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Culture, gender and societies

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La reconnaissance des tribunaux de Kadhi au Kenya : un enjeu politique ? (1887–2005)

Anne Cussac*

Depuis la période coloniale, les musulmans kenyans se prétendent marginalisés en matière éducative et économique. De nos jours, ils déplorent également des difficultés pour l'obtention de leurs papiers d'identité ou des intimidations abusives de la part des autorités, le tout alimentant un sentiment de discrimination par rapport aux autres citoyens¹. Pourtant, au sein d'un État laïc, ils jouissent de l'existence de juridictions particulières, appelées tribunaux de *Kadhi* (*Kadhi's Courts*) et chargées d'appliquer le droit islamique en matière de statut personnel, mariage, divorce et héritage.

Bien que l'Islam ait été la première religion universelle introduite au Kenya, la majorité de la population est aujourd'hui de confession chrétienne et l'État kenyan contemporain ne reconnaît aucune croyance officielle. Dans ce contexte, il est intéressant d'observer l'existence de juridictions spécialement chargées d'appliquer le droit musulman. Certes, la situation kenyane n'est pas unique en Afrique, puisque de telles institutions se trouvent aussi en Ouganda, en Gambie et au Nigeria². Toutefois, il semble important de mettre en évidence les causes historiques du maintien de ces tribunaux au Kenya et les débats récents suscités par leur existence, car ils sont révélateurs de la dimension politique de la reconnaissance de ces juridictions.

* Doctorante en Science Politique, Université Paris 1 (MALD-CRPS), actuellement boursière de recherche à l'IFRA-Nairobi.

¹ *The Standard*, 29/10/05, 30/01/06.

² Article d'Ahmed Issack Hassan, membre de la Commission Kenyane de Révision Constitutionnelle, *Daily Nation*, 24/04/03.

Ainsi, sous la colonisation britannique, les tribunaux de *Kadhi* furent conservés dans une approche pragmatique à l'égard des musulmans. À l'indépendance, leur reconnaissance officielle témoignait de la volonté de garantir l'intégration des musulmans au nouvel État indépendant. Enfin, dans un passé récent, ils ont été au cœur même du débat politique, faisant l'objet d'une controverse dans le cadre d'un processus de révision constitutionnelle³.

1. La politique coloniale à l'égard des tribunaux de *Kadhi* : une approche pragmatique envers les musulmans

Lorsque les Britanniques s'installèrent en Afrique orientale, il existait déjà un système juridique sur la Côte. Le droit islamique y avait été institutionnalisé au début du XIX^e siècle, au moment de l'établissement du Sultanat de Zanzibar⁴. Sous l'autorité des Busaidi, l'administration du territoire fut confiée à des *Linvali*, *Mudir* et *Kadhi*, ces derniers ayant pour fonction de juger selon le droit musulman. Les deux premiers Sultans, Sayyid Said (1832-1856) et Majid (1856–1870), ne nommèrent que deux *Kadhi* officiels, mais, à partir du gouvernement de Barghash (1870-1888), leurs successeurs prirent l'habitude de désigner de tels juges dans les villes de Lamu, Mombasa, Bagamoyo, Malindi et Kilwa. [Pouwels, 1987 et Pouwels, 2000].

Dans ce contexte, la politique coloniale insista à la fois sur l'influence civilisatrice et pacificatrice de l'introduction d'un système juridique d'inspiration anglaise, mais aussi sur le désir de maintenir et de travailler autant que possible par l'intermédiaire des institutions préexistantes. Sur la Côte islamisée, les Britanniques assurèrent ainsi le maintien des officiers musulmans traditionnels, comme symboles de l'administration passée du Sultan de Zanzibar. Ils surent également se montrer conciliants envers les musulmans

³ Sous la pression de l'opposition et des bailleurs de fonds occidentaux, le Gouvernement kenyan s'engagea dès la fin des années 1990 sur la voie d'une réforme constitutionnelle. C'est aussi un des engagements que prit Mwai Kibaki, lors de son élection à la présidence en 2002.

⁴ En 1840, le Sultan d'Oman transféra sa capitale à Zanzibar, créant ainsi le Sultanat du même nom.

vivant hors de la région côtière, en ne s'opposant pas à l'instauration de juridictions de droit islamique dans le reste de leurs possessions.

1.1 Les tribunaux de Kadhi sur la Côte : un symbole de l'administration passée du Sultan de Zanzibar

En 1887, le Sultan de Zanzibar abandonna l'administration de son territoire à l'*Imperial British East African Company* (IBEAC) et la prise en charge de l'organisation de la justice par la Compagnie eut pour conséquence majeure de différencier la Côte, anciennement sous l'autorité du Sultan, de l'intérieur du pays. Alors qu'à l'intérieur les agents de l'IBEAC bénéficiaient d'une large liberté en matière de pouvoir juridique, dans la région côtière, la Compagnie permit le maintien des tribunaux de droit islamique et la nomination des *Kadhi* par le Sultan, dans une « approche pratique pour administrer une large région aux ressources rares »⁵ [Carmichael, 1997, p. 295]. Ainsi, pour gérer au mieux les terres concédées par le Sultan, les Britanniques choisirent de gouverner à travers les structures préexistantes, qui bénéficiaient du respect et de la confiance de la population. De même, lorsque la Compagnie fut liquidée en 1895 et les territoires qu'elle gérait transformés en *British East Africa Protectorate*, l'accord signé entre les Britanniques et le Sultan reconnut l'application de la loi islamique. Dans le cadre du Protectorat, la Côte devint une province appelée *Seyidieh* (ou *Coastal Strip*) et le système de l'IBEAC fut maintenu. Les officiers musulmans traditionnels (*Livali*, *Kadhi*, *Mudir*), toujours officiellement désignés par le Sultan, continuèrent à exercer leurs fonctions judiciaires et administratives. Ils passèrent simplement du statut d'agents du Sultan à celui d'agents de l'autorité britannique, étant désormais sous la tutelle d'officiers européens, les *District Officers*.

Dans l'organisation de leur administration, les Britanniques se montrèrent donc très respectueux envers le Sultan et ses sujets. Ceci tenait largement à la personnalité du Consul Général de Zanzibar et Représentant de Sa Majesté en Afrique orientale britannique, Arthur H. Hardinge (en poste jusqu'en 1900). Ce

⁵ “... a practical approach to administrate a large region with scarce resources”.

dernier avait été en service dans plusieurs villes arabes, en particulier Istanbul et Le Caire et était donc familier de la culture et du système juridique musulmans [Salim, 1973, p. 75]. Ainsi, le 1^{er} juillet 1895, lors de la *baraḡa* (réunion publique) tenue à Mombasa pour annoncer la création du *British East Africa Protectorate*, il se montra extrêmement diplomate pour faire accepter ce changement par la population musulmane. À cette occasion, il déclara que la religion islamique continuerait d'être respectée par la nouvelle administration, tout en demeurant la foi établie dans les territoires du Sultan, et garantit que, dans cette zone, les affaires juridiques entre « *natives* » seraient jugées au regard de la charia⁶.

Toutefois, les Britanniques cherchèrent également à réguler les fonctions et les responsabilités des officiers musulmans. En effet, s'ils avaient intérêt au maintien de ces administrateurs dans leur quête de légitimité auprès de la population locale, leur but était aussi de contrôler la région et donc d'encadrer les pouvoirs des officiers traditionnels. Une série de législations fut ainsi votée après l'établissement du Protectorat, précisant progressivement les attributions des *Kadhi*. En 1897, le *East African Order in Council* et les *Native Courts Regulations* établirent un système juridique embryonnaire, qui reconnaissait l'existence des instances de l'ancienne administration du Sultanat, mais qui précisait aussi la limitation de leurs compétences à la Côte. Onze postes de *Kadhi* furent créés et les *Native Courts Regulations* de 1897 introduisirent la fonction de *Sheikh-ul-Islam* (ou *Chief Kadhi*), responsable des appels

⁶ Lors de cette réunion publique, Hardinge déclara : « (...) *And with respect to what the Wazir of the Sultan has told you about religion, let it be known to you that it will be protected and respected by the new administration, and that all mosques and religious festivals, and Cadis and Ulema will receive all honour at our hands. The Mahomedan religion will remain the public and established creed in the Sultan's territory, and all cases and lawsuits between natives will continue to be decided according to the 'Sheria', but although the Mahomedan is and remain the State religion, we intend that there shall be the fullest liberty for all others, and that all their adherents, whether they be Christians, or Parsees, or Hindus, shall freely worship God according to their respective rites (...)* Lastly, I confirm the present Administrator at Mombasa, and all Walis, Cadis, Akidas and other officers of the former Company in their present positions pending further orders, and I enjoin upon you all to continue to obey them ». [Hertslet, 1896, vol. III, pp. 1069–1071].

de ces cours et siégeant à Mombasa⁷. Ces dispositions furent reprises par la *Courts Ordinance* de 1907 : les *Kadhi* conservaient la juridiction sur les indigènes musulmans en matière de statut personnel, mais également en matière criminelle, dans la zone côtière. Toutefois, dans le même temps, le texte les plaçait sous la tutelle de la Haute Cour, devenue responsable de leurs appels⁸. Leurs compétences furent enfin précisées par la *Court Ordinance* de 1931, conférant aux juges musulmans les pouvoirs d'un magistrat de deuxième classe⁹.

Ainsi, dans les anciens territoires du Sultan de Zanzibar, où les tribunaux de *Kadhi* étaient une institution ancienne et à laquelle les musulmans étaient particulièrement attachés, les Britanniques avaient bien conscience qu'ils ne pouvaient faire abstraction de la loi islamique. Cependant, la distinction entre la bande côtière, ayant statut de Protectorat, et le reste du pays, devenu Colonie en 1920, créait une situation administrative complexe, dans la mesure où seuls les musulmans des anciens territoires du Sultanat bénéficiaient de l'existence de telles juridictions. Les Britanniques surent faire preuve d'une attitude relativement pragmatique, ne refusant pas leur éventuelle extension hors de la *Coastal Strip*.

1.2 Vers la reconnaissance des Kadhi en dehors de la Bande Côtière

L'établissement de tribunaux de *Kadhi* le long de la Bande Côtière résultait du statut particulier de ce territoire s'étendant sur 10 miles marins à l'intérieur, le long de la Côte, entre le Tanganyika et Kipini et incluant les îles de l'archipel de Lamu. Bien qu'administrée

⁷ L'article 56 précisait : « *A Court is hereby constituted to be called the Chief Cadi's Court. It shall be presided over by a Chief Cadi for the whole Mahomedan coast region, who shall be called the Sheikh-ul-Islam and who shall hold his court at Mombasa* ».

⁸ Article 22 : « *Appeals from Cadi's Courts shall lie to the High Court with the Sheikh-ul-Islam or Chief Cadi as assessor* ».

⁹ La section 18 de ce texte stipulait que les juridictions musulmanes avaient « *... full jurisdiction over Mohamedan Arabs, Baluchis and Africans (including Somalis, Malagasies and Comoro Islanders), in all matters relating to personal status, marriage, inheritance and divorce, and within the Coast districts, over all Arabs, Baluchis and Africans (including Somalis, Malagasies and Comoro Islanders), in all matters in which the value of the subject matter in dispute does not exceed one thousand shillings* ».

par les Britanniques, cette zone faisait partie des possessions du Sultan de Zanzibar et d'après les *Courts Ordinance* de 1907 et 1931, la juridiction des *Kadbi* ne s'exerçait pas en dehors de cette région. Or, des musulmans étaient également installés dans le reste du territoire sous domination britannique et, dans les faits, des juges islamiques agissaient de manière non officielle dans de nombreuses zones situées hors de la Bande Côtière, comme les districts d'Isiolo, de Machakos, d'Eldoret et de Mumias. De même, à Nairobi, un *Kadbi* officiait dès 1907, sans pour autant qu'il existât un tribunal¹⁰. Cette situation se révéla assez rapidement problématique pour les officiers britanniques, car il semblait difficilement gérable, mais aussi politiquement délicat, de ne reconnaître l'application de la loi islamique qu'aux populations du *Seyyidieh*. En 1919, dans une lettre adressée à l'*Attorney General* (Ministre de la Justice), R. W. HAMILTON, le *Chief Justice*, écrivait par exemple :

« (...) In the first place, we are under direct obligations to maintain the Mohamedan law in the Sultan's dominions. In the second, having regard to the geography of the Protectorate and its past history it would in practice be difficult, and might be politically unwise, not to accord both to British subjects and British protected persons the mass recognition of Mohamedan law up-country that we are bound to extend to them at the Coast. (...) A semi-recognition would not work satisfactorily and would tend to confusion of rights to property and to complication of the law. »¹¹

La nécessité d'établir des *Kadbi* officiellement reconnus hors de la province côtière s'expliquait aussi, de manière plus prosaïque, par le fait que les jugements des *Kadbi* « informels » ne bénéficiaient pas de l'autorité gouvernementale et que, par conséquent, les individus n'étaient pas tenus de les respecter¹². La nomination de *Kadbi* dans certaines régions à forte population musulmane fit l'objet d'importantes discussions au sein de l'administration coloniale et, finalement, en 1945, la *Courts Ordinance* de 1931 fut amendée pour permettre l'établissement de

¹⁰ KNA/AP/1/368.

¹¹ KNA/AP/1/720, D.R..298/19. Lettre datée du 24/04/1919.

