community based credit systems. The government therefore anticipates that through the cooperative movement vulnerable groups both in the rural and urban areas will be able to tackle their shelter problems more effectively and that they will be able to improve their bargaining power through collective effort;

- c) the government will further encourage vulnerable groups to participate actively in housing by strengthening relations with community-based organisation and by promoting the formation of self help groups;
- e) In order to cater for the shelter needs of the elderly persons the government will encourage the establishment of elderly people's homes. (Ministry of Lands and Housing July 2004: 13-14).

Given the above housing targets for vulnerable groups it is important to examine the extent to which these rights have or have not affected the squatters in Mogotio.

Land is a valuable and scarce resource in Kenya. Land use, development and control are fragile issues with deep socio-economic and political effects. The absence of a detailed land use management and planning policy resulted to the construction of sub-standard settlement. (Ministry of Lands and Housing July 2004:15). This study benefited immensely from these details on land which in turn has capacitated me with the need to find out how the denial of land rights to the squatters affects them.

The current Constitution provides for a wide range of rights in the Bill of Rights namely, "right to life, right to security of the person and the protection of the law, right to freedom of movement, protection for the privacy of the home and other property without compensation, protection from deprivation of private property (Kenya Constitution Articles 70(a), 70(c), 71, 75 and 81).

. The squatters in the coast region were rendered landless after the introduction of the Land Titles Act where people were required to claim ownership of land within a period of six months, and where they did not the land was deemed to belong to the crown, this left many Africans landless. Those that were able to claim the land were the colonialists and the Arabs, as the Africans were not even aware of the Gazette notice. They then lost their land as they learnt down the road that what they had known to be their ancestral land belonged to other people who were registered owners and held titles to the land to their exclusion (Amnesty International 2007: 8-10).

The lessons drawn from these studies enabled me to understand how the evictions in Sururu and Mau forest compelled people to squat. My study like this works intends to find out how the squatters at Mogotio were compelled to squat. I also learnt that although the plight on squatters had been discussed in other studies, non of the studies has looked at their right to water, food, and shelter. It is for this reason that I noted that a study on these rights is critical particularly on the squatters in Mogotio.

Land in Kenya is placed in three groups namely; Government Land, Trust Land and Private Land. Trust land refers to land which was designated as “Native Reserves” at independence and today constitutes 65% of Kenyan Land. This land is dry or semi arid areas of the country and is owned by the council which holds it in trust for the benefit of the residents, Trust land is governed by the Constitution, Trust land Act, Land Consolidation Act, and the Land adjudication Act (Benschop, M., 2002: 146). However, none of these respect the individual rights especially the vulnerable groups like the squatters.

Government Land refers to land reserved for the use by the government and is “vested in the president who has power to make grants and dispositions” and is regulated by the Government Land Act. “When a person without a right, title or license, occupies vacant government land, the Commissioner of Lands may obtain a court order for the possession of the occupied land. Practically the Government has condoned the formation of informal settlements (Benschop, M 2002:150). Based on these findings it is evident that the legal framework in Kenya leaves squatters without security of tenure.

Private land is held on freehold or leasehold by members of the public. Such land is owned by private companies, individual, co-operatives, statutory boards among other private institutions. (Benschop, M 2002:153). This study therefore seeks to evaluate how the right to land in Kenya is handled especially the rights of squatters in Mogotio.

The Draft National land Policy 2006 developed by the government has noted the challenge of squatter as a product of historical colonial injustices. The post independent governments pursued a land settlement programme premised on a “willing buyer-willing seller” mechanism rather than

a collective operation of land repossession and redistribution as was the case with Zimbabwe. (Kenya Land Alliance 2004). This study therefore looks at the aspects which have led to people squatting which aspect is key to my study. As a point of departure I intend to evaluate the right to the resources by the squatters in Mogotio.

In 2002, the UN Committee on Economic, Social and Cultural Rights in its General Comment No. 15 on the right to water observed that “everyone is entitled to sufficient, acceptable, safe, physically accessible and affordable water for personal and domestic uses (Kenya Human Rights Commission). This study therefore seeks to examine how the squatters have had their rights provided by the government of Kenya.

Everyone is entitled to food and water according to the Universal Declaration of Human Rights. It states that human beings should have “access to the minimum essential food which is sufficient nutritionally adequate and safe.” The right to food is directly referred to in the ICESCR “The state parties to the present covenant recognize the right of everyone to an adequate standard of living for himself and his family including adequate food clothing and housing, and to the continuous improvement of living conditions.”

It is therefore imperative to evaluate the extent to which the government of Kenya has fulfilled the international obligation of providing food for its citizens particularly the squatters in Mogotio.

### **Justiciability**

Through the internet research I found that there are some countries that have domesticated the provisions of ICESCR Art 11 into their domestic laws, although many do not distinguish between the provisions that are justiciable, and those that are not. Two Constitutions were looked at in this regard that is the Constitution of India and the Constitution of the Republic of South Africa.

**India:**

I looked at the Indian Constitution which recognizes the right to life and contains specific provisions related to food. The Constitution of India, in part III of its Fundamental Rights contains a provision in regard to protection of life and personal liberty<sup>4</sup> and part IV talks of Directive Principles of State Policy<sup>5</sup>. The Supreme Court of India has formally recognized the right to food<sup>6</sup> and has ordered the Central and State governments to take a number of measures to improve the situation. The justiciability of these rights is therefore confirmed, and the court has issued a number of orders to government, entailing expenditure of resources. Among the decisions made are

- All state governments have been directed to begin cooked mid-day meals for all children in government and government assisted schools.
- State and central governments have been ordered to adopt specific measures to ensure public awareness and transparency of assistance programmes.
- Governments of India must develop a system to ensure that all poor families are identified as living Below Poverty Line.
- Vulnerable groups to be identified amongst the poor, including widows, the elderly, infirm, disabled pregnant and lactating mothers without assured means of subsistence, as well as “primitive tribes”
- All state Governments have been ordered to implement food for work schemes in scarcity areas.

In one of its interim orders, the Supreme Court of India appointed two Commissioners of the court “for the purpose of monitoring the implementation of all orders relating to the right to food. The commissioners were empowered to enquire about any violations of these orders and to demand redress, with the full authority of the Supreme Court. They were entitled to enlist the assistance of NGOs and individuals. Resident Commissioners have also been appointed in each state to assist the Commissioners of the court. My observation of the Indian situation which

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<sup>4</sup> Article 21 says no person shall be deprived of his life or personal liberty except according to procedure established by law

<sup>5</sup> Article 47 spells out the duty of the state to raise the level of nutrition and the standard of living and to improve public health.

<sup>6</sup> People’s Union for Civil Liberties(PUCL) Rajasthan vs Union of India an others, Writ Petition(Civil) NO. 196 of 2001 available at [www.righttofood.com](http://www.righttofood.com) this has been reiterated in a series of other cases.



involves compelling the state to do certain acts and ensuring compliance is that justiciability of these rights is possible if there is no interference of the judiciary by the executive.

### **South Africa:**

The Constitution of the Republic of South Africa in chapter 2 which deals with the Bill of Rights, addresses the issue of health care, food, water and social security.<sup>7</sup> The way the social, economic and cultural rights are drafted leaves no doubt as to the justiciability of those rights. The state is required to respect, protect and fulfill the rights in the Bill of Rights.<sup>8</sup> The constitution further provides that a class, group or individual can “approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights.

The justiciability of the social and economic rights in South Africa was confirmed in a Supreme Court Judgment, in the Grootboom case<sup>9</sup>, which concerned the right to housing. The test of “reasonableness” against which to measure the performance of the government in dealing with the right to housing was developed and established, priority must be given to those in desperate need.

The study of the justiciability of the social and economic rights in these two jurisdictions was relevant to my research topic which seeks to examine how the constitution’s failure to address these rights affects the squatter living in Mogotio.

### **Conclusion**

The literature review provided me with a lot of insights. It was evident that Kenya is a signatory to the international Human Rights instruments. It was also evident that there are researches on squatters in Kenya. It was also evident that there is a housing policy which states the need to provide shelter to rural and urban dwellers.

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<sup>7</sup> Section 27(1) and (2) it also compels the state to take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of the rights set out in this section

<sup>8</sup> Section 7(2)

<sup>9</sup> See *Government of the Republic of South Africa v. Grootboom* 2001(1) SA 46 (CC)

Overall from the reviewed literature there is no single study per-se which deals with the rights of squatters to land, water, food and shelter. These rights are interwoven and hinged on Land. In conclusion therefore these rights are interwoven and hinged on the land. It is for this reason that the researcher found it vital to carry out a study on these rights with specific reference to a test case of the squatters in Mogotio.

## **CHAPTER THREE**

### **RESEARCH METHODOLOGIES AND METHODS**

#### **Introduction**

This chapter deals with the framework of the research. It explains the various methodologies used to investigate the study it shows which methodologies were used and how it eventually transmitted into and informed the research methods that were adopted. It also discusses how these methodologies and methods were useful, and proceeds to set out their limitations.

#### **Research Methodologies**

##### **Sex and Gender perspective:**

These are studies, which seek to establish gender parity. Through this approach I was able to see how inaccessibility to land, water, food and shelter affects men and women differently. I was able to investigate as well as observe how gender roles play out. My observation was that women as well as young girls were engaged in fetching water I did not see any man in the river fetching water nor washing clothes. I observed young boys swimming while girls their age were engaged in fetching water. I was able to take photographs of young children.

This approach was also useful in showing how lack of food and clean water affects women more than it affects men due to women's reproductive roles. Women's specific needs and value for water for uses such as bathing, cooking, washing clothes etc was analyzed using this approach. This approach was also useful in analyzing how inaccessibility to food affects women vis a vis men. Through interviews with Public health officers as well as a doctor, I was able to uncover how malnutrition for instance affects women more than it does men, especially during pre and postnatal periods and its impact on children that are born as a result of such conditions. Details of this are discussed in the Findings and Analysis Chapter.

These are pictures of young boys swimming and young girls their age fetching water



Figure 1

Figure Picture of girls fetching water



Figure 2

These pictures were taken at the same time it shows the gender roles as they play out even among children.