¹² Lettre de l'*Attorney General*, S.W.P. Foster-Sutton, 1945, KNA/PC/NZA/3/18/29, No. L/IA/12, « *Memorandum of Objects and Reasons* », 13/10/1945.

telles juridictions en dehors de la région côtière¹³. Ainsi, dès 1945, un *Kadhi* fut nommé à Wajir, dans le *Northern Frontier District*¹⁴, puis un autre fut désigné à Kisumu, pour les provinces du Nyanza et de la Rift Valley, en 1947¹⁵. Peu avant l'indépendance, sept juridictions de *Kadhi* étaient officiellement établies, soit cinq dans la Province côtière (deux à Mombasa, une à Takaungu, une à Lamu, une à Malindi), une dans l'Ouest (Kisumu) et une dans le Nord (Wajir)¹⁶. Les *Kadhi* n'étaient cependant pas membres de la fonction judiciaire : dépendants de l'administration provinciale et rémunérés sur son budget, ils étaient nommés par le Gouverneur, qui avait délégué ce pouvoir au *Provincial Commissioner* de la province côtière. Aussi, lors de l'accès du Kenya à l'indépendance, la réorganisation de l'administration souleva, entre autres problèmes, les questions du maintien de ces juridictions propres aux musulmans et de leur inclusion dans le système judiciaire.

2. Le maintien des tribunaux de *Kadhi* à l'indépendance : un compromis

Au moment du transfert des pouvoirs, le Protectorat fut annexé à la Colonie du Kenya et les deux parties émergèrent comme un territoire unifié le 12 décembre 1963. Les musulmans de la Côte, qui sous la colonisation bénéficiaient d'une considération particulière des Britanniques, craignirent alors que ce statut privilégié ne disparaisse. Aussi, c'est avant tout pour faciliter le rattachement de la Bande Côtière au reste du territoire que le maintien des juridictions de *Kadhi* fut concédé aux populations musulmanes.

¹³ L'ordonnance 43/45 de 1945 modifia l'article 7(1) du texte, précisant désormais « *The limits within which subordinate courts shall exercise their jurisdiction shall be as follows: (...) A cadi's Court... within the limits of the district in which it is situated* ».

¹⁴ KNA/DC/ISO/11/4.

¹⁵ KNA/PC/NZA/3/18/29.

¹⁶ KNA/CA/9/96, SF/ADM/14/5/7: lettre du *Provincial Commissioner* pour la Côte à l'*African Courts Officer*, datée du 23/03/1962, « *Muslim Subordinate Courts* ».

Cependant, si, aux yeux des musulmans, la protection par l'État des tribunaux de *Kadhi* se justifiait par la liberté de la foi, pour l'État laïc, il s'agissait également de garantir le respect du droit par les citoyens de confession islamique. Ainsi, les juridictions de *Kadhi* ne pouvaient bénéficier d'une totale liberté et, pour que leur maintien ne soit pas le prélude à une particularisation excessive des musulmans, il semblait nécessaire qu'elles soient encadrées.

2.1 La reconnaissance constitutionnelle des tribunaux de Kadhi : résultat des pressions musulmanes de la Côte

L'avenir de la *Coastal Strip*, dont les habitants n'étaient pas sujets de sa Majesté¹⁷, devait être décidé avant l'indépendance. Or, les Arabes et les Swahili de la Côte, qui avaient joui sous la colonisation d'un statut supérieur aux Africains, firent pression pour une forme d'autonomie de la région, désignée par le terme swahili *Mwambao*¹⁸. L'influence des Arabes et des Swahili força les Britanniques à désigner un rapporteur, Sir James Robertson, chargé d'émettre des recommandations sur l'avenir de la région. Dans son rapport, celui-ci conclut que l'autonomie de l'ancien Protectorat serait délicate, étant donné l'importance de Mombasa, principal port du Kenya. Il recommanda plutôt l'intégration administrative de la Bande Côtière au reste du territoire et l'abrogation de l'accord de 1895, le tout assorti de certaines conditions. La Constitution devrait en particulier prévoir des garanties afin de répondre aux craintes des minorités côtières et il était conseillé, entre autres, de maintenir l'application de la loi musulmane par l'intermédiaire des tribunaux de *Kadhi*. Le rapport de Sir Robertson constitua la base des discussions qui réunirent à

¹⁷ La Bande Côtière était un Protectorat. Or, au regard du droit anglais, un Protectorat est considéré comme un pays étranger et ses habitants ne sont pas sujets britanniques. Cependant, ses relations avec le pouvoir protecteur ne sont pas gouvernées par le droit international.

¹⁸ Dans la nouvelle administration établie par Hardinge, les Arabes et les Swahili avaient bénéficié d'une position spéciale, le Consul Général les considérant supérieurs et mieux éduqués que les Africains. Ainsi, la majorité des postes de *Mudir*, *Livali* et *Kadhi* étaient-ils, sous la colonisation, occupés par des Arabes. Peu avant l'indépendance, émergèrent plusieurs partis pour l'autonomie de *Mwambao* (côte, littoral) [Salim, 1973, pp. 228–233].

Londres en 1962 les délégués de Zanzibar, du Kenya et du gouvernement britannique, dans le cadre de la Conférence Constitutionnelle. Les représentants du Sultan se déclarèrent alors satisfaits s'ils recevaient la garantie que les institutions et le mode de vie des sujets de Son Altesse seraient protégés selon les recommandations du rapport.

Finalement, quand la Constitution du Kenya fut adoptée en octobre 1963, les tribunaux de *Kadhi* furent maintenus et intégrés au système judiciaire, leur statut étant précisé dans la section 66 de la Loi fondamentale. En réalité, cela répondait avant tout à la volonté de ne pas heurter la sensibilité des musulmans côtiers, plus qu'au souci de satisfaire l'ensemble de la population islamique, puisqu'il fut décidé qu'aucune partie de l'ancien Protectorat ne devrait demeurer hors de portée d'une juridiction musulmane. De même, l'échange de lettres du 5 octobre 1963 entre Jomo Kenyatta, alors Premier Ministre du Kenya, et M. Shamte, Premier Ministre de Zanzibar, confirmant le rattachement de la Bande Côtière au reste du territoire, garantissait le respect de la foi musulmane essentiellement au regard des anciens sujets du Sultan :

« The free exercise of any creed or religion will at all times be safeguarded and, in particular, His Highnesses's [*le Sultan de Zanzibar*] present subjects who are of the Muslim faith and their descendants will at all times be ensured of complete freedom of worship and the preservation of their own religious buildings and institutions. The jurisdiction of the Chief Kadhi and of all the other Kadhis will at all times be preserved and will extend to the determination of questions of Muslim law relating to personal (for example, marriage, divorce and inheritance) in proceedings in which all parties profess the Muslim religion. »

Peu après l'indépendance, le Gouvernement kenyan honora sa promesse de protéger les juridictions de droit musulman, en faisant voter le *Kadhis' Courts Act* (Chapitre 11 des Lois du Kenya) en 1967. L'adoption de ce texte ne fut pas sans soulever l'opposition de certains parlementaires, refusant le principe même de tribunaux séparés pour les musulmans, ce qui, selon eux, favoriserait la diversité plutôt que l'unité, dans un État encore jeune. En revanche, les parlementaires musulmans et les sympathisants du projet défendirent la loi, affirmant que le

maintien de ces juridictions rendrait caduque la « propagande somali selon laquelle les musulmans n'étaient pas correctement traités au Kenya »¹⁹ et que le droit musulman est un droit religieux particulier, qui ne peut pas être traité comme un droit séculier ordinaire. [Ghai & Mc Auslan, 1970, pp. 368-369]. Mais en réalité, il semblait difficile au Gouvernement kenyan de ne pas concéder cette faveur aux musulmans, dans la mesure où, au moment de l'indépendance, il avait dû faire face à des difficultés dans les deux zones à forte population islamique, la Côte (mouvement *Mwambao*) et la province du Nord-Est²⁰. Cependant, le Gouvernement avait aussi pour ambition de créer un système juridique intégré, c'est pourquoi, lors de la présentation du projet à l'Assemblée Nationale, le Ministre de la Justice rejeta le caractère soi-disant « spécial » du droit islamique et fit comprendre que, selon lui, l'une des fonctions de la Haute Cour, responsable des appels, serait d'introduire des réformes dans ce droit [Ghai & Mc Auslan, 1970, pp. 368-369]. Ainsi, la reconnaissance dans la Constitution des tribunaux musulmans et le vote du *Kadhis' Courts Act* témoignait d'une attitude ambiguë des autorités envers les musulmans : ces dispositions constituaient, certes, une garantie pour ces derniers, mais également un instrument de contrôle de ces institutions.

¹⁹ « ...it would give lie to Somali propaganda that Muslims were not properly treated in Kenya ».

²⁰ En 1960, alors que les partis politiques furent autorisés au Kenya, des formations demandèrent la sécession de la province du Nord-Est, à dominante Somali. Après la réunification de la Somalie italienne et du Somaliland britannique, les autorités de la nouvelle République de Somalie, qui n'avaient pas ratifié la Charte de l'OUA sur l'intangibilité des frontières héritées de la colonisation, commencèrent en effet à envisager la formation d'une « Grande Somalie » et à revendiquer des droits sur Djibouti, l'Ogaden éthiopien et le *Northern Frontier District* kenyan. Au Kenya, les Somali lancèrent en 1963 une insurrection, connue sous le nom de *shifla* et qui fut sévèrement réprimée par le Gouvernement.

2.2 Une reconnaissance accordée au prix de concessions de la part des musulmans

Pour l'État, dont le souci était aussi d'assurer le respect du droit par tous les citoyens, la reconnaissance des juridictions de *Kadhi* comme institutions protégées par la Constitution constitua un moyen d'encadrer ces juridictions. À l'origine, le *Kadhis' Courts Act* prévoyait l'existence d'un nombre de tribunaux de droit musulman qui ne pouvait ni être inférieur à trois ni excéder douze (cette dernière condition fut supprimée par un amendement en 1997). En 1967, il en existait six : quatre dans l'ancien Protectorat, un pour les Provinces de l'Ouest et du Nyanza ainsi que certains districts de la *Rift Valley* et un pour les districts de Garissa, Wajir et Mandera. Dans les années 1980, deux autres tribunaux furent institués : un pour une zone regroupant Nairobi, la Province Centrale et la Province de l'Est, à l'exception des districts de Marsabit et Isiolo, où le second fut établi. Cette loi, qui constitue toujours la base de la législation des *Kadhi*, définit comme suit les compétences de ces juridictions :

« A Kadhi's court shall have and exercise the following jurisdiction, namely the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion ; but nothing in this section shall limit the jurisdiction of the High Court or of any subordinate court in any proceeding which comes before it ».

La loi limite ainsi la juridiction des *Kadhi* aux questions de statut personnel, mariage, divorce et héritage, mais elle précise également le recours optionnel à ces institutions. Les musulmans, qui sont des citoyens comme les autres, ont donc toujours le choix de présenter leur requête devant les tribunaux subordonnés ou devant la Haute Cour et, dans ce cas, aucune disposition particulière n'est prévue pour l'application du droit islamique. En effet, seuls les tribunaux de *Kadhi* ont compétence en la matière et si les musulmans s'adressent à un autre tribunal, c'est le droit général qui s'applique. En outre, la législation institue une procédure d'appel directe du tribunal de *Kadhi* à la Haute Cour. Dans ce cas, le *Chief Kadhi* ou deux *Kadhi* siègent en qualité d'assesseurs, sans toutefois que les juges en appel ne soient obligés de baser leurs décisions sur le droit islamique. Ce dernier point

suscita débat lors du vote de la loi dans la mesure où, si les membres musulmans du Parlement se réjouirent du maintien des juridictions de *Kadhi*, ils condamnèrent la procédure d'appel, qui permettait à des juges ne connaissant pas le droit islamique, de statuer sur des questions concernant les musulmans.

Par ailleurs, en matière de procédure, la législation ne distingue pas les *Kadhi* des autres juges, qui sont tous tenus d'appliquer les règles de droit commun définies dans le *Civil Procedure Act* (Chapitre 21 des Lois du Kenya)²¹. En revanche, en matière de preuve, les *Kadhi* bénéficient d'une dérogation, puisqu'ils peuvent appliquer les règles islamiques, à condition toutefois que les témoins soient considérés sur une base égalitaire, sans considération de religion ou de sexe et que les jugements soient établis en fonction de la crédibilité de la preuve et non en fonction du nombre de témoins. Par ces dispositions, le *Kadhis' Courts Act* encadre le travail des juges de droit musulman, qui doivent également tenir leurs registres et leurs actes à disposition de la Haute Cour ou du *Chief Justice*. Sur la base de ce texte, pendant près de quarante ans, les musulmans ont pu jouir de l'existence de tribunaux qui leur étaient particulièrement destinés, sans que cela ne suscite de problème. Cependant, dans les années 2000 et dans le cadre d'un processus destiné à établir une nouvelle Constitution, les juridictions de *Kadhi* ont fait l'objet d'une controverse.

²¹ L'article 8 du *Kadhis' Courts Act* stipule : « (1) *The Chief Justice may make rules of court providing for the procedure and practice to be followed in Kadhi's courts.* (2) *Until rules of court are not made under subsection (1), and so far as such rules do not extend, procedure and practice in a Kadhi's court shall be in accordance with those prescribed for subordinate courts by and under the Civil Procedure Act* ». Aucune réglementation spécifique en matière de procédure n'ayant été établie jusqu'à présent, les *Kadhi* sont tenus d'appliquer les règles de droit commun.

3. Les tribunaux de *Kadhi* dans le cadre du processus de révision constitutionnelle : une juridiction au cœur du débat politique

Depuis la fin des années 1960, le statut des tribunaux de *Kadhi* est demeuré inchangé, mais leur nombre a progressivement augmenté, pour arriver aujourd'hui à dix-sept, répartis dans les différentes provinces du pays²². Toutefois, des questionnements ont resurgi à la fin des années 1990, lors des discussions engagées pour l'élaboration d'une nouvelle Constitution.

Dans le cadre de ce processus, l'organisation de la fonction judiciaire a été discutée et les musulmans, comme tous les Kenyans, ont eu l'opportunité de s'exprimer au sujet des tribunaux de *Kadhi*²³. Les débats constitutionnels ont provoqué d'importantes discussions relatives aux juridictions de droit islamique, alimentées par une certaine incompréhension entre chrétiens et musulmans. Ils ont également mobilisé ces derniers, pour défendre une institution qu'ils estiment essentielle.