### **Human Rights Approach:**

Human rights are universal legal guarantees that protect individuals and groups against actions that interfere with fundamental freedoms and human dignity, accountability and transparency are at the core of the Human Rights Framework. The process of addressing the issues affecting the squatters was an important aspect of the research, hence the human rights approach. The issue of access to land, clean water, food and shelter was analyzed from a human rights perspective with respect to the obligations that the state has under the international instruments for providing for clean water, food and shelter

In this study this approach was necessary to examine how the local and international instruments treat the issues of access to land, clean water, food and shelter. This approach was employed and the Human Rights based Development Approach used in analyzing the individual as a holder and /or claimant of basic rights and the role of the duty holders such as the individual, community, government, and NGOs, in regard to the research topic. This approach situates the human dignity at the centre of its insistence that individuals have, among others inalienable rights to fundamental freedoms from hunger, disease, illiteracy and lack of shelter. These Rights were found to be intertwined and interdependent.

### **Grounded Theory:**

In this study, women were taken as the starting point, a feminist approach was applied which as Stang Dahl (1987:22) argues “means that one perceives legal rules in the light of both women’s experiences and interests”. This approach looks at the lived realities of both men and women and the interplay of the law in trying to analyze the factors or forces that control women’s lives. (Bentzon’ et al: 1987). This approach was useful in showing how lack of land ownership rights, clean water, food and shelter affects women more adversely than it does men due to women’s rearing, caring as well as reproductive roles. In this study, women as well as men were interviewed.

I took women as the starting point. Through the use of this approach it was evident that women's health as well as children's were affected as a result of lack of land, clean water, food and shelter. Interviews were conducted with one primary school teacher and three nursery school teachers, which resulted in findings that children from the squatter village suffered from ill-health as a result of the harsh conditions they were exposed to. I then interviewed 2 doctors as well as three public health officers from Mogotio division and two from Nakuru district headquarters in, which Mogotio division falls to establish the effect and/ or the impact on squatters of lack of clean water, food, and decent shelter. It was revealed that women were more affected than men due to their role as bearers and nurturers.

Individual in-depth interviews as well as focus group discussions were conducted. Interaction with the respondents was a very useful aspect of the research, respondents revealed their experience and their lived realities, I was able to decide who else to interview in order to make a follow up and to get a deeper understanding of the issues at hand. The research involved going to the river to actually see where the respondents drew their water, I saw that the paths were narrow, some very steep and rocky and with defecation on them I had to maneuver where to step. The lived realities of the women living as squatters hit me as they have to tread these paths every day at least 5 to 6 times or more depending on their needs with 20 litre containers to fetch water, if one is not careful they end up falling.



**Figure 3**

This is a picture showing the rocky paths women have to walk to go to the river in search of water.

**Actors/Non state Actors and structures:**

While human rights are principally concerned with obligations of governments, actors in all parts of society should assist in making basic rights a reality. Such actors include Individuals and communities, civil societies, NGOs as well as International Organizations. This method was useful in terms of establishing what the women's views were on who they held accountable for lack of their land ownership rights, inaccessibility to clean water food and shelter. The respondents held the government accountable. The contribution in terms of food stuffs from Non Governmental Organization was appreciated by the squatters.

Those employed by the Greek settler farmer were of the view that non payment of their salaries in time or at all contributed to their failure to access food. The fact that these employees lived on his land as squatters prevents them from putting up decent shelter since they did not have land ownership rights. The study therefore, led to interviews with the Nakuru District Commissioner (DC) to establish what the government was doing in terms of settling the squatters in Mogotio.

The Nakuru District settlement officer was also interviewed in this regard. The Greek owner (Mr. Horn) was also interviewed in order to establish what he had done in terms of assisting the squatters who work and live on his farm. It was noted that the Greek settler denied the existence of squatters on his land. He said that those who lived on his land were labourers on his farm and held that his work was labour intensive hence the large number of people who lived on his land.

I found Mr. Horn to present a view that was not true given that some of the respondents though a small portion said they were squatting on his land. He said that he does pay salaries in time but the interviews revealed otherwise. When I went for the interview I was accompanied by a colleague who is owed a sum of Ksh 1.5 million in fees by Mr. Horn for services rendered. She has always found it impossible to execute legally against him despite having court orders due to the difficulty in accessing his premises. My colleague remained in the car whilst I carried out the interview only when I was done did she show up. Mr. Horn was embarrassed but promised to pay her which he has not honoured. My analysis of this is that if he fails to honour a court order how much more for an individual who cannot access justice easily.

From interviews with the Nakuru DC and the Mr. Horn settler it was noted that the government had bought about 14,000 acres of land from him with a view of settling squatters but had not completed paying the purchase price so the process of resettling them had not began. The DC said that priority was going to be given to those already living on the land. It was noted that, the process of settling the squatters had taken a twist after about One Hundred of them took the government to court to stop the process because they suspected that their names had not been included in the list. However, after taking the government to court it was discovered that their names were actually on the list. The process according to the D C has stalled until the court case is withdrawn or unless it is concluded and a final decision made by the court.

The role of the community, NGOs and civil in ensuring food as well as water were supplied to the squatters was explored. It was discovered that only the CDN had a program that supplied food occasionally to the squatters.



### **Feminist Perspective:**

This approach was useful in analyzing the laws and policies and critically looking at their weaknesses from a feminist point of view. I discovered that none of the laws and policies gave preference to women's special needs. One of the issues I investigated was the issue of payment of consultation fees in the clinics. The rates were applicable to both men and women equally without giving a special concession to women. For instance only children below five years do not pay consultation fees but those above five have to pay Ksh. 30 for the card, whilst adults paid Ksh 50 for the card, Kshs. 50 for malaria and Ksh.100 for typhoid fever and Kshs. 10 for an injection. Mosquito nets are also sold at a subsidized price of Ksh 50.<sup>10</sup> There being an Act of Parliament to deal with control of Malaria, the issue was investigated in light of whether the law gave special provision and concession to women.

On the ground, the issue of how women dealt with maternity was investigated the women said that they cannot afford to pay for hospital charges which amount to Ksh. 700 if the delivery is normal (without caesarean) and so they resorted to TBAs. Although the public health officers said that the government had banned the services of TBAs due to the high rate of maternal mortality during childbirth caused by resultant complications.

### **Methods:**

In order to investigate the issues at hand and having singled out the methodological approaches that were useful, various research methods were used for collecting Data. The following methods were adopted

### **In-depth individual Interviews: Respondents and Key informants**

The unstructured form of interview was chosen. This method allowed me to engage in a flowing conversation with the respondents, I occasionally adjusted the questions depending on the responses I elicited from the respondents. Respondents (women), men, children and key informants were interviewed to get an in depth understanding of the issues at hand. The squatters were interviewed to get an in depth understanding of the issues affecting them, to know how they ended up in squatter camps and to get to know their expectations in order to map a way forward.

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<sup>10</sup> The rate of the US\$ to the Kenya Shilling at the time of the research was 1US\$ to 67 Ksh

This method was advantageous as it offered an opportunity for a far more personal form of research. I was able to interact with the squatters and get a feel of their experiences and their lived realities through personal contact. I was able to probe or ask follow-up questions in order to get clarifications on various issues and an in depth understanding of the situation at hand. Interviews were much easier for the respondents to give information and opinions freely because after interaction they felt more relaxed and comfortable to discuss with me. I was able to observe their facial expressions as well as gestures and to note the emphasis they put on issues that appeared pertinent to them. It also gave me an opportunity to observe how the respondents felt about the issues that were under discussion.

Interviews with key informants were undertaken. Key informants were chosen because of their expert knowledge and experience in different structures and institutions directly concerned with the research topic. Those interviewed were the DC Nakuru district, 5 public health officers (three from Mogotio Division and 2 from the District headquarters). The DC was able to highlight on what the government was doing in terms of settling squatters and the challenges they faced such as identifying who the actual squatters were. The public health officers highlighted some of the diseases prevalent in Mogotio area and their causes and the interventions put in place together with the challenges they faced such as lack of resources and manpower.

These interviews were useful as they gave me an opportunity to get to know the key informants personally and to share views on some of the initial findings such as the issue of lack of land ownership rights and how it affected other rights such as the right to access clean water which issue at the end of the research had been taken up by the team of public health officers at Nakuru District who were shocked to learn that the cemetery was next to the only source of water, Molo River, which posed a health hazard to the squatters.

At the end of the interview the Public health Officers requested that I share my findings with them to enable them incorporate them in their activities. A meeting was to be organized at the district level with stake holders to discuss some of my findings. Unfortunately it did not materialize due to the post election violence that hit Nakuru District diverting all attention to the security situation. Interview as a method was useful in the sense that it gave me a clear and better

understanding of the issues I was investigating in a more responsive way as the issues emerged and it enabled me to probe responses and get a full understanding of their meaning and implications.

The disadvantages of this method are that it is time consuming and resource intensive. It involved moving from one place to another in search of respondents. Some interviews could last as long as one hour some would take long to begin. Another challenge is that I had to visit homes in order to ensure that the people I interviewed were actual squatters. Occasionally the respondents would give me more information that was outside my research topic. Most respondents confessed that as squatters no one has ever sat with them to ask about their specific problem.

**Table 1**  
**The following is the table of Respondents interviewed.**

Persons interviewed	Female	Male	Total
Respondents	56	24	80
Children	6	4	10
D C		1	1
PHO	1	4	5
Private Land owner(s)	1	0	1
NGO(KNHRC) and (KHRC)	1	1	2
Dist. Settlement officer	1	0	1
Doctors	0	2	2
Water technicians	0	2	2
CDN	1	2	3
Teachers			
Primary schools		1	
Nursery Schools	3		4
TBA	1	0	1
Total	71	41	112

### **Focus Group discussions**

Focus group discussions were organized of men and women separately just to get an insight of the issues that were at hand. Four focus group discussions were held three with women and one with men. Group discussions were a very useful method of collecting data. It made it possible to get the in -depth collective views of the respondents and compare with the individual

respondents views as well as observe the behaviours of the respondents collectively. The aim of this research method was to investigate men and women's specific experiences as squatters and draw findings from their separate experiences. The women and men were able to say what their specific needs for water were. This was useful in drawing the gender dimensions that played out in accessing these rights.

The advantage of this method is that respondents were more open and participated well it was an interactive session. They were able to think together and share their views and experiences openly. Furthermore I was able to gather a wide range of information within a very short span of time. This method was disadvantageous because it took time to gather the groups. Another difficulty was experienced in getting the participants to speak freely. This took some time as there were those in the group that were shy and those that feared that the collected information could be used against them, and only picked up much later in the discussion. This made the interviews more time consuming as it was learnt that each view was as important and needed to be given time.

The research was carried out during the campaign period for the general elections. Occasionally there would be interference from non participants as they suspected that those being interviewed were going to get some handouts to their exclusion. The interview had to be stopped occasionally to explain to the people the purpose of the visit. This method can attract suspicion from non-participants depending on the situation at the time of the research.

### **Combination of methods**

A combination of methods was adopted for clarity. The methods that were combined were discussion, observation and photography. Combination of methods was adopted and became useful as it helped me to understand why certain things were the way they appeared. Photographs were then taken to capture the sites. Looking at the sizes, structures and material used to construct the houses made me question and investigate why it was so. Observing children in a nursery school dull and inactive during the break time made me investigate what the problem was.

### **Photography**

Photographs of various sites were taken to capture the situation of the area of research. The advantages of this method is that it offers an opportunity for any one who reads this write up to have a picture of what the situation is like on the ground. The challenges were that it was difficult to get other scenes that were relevant to the research, because I had to get permission from the parties before I could take the photos and permission was in most cases denied, as people were not sure of what I was going to do with the pictures.

### **Secondary Methods**

Initially I had hoped to get data from the area chief on the number of squatters in the area as a starting point but this proved futile, as there are no records to that effect at all. The next point was to get data from the health centres on various diseases in relation to my research topic. This was useful it gave an insight on the kinds of diseases that affect squatters in Mogotio, their causes and the interventions put in place if any and the results achieved.

Data was taken from the MOH's office Nakuru District, Mogotio Dispensary and the CDN clinic just to compare and to get to know which diseases were prevalent in the area and their causes, it was found that six out of the 10 prioritized diseases were related to the water that was being used whilst one was an air borne disease which spreads as a result of poor ventilation. The disadvantages of this method were that poor record keeping was a major set back some records were missing and therefore disrupted the flow of investigation for instance the data on diseases recording of some months was missing. Some of the documents had been submitted to the district headquarters and bureaucracy in obtaining the same was a challenge.

**Table 2**  
**The following is a table of some prioritized diseases**

Disease	Month	No. of cases reported	Contributing factors
Malaria	September	517	Stagnant water
	October	760	
Typhoid	“	10	Dirty water
		28	
Amoebiosis	“	5	Dirty and polluted water
		16	
TB	“	39	Mostly HIV/AIDS
		44	Poor ventilation contributes further to its spread
Skin infections	September	139	Dirty water
	October	154	
URTI	“	382	Poor ventilation
		533	
Diarrhea	“	139	No sanitation causing faecal deposits to drain into the river
		533	

Internet sources, newspapers and related literature were also important. Although I did not come across any research that has been done in this area specifically concerning social and economic rights in regard to squatters I was able to look at how other jurisdictions had handled these rights among them India and South Africa. These helped in better understanding how Social and Economic rights affect society and to eventually make useful recommendations. It has given me the desire to carry out a further research with a view of advocating for these rights to be addressed through national laws. A lot was obtained on how the establishment of squatter settlements came into being and on the eviction of squatters from the Mau forest. The advantage of this method is that I was able to compare findings from other jurisdictions and have better focus on the research topic.

### **Observation**

My role was that of a passive observer. My role saw me visit the squatter settlements just to observe how they live see their houses as well as enter inside them to view the set up in order to appreciate and understand their experiences. I was also able to go to the river and see for myself where the squatters draw their water, I observed the colour of the water as well. I observed young boys swimming in the river as the river flows down the stream about ten meters away there were women washing clothes, and about eight meters away were young girls drawing water from the river. From this method I was able to investigate further and establish the health implications of that sequence of events by interviewing a doctor as well as a water technician.

I was also able to observe how water is polluted through faecal deposits, washing of cars as well as cows drinking water from the same source. I saw the colour of the water together with other deposits, which caused me to have the water tested to establish the extent of its pollution. Through this method I was able to interrogate and establish how gender roles play out in young children. I observed young boys swimming whilst girls their age were engaged in fetching water on inquiring from the young boys why they were not assisting in fetching water they responded that it was the duty of girls to do so.

Whilst at a primary and two nursery schools, I observed that children were quite dull and not active like children their age ordinarily are. On investigation the teachers informed me that most of the children were from squatter settlements and that a lot of times they go without food. I also saw the paths women have to walk with water on their backs or heads in 20 litre containers. The paths are rocky, steep and slippery on climbing. I also observed young children chewing maize stalks like sugar cane. On enquiring they told me that was their lunch. I found this method quite useful it enabled me to get a clear view of what I was investigating. The only challenge is that most of what I observed was quite depressing and most times I felt so helpless because I could not do much to help.

### **Limitation of the Study**

The research was carried out during the election period, Occasionally it became difficult to get key informants due to the political turbulent pre and post election environment in the country, whose

impact was felt severely after the election. Most key informants were engaged in activities geared towards the elections, while some had taken their annual leave during the elections. It was difficult to get the Kenya National Human Rights Commissioner concerned with ESCR to shed light on their activities in regard to the research topic as he was engaged in matters related to the election.

Post election the area was hit by violence resulting in an Internally Displaced Persons Camp (IDP) being established. The area became un-conducive to carry out further research. Frustration and mistrust by squatters was experienced initially, until I got the assistance of Mr. Ojimbi of the CDN. CDN had some activities such as providing clothes and food stuffs for the squatters, and as a result Mr. Ojimbi was known to them. Their view is that people only visit them either to laugh at their situation or to make money out of it but do nothing to assist. There were allegations of numbers of Children orphaned by HIV/ AIDS as well as infected persons, being taken yet they do not get assistance in terms of drugs, food etc.

Territorial ownership by NGOs was experienced. It became difficult for Mr. Ojimbi to take me round after much of data had been collected after his employer CDN was informed that he was taking someone around the squatter settlement. This made it difficult for me to penetrate other squatter settlements such as the one that is owned by the Greek settler to get an insight of the experiences of the squatters living on the land in order to compare the findings from the different settlements. My view of this was that since the CDN had some activities in the area that was eliciting funding they wanted the status quo maintained, my presence in the area may have been seen to be jeopardizing this position. This view was expressed by others, among them the head teacher of St. Mary's primary school who revealed that the school would have been receiving funding from donors but for interference by the local politicians. For instance the Methodist Church had begun a project of assisting orphans, particularly those of the children headed homes, and children of single parents in 2006, but the project collapsed due to the interference of politicians in the area. This factor contributes to limited activities by other donors in the area.

The other issue is that I could not get results of the sample of the water that was taken to the laboratory for testing to ascertain the extent of pollution of the water in Molo River, which the squatters consume.



The laboratory technician took his annual leave and travelled up country during the elections only to fail to resume work in time due to the post election violence.

### **Conclusion**

This Chapter outlined and discussed the research methodologies and methods. It explained how each of the methodologies and methods were used during the course of the study. The weaknesses and strengths of the methods I used were discussed. It also shows the limitations of the study

## **CHAPTER FOUR**

### **FINDINGS, DISCUSSIONS AND ANALYSIS**

#### **Introduction**

This chapter deals with the discussion and analysis of the study findings it analyses the findings in light of the provisions of the Human Rights Instruments. In this chapter, the indivisibility of and interdependence of human rights as the ideal formula for achieving economic social justice is discussed. Kenya is a state party to the ICESCR, which is the key International Human Rights instrument covering issues of economic, social and cultural rights. It is also a signatory to the Vienna Declaration and Programme of Action, adopted by consensus in 1993, which proclaimed that human rights are universal, indivisible, interdependent and interrelated. The findings in this chapter are based on what was found in the field study.

The themes that are singled out for discussion are; Lack of land ownership and its effect on squatters living in Mogotio; the effect of inaccessibility to clean water and its impact on squatters living in Mogotio; the impact of inaccessibility of food on squatters living in Mogotio; the impact of lack of adequate and decent shelter on squatters living in Mogotio.

#### **Lack of Land ownership and its effect on squatters living in Mogotio**

Land is highly regarded in Kenya. In the culture of most ethnic groups it is a deep-rooted perception that it is the sole source of wealth. It is a critical asset for the development of humanity. It is the foundation of all human activities both social and economic especially in agrarian economies such as Kenya. Kenyan women are central to the economic production in agriculture and livestock sectors they contribute up to 80% of the workforce (Gender profile, February 2002).

In Kenya land issues have remained very sensitive for different people for different reasons. Some of the reasons being that it is a source of livelihood, a good leverage for credit facilities and some being that is used as a currency to buy and sustain political power. Lack of land ownership was found to be at the core of the problems the squatters in Mogotio were facing.

Kenya is a multi lingual society. In order to establish how the squatter settlement in the study area came into being it was important to establish where the squatters came from i.e. their ancestral land and what caused them to leave it. It became necessary to find out how the respondents ended up becoming squatters in Mogotio. Of those interviewed about 80% were from the Turkana tribe, the rest were from the kikuyu, Luhyia, Luo, Kenyan Somalis and Kalenjin tribe. About 95% of those interviewed said they became squatters after being displaced from their ancestral land due to tribal clashes. The Turkana claimed they were driven out of their land by the Pokot who are cattle rustlers. Cattle rustling among the Pokot is an issue that has gone on for a very long time and the government has failed to address the same and bring it to an end. Others such as the Somalis cited severe drought in their areas.

The kikuyu squatters were also driven away from their land most of whom were living in Laikipia area which has been rocked by tribal clashes between the kikuyu and members of the Maasai tribe who claim that the land belongs to them. Tribal clashes in the area are prevalent. As I write this dissertation there are clashes going on in the area. The other respondents said they moved into the area in search of jobs in the sisal estate (rural/urban migration) and have lived on the land for so many years and find it difficult to go back to their rural home as they have lost contact with their folks.