3.1 La controverse relative au statut constitutionnel des juridictions de Kadhi : une polémique interconfessionnelle ?

Depuis l'établissement de la Constitution du Kenya indépendant, le statut constitutionnel et l'existence même des juridictions de droit musulman ne furent jamais remis en question. Il est donc assez surprenant que ce thème ait suscité de telles discussions dans le cadre du processus de révision. En réalité, les auditions réalisées par la Commission Kenyane de Révision Constitutionnelle (CKRC) et le projet élaboré à Bomas exprimèrent l'aspiration de la majorité des Kenyans pour le

²² Les différents tribunaux de *Kadhi* sont situés dans les villes de Nairobi, Mombasa, Nakuru, Kisumu, Nyeri, Isiolo, Eldoret, Hola, Lamu, Kwale, Bungoma, Malindi, Garissa, Wajir, Moyale, Marsabit et Mandera. À ces 17 cours, il faut ajouter le tribunal du *Chief Kadhi*, à Mombasa.

²³ Le processus engagé par la Commission Kenyane de Révision Constitutionnelle (*Constitution of Kenya Review Commission*, CKRC) reposait sur une approche qui devait impliquer les citoyens. Ainsi, avant de rédiger son projet, la Commission a recueilli les voix d'une partie de la population, de manière à répondre aux désirs des Kenyans.

maintien des tribunaux de *Kadhi*. Ce premier projet²⁴ prévoyait même une augmentation de leur nombre et la création d'une procédure d'appel spécifique. Il semble que la controverse soit née dans le courant de l'année 2003, sur fond de dégradation des relations interconfessionnelles. À l'origine du processus, à la fin des années 1990, des représentants des différentes religions (catholiques, protestants, hindous, musulmans, membres d'Églises indigènes) s'étaient organisés dans le cadre de l'initiative *Ufungamano*²⁵, destinée à promouvoir la réforme constitutionnelle. Le groupe joua un rôle important, puisque environ un tiers des membres de la CKRC en étaient issus. Cependant, l'évolution des débats a abouti au retrait des musulmans d'*Ufungamano*, après que certains de ses membres chrétiens, dont son Président, le Révérend Mutava Musyimi, aient condamné le maintien des tribunaux de *Kadhi* dans le projet de Constitution²⁶. Pour les musulmans, le groupe avait abandonné le principe de respect mutuel entre les religions sur lequel il était basé et était donc devenu inutile²⁷.

Certaines organisations chrétiennes, regroupées au sein de la *Church of Kenya*, se montrèrent très virulentes contre les tribunaux de *Kadhi*, estimant que la présence de ces institutions dans la Loi fondamentale favorisait l'islam par rapport aux autres religions. Ces groupes allèrent même jusqu'à porter l'affaire devant la Haute Cour, demandant le retrait des juridictions de droit musulman du projet de Constitution, au motif que le Kenya est un État laïc, dont tous les citoyens doivent obéir à la même loi²⁸. Un autre argument souvent avancé concernait le caractère public de ces offices et la rémunération de leur personnel sur le budget de l'État, donc par

²⁴ Un premier texte, élaboré par la Commission de Révision Constitutionnelle et appelé *Bomas Draft*, fut voté en 2005, mais sans faire l'objet d'un consensus parfait. Des initiatives postérieures, en vue d'aboutir à un accord, conduisirent au projet de Naivasha et enfin au projet de Kilifi, encore appelé « projet Wako » (du nom de l'*Attorney General*, Amos Wako) et qui fut soumis à référendum en novembre 2005.

²⁵ *Ufungamano* est un mot d'origine swahili qui signifie « unité » ou « collaboration ».

²⁶ *Daily Nation*, 23/04/2003, pages 1 et 3.

²⁷ *Daily Nation*, 23/04/03 ; *Saturday Nation*, 15/01/05.

²⁸ *Daily Nation*, 24/10/02.

l'ensemble des citoyens payant l'impôt, alors que ces tribunaux ne sont utilisés que par une minorité. Certains groupes évangélistes affirmèrent aussi que la reconnaissance des tribunaux de *Kadhi* dans la Constitution pouvait favoriser l'introduction de la charia au Kenya et la transformation de ce pays en un État islamique. Cependant, cette affirmation était dénuée de fondement, puisqu'au Kenya seul le droit musulman dans le domaine civil est reconnu et qu'il n'a jamais été question d'introduire sa partie criminelle. Par ailleurs, il est nécessaire que les deux parties en présence soient de confession islamique, donc les juridictions de *Kadhi* n'affectent en rien le statut des non musulmans. Enfin, si ces tribunaux constituent une institution unique du système judiciaire kenyan, l'application du droit islamique en matière de statut personnel ne fait que partie d'une législation plurielle en matière de mariage et de divorce, qui reconnaît cinq systèmes de droit dans ces domaines (droit général, « africain-chrétien », coutumier, hindou et musulman). Ainsi, différents leaders musulmans, sous l'auspice du *Council of Imams and Preachers of Kenya* (CIPK), condamnèrent le mouvement de ces Églises chrétiennes qui, selon eux, était destiné à diviser les Kenyans sur des lignes religieuses²⁹.

Dans le projet Wako, une sorte de compromis fut recherché pour calmer les tensions. L'article 195, en particulier, qualifiait les juridictions de *Kadhi* de « tribunaux religieux », à côté desquels existaient des institutions similaires pour les chrétiens et les hindous³⁰. L'article reposait sur l'idée que, permettre à toutes les confessions d'avoir leurs propres cours, pourrait contribuer à dissuader ceux qui refusaient l'existence des tribunaux de *Kadhi*. Cependant, il n'a satisfait ni les chrétiens opposés aux juridictions de droit islamique et qui n'avaient jamais demandé la création de tribunaux chrétiens, ni les musulmans, qui ont vu là une manœuvre pour faciliter une suppression ultérieure des juridictions de *Kadhi*. Ces derniers se sont aussi opposés à la qualification de ces institutions de « tribunaux religieux », au motif que les *Kadhi* ne sont pas des leaders religieux, mais des juges, qui statuent dans des

²⁹ *Daily Nation*, 27/09/03.

³⁰ L'article 195 (1) du projet stipulait : « *There are established Christian Courts, Kadhi's Courts and Hindu Courts* ».

affaires civiles. Ainsi, ils ont fait preuve d'une parfaite unité, pour défendre ce qui est considéré comme un droit.

3.2 Les tribunaux de Kadhi : facteur de mobilisation politique des musulmans ?

Les travaux préparatifs à l'élaboration d'une nouvelle Constitution ont donné l'occasion aux citoyens de présenter leurs vues, lors des auditions réalisées par la Commission de Révision Constitutionnelle. Les musulmans se sont alors montrés particulièrement engagés : tant les organisations préexistantes telles que le *Supreme Council of Kenya Muslims* (SUPKEM) ou le CIPK, que des groupes spécifiquement créés dans le cadre du processus de révision constitutionnelle, comme le *Muslim Consultative Council* (MCC), ont participé de manière très active aux discussions de la Commission. Ils ont notamment fait campagne en faveur du maintien des juridictions de droit islamique dans la Loi fondamentale. Ce thème a également mobilisé les fidèles, qui organisèrent des manifestations dans plusieurs villes du pays, pour protester contre l'opposition de certaines Églises chrétiennes aux juridictions de droit islamique³¹. À travers la publication de différents communiqués dans la presse nationale, les principales associations musulmanes ont par ailleurs cherché à faire connaître les tribunaux de *Kadhi* et à en expliquer les fonctions, de manière à mettre un terme aux fausses informations véhiculées à leur sujet³². Dans le cadre de la campagne référendaire, de nombreux leaders musulmans ont aussi ouvertement affiché leur opposition au projet, au motif que ce texte faciliterait la suppression des tribunaux de droit islamique. Ainsi, les lettrés du *Council of Muslim Scholars* (*Majlis Ulama*) firent campagne dans différentes mosquées du pays, pour éduquer les musulmans et les appeler à voter « NON »³³. Le *Chief Kadhi* lui-même, Sheikh Hammad Kassim, déclara publiquement son opposition au projet Wako qui, d'après lui, affaiblissait les tribunaux de *Kadhi*, ne précisait pas leur domaine de juridiction et ne reprenait pas la disposition le faisant

³¹ Voir par exemple le *Daily Nation* du 26/04/03.

³² *Daily Nation*, 25/10/02, 01/03/03, 24/04/03 ; *Saturday Nation*, 03/09/05.

³³ *The Standard*, 02/11/05, p. 6.

siéger à la *Judicial Service Commission* (autorité de nomination des juges et des magistrats)³⁴. Ces prises de position ont certainement eu une grande influence sur les fidèles, peu habitués à voir les lettrés s'exprimer sur des questions purement politiques.

Ainsi, les résultats du référendum de novembre 2005 ont souligné une large opposition dans les zones à forte population islamique comme la Côte et le Nord-Est, où le « NON », l'a emporté à respectivement 80 % et 75 %³⁵. Ceci tient peut-être au fait que le thème des tribunaux de *Kadhi* a été manipulé, dans le but de conquérir les voix des fidèles. Par exemple, plusieurs hommes politiques du camp « Orange » (appelant à voter « NON »), tels que Raila Odinga, Uhuru Kenyatta et Najib Balala défendirent ouvertement les tribunaux de *Kadhi*, de manière à s'attirer la sympathie des musulmans. Toutefois, l'unanimité des fidèles en faveur des tribunaux de *Kadhi* constitue sans doute un signe trompeur de l'existence d'une conscience politique proprement musulmane. En effet, le rejet du projet de Constitution par certains fidèles s'explique aussi certainement par une incompréhension de son contenu, beaucoup pensant que le texte conduirait à la disparition des juridictions de droit islamique, idée qui fut aussi avancée par certains partisans du « NON », dans leur quête du vote musulman³⁶. Or, dans le projet Wako, les tribunaux de *Kadhi* figuraient explicitement et certains leaders musulmans se déclarèrent favorables au texte qui, d'après eux, prenait en compte les intérêts des fidèles³⁷. Le SUPKEM fut également considéré comme partisan du « OUI », même si, officiellement, l'organisation ne donna pas de consigne de vote. Il est donc difficile de discerner dans la question des tribunaux de *Kadhi* le signe de l'émergence d'une conscience politique typiquement musulmane, car si elle fit l'unanimité, il serait exagérer de considérer que l'ensemble des fidèles ont rejeté la Constitution ou qu'ils ne se sont prononcés que sur le sujet des juridictions de droit islamique. Ce thème témoigne plutôt de l'unité et de la capacité de mobilisation des

³⁴ *The Standard*, 20/09/05.

³⁵ *Daily Nation*, 23/11/05, p.5.

³⁶ Entretien avec Ahmed Issack Hassan, ancien commissaire de la CKRC, Nairobi, 08/02/06 ; *Daily Nation*, 23/09/05.

³⁷ *Saturday Nation*, 12/11/05, p. 5.

musulmans, dès lors qu'ils se sentent menacés dans la pratique de leur foi, en particulier dans un contexte où ils apparaissent numériquement minoritaires.

Conclusion

Les relations entre musulmans et chrétiens ont toujours été pacifiques au Kenya et la controverse relative aux juridictions de *Kadbi* a pu faire craindre une dégradation de ces rapports, tant les débats ont été passionnés. Si les tensions se sont apaisées après le rejet du projet de référendum, les discussions récentes relatives aux juridictions de *Kadbi* ont illustré une certaine confusion entre le respect du droit islamique et le phénomène d'islamisation politique. Or, il ne s'agissait pas pour les musulmans kenyans de revendiquer l'établissement d'un État islamique, basé sur la charia, mais simplement d'obtenir la reconnaissance de leur droit particulier en matière de statut personnel et de son application par des tribunaux considérés comme un héritage historique. Partie intégrante du système juridique kenyan, les tribunaux de *Kadbi* sont, en effet, une institution originale, témoignant aussi d'une certaine reconnaissance par l'État des sociabilités musulmanes et constituant peut-être le dernier symbole d'une époque où l'Islam était la foi dominante dans la région.

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Magic, witchcraft and sorcery in contemporary Africa and elsewhere*

Michel Adam♦

“Double, double toil and trouble;
Fire burn and cauldron bubble.”
Macbeth, IV, 1.

Abstract

Following an overview of recent field data, particularly from Africa, the critical review of the canon established by classical anthropology on magical thought (Frazer, Durkheim, Evans-Pritchard) brings out some errors of assessment about the contents of the inclusive categories (good magic, sorcery and witchcraft). But this confrontation does not challenge the deep truth of Marcel Mauss and Sigmund Freud analysis: magic in general clearly reveals the omnipotence of ideas.

Two remarks can serve as an introduction to this essay: 1) the present discussion is on beliefs in magical phenomena and not on the reality of the supernatural, which is another matter; 2) the justification of this subject (as a choice for this seminar) is the fact that, among supposed magic phenomena, witchcraft in particular (accusation of witchcraft, and not witchcraft *per se*), instead of declining with modernisation, is on the contrary increasing in Africa, and within Africa, particularly in the areas affected by serious human problems like civil wars, social crisis, epidemics, etc.

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♦ Michel Adam is an anthropologist, Professor Emeritus at Université de Tours (France).

One of the aims of anthropology is to propose explanations for human behaviours regarded as irrational by representatives of other cultures. That is the way that we will follow. After an overview of the approach to magic in classical anthropology, I will put these theories to the test of more recent field data.

1. Definitions

There is a deficiency of vocabulary in the European languages regarding supernatural practices. The French language offers only two words. The first word, *magie*, is both generic (including all the supernatural phenomena) and specific, meaning good magic. The second word, *sorcellerie*, is synonymous with black magic. English is richer in vocabulary than French and can provide three or four words—magic (generic); good magic (which is good and learnt as well); sorcery (learnt black magic) and witchcraft (innate black magic). In the middle of the last century, the British anthropologist John Middleton suggested the word 'wizardry' to include sorcery and witchcraft, but this proposal was neglected by researchers (Middleton and Winter, eds. 1963). On the other hand, as will be verified in the following remarks, the African languages use more words than the European to qualify magical facts and practices.