One of the ladies (Yuanita Okongo) interviewed said she has lived in the area for more than forty years. She moved to Mogotio when her late husband was working at the sisal plantation. When her husband died, she tried to go back to her husband's home but as a widow she was not welcome. She has lived on the land since then and has no other home. She brought up her children in the same land and they have ended up becoming squatters like her especially the boys. She could not remember her age (her picture is on the next page).

The squatters live in fear of being evicted. Some of those living in *Akatorong'ot* and *Kapsigiroi* areas said they had in the past 20 years been moved about three times from different areas. Each time they are moved, they are forced to demolish their structures and they have to look for building material to construct other shelter. They maintained that the evictions have seen them

being move from bad to worse areas. They said that the land they are currently occupying is not arable and is rocky.

On one of the occasions when I visited the area for the research, the incumbent MP had visited the area to carry out his campaigns. One of the promises he made to the squatters as a campaign pledge, was that he would ensure that he moves them to another piece of land. As much as this was a promise that was made in good faith it did not augur well with the squatters whose main fear is moving from that area on of them said,

‘Yesterday the outgoing MP was here he says that if we elect him he shall move us to another area. We think this is not good it means we have to demolish our houses again, we fear that we might be moved to an area that has no water. We better remain here even if we cannot grow food on this land.’

The pledge may have been made in good faith but the squatters did not take it well considering that their fear is being evicted from the land they have now adopted as home.

**Picture of Yuanita approximately 80 years**

**She has been squatting on the land for over 40 years**



**Figure 4**

## **The effect of inaccessibility of clean water and its impact on squatters living in Mogotio.**

### **What is the meaning and scope of this right?**

Water is life. These often spoken words carry with them the meaning of the right to clean and sufficient water. Human life is dependent on access to clean water. Water is used for drinking, cooking, personal and domestic hygiene, food production and feeding animals. It is both a social and economic good. Sufficient and safe water assists in reducing the risk of water-related diseases. The right to clean and sufficient water is a life enabling right whose deprivation is tantamount to a violation. Water is also fundamental to poverty reduction, providing people with elements essential to their growth and development (WHO; 2003).

The right to water as set out in 2002 in the UN Committee on (CESCR General Comment) stated that the human right to water entitles everyone to sufficient safe, acceptable, physically accessible and affordable water for personal and domestic use. Various international and regional instruments provide for the protection of this right. These include ICESCR<sup>11</sup>, CEDAW<sup>12</sup>, CRC<sup>13</sup> and General comment No 15 (ICESCR)<sup>14</sup> set out the key components on the right to water as follows:

**Sufficient:** An adequate quantity must be available in accordance with international guidelines. This normally means 50-100 litres, and an absolute minimum of 20 litres.

**Safe and acceptable:** water for personal and domestic uses must be safe

**Physically accessible:** Water must be within safe physical reach, in or near the house, school or health facility. Accessibility also captures the right to receive, seek and impart information concerning water issues.

**Affordable:** Water should be affordable not reducing a persons' capacity to buy other essential goods. This means that essential amounts must sometimes be provided free.

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<sup>11</sup> Article 11(1) recognizes the right to everyone to an adequate standard of living, which included accessibility, and availability of adequate housing food and clothing. The right to water is included here as it is instrumental to an adequate standard of living

<sup>12</sup> Article 14(2) requires that state parties ensure that women "enjoy adequate living conditions, particularly in relation to water supply"

<sup>13</sup> Article 24(2) requires that state parties to combat disease and malnutrition "through the provision of adequate nutritious foods and clean drinking water".

<sup>14</sup> States that "an adequate amount of safe water is necessary to prevent death from dehydration, reduce the risk of water-related diseases and provide for consumption, cooking, personal and domestic hygiene requirements.

**Available:** water supply for each person must be sufficient and continuous for personal and domestic use. These obligations imply that policy makers and implementers should ensure that their work respects, protects and improves on the fulfillment of this right.

The source of water for the squatters is Molo river. The river flows through out the year with the water level rising during rainy seasons and very low during the dry season. The water is brown in colour and carries a lot of refuse as it flows down the stream. The water is used for domestic purposes. It is used for drinking and cooking. Vehicles are washed in this river, cows drink from it and people bathe, wash clothes in it and still fetch it for domestic consumption.

As much as the UN committee on ESCR in its general comment No 15 states water must be safe for personal and domestic use, these elements lack in relation to water in Molo River as the water is polluted and unsafe for consumption and domestic use. Besides being unsafe for drinking, the water is not easily accessible as women have to walk long distances to fetch the water and they carry 20 litres making up to five trips. Sometimes they make more trips especially those that have sick people in the house who cannot go to the river to bathe. One respondent said

‘Our day begins with fetching water from the river. We cannot do without it, we need it for our domestic use. Our day begins with fetching water in the river before we go out to look for money for feeding our children. We have to walk long distances between three and five kilometers to the river, we make at least five trips a day, sometimes more.’

According to Dr. Osore( a medical practitioner) lack of water impacts negatively on children who are more at risk than adults of health problems caused by substances in the environment. This is because their immune system, which helps their body fight illness, is not fully mature. They also inhale air more deeply than adults when they breathe, which makes them take in more pollution. Children also spend more time outdoors and are less likely to notice any health problems.

Dr. Omala, who when asked what the risks of taking water that vehicles are washed in as well effluent from factories drains in was said, Lead can harm almost every system in the human body. It is very harmful to the developing brain and nervous system of fetuses and young children. He said that proportional to body weight, children eat, breathe, and drink more than adults. So they take in higher concentrations of the toxins in the environment. As children’s

bodies develop, especially in the womb and newborns, they are vulnerable to damage from toxic substances. According to the Doctor, blood lead level is 10 micrograms/deciliter. He said that, studies suggest that there is no level that is safe to a developing brain. Lead can also cause children to suffer from slowed growth, hearing problems, and headaches. . He therefore confirmed that toxins deposited in the water from the sisal estate are dangerous as is fuel from vehicles that are washed in the river.

Lead is also harmful to adults. They can suffer from reproductive problems(both men and women).It can cause high blood pressure, complications in women during pregnancy, problems with digestion, muscle and joint pain and it can cause memory concentration problems. Too much lead in the body can seriously injure the brain, nervous system, red blood cells, and kidneys. High levels of lead in the body can cause mental retardation, seizures, blacking out, coma, and even death. In many cases, there are no symptoms or signs of high blood-lead levels or lead poisoning. Since the doctor is not based in Mogotio he has not come across these patients in the area. The other issue that may also contribute to cases of this nature not being diagnosed in the area is lack of resources to enable the squatters to seek medical services.

Intestinal worms are also caused as a result of consuming water that is contaminated increases the chances of, malnutrition, and anaemia and in the most severe cases retarded growth. This is so because the parasites (worms) in the body feed on what someone consumes leaving the person weak and malnourished. Bacterially caused diseases such as typhoid fever, dysentery, cholera are common when there is inaccessibility to clean water and sanitation.

The water, he also added, causes dental disorder causing fluoresces. This affects the general populace. It was revealed and confirmed by the Public Health Officer Mogotio division that effluent from the sisal estate drains into the Molo River at least once every three months when the lagoons break. This he said results in food poisoning. He pointed out that animals (cows) abort after consuming this water.

Lack of clear policies on water management is the key constraint facing the water sector in Kenya. The water Act 2002, provides for the establishment of a water service Regulatory body as an autonomous institution to regulate the provision of water services. The enactment of this

Act is an extension of the integrated water resource management concept in Kenya's 1999 water policy. The Act provides penalties for water pollution (Ksh 100,000/= for first offender and Ksh. 100,000/= plus jail term for one year for a repeat offender). Despite these laws being out in place the owner of the sisal estate has never been arrested for this nuisance.

An interview with the water officer in Mogotio revealed that the ministry had nothing specific touching on squatters. He said there was no piped water to the squatter areas. He said that the general population the water supply is supposed to serve is 12,000 out of the general population of 30 million but only one third of the population get the water. He said the water supply project was started in 1993 and since then the population has increased. It is intended to serve for 20 years before any review can be done. This in effect means that unless something is done, the squatters may be condemned to consume this water for a longer period of time. He agreed that the colour of the water is not good but maintained it is safe for drinking.



**A picture Molo River showing the colour of water**

**Figure 5**



According to the respondents the colour of the water never changes it is the same throughout the year. One respondent said that

‘The water is worse during the rainy season it carries all the dirt you can think of as it flows down stream. Last year the when the river broke its banks the graves were washed away and there were bodies floating in the river. We have no choice but to fetch the water for our domestic use.’

Figure 6



Figure 6 (a) the arrow points to a cemetery owned by the county council the brown part shows part of the graves that was washed away when the river broke its banks. The graves were washed away and bodies floated in the river yet the squatters had no choice but to use it.

(b) The arrow points to a woman bathing, (c) another one washing clothes and(d) another fetching water for domestic use, while another one has fetched her water- in Molo River.

### **The impact of inaccessibility of food on squatters living in Mogotio.**

#### **What is the meaning and scope of this Right?**

The right to food refers to the fundamental right to everyone to be free from hunger. This right is realized when every man, woman and child alone or in a community with others has physical and economic access at all times to adequate food or means for its procurement (KNHRC 2003-2004). In appreciating the right to food, emphasis at this point is put on the adequacy, nutrition, safety and its cultural acceptability. The right also includes the element of food security i.e. its availability, access and utilization.

While article 11 (1) of the ICESCR is the key provision in regard to the right to food, issues relating to food and nutrition are dealt with in numerous other international instruments. Of particular importance the UDHR,<sup>15</sup> CRC,<sup>16</sup> and CEDAW.<sup>17</sup> Although the ACHPR does not explicitly spell out the right to adequate food, Article 22 nonetheless outlines the right of all people to economic, social and cultural development. No meaningful development can be achieved if the right to food is not addressed.

The state has an obligation to ensure that this right is respected, protected and fulfilled by ensuring food adequacy and security. In protecting the right to food the state must ensure that other actors do not violate the provision of food to its citizens. In fulfilling the right to food, the government must first facilitate this right by providing an enabling environment for people to feed themselves through land reforms and creating employment, (Karren Kallman 2004 Pg 3).

The Constitution of Kenya is silent on the issue of the right to food. It lays emphasis on civil and political rights at the exclusion of social and economic rights. In its Bill of Rights, Article 64 of the draft constitution that was rejected at a referendum in 2005 had recognized the right of every person to be free from hunger and, therefore a right to adequate food. The absence of the constitutional guarantee does in a way negate the obligation that the government has in protecting this right. This right is closely connected to the right to life, without which life cannot be sustained.

Access to food is controlled by access to land, water economic life, education and political power (Karen Kullman 2004 page 3). This right cannot be achieved in isolation as it is by and large influenced by other factors. In analyzing hunger Amartya Sen (1999) observes that it must relate to the freedom of the individual and family to establish ownership over and adequate amount of food either by growing it or buying it in the market. During the research it was observed that the squatters do not have access to adequate food. The respondents said that since the land does not belong to them they cannot grow any food. One respondent said that

‘I cannot even have a vegetable garden because I am not allowed to fence any portion of the land. If you grow vegetable in this open space, they risk being eaten by cows from outside that graze here. If this

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<sup>15</sup> Article 25 recognizes food as one of the key component in the realization to an adequate standard of living

<sup>16</sup> Article 24(2)(c) stresses the need for state parties to take appropriate measures to combat disease and malnutrition.

<sup>17</sup> Article 12 and 14 deals with the right to Adequate nutrition

happens and you raise a complaint with the chief he will ask you , ‘on whose land had you grown the vegetables? We have no right because indeed the land does not belong to us.’

It was observed that the squatters do not have food security as the lack of land ownership rights prevents them from producing and procuring it through agricultural activities. It was further observed that the squatters are unemployed and only rely on casual employment. The elderly in the group suffer double jeopardy, as they are dependant on their children for support when most of them are barely surviving. I interviewed an old woman who is toothless and her concerns were that she can only eat soft food such as beans but cannot afford them.

### **The effects of lack of food on squatters**

According to Dr. Omala a key informant lack of food has a great impact on the people’s health, both men and women. It lowers their productivity whether employed or not. Indeed respondents interviewed in a focus group discussion said that they are usually hired to harvest French beans and usually they are paid according to the work they do (production). One said

“We usually go to the field very early in the morning at around 6.00 am and we come back as late as 10.00 pm. For every one kilogram harvested we earn Ksh 6. One is paid according to the work done. We only manage to make about Ksh 50 per day because we generally don’t have the energy to do the work fast in order to earn more because of hunger.”

The doctor also said that lack of food leads to depression, and when this happens a lot of people resort to temporary measures just to try and forget their problems. Usually they will resort to drinking alcohol. It was observed that many of the respondents interviewed consume alcohol due to frustrations. As early as 10.00 o’clock in the morning, I would find quite a big number of people drunk. I had to ensure that I interview the respondents during the morning hours because in the afternoon most of them are too drunk to engage in any meaningful discussion. The reason people resort to drinking alcohol is because it is cheap and once they get drunk they can sleep and forget their frustrations temporarily. The effect of lack of food also impacts negatively on children, they end up being given the remnants of the illicit brew as food. One respondent said

‘Sometimes I get very depressed when I find that I have no food to offer my children. When the young ones cry because of hunger we are force to give them *machicha*<sup>18</sup> which we mix with *busaa*<sup>19</sup> just to send them to sleep.’

The Doctor said that in children particularly between birth and the age of five, lack of adequate nutritious food has serious adverse effects from which the child may never recover. He further

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<sup>18</sup> Remnants from local brew

<sup>19</sup> Local brew (beer)traditionally made using mealie meal it goes through a process of fermentation

explained that the effect of alcohol on children is bad as it can lead to brain damage and it also results in children becoming alcoholics at a tender age. According to the public health officer inaccessibility to food leads to malnutrition in small children, cases of Kwashiorkor and marasmus are very prevalent. These two diseases were found to be prevalent in the area Malnourishment was visible among the respondents and children. The respondents said

‘Do not see us thin and think we are slim. We are thin because of hunger. This is not the way we should be’

The respondents said that diseases such as malaria, cholera, typhoid amoeba diarrhoea TB and HIV/AIDS are rampant among them and when they hit people the situation becomes desperate due to hunger. As a result many people die. On one of the days, I found an old woman who looked frail sitting outside her house. I talked to her with an intention of interviewing her but unfortunately due to language barrier we could not have a discussion on inquiring whether she was sick she responded in Kiswahili ‘*ni njaa*’ meaning it is hunger.

Lack of food and resources to purchase the same has led to the squatters eating food that is culturally unacceptable to them. Among the respondents interviewed were the Turkana whose staple food is milk and meat, whilst for the Kikuyu it is ‘*githeri*,’<sup>20</sup> for the Luhya and Luo *ugali*<sup>21</sup> served with any relish. The respondents said that they couldn’t afford to eat their staple food as it is not available. They therefore eat one meal a day. They cook thick porridge instead of ugali and eat it with vegetables. Since there is a slaughterhouse near by they are able to buy *matumbo* (intestines from goats and cows), meat from the neck and testicles of the goat as these are the only parts they can afford. The rest are too expensive. One buys according to the amount they have.

### **The impact of lack of adequate and decent shelter on squatters living in Mogotio**

#### **What is the meaning and scope of this right?**

“Adequate housing” is essential for human survival. It refers not only to availability of shelter. It is vital for purposes of enabling human beings live normal and healthy lives. Human dignity can be pegged on decent and adequate shelter. Inadequate housing compromises other basic human

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<sup>20</sup> Mixture of maize and beans boiled together.

<sup>21</sup> Made from mealie meal

rights such as the right to family life and privacy. It curtails the right to movement, the right to assembly and association, the right to health and the right to development.

This right does not merely imply the right to have a roof over one's head but the provision of sufficient building that not only protects one from the vagaries of the weather but also allows the human person to live in dignity.

Homelessness is about the lives of real people; it is about poverty, pain, struggle, poor health, loneliness, violence and ultimately powerlessness. UDHR<sup>22</sup> establishes an internationally recognized set of standards for all people whereas ICESCR<sup>23</sup> commits state parties to take appropriate steps to ensure the realization of this right. CEDAW<sup>24</sup> also expresses concern for women.

The CRC<sup>25</sup> recognizes that because of their vulnerability children, need special care and protection. Under this Convention, children are entitled to grow up “in an atmosphere of affection and of moral and material security”, to “grow and develop in health”, to be given opportunities and facilities to enable them to develop “in a healthy and normal manner and in conditions of freedom and dignity” and to “be free from exploitation and abuse”. It was found that many children, due to poor living conditions in the squatter village are exposed to a lot of indecency.

Children especially teenagers are forced to sleep in the same room with their parents. The respondents said that they are not allowed to put up more shelter, whatever they are given by the chief is what they utilize. The space measures 8 by 8 feet, in order to put up more shelter for the children who are grown up permission must be obtained from the chief whom is usually difficult to get. It is not clear how the chief comes in but it looks like he knows the owners of the land and so is ensuring that no development takes place on the land.

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<sup>22</sup> Article 25 supra.

<sup>23</sup> Article 11 supra

<sup>24</sup> Article 14 (2) (h) it enjoins state parties to ensure that women enjoy adequate living conditions particularly in relation to housing and transport among others.

<sup>25</sup> Article (16) (1) and (27) (3) enjoins state parties to ensure that children have a right to adequate nutrition, housing, recreation and medical services

Adequate housing provides opportunities for capital formation, employment creation, improvement of health and increasing labour productivity (KNHRC 2003-2004) this is so because it enables people to have some sense of stability, which allows them to concentrate and engage in economic activities unlike those who are homeless.

This right is inextricably connected with and is derived from the right to an adequate standard of living. This right involves the right to access safe drinking water, sanitation, mental and physical health, access to resources including energy for cooking, heating and lighting and access to basic services, freedom from arbitrary interference (such as forced eviction) and freedom from discrimination. The right to housing comprises certain components that require fulfillment of certain conditions for its realization to be achieved, which include;

- Legal security of tenure- to ensure protection against forced eviction.
- Availability of services, material and infrastructure- such as clean water, energy for cooking, sanitation etc
- Affordability- the cost of adequate housing should be attainable and satisfactory
- Habitability- it must provide adequate space and protection from bad weather that threaten health and physical safety of inhabitants, structural hazards and disease vectors
- Location- adequate housing must take into consideration accessibility to other essential services such as schools, hospitals employment option etc and should be located away for hazardous sites which can affect the health of the inhabitants.
- Cultural adequacy.

### **Status of the Right**

The constitution of Kenya does not expressly protect the right to adequate housing. The constitution recognizes the protection of fundamental rights and freedom without discrimination, it may be argued that this right provided protection against forced eviction (COHRE). Although there are several laws that touch on housing, none of them comprehensively deals with the right to housing but each of them seeks to regulate specific aspects of housing. Besides none of them have domesticated the provisions of the ratified international conventions nor do they impose obligations on the government to provide housing.

The draft constitution (Article 63) that was rejected at a referendum recognized that everyone has the right to accessible and adequate housing. The National housing policy (2004) recognizes the linkages between adequate housing and dignity, security and privacy of persons; poverty reduction through employment generation, raising incomes, improved health and increased productivity. The policy also recognizes the need for special protection for vulnerable groups such as women, children in difficult circumstances, the disabled, elderly and displaced persons. From the policy documents it can be argued comfortably that the squatters in this research area fall squarely within this category. Unless this policy is developed into a comprehensive Housing Act, the right to adequate housing may not be realized easily. Further in order for this right to be progressively realized all persons ought to have 'equal access to housing resources such as building materials, credit, land and basic infrastructure services.'

### **The impact of poor shelter on squatters**

While in the field it was established that due to poor shelter, the respondents are exposed to indecency as they have to share the same house with their children who are already grown up and need their own privacy. Lack of privacy among couples in the squatter settlement can expose children to abuse. One respondent said

'It becomes difficult especially when my husband comes home drunk and I have to oblige to conjugal rights. The fact that the children are sharing the same room with us depresses me.'