If we consider magic in its general meaning, including beliefs, behaviours and practices (that is to say good and black magic, divination, witchcraft, shamanism and taboo), we will define magic by the principle that it is possible to undertake an action with means (generally occult) which conflict with common experience. The famous French anthropologist Marcel Mauss noted with a particular clear-sightedness that, in any magical expression, the universal determinism of the natural facts is completed or replaced with an intentional agent (Mauss, 1972: 18–24). Starting from this observation, we can infer a first conclusion—that magical thought does not believe in phenomena without cause. But, **it endows the cause with an intentional character**; it attributes to the cause a conscious will. Now, if we talk about intentional cause or initial cause, we are nevertheless in contradiction with one of the main scientific principles, which is the necessity of a previous cause. The intentional cause gives magic

its supernatural character. We will discover later that if the magical fact is not a divine act, it is **like** a divine act because it has its cause within itself.

A small half dozen of authors have participated for little more than a century in enlightening the modern theory of magic. The main outlines of this general corpus can be stated as following:

1.1 Natural determinism

All societies acknowledge the existence of a natural determinism, even if individuals are generally unable to explain it. We can quote Evans-Pritchard in his famous study on witchcraft and magic among the Azande: "*Zande belief in witchcraft in no way contradicts empirical knowledge of cause and effect. The world known to the senses is just as real to them as it is to us*" (Evans-Pritchard, 1951: 73).

1.2 Determinism

In some specific conditions (psychological or sociological, or both, these conditions remaining unknown to the first analysts, but which will later be discovered by Freud), the conviction emerges in the mind of some persons that determinism is not absolute. Within the natural world, intentional agents intervene: non-human spiritual agents, but whose behaviour is similar or analogous to that of humans. According to the circumstances, and depending on their specific strength, the intrusion of intentional agents leads either to a single inflexion or to the complete disappearance of the determinism (for instance in case of metamorphosis, ubiquity, etc.).

The hypothesis of a simply partial diversion of determinism is the ordinary form of magic. This occurrence is strongly described by Evans-Pritchard:

We must understand therefore, that we shall give a false account of Zande philosophy if we say that they believe witchcraft to be the sole cause of phenomena. This proposition is not contained in Zande patterns of thought, which only assert that witchcraft brings a man into relations with events in such a way that he sustains injury (*Ibid.*: 68).

Evans-Pritchards adds:

It is the particular and variable conditions of an event and not the general and universal conditions that witchcraft explains. Fire is hot, but it is not hot owing to witchcraft, for that is its nature. It is a universal quality of fire to burn, but it is not a universal quality of fire to burn you. This may never happen; or once in a lifetime, and then, only if you have been bewitched (*Ibid.* 69).

This same difference between efficient cause and final cause is well explained by Max Gluckman:

For every misfortune, like every piece of good fortune, involves two questions: the first is “how” did it occur, and the second is “why” it occurred at all. The “how” is answered by common sense empirical observations: the man died because he was bitten by a poisonous snake. But this does not explain “why” that man was bitten by that snake and at that time and place, and not by another snake at another time and place; or indeed why that man was bitten and not some other man altogether. Beliefs in witchcraft explain why particular persons at particular times and places suffer particular misfortunes—accident, disease...and so forth. Witchcraft, as a theory of causation, is concerned with the singularity of misfortune (Gluckman, 1956: 83–84).

We have to notice that the intentional causality does not act in an arbitrary way. Most often, magic action is supposed to be ruled by natural laws. In 1890, these laws were summarized by James Frazer in two famous formulas (Frazer, 1971: 14–15):

First. every similar calls for a similar; or: an action on the similar is efficient on the similar; that is to say: an action on the copy (or on the replica) is efficient on the original. This type of magic, is what Frazer calls **homeopathic** magic. It allows the magician to act at distance on single copies or effigies. Example: you can kill your enemy if you prick a pin or a needle into a doll representing him.

Second. two things which have been in contact act one to another, including when the contact has stopped. This means that a part of the thing which is separated from the whole can represent the whole. This second type of magic, Frazer calls **contagious** magic. It permits the magician to act on a whole thing if he acts on

a single part of it. Example: you will kill your enemy if you can obtain even a small part of his body (nail clippings or hair); conversely, you will be protected against the lion if you carry a lion's tooth or claw, etc.

If we follow Frazer, we can conclude for the time being that, regardless of the reservations presented above, there is an analogy between the magical conception and the scientific conception of the world.

1.3 The supernatural world

In many respects, the general picture given on the subject by Evans-Pritchard completes and systematizes the previous developments.

In the supernatural world, Evans-Pritchard upholds, five actions are intermixed:

Witchcraft represents an intrusion of the natural spirits into the world of culture. They disrupt its order and they spread evil and suffering. This intrusion is achieved through the agency of some humans who are surrounded—without knowing it—by nasty or malicious power and become their involuntary servants. Thus, witchcraft is both a psychological action and it is organic and hereditary. To gain control of it, it is not necessary to use medicines or to be initiated. The witch is the spirit itself (Evans-Pritchard, 1951: 33).

On the opposite side of witchcraft, **good magic** is a reaction of defence by culture against threats or attacks from the forces of evil. Good magic acts by means of technical formulas or rituals and it needs initiation or apprenticeship. As it is working for the common good, it is socially recognised and can express itself publicly, even if the recipes remain secret.

Separate from witchcraft and good magic, black magic, or **sorcery**, is similar to the first in its intentions, and similar to the second in its origin and processes. It aims at evil and the destruction of others. But it is not a psychological action. It belongs to culture and, like good magic, needs initiation, technical means, tools and stratagems. However, as it is malevolent, it is also underhand and secret. It is enacted by people who try to guess the secrets of witchcraft. Who are these people? Evans-Pritchard says

that some of them (perhaps the majority?) are corrupted or perverted good magicians (Evans-Pritchard, 1951: 406–416).

In the space between nature and culture, the **taboo area** (Frazer calls it 'negative magic') is a set of behaviours, things or places which are not in accordance or in conformity with the usual order (which means that they are disturbed by mystic troublemakers or disruptive agents). For that reason, they must be avoided (Douglas, 1970: 54–72). There is, of course, a relationship between what is taboo and the concept of *mana* (as a universal mysterious force) which was put forward by Frazer (Mauss, 1972: 108–121).

Magic, witchcraft, sorcery and taboos describe a relationship between nature and culture and are located in a field of representation and action which is within that which we can call **immanence**. In contrast, the divine entity rules over the universal order, including nature and culture and controlling universal determinism. Between humans and the divine, there is a **transcendental** relationship which demands submission and respect on the part of humans. This defines the difference between magic (in general) and religion. On the one hand, power struggle, confrontation or negotiation between agents located at the same level (and which we can call 'creatures'); on the other hand, pleas, supplications or thanksgiving from the human creature to the Creator of everything (Durkheim, 1975: 119–123). This main difference explains the mutual hostility, or at least suspicion, between respective representatives of religion and magic.

1.4 Compatibilities

Now, let us go back to an important observation that we presented above, that is to say the universal and amazing compatibility between acknowledgment of determinism and magical thought. Whatever society you consider, none will believe that magic is always present and is everywhere. In ordinary life, there is no magic for anybody. As a result of that, we have to discover the conditions which drive the magical machinery.

To solve this difficult problem, we have to come out of classical anthropological references and question Sigmund Freud. What is magical thought? asks Freud in 1903 (a few years after

Frazer and the same year as Mauss). Magical thought, he says, is a psychological mechanism peculiar to every human. It represents a sort of disactivated potential. How is it activated? Freud answers: “*by the force of desire, or more specifically: by the force of unsatisfied desire; when human desires (or the obsessive worry to avoid a threat) do not find any outlet in the rational world of experience.*”

In 1903, Freud gives a first definition of magic which is borrowed from the British anthropologist Edward Tylor: “*Magic*, he says, *is a means of action on nature which is mistaking an ideal connexion for a real one*” (Freud, 1968 (1912): 83). Coming back to psychology, Freud seeks the roots of this confusion in the infancy of the individual, at a stage where the young child is not yet confronted with the principle of reality. During this period—called ‘narcissistic period’ by psychoanalysts—the child has unlimited desires. To satisfy them, he creates illusory or false realities (*Ibid.*: 83–4). He is the victim of the power of his ideas. Referring to Frazer, Freud notices that this process follows some rules which are in fact the laws of language, or, more generally, the laws of symbolism (Freud *Ibid.*: 84–5, Jakobson and Halle 1956: 76–82) 1) **metaphor** (which Frazer calls “similarity” or “homeopathy”, meaning to substitute one thing for another, or substitute a thing by a word); 2) **metonymy** (which Frazer calls ‘contagion’, meaning to substitute a thing by one of its parts). Conclusion: magic is a way (for the child) to create reality corresponding to unsatisfied desire. The child is like a divine creature, he creates reality with words.

At this stage of the demonstration, Freud adds a decisive complement. At the beginning, he says, the child ascribes to himself only the power of the thought. But later (in the stage which is called ‘animist’), the child projects his own psychological organisation onto natural objects. He believes (and sometimes fears) that natural phenomena are in fact **events** produced by the will of other thinking beings. To communicate with these thinking beings, it seems logical to use language. Through magical formulas, magic speaks **their** language (which is not human language) to other non-human speakers (for instance: ‘abracadabra’ or ‘open sesame’). Everybody will understand that, in this face-to-face, the magic formula is an act in itself. It is—as the linguists would say—performative. As we have already mentioned, in magic, man is like God; that is to say, words are acts (Favret-Saada, 1977: 21).

In his early research, Freud believed that magical thought was the exclusive prerogative of childhood, neurotic individuals, or also primitive people lacking the means of action on the natural world and unable to explain scientific causality. But he soon discovered that belief in the superior power of thought (or desire) survives in some circumstances in every adult, including in cultural contexts which promote a scientific conception of the natural world (Freud, 1968 (1919): 240). Magic, says Freud, is the universal sickness of Desire.

2. General theory

Now, we have to confront this endeavour to synthesize a general theory with more recent data from ethnographic surveys, particularly in Africa.

2.1 Immanence and transcendence

First, probably the easiest of the series checking: the validity, in the cultural facts, of conceptual opposition between immanence and transcendence. The ethnography, on this particular point, is not entirely uniform. In Africa, most ethnic groups acknowledge the distinction between the priest (who belongs to the ancestors' cult or religion) and the magician, either good or bad. Such is the case among the Gikuyu of Kenya who strictly separate the priest (*mũthuuri ya ukuru*), the good magician (*mũndũ mũgo*), and the witch (*mũrogi*).

Nevertheless, this distinction is not universal. Referring to Africa and the figure of the 'Magician King', Frazer already admitted the historical reality of a confusion between magic and religion. For instance, among the Yoruba of West Africa (Apter, 1992: 97–116), some goddesses are supposed to be magicians' mothers, and even witches or sorcerers' mothers (the information is not clear on this point). Elsewhere in Africa, the magician can request the intercession of the divinity. If we come out of Africa, and travel to far-east Asia or America, we meet the figure of the shaman, a medium between heaven and earth through animal spirits—magician and priest as well.

So, it seems that we can bring a first, critical revision to the anthropological theory. In some cases, God can come down from heaven to earth, onto the natural scene. He can also want or accept evil also. This interpretation is in conformity with the dogma of several great religions, including Christianity.

2.2 Witchcraft v. Magic

Second confrontation: the difference between witchcraft and magic (good or black). If we consider Africa, we can point to the fact that, everywhere, witchcraft is supposed to be an organic inheritance, but expresses itself through psychological means. Hence, technical means are not needed. Thus, witchcraft is effective among relatives, that is to say within the kinship, or sometimes—and with exception—between husband and wife.

However, the general association between witchcraft and evil or witchcraft and antisocial action is not confirmed in the ethnography. We have to develop this important point.

If we carry out a survey of witchcraft activity in Africa, we discover that its aim is to seize the vital force of others. Very often, this hold is metaphorically expressed by an act of manducation or cannibalism. The belief in a vital force peculiar to everybody and likely to be caught and devoured by harmful supernatural forces can be observed in many societies, including in Europe (Favret-Saada, 1977). In Africa, this force is acknowledged almost everywhere, not only among humans, but also among animals or beings in general (Tempels, 1949). It is not always easy to separate this force from the other components of the person (shade, double, soul, etc.). Within the Bantu area, different names are used to qualify the vital force: *tsav* among the Tiv of eastern Nigeria, *ke* among the Bamileke of Cameroon, *mvi* among the western Congo, *ngere* among the Gikuyu of Kenya. There is a general consensus to think that this force lies inside the small intestine, sometimes in the form of tiny animalcules (this is in conformity with the description of witchcraft among the Azande by Evans-Pritchard, 1951: 21–39).

It is striking to point out that the moral orientation of the vital force is not assigned in advance. It seems that it can be used either for good or for evil (Augé, 1977: 109; de Heusch, 1971:

176). There is, inside the vital force, a destructive power. This power is not immediately opened to everybody. It is a potential which is activated either by initiation or by age, so much so that all the elders are endowed with it. Among the Gikuyu of Kenya, this destructive power is called *kîrumi*. It can be used for self-defence. The *kîrumi* is present among the unsatisfied natural entities. Under the name of *thabu* ('stain'), it affects humans guilty of transgressing taboos (Hobley, 1967: 32; Cagnolo, 1933: 134).

Three principles are present in the use of the vital force:

- The individual vital forces are unequal, including in terms of harm;
- The vital force belonging to an individual of high status is stronger than a vital force belonging to an individual of low status;
- In the use of vital force, an action on one part is similar to an action on the whole (metonymy).

The vital force has the property of leaving the body during sleep and then it can wander and grab other vital forces. This is why many people believe that an old man asleep could bewitch somebody else. A person who seizes another vital force will reinforce her own force (Devauges, 1977: 117). Conversely, a person whose vital force has been eaten is doomed unless a magician whose vital force is stronger can grab it. Some people (the Lari of Congo) believe that some witches trade in their supply of vital forces, particularly with Europeans.