The houses were found to be of very poor quality. They are made from weak structures such as, the roofing is done using sisal posts (which they call *Marura*), which rot with time due to rain, or sometimes ants invade it. The walls and floors are made using mud. One respondent whose roof had collapsed due to rains had covered it using polythene paper. On asking her why she did not cover it using *Marura* she said that it had become scarce. Initially they used to get it for free from the sisal estate but when the owner discovered it was useful, he began selling it. She said one stem, which is about 3 inches wide and about 5 to 6 feet long, sells for about Ksh. 20, which is too expensive she could not afford because she needs a lot of it to repair the house. It was observed that the houses were inhabitable.

The Public Health Officers as well as the doctors interviewed said that poor shelter contributed to the spread of diseases such as URTI and TB due to poor ventilation and congestion. The



respondents interviewed had between four and eight children with 85% of them having between six and eight children whom they live with under the same roof. According to the Public Health Officer the airborne diseases were quite prevalent among the squatters.

#### Shelter for the squatters in *Akatorong'ot Mogotio*



**Figure 7**

#### **The inaccessibility of land, clean water food and shelter and the gender dimensions on squatters living in Mogotio.**

Legally and practically, in Kenya women's right to property are unequal to those of men. Women's right to own, inherit, and manage and dispose of property are under constant attacks from customs, laws and individuals including government officials who create impediment in their distrust and disbelief that women can be trusted to preserve land. Gender discrimination plays a big role in constraining sustainable use of land in Kenya. In many Kenyan communities, women do not own land and therefore do not have the same user rights to improve its sustainable use.

In Kenya land is crucial for agricultural activities. It is also a good leverage for credit facilities. Whereas Kenya has no laws prohibiting women from accessing credit facilities, women face a variety of bureaucratic hurdles from the formal sector. Financial institutions usually require a form of collateral before they advance credit, which collateral includes land, capital, goods or savings, most of which are unavailable to a majority of women as most women do not have land registered in their names. Land title deeds are the major collateral security required by banks whenever a request for credit is made. Women's access to land is very important as it ensures their access to other natural resources, such as water fire wood and food security. Land is also a social asset crucial for cultural identity, political power and participation in local decision-making process.

It was found that most of the families interviewed in the squatter settlement were female-headed homes. There were children headed homes as well. Most of them said that after their husbands died they were unable to go back to the ancestral land, as women do not own. One respondent said

'My husband died as a result of HIV/AIDS. After burying him in his ancestral home I was thrown away by my in-laws who said that I had killed their brother with the dreaded disease. I left the home with the children and have never gone back. I have now ended up as a squatter here.'

It was found that access to water had different implication for the men and women. It was observed that women needed water for cooking, cleaning, bathing and washing clothes. Their day begins with them making several trips to the river to fetch water. They make between five and six trips with 20 litre containers on their back or heads. On the other hand men who were interviewed had this to say when asked what their specific needs for water was.

'As a man when I need water just for bathing usually I go to the river to bathe. Women usually draw water for drinking and cooking from the river. It is their work.'

Inaccessibility to clean water and food had serious health implications on women than men. Women, felt inconvenienced particularly when menstruating as they are forced to bathe with the water, which they said, was not clean. According to Dr. Osore, obstetrician clean water is necessary for women especially due to their reproductive role. Water that has Lead in it is specifically dangerous for women's consumption when they are pregnant as the Lead can be passed on to the foetus. Lactating mothers can pass lead to the baby, through breast milk. He said Lead is dangerous to children as it can cause damage to the brains. Other water related

diseases such as malaria are dangerous to pregnant women. They can cause anaemia, which can lead to death. Children born to mothers suffering from malaria are likely to have low birth weight and hence susceptible to other diseases.

With regard to food and nutrition, both doctors said that poor nutrition poses a greater challenge to women due to their reproductive role. It affects the monthly cycle. In case a malnourished woman conceives, chances of miscarriage are high due to anaemia. It also contributes to low birth weight babies, who are commonly referred to as troublesome babies. Malnutrition is also risky in the era of HIV/AIDS. It lowers the level of immunity. At the same time it challenges the Mother to Child Transmission of the HIV virus. If a mother who chooses to breast feed a child solely for six months cannot afford food for her self, then it is not possible to have milk to breast feed the child.

In regard to poor shelter, women were more disadvantaged as they bore the brunt of nursing children who are usually the most affected with URTIs. Most women interviewed said they had a lot of difficulty getting permission from the chief to put up extra shelter for their grown up children they were being discriminated upon by the chief men were luckier than women. It was observed that many of the women living, as squatters were single.

In the Kapsigiroi squatter settlement, women as well as men fetch water to sell to other people in the area to earn a living. One container full of water costs Ksh 5. However, women said that the work is so difficult for them as they have to do other house chores first, such as, cooking, take care of the sick among others before they could go to make some money for buying food stuffs. One respondent who was thrown out by her husband because she gave birth to a physically and mentally challenged child (now aged 25) said that she cannot do much as she has to keep an eye on her son who urinates and faeces on himself. Whereas men make ksh 70 to 90 a day women make Ksh 30 to 40 per day sometimes less.

It was further found that women were left with the burden of taking care of children in cases of separation and divorce. An interview with the chief revealed that cases of divorce were high especially among the Turkana community living as squatters. Cases of domestic violence are

usually brought to them by women. The chief said if he reprimands the man harshly, they usually just their belongings and move to other areas without caring about the family they are living behind. This kind of behaviour leaves women in a desperate state, many have ended up just getting married to the neighbour next door. It just serves to add a burden on the woman who is already living in hostile conditions. Besides it has led to rampant spread of HIV/AIDS among the squatters.

## **Conclusion**

Kenya is a state party to the ICESCR, which is the key International Human Rights instrument covering the issues of economic, social and cultural rights. Land is highly regarded in Kenya. In Kenya land issues have remained very sensitive for different people for different reasons. About 95% of those interviewed said they became squatters after being displaced from their ancestral land due to tribal clashes. This study found out that land is central to all rights of the squatters and as a result all the other rights are affected by provision or the lack of land provision.

The squatters at Mogotio do not have access to clean water and their source of water is the polluted Molo River. The water among other things is contaminated by lead which causes slowed growth, hearing problems, and headaches both to the young and old. Lack of clear policies on water management is the key constraint facing the water sector in Kenya this indeed can be resolved through the provision of the land rights.

From the findings the state has an obligation to ensure that the right to food is respected, protected and fulfilled by ensuring food adequacy and security. To accomplish its obligations the government must ensure that other actors do not violate the provision of food to its citizens. It is the duty of the government to fulfill the right of its citizens to food by creating an enabling environment for people to feed themselves through land reforms and creating employment.

In addition it was clear from the findings that the Constitution of Kenya is silent on the issue of the right to food. It was apparent from the findings that the squatters do not have food security as the lack of land ownership rights prevents them from producing and procuring it through

agricultural activities. Inaccessibility to food leads to malnutrition in children and these were realized through the, cases of Kwashiorkor and marasmus were very prevalent in Mogotio.

Furthermore, this study notes that the constitution of Kenya does not expressly protect the right to adequate housing. This is evident in the many squalid shelter including those built by squatters at Mogotio despite the fact that the National Housing Policy (2004) recognizes the linkages between adequate housing and dignity, security and privacy of persons; poverty reduction through employment generation, raising incomes, improved health and increased productivity. As a result of failure by the government to provide shelter squatters at Mogotio among other things lack privacy among couples in the squatter settlement and their children are exposed to abuse.

## CHAPTER FIVE

### EMERGING ISSUES AND THE IMPLICATION ON THE RESEARCH

#### Introduction

This chapter looks at the emerging themes whose findings need to be addressed alongside the issues that were the subject of the research. The emerging themes were categorized under the following headings; Poverty, lack of government involvement, the role of non actors, lack of information as well as awareness of rights, and lack of land ownership and its impact on other right such as education, right to proper sanitation and political rights.

#### Poverty

It was found that many of the squatter families are female-headed homes. Most of them were widowed whilst some it was established through the area chief, were separated due to cultural practices. Lack of economic empowerment was felt among women. Poverty affects women, elderly members of the society and children. Women's role as carers and nurturers puts them at a position of looking for various survival strategies among them exchanging sex for money. The area chief said that promiscuity was high and the spread of HIV/AIDS in the squatter settlements was high. One respondent said

'We try to get casual work such as washing clothes for people just to make money usually about Ksh 50 per washing. The work is only available during the weekend. When there is no work and we have to fend for the children we try to get men with whom we have a sexual relationship in order to raise money for the day to feed the children.'

Whereas men were concerned with getting land just for security of tenure, women's concern for land was for security of tenure, as security for credit facilities in order to improve their lives and their children's, as well as for procurement of food through agriculture. Those that are single fear that should they die leaving their children behind, they would be subjected to the same misery they have gone through. They wished they could get title to land even if it meant remaining on the land they were living on (which was not arable) just to have security of tenure which they could pass to their children. One of them said:

'I wish I could get a title deed even if this land is not arable. I need to have a secure place for my children where they can call home. There are many children headed homes in this squatter settlement. If we are evicted now those children will suffer. I fear that my children may be exposed to this kind of situation if I die. I need to have land I can call my own.'

Effects of poverty are felt by women especially when it comes to childbirth. The respondents said they are subjected to humiliation and have only survived by the grace of God. They said that they cannot afford the hospital bill so they assist each other during delivery. The only challenge is when complications arise and as a result some have died. Asked if they have a delivery kit one said

‘No I just helped the daughter of one of us to deliver. I used the knife we use for cutting sisal to cut the umbilical cord, then I tied it using a piece of cloth from my old dress.’

This places them at a high risk of contracting diseases. At the same time in the era of HIV/AIDS, it is dangerous as delivery in hospital is important for the prevention of Mother to Child transmission.

Poverty also contributes to high levels of school dropouts. The effect of this is that children are exposed to labour at a young age. Child labour among squatters is rampant, particularly in the sisal estate where girls assist in the cutting and hanging sections, while boys assist in the machine operation section. I was informed that in 2006 two boys had their thumb and index fingers chopped off by a machine. The issue had been highlighted by the CDN and handed over to a lawyer to deal with. Details of the case were not available to me as the lawyer handling the matter was out of the country on further studies.

The other issue is that girls in the squatter settlement are exposed to early marriage and early pregnancies after dropping out of school. Some resorted to working as house girls but ended up being mistreated by their employers. One respondent said

‘My daughter was employed as a house girl but was humiliated and exposed to abuse by her employer. The reason being that she could not handle most of the equipment she found in the employers house because she was not exposed to it. One day she spoilt an electric gadget and was beaten and maimed badly. She gave up on the job.’

The respondents also said that poverty exposed them to a lot of humiliation. For instance they are forced to bury their dead in a disgraceful manner. They said

‘We bury our dead in sacks and polythene paper because we cannot afford to buy coffins. We feel so sad to be living near the cemetery but we have no choice. In our culture we don’t handle the dead, we do not bury the dead near our residential areas. When some one dies we leave them in the bush. But here we are forced to see their graves, which is against our culture.’

As a result of poverty most of the women resorted to brewing and selling *busaa*, which is an illicit brew. They said they brew it once a week and from it they make about Ksh. 300<sup>26</sup>. They said that if they don't brew it, they cannot afford to buy food, clothes, and kerosene which they use to light their lamps.

They said that they are normally tracked down by the police and when they are apprehended they are forced to part with the entire day's sales as a bribe and if they don't they are arrested and arraigned in court. If this happens they are fined up to Ksh 1,500 or imprisonment for three months. They said they cannot raise this fine. At the time of the research, one of the respondent's husbands had been arrested after he was caught with a glass of the illicit brew. He was arraigned in court and charged; he pleaded guilty and was fined. The fine was Ksh. 1,500 but they could not raise it so he was serving imprisonment for three months.

Due to poverty the respondents said they cannot afford to buy fuel for boiling water. Their source of fuel is sisal stumps, which they use for kindling. The sisal stumps light very quickly and produce a lot of ash. They are not so good to use but that is all that is available to them. Whatever they collect is usually reserved for cooking. They could not also afford to buy chlorine or water guard to treat the water due to lack of resources.

### **Lack of government involvement**

There are too many squatter camps in Kenya today that have been created as a result of various reasons such as rural/urban migration and tribal clashes. The issue of cattle rustling is prevalent. The government is aware of that fact but nothing has been done to re-settle the squatters in Mogotio particularly the Turkana settlement. The Government has issued title deeds to the landless on few occasions, especially when they want to woo voters. During the referendum in 2005 and elections in 2007 this was done in Molo and Coast areas. This happens when the political leader in the area pushes for squatters in his area to be given title deeds. Whenever the leaders or the president thinks he may lose votes in that area, he issues title deeds to woo the voters.

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<sup>26</sup> Equivalent to 4.5 US\$ at the time of the research



Although squatters throughout Kenya share common problems, there are also some unique challenges for squatters in Mogotio which are not being addressed. In Mogotio, I learnt that there were squatters who lived on private land owned by the Greek settler, and there are those that live on land owned by absentee landlords. It was however surprising to note that neither the area chief nor the public health officers had any data on the actual number of squatters. It is important for the area chief to keep data of the people in his area. For instance, as I mentioned earlier, if a pauper were to institute action, a letter from his chief confirming his status, is important. Therefore the only way for his chief to do this would be if he had the number and status of the people in his jurisdiction. The chief's office falls under the provincial administration office, which is under the Office of the President. A letter from the chief confirming that one is a resident of his area is mandatory when one wants to obtain an ID card. In applications in court in succession matters a letter from the chief confirming that one is a resident of his area is also important. I therefore find that because of these reasons among others it is important for the chief to have the actual number of squatters in his area. This is an important step towards beginning to address their issues administratively. This was found to be an issue of great concern given the escalating number of squatters in the area and the pathetic conditions in which they are forced to live.

The lack of Government involvement was also felt when during the interviews the public health officers said that they had not gone into the squatter settlement that I had visited during the research. This fact was also confirmed by the respondents who said they had never seen the public health officers in their area.

The other issue is that about 97% of the squatters are not members of the Kalenjin tribe, who are the inhabitants of Mogotio area. It was established that even the area MPs as well as the councilors had done nothing to address the plight of the squatters. An interview with the District settlement officer revealed that they were only aware of squatters living on the Greek settler's land. As for those living on the other land, he said it was incumbent upon the area chief as well as the area MP to raise the issue with them so that they could map the way forward. One respondent said:

'Members of Parliament only visit us when they are campaigning. All they are interested in are our votes. They do not care about us after they get our votes they disappear only to resurface after five years are over when they are seeking a fresh mandate. He never assists us even when we have problems.'

The lack of Government involvement was also felt when the public health officer said that most schools do not have access to clean water. He said that although some had water tanks, they only tapped water during the rainy season. It was noted that most of the schools in the area are public schools except those run by the CDN. The Government has an obligation to ensure that schools have proper sanitation as well as clean water.

One key informant who sought anonymity said that corruption was a big problem within the government organizations. He said that sometimes the people concerned with the distribution of food get letters from higher authorities redirecting the food to other destinations instead of being distributed to the needy. Aid to the orphans also ended up in corrupt hands and never benefited those it was intended for.

The insensitive attitude of the assistant chief towards the squatters left a lot to be desired. According to him the Turkana people do not need a lot of property. He said that they are survivors. They are used to eating one meal per day, they know how to survive. His view was that they were not keen on education. His view was that education, shelter and diseases are the greatest problems experienced by the squatters. His view was contrary to what was found on the ground. The respondents were concerned about food insecurity and they said they eat one meal a day because of poverty. They were also concerned about the education of their children. They wished that their children could get proper education so that they could buy property and live better lives than they do. This attitude only served to show the assistant chief's lack of commitment to the squatters' plight. The chiefs fall under the Provincial administration which in turn falls under the office of the President.

### **The role non-structures in contributing to the squatters plight**

The role of actors and structures and non-state actors played out during the research. Squatters living on the Greek settler's land had various issues affecting them such as lack of land ownership rights, inaccessibility to clean water, food and decent shelter. Most decried the lack of payment of salaries in time or at all. For the right to food to be fulfilled, there must be physical as well as economic access to food. Non-payment of salaries contributes to high poverty levels

among the squatters. It deprives them of the ability to purchase food. One of the teachers, of a nursery school owned by the Greek settler said:

‘My salary is very low, I depend on what parents pay. Most parents are poor and cannot afford to pay the fee which is Ksh 100 per month in time. The same Greek settler who is a very bad employer employs most of them. During the holiday I may go without a salary as parents argue no teaching took place. My salary is usually Ksh 500.’

One of the squatters who is aged about 80 years old whose husband worked in the sisal estate said that before the current owner Mr. Horn (the Greek Settler) took over the ownership of the land, the previous owner Mr. Edwin was good. She said

‘He used to give us food, fish, rice, salt and lots of meat. He was understanding and used to make sure salaries were paid on time. Today my son who works in the sisal estate says he goes without a salary for several months.’

The most common source of employment around Mogotio area is work on the sisal farm. The farm owned by Mr. Horn was 35,000 acres but 14,000 have since been sold to the Government although the purchase price has not been paid in full. According to Mr. Horn, there about 5,000 people living in the sisal estate but they are workers and not squatters. He said his business is labour intensive so requires a lot of manpower. He said workers are paid on a piece rate basis and not a time rate basis, i.e., they are paid according to work done and he said all the workers are paid in time. The issue of his paying the workers on time was found to be different on the ground. Those employed by him said the delay in payment of their salaries still occurred.

Another issue is in relation to food distribution. The respondents raised concerns over the quality of food that was distributed to them. They said that the food is of poor quality and one respondent said:

‘In some instances we have been given beans that do not cook despite being boiled for long hours. We end up throwing them away. The rice we receive is also of poor quality it has a lot of small stones and dirt, this dirt takes up a quarter of the amount we receive. For instance if we get one kilo of rice almost a quarter of it will be dirt and stones.’

This was also raised by one of the public health officers who said that:

‘Food donations are usually brought to the squatters. The only problem is that some donors bring bad food or what I can call rejects. I have seen very bad quality rice, which has a lot of dirt and small stones. It is very bad but the people are desperate they have no choice so they just take it.’

The role of non-state actors instead of improving the wellbeing of the squatters it only serves to frustrate them. Again one questions the role of the Government in ensuring that non state actors conform to the laws.

### **Lack of Information as well as Awareness of Rights**

It was established that the squatters lack information about their legal rights. I observed that most of them have lived in the squatter settlement for periods ranging from 10 to 40 years yet they constantly live in fear of being forcefully evicted. According to the Limitation of Actions Act, the law provides that any one who lives on a piece of land uninterrupted for a period of 12 years can claim ownership by way of adverse possession. Most of the squatters have lived on the land uninterrupted for more than 12 years yet they still live in fear of being evicted. The squatters were not aware that they could claim a right of ownership of the land by way of adverse possession. One of the issues they raised was that even if they were to go to court, it involves funds, which they said they could not raise. Although the Civil Procedure Act provides for one to sue as a pauper, my experience as a lawyer is that the process is still rigorous it involves one providing proof that he/she is a pauper. Usually a letter is required from the area chief stating he/she knows that the litigant is a resident of his area and confirms the resident's status. Another form of proof is in the form of supporting affidavits from the area's church elders.

This process of a squatter's obtaining proof of his/her identity and status is that it is not only a lengthy one, it also requires the expert services of a lawyer to draft the legal documents which need to be filed in court. The difficulty for the squatters in this area is that there is no lawyer near the area. The nearest is in Nakuru where the High Court, which has jurisdiction to hear such matters, is situated and it is about 40 Kms away. The other issue observed by the squatters is that they hardly get assistance from the chief because they are deemed 'foreigners in the area' and are from a different tribe. The fact that the chief does not know how many they are is a very serious impediment to their right to access justice as he appears to have distanced himself from them and their issues.

The squatters were happy when I told them that they could claim ownership of the land by way of adverse possession. This is an area that calls for strong and responsible advocacy as well as judicial activism. Squatters need to know and enforce their human rights and the judiciary, the custodian of the human rights of all its citizens, especially the underprivileged, should actively seek to protect them.