It is important to notice (we will come back to this observation later) that, for many African peoples, a witch—regardless of his (or her) bad intentions—frequently possesses a vital force stronger than the average (Augé, 1977: 109). Conversely, a person—single person or magician—who possesses a superior vital force is able to resist the witches and even destroy them (Favret-Saada, 1977: 251).

How can we morally judge the use of the vital force? At first sight, the answer is quite simple. The destructive use of the vital force is legitimate or justified when it is socially empowered, or in case of self-defence. Therefore, the designation of 'witch' must be reserved for those people on the fringes of the law, that is to say using their vital force for stealing, swindling, killing or acquiring an

illegitimate power. Hence, also another important conclusion: since the weapon of witchcraft—that is to say the destructive vital force—exists universally, over and above the person of the witch, this one is no longer the inhuman character described by the literature. It is when society is unable to remedy or correct the bad inclinations of some individuals that witchcraft, defined by use of destructive vital force with malevolent purpose, begins to be effective. One can explain in this way the fact that, for some people, the witch is not entirely responsible for his (or her) acts. For the Africans, as the French anthropologist Philippe Laburthe-Tolra writes, “*every human being bears in himself the original sin*” (1977: 1080).

On whom, finally, is the destructive power effective? We have already answered. It is inside the kinship or (by exception) within the couple (Hobley, 1967: 147). To enlarge the number of victims, witches make societies. With a system of criminal concessions and debts, witches are able to attack people outside their family.

Now, we have to consider the relationship between witchcraft and social or political power. In many African countries, it seems obvious to everybody that leading personalities and political chiefs must be endowed with a strong and powerful vital force (which implies also other magical qualities like extra lucidity or clear-sightedness). We can check, first, that, at an infra-state level—within tribal societies—the elders are empowered to penalize misdeeds, or even misdemeanours, of the younger generation in operating their destructive power (Middleton, 1960: passim; Gluckman, 1965: 234–235; de Heusch, 1971: 172). Let us examine for instance, the case of the Gikuyu.

Among the Gikuyu, a spiteful action may be punished by using the *kîrumi* (destructive power) under the form of a curse (Hobley, 1911). As it is a physical and moral manipulation of a member of the family by a single spell, the *kîrumi* seems to correspond to the academic definition of witchcraft and it leads to the most serious misfortune called *mûrimû* (often outbreak of incurable diseases). But, if we take a closer look to the facts, it appears there are at least two differences:

- The *kîrumi* is socially justified as a familial penalty (abandonment of parents, refusal to pay bridewealth to the

wife's parents, robbery without remorse, murder, sale of the ancestor's land, etc.);

- Its expression is public and not at all secret; the curse is a solemn act; it has to be pronounced aloud and the guilty party must be present.

After having examined the power of punishment held by the elders, let us look at the case of countries' rulers. In many African traditions, the sovereign, the king, the monarch—in spite of the fact that he must preserve public order and peace within the population—is supposed to be the possessor of witchcraft powers (Adler, 2004: 43). A few years ago, one of the former presidents of an East African country was, during his mandate, considered by some citizens to be a follower of the devil, that is to say a superior witch. After having travelled in a remote country of Eastern Asia, he was accused of causing many road and railway accidents through magic, in order to pay, in the form of human lives, the price of the medical treatment he had received from this country. According to other rumours, this president was the chief of a witches' society, whose aim was to pile up riches in exchange for human blood. The blood was from children belonging to poor families and whose throats were slit on a sort of sacrificial altar.

The relationship between witchcraft and power leads to another question: how does one become a witch? If we refer to the academic theory, the witch does not 'become' a witch. He (or she) was born like that. But, as we saw previously, at least for some people, there is—in a dormant state—a sort of universal witchcraft power, which grows with age, and, notably with the beginning of old age. We saw also that this power could be used either for justice or for evil. In other words, **there is witchcraft beyond witches**. Then, what is a witch? We can suggest now (for these people) that a witch is a person who, being endowed with a very strong vital force, is completely corrupted by evil. Therefore, we are led to another conclusion: if we distinguish witchcraft (which is practically everywhere) and witch (as a specialized and qualified function to practice and fulfill witchcraft), we can say that witches are almost necessarily initiated. Such is the case in many societies—contrary to the observations of Evans-Pritchard among the Azande. Such is the case, in particular, among the Gikuyu where

the initiation of the *múrogi* (witch) is supposed to be the fact of super-witches of foreign origin (generally Kamba).

There are still a few more words to say about witchcraft and criminality. For many Africans (but also for other peoples around the world), there is a connexion between witchcraft and criminality, which does not mean that criminals are witches (Turner, 1968: 49). We come round again to the distinction between witchcraft and witches. In Kenya, for instance, we can observe that, very often, a criminal is suspected by the mob to be filled by witchcraft. Is he (or is she) looked upon as a witch? Not necessarily. If we define, first, education as a means to destroy the animal in the human, and if, secondly, we regard witchcraft, or destructive vital force, as a resurgence of animal instincts, selfish and violent, we can maintain that a criminal, even if he (or she) uses non-magical means, is somebody filled by witchcraft because his (or her) education has failed. And, if this education failed, it is now too late to remedy it (Droz, 1999: 379–80).

In Kenya, and in other African countries of Bantu cultures, there is a very old and cruel custom of destroying witches when they are identified. They are shut up in a circular beehive (made from a segment of a big tree trunk) and burnt alive with the wax of the beehive before being rolled—like a tyre - from the top of a hill. There is an explanation for the fire: it destroys the soul and prevents any possibility of haunting or reincarnation (the same belief is widespread in Europe). We are all aware of the existence, in the same cultural area, of a horrible torment called ‘mob justice’ which often consists of putting criminals (or sometimes suspects) inside old tyres which are then burnt. However terrible the process, the moral of the story is the following: in burning criminals, it is witchcraft which is being destroyed, and, in the eyes of the crowd, there is no other means to get rid of it.

2.3 Magic

We have talked mainly of witchcraft and witches. Now, let us talk especially about magic. There is a first point where all the ethnographic inventories converge in Africa—good magic is made to counter witchcraft (Evans-Pritchard, 1951:439). Other authors have specified that the aim of good magic is to destroy a harmful

vital force whatever it is; human or animal (Hobley, 1967: 52; De Heusch, 1971: 171). Hence, the good magician is primarily a counter-sorcerer or a counter-witch (Evans-Pritchard gives details about the Azande). These duties are the same for the soothsayer or the seer—because the role of the soothsayer is to prevent, or at least identify, the threat of misfortune. For instance, among the Gikuyu, the *mũndũ mũgo* can both practice divination (*ũragũri*) and erase a *thabu* or stain (the name of the ritual is *gũtabĩka*: “to vomit the evil”). In the case of bad predictions, he can give out magical prophylactics (*gĩbitu*).

Is a good magician able to commit evil? Here again, the ethnography confirms Evans-Pritchard (see also Gluckman, 1965: 233). There is no doubt that a good magician can possibly be evil or malevolent as we have seen previously. Without counting the fact that black magic—as a single technique or a recipe—can be subjected of a single trade, for instance in the guise of talismans. Then, it is up to the purchaser to decide on the use of the talisman, either to protect himself or to harm others. Everybody knows that in West Africa, for instance, all kinds of talismans are nowadays commonly used as defensive or offensive weapons at sporting events, commercial competition, electoral campaigns or civil wars.

Conclusion

As we mentioned in the introduction, witchcraft is increasing in several areas of Africa. If we consider the case of the rural Gikuyu of Kenya, many witnesses say that the increase in witchcraft accusations is connected to the crisis of these last few years. Ruin or, at the very least, impoverishment of coffee producers, drift from the land, loneliness of women and old people, unemployment of the youth, the rise of criminality, the Aids epidemic, etc., all these things are factors of anxiety and fright. It seems that witchcraft is involved in almost all misfortune: loss of the land or loss of a job, family conflict, illness or accident. Before any rational explanation, a person who fails in his or her business is normally assumed to be a victim of witchcraft.

If we question ordinary people, some of the interlocutors claim not to believe in witchcraft, but accuse the devil or finally end the conversation by telling stories of witches. We can give the

example of a poor woman in a small village of Central Province. Wanjiru is about 40. She was born in another remote village from a blacksmith lineage. Although she attended school for a very short time, she knows how to read and write. She lives by making *ciondo* (traditional Gikuyu baskets) and, with her husband, cultivates some maize, coffee and vegetables on a very small piece of land. Nevertheless, she never lacks money. Several people know that this money comes from prostitution, which helps her to pay the school fees of her three children. But most people consider Wanjiru to be a witch. They say that she has been initiated by a master-witch with three other women of the village. This is what permits her to *enthrall* her husband and change him into a weak and feeble character, and finally produce his metamorphosis into a woman. For several months on end, the husband remained silent and numbed, as she sat in the doorway of his house. After that, he installed himself in the role of spouse, gardening, cooking and washing while Wanjiru was away from the home. This role-inversion lasted until the day a friend took the husband to a *múndû mígo* who released him from the spell.

The case of Wanjiru is the illustration of a situation that we can qualify as paroxysmal. If many neighbours are convinced that Wanjiru is a witch, it is probably because, suffering themselves in utter destitution and without hope of changing their life, they believe that every way out—even the most modest—is a manifestation of magic, that is, of witchcraft, towards the majority who are kept in the background.

Whatever the interpretations of magic phenomena, we are then taken back to the reasons why its practice is today in full expansion. That is to say, an unlimited desire to escape misfortune and suffering on the one hand; unlimited desire for power on the other hand. Escape from reality or dream up an imaginary reality—magic and witchcraft are the enlighteners of adversity.

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Misfit Mothers, Wayward Wives and Disobedient Daughters

The construction of gender identity and the
reinforcement of traditional authority
in post-war Seme Location*

Samwel Ong'wen Okuro

Introduction

The Luo society in Kenya has overtime received a considerable volume of literature. Some of these literatures have focused on the Luo history, social structure and ideology (Fearn, 1961; Lonsdale, 1964; Whisson, 1964; Ogot, 1967; Wilson, 1968; Evans-Pritchard, 1969; Ochieng', 1974; Sutton, 1974; Pala, 1977; Schiller, 1982). Others have explored the extent to which colonial intrusion transformed the pre-colonial socio-economic and political structures to its own benefit (Whisson, 1964; Lonsdale, 1964; Hay, 1972; Bookman, 1973; Pala, 1974; Butterman, 1979; Nzioki, 1986; Cohen and Atieno-Odhiambo, 1989). However, towards the mid 1980s a considerable shift occurred. This shift was in tandem with the realisation that the emerging post-colonial literature appreciated to a lesser extent women's enormous contribution to the fight for independence and to economic development. Together with the declaration of the 1975 as Women's Year, local though scattered, initiatives emerged to lay emphasis towards gender relations and to particularly examine the changing roles of women during the colonial and the post-colonial periods. These studies have rightly identified the central role

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women played in the liberation movement, how colonialism adversely affected women's access to and rights to means of production together with the ever-increasing women's burden (Pala, 1975/1980; Hay, 1976; Kanogo, 1987; Ayot, 1990 and Jalang'o-Ndeda, 1991). While some of these studies (Ayot, 1990 and Jalang'o-Ndeda, 1991), remain original and path breaking when it comes to gender studies among the Luo, they present several gaps that needs to be filled to foreground the experiences of women particularly during the colonial period. What exists in Seme, for instance, are general historical, sociological and anthropological works that pay no serious attention to the interaction between women and locally emerging colonial institutions in the vicinity of Seme. Such institutions particularly include Kisumu Township and Maseno Mission.

These interactions are very handy when it comes to exploring the ways in which women have confronted and negotiated the opportunities and obstacles they faced during the colonial period. It is here that we are able to examine the complex collaboration between colonial administrators and male elders as they attempted to assert and maintain patriarchal authority over women and younger men. This paper is an attempt to interpret archival and oral data collected in the present day Kombewa division or the former post-war Seme location to elucidate the response of women, girls, young men and the elders towards the colonial impoverishment of rural households in Seme.

The major arguments to be developed in this paper include: (a) that the dramatic changes in the household structure in Seme from 1945 were basically as a result of colonial policies i.e., policies on taxation, labour, and missionary activities (b) that colonial and missionary activities in Seme were responsible for the creation of female headed households and the increase of women's' social and economic responsibilities (c) this resulted into a remarkable stress in the traditional marriage institution, as such, marriage institution became one of the arenas in the late colonial periods that gender conflicts were revealed most starkly, (d) that some women, dissatisfied with their lives under traditional authorities fled their homes to the urban centres especially Kisumu township to dissolve unwanted relationships and institute, on their own, legitimate and desired relationship. Others, particularly trained

women and girls admired and later joined wage employment, (e) and finally dissatisfied male elders reacted to the erosion of their traditional power and authority by reinstating strategies to control women and girl's mobility to the township.

To fully appreciate the historical context from which these problems emerged, this paper will first sketch the pre-capitalist Luo society and household responsibilities. Secondly, it will summarise the broad changes brought about by colonial policies and missionary activities particularly focusing on how these changes affected women, girls and male elders. The same section will also explore how these women and girls escaped unbearable situations created by colonial policies. Finally the paper will examine the strategies developed and used by the male elders to curtail the mobility of girls and women and to restore the deplorable social and economic order then prevailing in Seme.

The area in question falls within the modern administrative borders of Kisumu district. During the Post-war years the region was one of the locations in Central Nyanza called Seme. The area is inhabited predominantly by one section of the Luo called Joseme. Joseme are divided into two major sub-clans namely Joka-Dipir and Joka-Gumba.

1. The Joseme household structures and gender roles on the eve of colonial encounter

At a general glance, Ochieng³, 1974; Buttermann, 1979; Schiller, 1982; Obudho, 1985, Ayot, 1990 and Jalang'o-Ndeda, 1991, have useful comments about Joseme. However, Ogot, 1967; Hay, 1976/1994 and Pala, 1980 have specifically analysed the socio-economic and political structures of Joseme before colonialism. From these detailed studies, it is generally agreed that the movement of Joseme into their present homeland is just part of the historic migration of the Luo people, whose origin are to be found in Sudan. By the eighteenth and the nineteenth centuries, the people of Seme lineage were moving along the shores of Kavirondo Gulf competing for territory with other maximal lineages. But population pressure and conflicts with other groups finally forced them to turn inland, away from the lake, and to expand gradually into the higher wetter areas of the north (Hay,

1976: 89). By 1900 they had occupied most of the regions where they are today (Ogot, 1967; Jalang'o-Ndeda, 1989).

The Luo were divided into twelve or thirteen *Ogendini* (maximal lineages) varying in size from about 10,000 to 70,000 persons (Ogot, 1963). The largest political unit to which a Luo could belong was *oganda* (maximal lineage) made up of *gwenge* (semi-autonomous political units). The territory of *oganda* was called *piny*; each *oganda* was a gathering of many clans. *Oganda* was composed of a powerful clan to which others attached themselves for security and protection against neighbouring alliances (Whisson, 1964: 22; Jalang'o-Ndeda, 1991: 55). Joseme were thus apart of maximal lineage whose members cooperated for military and political purposes and were strictly exogamous groups. Below the maximal lineage are major lineages whose members trace their genealogical relationships six to eight generations to a common ancestor. Within Seme, the major lineages are the primary corporate landholding units, which was the largest important political, judicial and economic unit (Ogot, 1963; Hay, 1972: 93; Hay, 1976: 88).

Joseme were an independent economic, political and ritual unit. Politically, they had their own *ruoth* (chief). The *ruoth* was the jural-political leader of the sub-ethnic group. In some sub-ethnic groups he was also a prophet. As in the whole of the Luo community, each *ruoth* had a council (*buch piny*) consisting of clan elders (*jodong dboot*), the peace-maker (*ogaye*), and the tribal war leader (*osumba mirwayi*). The council dealt with matters affecting the whole 'tribe', such as famine, rain, war, tribal sacrifices, prayers and peace making. It also acted as the final court of appeal for the *ruoth* (Whisson, 1964: 22; Ochieng', 1974; Jalang'o-Ndeda, 1991; Cokumu, 2001:33)

Within the area of jurisdiction of the *ruoth* a hierarchy of *ruothi* had developed. Each *gweng* had an assistant *ruoth* appointed by ruoth himself. Such assistant *ruoth* had their own councils called (*dobo*). The *dobo* was composed of the *jodong gweng* (county elders), local *ogaye*, and peacemaker (*ogulmama*), whose job was to enforce decisions reached at the *dobo* meetings. The *dobo* council dealt with local matters and it also acted as a local law court. All cases are brought first before *dobo*. These included such cases as those of

robbery, homicide, witchcraft, land, arson and adultery. Appeals could then be made to *buch-piny*.

From what is known about pre-colonial Luo communities, it appears that they were in influx in the years immediately before the arrival of British in the 1990s, with many communities shifting from an apparently predominantly pastoral economy towards one more based on agriculture as they moved from the drier areas around lake Victoria into higher, better watered grounds. There appears to have been a concomitant increase in male involvement in agriculture, but, on the whole, the bulk of agricultural and domestic work was done by women (Whisson, 1964; Hay, 1972; Pala, 1977; Butterman, 1979). As other Luo groups, the Joseme, before colonialism were characterised as patrilineal, patrilocal, and polygynous structures (Hay, 1984: 2). The local economy was based on a shifting combination of agriculture and cattle keeping; those in the southern lakeshore areas also fished and animal protein was added to the diet through periodic hunting. Pastoralism continued to dominate the ideology of Joseme in the early 1890s, although the rinderpest epidemic seriously decreased local herds and required some adjustment in the local economy and in the division of labour.

The homesteads formed the basic unit of social organization among Joseme, with arable land assigned to it. Within the homestead, the wife was *nuon ot*, [the owner of the house] as the husband was the *nuon dala or nuon pach*, [owner of the homestead]. Even in polygamous families the husband was the head of the many households (*udi*). It was the homestead (*dala*), which formed the primary religious, social and economic unit. Each individual homestead could be occupied by the nuclear family consisting of father, his wife or wives, unmarried children, married sons families and sometimes servants (Jalang'o-Ndeda 1991: 65). In some homesteads the head of the home invited his brothers and cousins to stay with him. *Dala* thus served as the basic political, productive, reproductive and socialization unit. On the basic level, political decisions are made by *nuon dala*. This *nuon dala* was in theory the primary authority in his compound and made all the major decisions in the household. These included settlement of disputes, relations between his *dala* and other *mier*, distribution of crops and land. Each household (*ot*) was charged with all the activities

required for the maintenance and the needs of its members, including production, deployment and use of labour power and the determination of economic objectives, for instance, what to produce and how to go about it. People might cooperate at a higher level but the basic aims of the household were paramount (Jalang'o-Ndeda, 1991: 67). In a polygamous home, each co-wife was *wuon ot* meaning that she was the head of the household and the leader of its domestic and economic activities.

The division of labour among the Joseme was no different from that of the other Luo groups. Every gender had a role to play for the maintenance and smooth running of the whole community. The division of labour within the Luo home was done according to sexes-thus there were duties to be performed by women and others by men. However it was not a rigid division of labour. While there were specific duties performed by women and others by men, at times depending on the task and the circumstances the roles could shift, more particularly during war or other calamities. Within the homestead, the men constructed houses and granaries (*godero*), whose roofs they thatched. After men had built houses, the women plastered the walls including those of the granaries, which they smeared with a particular type of soil, mixed with cow-dung. The men fenced the homesteads, and in most instances, they milked the cows and goats. While minor weaving fell in the province of women, the production of hoes, knives and handles as well as large baskets fell on the province of men (Jalang'o-Ndeda, 1991). The women also processed and traded in milk products (Ayot, 1990: 168). Apart from farming activities, the women were also involved in trade, pottery, herbal medicine, transmission of knowledge, attitudes and value systems to the youth, especially girls. They could also be consulted on intriguing issues affecting the whole community. No matter how involved homestead heads were in the household operation, women were in control of the domestic economy. Outside the homesteads, men did other duties such as hunting, herding and fishing; they cleared the virgin fields in preparation for cultivation after the elders had given a signal to plant and for procuring a rainmaker if necessary. Both men and women participated in tilling, sowing, weeding and harvesting (Ayot, 1990; Jalang'o-Ndeda, 1991).

The pre-colonial society did not in any way over burden the woman. Each gender had specific roles to play. The withdrawal or absence of one could have a considerable impact on the other. On death of the owner of the homestead, the widow or widows were 'inherited' and this was a very important cultural aspect of the Luo community. In the case of a man who died when his wife had not passed childbearing age, it was the duty of the man's brother to cohabit with the widow in order to raise children, on behalf of the deceased. The widow remained permanently the wife of the dead man and the children born out of such relationship remained the children of the dead man, for whom the brother was a surrogate and thus not strictly speaking her husband (Nyaruath, 1994, Radcliff, *et. al.*, 1975). The Luo had a protocol and pattern for everything in the homestead. These involved performance of rituals, which in most instances were realized through sexual act. This was required by the society for its proper function (Ayot, 1990: 85). It was thus impossible for a widow or a woman to be in the homestead without a man, for this could result in a break down on the whole social, economic and political setting of the Luo community (Nyaruath, 1994). Thus the Luo had an economic system that was closely intertwined with the social system and really cannot be analysed separately from the society as a whole (Jalang'o-Ndeda, 1991: 64).

The preamble of all marriages was courtship (*sero*), which generally took place between late afternoon and midnight when all duties were done. Young men from adjacent villages got into the home through the small opening on the fence (*rot* or *rath*) to gather in the *simba* for the evening chat. The young men met with girls to chat or court each other. Sometimes the boys invited girls from a distant clan to spend the night with them. This was known as *wuowo*. Before the girl went to *wuowo*, she was instructed on *pim*—on safe sex to avoid unwarranted pregnancy. Sexual intercourse was restricted and the girl had to ensure that she was not deflowered (Ochieng'-Othieno, 1968). When a man reached the age of marriage, his father gave him freedom to look for a suitable girl. If he had no choice among his friends he made contacts with married sisters or cousins to help get a suitable girl. When he got a suitable girl, he reported back to his parents and between them, they looked for a contact person (*Jagam*) that was related to the girl

and also known to them as an upright person. He was the mediator between the two young people and between the two families and the two clans. He gave information on the integrity among of the girl, fertility among the girl's clan and family and clan. *Jagam* (go-between) also gave information to the girl's family concerning the boy, his family and clan. It was felt improper for a young man to talk publicly to prospective young lady by himself without the services of *Jagam*. This person played a very important role not only in the marriage ceremonies but also in the consequent negotiations (Wilson Gordon, 1968: 96). The young man and his group then made arrangements for the visit to the girl's home. During the first visits to the girl place, negotiations took place and soon after the young man began to exchange marriage tokens (bride-wealth). He gave cattle as agreed upon and had to make arrangements on how to acquire the bride. This they did with the secret arrangement with *pim* to pull the girl away (Jalang'o-Ndeda, 1991).

Bride-wealth exchange was a very important activity among the Joseme. It was not only about rights and property, but also about the people and the ways in which the social identity is constructed. It acted as a moment in which 'persons' are confirmed in a complex social identity. It did not only give the man rights over women's labour, in fact it is after marriage that a man could aspire for social and economic leadership (Potash, 1984; Jeater, 1993). Obudho captures this in details. He observed:

The giving of livestock in form of bride-wealth (*mwandu*), to obtain a wife was actually the basis of a whole network of interpersonal relations an expression of gratitude from the husband to the family members of his wife. It was a symbolic gift of gratitude. It had an important social, economic and even religious significance... Bride-wealth was real symbolic gift of exchange legalizing a marriage, legitimising children of the union, indemnifying the bride's family, stabilizing the marriage to a limited extent and propitiating the lineage spirit (Obudho, 1985: 124).

The bride-wealth exchange among the Joseme was very elaborate, expensive and ended with *Riso*, which was the final stage in the marriage ceremonies. Here, the girl's brother-in-laws gave her a general welcome into the clan. She received many presents

including her own *chieno* (tussle). *Chieno*, made of fibbers was fastened by a string round her waist. This was important attire and she could not serve a meal to her husband without wearing one.

As can be observed, the Joseme marriage pattern was a communal affair, which united a woman to a man and further united the families and the clans of married couple. The union of the husband and wife in traditional society generated relationships with a larger pattern of social networks. The social formation determined the nature of the marriage, which operated within the social system, and became a societal obligation in which all had to participate. If one failed to partake in it, such a person was considered an under-man, a lawbreaker and a rebel (Obudho, 1985). As such, marriage arrangement attracted the participation of the whole family and clan. Prior to the mission influences it made little difference to a man if his wife went away with someone else, because he knew that she must some day come back to him for her father would not dare to accept second bride-wealth. Moreover, if the marriage failed, calculation of bride-wealth return was done (these included the animals killed on the man's honour, those for virginity, for children and food eaten during negotiations). The traditional ground for divorce included: witchcraft, drunkenness, impotency, sterility, incest, sodomy, bestiality, homosexuality, premeditated murder of a tribesman, continuous miscarriages based on habitual adultery, failure to meet full obligation of the bride-wealth contract, wife beating, food measuring, laziness and barrenness (Wilson, 1984; Obudho, 1985).

2. Establishment of colonial rule and missionary activities in Seme Location

The establishment of colonial rule in Central Nyanza has attracted several scholars (Ogot, 1967; Lonsdale, 1964; Hay, 1976; Ogutu, 1978; Schiller, 1985; Ochieng', 1985 and Stitche, 1985). These scholars seems to agree that it was all in pursuit of a policy that had been put in place by C.W. Hobley, a former servant of Imperial British East African Company, in 1895 to protect the region between Mombassa and Busoga—a supply route to Uganda from “wild tribes”. It was as a result of the above, that two British officials led a punitive military expedition against Joseme, who had

stiffly resisted colonialism, on the December 23, 1899 (Whisson, 1961; Hay, 1976). This expedition was both a demonstration of British military strength and retaliation for certain “outrages” committed by the Luo of Sakwa, Uyoma and Seme. It resulted in the death of about 100 men and the capture of nearly 600 cattle and some 8000 sheep and goats. Soon after this demonstration of force, the British imposed Chiefs on Joseme and began to collect through them the much hated Hut and Poll Tax. With the enactment of the Village Headmen Ordinance in 1907, the chiefs and headmen became responsible for the keeping law and order, collection of taxes and supplying labour both communal and for public work. Thus colonial establishment in Seme acted as an instrument of primitive accumulation on the settlers behalf by appropriating African land, confiscating African animals, taxation, building rail and transport network and creating marketing and financial structures highly favourable to settlers, and, finally through the imposition and institutionalisation of forced labour.

In tandem with colonial establishment was the spread of missionary activities particularly the Church Mission Society (CMS), of which by 1907 had exerted itself to be the most influential of all missions in the region (Ogot, 1963). In Western Kenya, the CMS had by 1906 started their work at Maseno in the vicinity of Seme. Apart from evangelism, these missionaries were also involved in the provision of elementary education and agricultural training to men, women and young ladies (Ogot, 1963: 255; Hay, 1976: 99). From Maseno, Christian teaching expanded to surrounding villages in Seme as many people started to demand for Christian instructions. The process of evangelism was not that smooth, as CMS experienced three significant cultural conflicts with Joseme. First, the gospel message whose core message was based on Jesus Christ was in conflict with the local beliefs and practices. Secondly, was the attitude Christian missionaries had towards African beliefs and values, and finally was the impact of these attitudes on the African converts (Nzioki, 1993). As such, the CMS attacked some of the very fundamental African institutions including marriage system, polygamy and ‘wife inheritance’/widow guardianship. They preached against bride-wealth exchange, polygamous marriages to those who aspired to be Christians and to be baptised.