An informal interview with the PHOs revealed that there is a directive by the Government for pregnant women to be delivered free of charge in health centres. What I discovered on the ground is that the squatters were not aware of this right. In fact they said that whenever they go to the clinic, if it is a first delivery, they are referred to the Provincial General hospital, which is not only far but expensive. It costs about Ksh 700 for a normal delivery. In addition, they are required to buy gloves and cotton wool. These charges are prohibitive for the squatters.

Most of the respondents interviewed said they had between seven and twelve children. This is an indicator of lack of information and services on family planning methods. According to the PHO many women cannot access contraceptives because they do not have the money to do so. Similarly some do not take children for immunization due to lack of knowledge. Asked what the Ministry was doing to curb this problem, he said that free immunization and free contraceptives (condoms) were being offered to the people. Malaria and de-worming tablets are also distributed free of charge. He said that STI's are generally very common in Mogotio. However, on the ground it was found that the squatters were not aware of these services, as no one reaches them to advise them on these services. Proper sensitization is very important. The squatters seem to be a forgotten people and no one in authority seems prepared to take the responsibility of reaching out to them.

### **Lack of Land Ownership and its Impact on other Rights.**

#### **Right to Education:**

The Athinai Nursery School which accommodates children from squatter settlements experiences a lot of problems. The school has one classroom and has to accommodate three classes. It is understaffed with only two teachers. One teacher takes one class while the other takes two classes. One of the classes is conducted under a tree because of a shortage of facilities. Concentration levels among children from squatter settlements are very low. One of the teachers said:

'Education standards are very low here. One of the contributing factors is that children come from home very hungry. Teaching them becomes a challenge. Their concentration level is very low. As you can see the children's health is not good most of them are malnourished some are fed on *ugali* and potatoes which are both starch.'

One other issue that was pointed out by the nursery school teachers and the head teacher of St. Mary's Primary School is that due to high poverty levels among squatters, some children come to school drunk and on investigation they learn that because there was no food in their homes, they were fed on *machicha* mixed with *busaa*.

High poverty levels are contributing factors to the lack of facilities in Athinai nursery school. It was observed that the school had no reservoir or water storage tanks and children were forced to carry water from their homes. There is a foundation that was started by a catholic priest in the year 1993 for the construction of three classrooms but when he left the diocese in the same year it was never completed. The spirit of *harambee*<sup>27</sup> has failed to work due to poverty levels among the squatters. The classrooms have big potholes on the floor. Besides when it rains the classrooms are usually flooded with water and cannot be utilized for learning.

**Picture of Athinai Nursery School Mr. Jamb my key informant and Mrs. Rose Kioko one of the teachers**



Figure 8

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<sup>27</sup> *Harambe* means pulling forces together to build the Nation through raising funds.

The other challenge is the outbreak of diseases such as diarrhoea and malaria, which affect children during rainy seasons. The school has no toilet and the children have to use the bushes near by if they want to relieve themselves. She said that:

‘Whenever there is an outbreak of diarrhoea I get so depressed because sometimes children mess themselves and I cannot clean them as there is no water here so I have to get one of the classmates who is a neighbour to escort them home to be sorted out.’

The other issue that was raised by the squatters is that although the government had introduced free primary education, the challenge was educating children at high school level because the school fee was too high. They said they could not afford the fees of Ksh 14,000. They said as a result the children are forced to drop out of school and the girls usually end up getting married at an early age.

At the time of the research the government had not implemented its policy of free secondary education which was in the pipeline. I believe that some aspects of free secondary education has since been introduced (e.g., waiver of tuition fees), but there was no opportunity for further research to be carried out after its implementation to establish whether it has been of much benefit to the squatters. The other issue of concern was that the high schools (which are day schools) are quite far from the squatter camps and the children have to walk about 10 to 14 kilometers to reach them. One respondent observed that: ‘The distance to school is quite far especially for the girls. Boys seem manage well but the girls find it very difficult.’

### **Sanitation**

Sanitation is a big problem in the squatter settlement. The squatters do not have toilets so they use the bush whenever they want to relieve themselves. Some go near the river which they said is hidden to deposit their faeces. They said that since the land does not belong to them, they are not allowed by the chief to put up permanent structures. Since the land does not belong to them they cannot dig more than five feet deep. They said that when they had dig the pit latrines with covers in the past, everyone used them and they became full after a month. So the best option for them was to use the bush.

Besides the lack of land ownership rights the respondents said they do not have access to proper building materials for constructing pit latrines. The PHO said that the squatters do not have

toilets. He said that he had visited some squatter settlements but had not penetrated the two settlement areas under research. The challenge the PHO has is that he is alone and has to serve the general population of 30 thousand people living in Mogotio, whilst according to the Ministry of health policy he should serve a populace of 5,000.

The area chief said that the reason most Turkanas do not have toilets is because the men say it is against their culture to deposit faeces in the same toilet as women and children and so they prefer to do it outside. A follow up on this allegation was not done due to the post election violence. However an interview with the District Public health officer confirmed that unless the people own the project it is difficult to start one. This in my view calls for proper sensitization of the squatters about serious health implications for them if sanitation is not observed.

Poor sanitation is a contributing factor to the water pollution and the spread of water-borne diseases, including amoeba (intestinal worms spread by poor personal hygiene, e.g., the poor habit of not washing hands before eating) and diarrhoea. According to the PHO, in one squatter settlement called Lomolo within Mogotio, which due to time I could not visit, the squatters bathe in stagnant water and also use it for domestic use.

### **Political rights**

According to the Registration of Persons Act every person after attaining the age of 18 must be registered with the Register of Persons and issued with a National Identity card (ID). An ID is mandatory for every Kenyan on attaining the age of majority (18 years). An ID is mandatory when one wants to be formally employed as it is one of the documents employers ask for. It also enables one to be eventually registered as a voter and to participate in the voting process.

The registrar of persons must obtain information such as the tribe of the person intending to be registered, the sex, where s/he comes from i.e. location, district, sub location etc, and a letter from the chief confirming that s/he is a resident of his jurisdiction is mandatory. The respondents said that due to the fact that they come from other regions they experience a lot of difficulty when they want to get identity cards (IDs). This affects the majority who have been born in the squatter settlement. They are usually denied a letter from by the chief and told to go back to their



districts to obtain IDs. They found this difficult as they have not lived in Turkana (their ancestral home) for long periods of time and are therefore not known by the area chiefs there, making it even more complicated to obtain IDs.

Secure land rights enable the poor to participate in political processes without fear of losing their source of livelihood. The other issue is the fact that being squatters in that area prevents them from participating actively in certain political processes. For instance it is not easy for one of their own to be nominated as chief as the members of the Kalenjin community who are the inhabitants of that area will not accept or support them. Councilors are elected through the electoral process of voting. Similarly they cannot vie for the seat, as they are only a minority and a marginalized community, besides they also need the support of the inhabitants and other residents of the area. These kinds of challenges make it impossible for them to participate actively in political processes.

## CHAPTER SIX

### CONCLUSION AND RECOMMENDATIONS

This chapter deals with the conclusion and recommendations that are drawn from the study.

#### Conclusions

The research focused on Social and Economic rights with focus on the right to clean water food and shelter. For these rights to be realized the right to security of tenure on land is very crucial. Economic, Social and Cultural Rights have traditionally been assumed not to amount to real rights, but from the research conducted, it is clear that they are at the core of endeavours to achieve economic and social justice.

It is clear from the study that women (as opposed to men) have a special need for land, clean water, food and shelter. Women's unique role in society as its carers and rearers constantly threatens to overburden them. Clearly economic and social justice can largely be realized if poverty is reduced. Inequality is also a major challenge. Women in squatter settlements suffer a double jeopardy. Firstly, they are members of a marginalized group, and secondly, as women, more is demanded of them (than their male counterparts) in the area of reproduction and cultural beliefs.

In order for these issues to be addressed there is a need to amend the Constitution to incorporate social and economic rights in the Bill of Rights. There is a need to make gender specific laws and policies to factor in women's specific needs. In order to understand clearly so as to begin to address the issues emanating from the findings and emerging themes of this research, further research needs to be done in each of the areas highlighted in the study.

To clearly understand and begin to address the issues addressed in this study as findings and emerging themes there is need to take the research further to look at each issue in detail.

#### Recommendations

- As basic rights, which have serious implications for the right to life, the right to clean water, adequate food and decent shelter should be protected in the Bill of Rights. To

achieve this government should ensure the Constitution is amended to protect these rights alongside other social and economic rights.

- Policies that ensure that the poor particularly the women have secure access to land and other vital resources must be put in place.
- Gender specific policy interventions are necessary to ensure that women are not overburdened. Their specific needs should be factored into law. Women's right to primary health care should be made a reality.
- Advocacy and sensitizing of all stake holders is necessary.
- Kenya is a signatory to many international instruments. In order for the various human rights guaranteed and protected in these instruments to be achieved, the implementation and the application of human rights in law and in reality is very crucial.
- Effective systems for societal and governmental monitoring of human rights enforcement is very important to ensure that society is constantly reminded of its human rights record, especially in relation to the underprivileged.
- Policies should be formulated aimed at: eradicating poverty and inequality and improving the physical and economic access by all, at all times, to sufficient, nutritionally-adequate and safe food and its effective utilization.
- Policies should be formulated to ensure that members of marginalized tribes or communities are given an opportunity to choose a leader who will speak for them and highlight issues that are pertinent to them. This is so because each community has its own unique problems.
- In order to protect the right to food, the government must ensure that the right to food is not violated by other actors, such as employers, who do not pay their workers on time. Hefty penalties should be imposed by the courts on such offenders in order to compel them to comply.
- The government must facilitate the right to food by providing an enabling environment for people to feed themselves through land reforms and creating employment.
- In order to fulfill the right to shelter the government should enact legislation that provides a legal basis for the implementation of a housing policy.
- There is a need to develop a policy that carefully executes, controls and monitors the eviction and resettlement of squatters. This should be done fairly.

- The underlying causes of displacement due to clashes over land rights need to be addressed by the government.
- The government must protect security of tenure as a key component of housing.
- The government must increase the number of public health personnel to deal with the escalating population in the squatter settlements.

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