Another major process for economic and social change in Joseme was the building of Kenya–Uganda railway and the development of Kisumu town. From the colonist's perspective, the railway was to extend the British presence towards the Lake Victoria. In 1886, R.J.D. Macalister opened a sub-station at Port Victoria (present Busia district). This port was originally to be the railhead but due to poor facilities Port Ugowe (the future Kisumu) was chosen instead. Thus towards 1899, the acting commissioner for Uganda, Colonel Ternan, ordered the headquarters of the province to be gradually removed to Kisumu from Mumias in anticipation of the arrival of Uganda railway at the Lake. Subsequently, the railway line was built from Mombasa in 1896 and reached Kisumu in December 1901 (NPAR, 1907–1908, KNA). From then onwards Kisumu operated as a major port connecting the British East Africa Protectorate and the German East Africa to the outside world. The town thus became important for tax collection and distribution. It operated as the provincial administration, commercial, transport, business and service hub of western Kenya attracting people of various ethnicities and nationalities (NPAR, 1907/8, KNA; Anyumba, 1995). The development of the railway and the town determined the extent and magnitude of social and economic change that affected women, men and girls in the whole of Seme location.

In the context of Joseme, therefore, the colonial policies, the establishment of Kisumu town, and the CMS activities were significant in unleashing far reaching consequences that radically altered the socio-economic and political position of not only Seme women and girls, but also men and male elders. The new social formation ushered in, and totally transformed the social and economic terrains in Seme as a majority of men, for instance, had to sell their labour power to survive. Both military expedition and economic forces achieved this transformation. The most noticeable example was the male labour migration that was first stimulated by force and by new cash needs-taxation, clothing and cash to purchase bride wealth cattle (Clayton and Savage, 1974; Van Zwanenberg, 1975; Stechter, 1982). Such that, by the beginning of Second World War, the Seme region had become one of the largest exporters of male labour in the whole of the colony (Jalang'o-Ndeda, 1991: 222). In fact, almost all the Central Nyanza

Annual Reports after the War were replica with the phrase “*the district is denuded of its adult male population*”. For that matter, in absence of men, agricultural production fell drastically (Hay, 1972; Francis, 1995), as many women spent increasing amount of time in off-farm economic activities, particularly trading and handcraft production. However, the direct consequences of all these social reorganisation in general and for gender relations in particular were dramatic. Many women in Seme assumed extra roles and responsibilities as the process of colonialism upset the traditional social and economic complementarity between both sexes prevalent in Seme.

Labour migration, even though it began in the early decades of colonial period was not the only factor that catalysed social and economic changes witnessed in Seme location before 1945, several other long term impact very critical for nuance analysis of Post-war gender relations will however deserve a mention. These included, the reduction of cattle used in bride-wealth exchange, increasing demand for European consumer goods, forced relaxation of clan endogamous marriage prohibitions, forced marriages, marriage of premature girls, widows refusing to conform to traditional customs, widows paying taxes, reduction of huts, elopement, women running away from marriages, the increasing involvement of women in communal labour (road side clearing, development of water supply, conservation of soil erosion, maintenance of government camps, building police stations, bridges and dispensaries), and increase of children providing communal labour.

2.1 Joseme during the post-war era

Compared to the pre-colonial period, Joseme entered the post war era a different society. Seme location was a society of women, children and old men. Both capital and labour investment in agriculture were reduced to a minimum and women and even children worked intensely to meet subsistence requirements (Hay, 1976: 102). Agricultural production for subsistence became increasingly marginalized, as a generalised decline was noticeable everywhere in the location. Commodification, that is, the complex of social processes through which all aspects of life's continuation,

including production, exchange, consumption and the preservation of natural world, which had previously taken place in subsistence focused social arrangement, are restructured and given market value became apparent. The destruction of the subsistence realm was realised in Seme as colonialist constructed commodified social relations. It turned money demand into more money demand. This led to irresistible fluidity in almost all aspect life in Seme. Men, women, elders, colonial administrators and Christian missionaries held several expectations after the war. For the women and children, *Otonglo famine* (1943–1944) compounded the problems they were already experiencing. Male labour migration left a considerable number of women without male companion for extended period never witnessed before. The labour census of 1946 revealed that out of 254, 757 labourers for the whole colony, 106,460 were from Nyanza (Jalang'o-Ndeda, 1991: 222). A majority of Kavirondo men were employed in the European plantations and farms. Others moved on boat to as far as Uganda and Tanganyika to look for employment. As this was not enough, in 1949, the colonial administration felt that, the Luo still had a large reservoir of male labour and mounted a major labour recruitment campaign, further increasing the demand for Luo manpower (CNDAR, 1948-1949, KNA). Similarly, other push factors had also crystallised among the Luo in Seme attributable to the scarcity of land, the urge towards a higher living standard, preference for industrial employment, craving for advantages or at least the trapping of Western civilisation, the need to pay taxes and the desire to purchase trade goods (*Ramogi Issue*, April 15, 1948).

Away in wage employment, a number of these labourers received inadequate wages to cater for their basic needs, thus it became common after the war for men to complain about poor wages while women complained about irregular remittances. However, the colonial administration, registered improved collection of taxes. This meant that Seme women had to redouble their labour in both agriculture and in domestic task. This was particularly difficult period for women and their families who remained behind as subsistence farmers to work on the land, which was moreover, heavily rugged and whose fertility was declining year by year. The departure of Seme men thus inevitably

intensified women's burden of work by limiting their mobility and without enlarging their freedom to make decisions.

The living conditions of the migrant men and their life long inadequacies were clearly captured by Richard Omollo of Headquarters Millers Records East Africa Command when he petitioned the Secretary of Local Native Council in Nyanza Province. He observed, when young men are asked to go out and marry, *“they fear going home because what they are having is not even one tenth of what should get them married. Comparing what they get as monthly pay with the price of one head of cattle, the pay itself may only be half the price. Thinking of this and how the present life should be treated, this makes many young boys fail to marry”* (DC/KSM/1/12/6, 1947, KNA).

The cyclical crisis of rural food production, which had left many women destitute without men to support them coupled with long absence of men due to wage labour migration, made the social and economic conditions in Seme unbearable for many women. Huts were falling without men to repair. In Seme, for instance, Jordan Obuny had to be called by chief Melkizedek Nindo to come from Mombasa and build for his wife a house that he had neglected for a long time (DC/KSM/1/19/235; General Correspondence 1956-58). Agricultural labour fell mainly on women because many men considered agricultural work less rewarding. In Seme, some women were heavily occupied by agricultural work even to visit their husbands. Enoka Ojuang's wife had to wait and harvest her crops before she could visit Ojuang. Even later when Enoka's father was moving to a new home, the wife could not move with him because according to traditional customs, Julia could only do so if her husband was present, as this involved the building of new houses (DC/KSM/1/21/12, 1950, KNA). The day-to-day solution of domestic disputes also fell on women because some husbands failed to return home for many years.

The situation was not any better for widows as their sons became migrant labours and provided little assistance to them. The Family Affairs Department during this period, had several letters of complains from widows asking to be assisted by District Commissioner secure release of their sons from work to come home and build for them huts. In Seme, the DC of Central Nyanza wrote to the officer commanding Headquarter Coy, 2/3k

Bn Kenya African Rifles Nairobi to allow Bernado Otengi to come and build for his mother (who was a widow) a hut, as there was nobody to do it for her (DC/KSM/1/22/202 Family Affairs Department, 1950–58, KNA). This illustrates the extent to which the traditional social support for widows had declined. Few men preferred to take care of widows due to difficult economic times and particularly because of the fear to pay Hut tax. Considering the stress of being lonely, and over-burdened in the case of women married to migrant men, and lack of social and economic support on the part of the widows, some women started thinking of means for survival beyond the boundaries of Seme. They became disheartened by their heavy workload and lack of companionship and sought ways to increase their economic control and social autonomy by renegotiating the terms of their labour obligations, marital and household relationships. Hard and difficult moments were still to come.

Agriculture and agricultural production were very important to the colonial administration that its collapse could never be imagined. After the war, Nyanza province was viewed as an important productive area of the colony. However, compared with other parts of Kenya, the fertility of land, with a few exceptions, had been so irretrievably lost that no remedial measure could economically be undertaken. But, every effort had to be made to place agriculture on a sound footing (Jalang'o-Ndeda, 1991: 243). Deterioration of land due to soil erosion, overuse, and population pressure thus formed part of consideration in the post war agricultural policy in Seme as was in the whole of the Nyanza province. Therefore, to realise increased food production, soil conservation and reforms in land tenure system became paramount (PC/NZA/3/1/358; Post War Development Plan 1942–1945, KNA). To curtail soil deterioration the Senior Agricultural officer J.T. Moon explained to the PC Nyanza that: *“wherever possible the whole hearted effort of the local population for soil conservation measures is desirable but I am convinced where this support is not forthcoming we have now reached a stage when compulsion is essential if land is to be saved”* (PC/NZA/3/2/113; 1945, KNA).

Despite the remarkable absence of men from the localities, the establishment put a considerable pressure on the local administration through the chiefs and headmen as well as

agricultural department to step up soil conservation campaigns to capacity (CNDAR, 1951, KNA). As envisioned by Moon, compulsion thus became essential component of soil conservation campaign. In 1950 the Central Nyanza District Agricultural Report explained that:

There is too some evidence of increased awareness on the part of those who remain in the district of the importance of preserving fertility of their soil. Measures of physical soil control, in the form of contour terracing carried by communal labour, although not popular, have continued steadily in every location throughout the year. The work is done by free communal labour. Each adult male is supposed to turn out once a week to do four-yard tasks, which involve having about 90 cubic feet of earth (CN/DAR, 1950, KNA).

In the absence of men from the localities, it was the women and children who in large numbers participated in soil conservation. The acceptable policy was that no woman was to be compelled to do soil conservation work and certainly could not be prosecuted for failing to do it; on the other hand they were not discouraged from helping provided they worked only within their own '*gweng*' (locality) and did only half of the man's task. How this was achieved was difficult but the contention here is that force must have been used on women (Jalang'o-Ndeda, 1991: 255). Soil conservation thus added another extra burden on already overburdened women. The women in Seme who were overburdened by household demands, time and energy was not available for extra communal labour to conserve the soil. As observed by Hay the women in Seme had resisted the ravages of capitalist encroachment in different ways. Local and emerging colonial institutions, such as Kisumu town started offering options to them. First, Kisumu provided a permanent market place where goods and services were routinely exchanged and where the much-needed cash predominated. Equally, the much-needed manufactured goods, such as clothing, soups, *jembes* (western imported iron hoe), hand cultivators, foods could easily and cheaply be obtained (Hay, 1994). Later, it became an avenue through which women and girls dissatisfied with their lives in the localities could challenge the traditional order asking them to "*behave like women.*"

Two reasons seem to explain women's mobility to Kisumu during this period. The Seme women got involved in petty trade within the emerging markets such as Lwanda, Rata, Asembo Bay, Akala, Kowe and Kisumu. The trade was basically in foodstuffs and local brews. It was during these trading activities that Seme women came to learn much about Kisumu. This was the time when the Kisumu town was expanding to a fully-fledged trading and commercial centre, and had attracted considerable populations from different nationalities and ethnicities. They met women fully resident in the town, either trading or on wage employment as Ayahs for Europeans (domestic female servant), in the hotels, restaurants and within the medical departments. These town novelties started to attract Seme women. Secondly women acquired a measure of freedom outside the 'reserves' and were free from tribal obligations, particularly for widows, women married to migrant men and women with marriage problems. These women took advantage of the opportunities, which resulted from the social and economic changes in their lives. They manoeuvred with their friends, rivals, family, clans, mission and the colonial state in order to leverage for changes and continuities in their realms. Thus while at Kisumu they tended to seek and in most cases received sanctuaries from customary obligations and traditional authorities as well as legal permission to dissolve unwanted relationships and legitimised newly desired relationships as from colonial legal point of view, women could not be forced to marry against their wish and they were, while in the town, freer to dissolve marriages, which they were no longer interested in.

In conclusion, the Second World War in Seme witnessed a shifting of resources from rural household to the war front and a feminization of the food production process as a majority of women assumed a wide array of domestic chores hitherto either shared with men or performed mainly by them. This change undermined the economic viability of the rural economies. Most households experienced difficulties in sustaining the rate of food production and in securing a means to cover any shortfall in production. As a result, production in reserves underwent readjustments in response to challenges brought about by the war. The demands made by the colonial state brought stress and crisis to the household economy. The post war era was a continuation of

the same scenario and was even exacerbated by the ever increasing colonial economic demands on the local population in Seme particularly when it came to agricultural improvement and soil conservation campaigns.

3. The rise and the development of social welfare services

In Seme, the absence of male labour was not sufficient in enhancing the mobility of women and girls away from Seme location, in the Post War era, other factors were handy, critical of which were the rise and development of social welfare system and the collapse of the traditional bride-wealth exchange system. In Great Britain, this process started by the growing recognition that the community is an organic whole whose health and vitality depended upon the well-being of all its constituent members and on the good relations between them (Social Welfare in the Colonies Memorandum 1945: DC/KSM/1/1/194: KNA). Similarly, in Kenya, social welfare activities were part of the post-war development (Ndeda, 1999), arising out of the realization that the contact of African people with industrial civilization had in many cases, broken down a sense of communal obligation. The introduction of wage employment had inevitably led to individualism and caused a break down in marriages as women tended to avoid their traditional duties in the communities. The supernatural sanctions which enforced communal moral rules had generally ceased to be effective in areas where European contacts had been pronounced and this caused the collapse of ethical systems which often had genuine social value. With these, it was further acknowledged that moral codes, which served to regulate the conduct of members of small kinship units, were no longer adequate in the case of people living in the large mixed communities that congregated in the new towns. Furthermore, the growth of these towns, and cities especially in the case of seaports and the spread of 'civilization' inevitably gave rise to new social problems such as destitution, child vagrancy, prostitution, housing shortages and delinquency with which traditional machinery were unequipped to cope with (Social Welfare in the Colonies Memo, 1945, KNA). Although the historical causes differ widely, Kenya's social problems were said to be in need of the application of new

techniques of social welfare which were worked out in more advanced countries.

The history of the rise and development of social welfare and community development is acceptably beyond the scope of this paper. Suffice it to say that that in 1946 a committee on social welfare information and mass education outlined the duties of welfare office as follows: promotion of economic prosperity, social contentment, creative power and health, prevention of poverty, social discontent, moral and mental lethargy and ill-health; care or alleviation of moral delinquency and mental and physical diseases and injury; and the rehabilitation of all who are for any cause disabled. Promotion of personal health meant adequate wages, nutrition, general education, physical exercise and recreation, industrial welfare and hygienic adult education. In a broader sense social welfare was to embrace practically every branch of amenity services, which were designed to produce a better 'civilization'. In Kenya, the colonial administration felt that agricultural development was poor because no agricultural information was provided to African women who did almost all the food production for subsistence.

As a consequence, on 22 March, 1946 a course of training for African social welfare workers was started at the Jeanes schools to offer spinning and weaving as well as literary classes. Also offered was a simple course on domestic duties under the few, in most cases unmarried European ladies. Although the work was sporadic, such was the enthusiasm that the government stepped in to control and assist the movement. The purpose of these was to raise the standard of living of African women by showing them how to become better house wives and mothers and giving them the opportunity to become literate, either in their own language or Kiswahili and English language (Ndeda, 1999: 6). The organizational structure of these centres were best captured by the July issue of *Maendeleo ya Wanawake* (MYW) (for details see Wipper, 1975; Presley, 1992; Aubrey, 1997; Ndeda, 1999, Report Central Nyanza, 1952). It observed that:

It is all rather like a tree, though the tree is not yet very large one. At the trunk of the tree there is Jeanes School at Kabete, and then there is district training centres as at Kericho—which grew from a small scheme initiated by the DC and his wife

Mrs. Gregory Smith became a valuable training centre and had 48 trainees from Central Nyanza (PC/NZA/2/17/15; Industries 1942–1947) and a new one that is to be built soon in Kisumu, they are the big branches of the tree; and then the little branches and twigs are the women institutes out in the district. The good homes and the healthy children are the leaves of the tree (AB/14/52, MYW General 1952-55, KNA).

These centres were created to help people think and act for themselves through adult literacy classes, lecture discussions and debates, information, radio, film, reading facilities, writing, indoor games, plays concerts and tea canteens. The spinning and weaving classes were for the purpose of instructing women on how to start their own industries. The course took approximately twelve months and at the end of it, each woman was to receive a complete set of equipment (Jalang'o-Ndeda, 1991: 265). The few privileged women who went to Kabete were to return and instruct within the women institutes, clubs and similar institutes in their own districts and thus pass on their knowledge to an ever-widening circle of women. The subjects included in the course were needlework, knitting, cookery, hygiene, childcare, simple housewifery and agriculture (Community Development Handout, 1951: PC/NZA/3/1/548, KNA). The certificate offered after the training later enabled some women to acquire employment within the various sectors within the Kisumu municipality.

Perplexing was the proposed Course Syllabus for Kericho Home Craft Students on 14 September, 1951–2, and which was to be used in all training institutions. Initially, the syllabus was divided into six sections. The first section included cooking of the following- soup, meat, poultry, vegetables, fish, eggs, fruits cereals, bread baking, simple cakes, pastry, beverages, butter and cheese making. Housewifery formed the second section and included aspects like cleaning, furniture, beds and bedding and utensils. The third section was needlework. Under needlework were hand sewing, machine sewing, patchwork, quilting and knitting. The other section was laundry, which had washing, pressing, and removal of stains, dying, hygiene and child welfare. Agriculture formed the second last section with care of livestock coming last (PC/NZA/2/17/15, 1942-1952, KNA). By 1951, the development of women clubs, women institutes and other

organisations for the promotion of African women, had grown bigger producing many of graduates and thus requiring elaborate coordinating body at district, provincial and national level (PC/NZA/2/17/15, 1942-1952, KNA). This is what led to the formation of Maendeleo ya Wanawake (MYW), in 1952, whose aims were to improve the living standard of African population especially the African women (PC/NZA/2/17/15, 1942-1952, KNA).

A few months after the establishment of MYW, Seme location stood out to be unique in the whole of the Central Nyanza District. Its uniqueness was attributed first to the remarkable progress made in the location, particularly in training of African women and secondly, its almost being sandwiched between two emerging and very important training centres to its vicinity. These were Kisumu Home Craft Centre and Maseno Home Craft and later Jeanes School. As a result, in May 1952 the MYW report noted that Seme women were very keen and even plan to build a small shelter in which to do cooking (AB/14/52, 1952, KNA). The same remarked were echoed by the DC of the Central Nyanza District in 1952, when he wrote in his report that of all the institutes:

The keenest were those at Kombewa and Manyasi with average attendance of 100 and 86 respectively. The intention at all these institutes is to teach all home craft subjects and also agriculture. But the women all much prefer sewing to any other subject, and it is difficult to get them to take sufficient interest in other subjects. A total of nine women went to Kericho Training Centre and six to Jeanes School. The prestige of the later is extremely high and there was intense competition to be sent there. This was so because the graduates of the later could find employment as trainers with the institutes. This employment offered these women wages and made them less dependent on not only migrant men but on all men (MYW Report CNDAR June 1952, KNA).

However, from 1955, the colonial administration's attempts at improving the Standard of Living of African women in Seme met stiff resistance and a remarkable decline was registered. Kinship heads and married men did not seem to like these initiatives despite reports to the contrary. Joyce Akeyo explained:

The mobility of women during training sessions started to worry men. Some men thought their wives were becoming prostitutes and were involved sexually with other men. Other than training, other men were of opinion that the kind of skills offered to women were not practical to their every day life as reports of women becoming difficult were also reported. A change was thus necessary particularly of courses offered and where they are offered" (Oral Information by Akeyo, 2000). The previous enthusiasm was no longer noticed. The total attendance at Kombewa club stood at twelve women who concentrated on baking cakes, scones, doughnuts and selling tea and sodas (*MYW Report* June/July 1955, KNA). In 1956 the downward trend could not be explained in any favourable language in the MYW propaganda report. The report depicted Maseno and Kombewa as the most unsatisfactory areas. In 1957 the clubs expanded to Ngere as the MYW blamed the decline to a few good leaders and councillors yet to be convinced of the value of women's club (*MYW Annual Report*, 1957, KNA).

Jalang'o-Ndeda (1999) explained this decline in terms of too much work on the part of married women as women and men did not know their position within the organization. She also attributed the failure of this program on negative attitude of men and the lack of money on women's part to buy the materials for the work. However, this did not mean that the social welfare initiatives had no impact on Seme women instead, it was the rapid and unexpected impacts of these institutes that explained their failure. This is what Ndeda (1999) failed to address. The interest of the government was to halt the perceived trend of social disintegration already taking place and to restore organic unity of the community. Thus self-help was seen as one of the concrete plans towards this direction. Ironically, the initiatives were marred with numerous weaknesses, which came out to be strengths and opportunities to many women graduates from Seme. Practically, social welfare developed and thrived on several contradictions. At its inception, it was agreed that the welfare of a society must be promoted by the society itself. Unless social welfare activities were intimately related to the life of the people and have their roots firmly embedded in the soil of the country, they proved to be transient and ineffective. It was therefore of importance both to make use of any spontaneously formed local associations and

organizations which may exist and to ensure that to the utmost possible extent the social welfare services at all level were staffed by members of the community which they serve. The staffs therefore were to be one of the right kinds with the right outlook and the right training. This was the first and essential requirement (Social Welfare in the Colonies Memo, 1945, KNA). However, closer examination of Kericho syllabus that was applied in almost all centres or institutes in Seme depicts the contradiction that explains the many problems that beset the organisation. The social welfare activities, needless to say, were European in outlook and alien to Seme women. The trainings were further given by inexperienced and unmarried European women who deeply adored European values, customs, character and tastes. Any graduate of these centres could serve Europeans in everything when it came to domestic work. Mrs Phoebe Asiyo, the first MYW African President indicated, *“things like queen cake baking and other European dishes, which provided the bulk of MYW syllabus, were not the answers to our problems. African children still had less than enough to eat. True, the white ladies tried hard and they were sympathetic but they did not understand the African women's needs”* (as quoted in Aubrey, 1997: 52). And so, as men were taking up hard labour, it was the women whom the colonialists seem to have embarked on to provide domestic duties hitherto undertaken by men. Under the guise of social welfare, the colonialists for their own benefit, improved on traditional roles of women at home. A clash was eminent as competition for domestic jobs intensified. The men had to fight back. But this they could only do with the support of the old men. Moreover the traditional Luo society was in disarray as training proceeded. In Kombewa, Joyce Akeyo, a Kabete Jeanes school graduate and an experienced trainer who trained women in Ahero Club, Maseno Club and lastly in Kombewa, explains this societal disintegration. She observed:

When we started training women many came forward but later things changed. Men started complaining because women started demanding to be provided with what they had learnt. In other cases when a woman found out that the husband could not afford what they had learnt she had no alternative but to leave such a man and go to the man who could provide them. Many women deserted their legal husbands. It forced us out of complaints not to provide a detailed training to women

and girls to enable them after training to go back to their husbands. Apart from that we did not recommend young married women to join trainings because they could easily be lured. We wanted a woman who was a mother of so and so who would go back after training to help members of her village. Widows were most appropriate in many cases; even the local administration could clear them very fast. Because after opening their eyes they opted for another marriage, or left to look for jobs in towns. After getting the certificate, these spoilt women went to Kisumu under the guise that they had the certificate for employment. Their activities led men to disliking the programs. In fact men stated stopping women and girls from attending classes. Later the whole thing collapsed and I myself went for a job as a dresser in Maseno. This training ranged from spreading the bed, taking care of the sick, cooking various types of foods, baking cakes, arranging photographs to please the eyes, particularly the eyes of children, playing with children, making things children use for play, drawing, making stools and giving instructions on simple agriculture at home (Oral information by Joyce Akeyo, 2000).

Seme women who prior to the training saw their life horizon within villages had their horizons widened as training progressed. These women no longer respected the traditional sanctions that had tied them at home. They had, without knowing, been prepared for another role in a larger capitalist economy. They had all the reasons to resist heavy workload, which was put on them by men and the colonial administration. They challenged the aims of social welfare- of halting the perceived trend of social disintegration and to restore the organic unit of community. Ironically, social welfare disintegrated many families in Seme and other areas around Kisumu Township. The training offered to women strained and dissolve many marriages. Those women who could not get employment within the local institutes opted to migrate to Kisumu. Unmarried girls and widows thus became beneficiaries, as the former were most preferred by the colonial administrators and Asian employers in the township. Given the rural difficulties, the social welfare systems seem to have offered economic solutions to many women particularly those with some training. The acquired skills could enable them cope favourably well in the urban centres, such as Kisumu.

4. Marriage and bride-wealth exchange in the post-war era

The onslaught of capitalism in Seme and its continuous warping of the traditional society had a considerable impact on traditional marriage system. The introduction of monetary system, which transformed bride-wealth exchange into a commercial transaction, was very handy in this context. After the Second World War, cattle exchange was to a great extent replaced by cash payment when it came to bride-wealth exchange. This development made bride-wealth exchange excellently suited to accumulation. It suited those working in the towns and could enable the recipients to accumulate other commodities. But the new bride-wealth arrangements undermined the position of fathers, and kinship heads, as items acquired during bride-wealth exchange were used for purposes other than exchange of sisters or daughters.

Those who first experienced marital problems were migrant men and those who were recruited in King African Rifles (KAR). For instance, considering the wilderness the migrant men were going to, before they were recruited, they tried as much as they could to marry before leaving home or came back to do so during holidays. It was in this context that most migrant men contracted hasty marriages before they left (Mutongo, 1999). These men found it easy to enter such marriages since they either earned higher salaries or were in a stable income from their military duties and thus could pledge in cases where bride-wealth could not be paid in full. While away, some of these marriages were often plagued with problems. When these men left, for example, many of the new brides experienced a great deal of personal freedom, some of the women were too impatient for companionship to wait for their husband's return. Some women claimed to have heard rumours that their newly acquired husbands had died in the military duties. As such, they were lured by other men into casual sexual relationships. Predictably, these clandestine relationships strained their marriages when their husbands returned from war. Thus a decade and a half after the war witnessed increased customary cases in the Native Courts of Central Nyanza District (CND 1946–1959). Some of these cases were about women complaining of neglect, desertion, bride-wealth, and mistreatment.

Similarly, men complained about adulterous women, runaway women, bride-wealth, and women failing to conform to societal obligations.

However, among the Europeans, the problem of adultery reported in many locations, was due to uncontrolled bride-wealth amidst rising costs of living. They argued that bride-wealth exchange was undesirable exchange and in particular, what they branded as excessive high scale bride-wealth. To them the high bride-wealth obtaining was deplorable inasmuch as it made it difficult for young men to marry at a reasonably early age. Circumstances like these were conducive for adultery and seduction of premature girls (PC/NZA/3/15/85, 1946, KNA). While issues of bride-wealth stabilization are not new at this point in time, the unaffordable prices of cattle prevailing made it difficult for unmarried young men in Seme to get brides. Local circumstances thus became hardy in the question of bride-wealth reduction in Seme.

In this unpredictable state of affairs, the colonial administration did not do much other than to seek advice from DC of Central Nyanza who found himself torn apart. On one hand he had to lawfully protect the women from what he considered their molestation, maintaining that no woman could be forced or compelled to live with a husband she had no love for. The best that could be done according to the DC was to advise the man to sue for return of bride-wealth. On the other hand the DC had to listen to the Christian missionaries who wanted to defend their faith and the rights and freedom of married and registered Christians. The missionaries were of the opinion of settling marriages problems in which registration was duly done apart from referring the cases to the Local Native Courts (LNC). They felt competent enough to handle marital cases—in any case they did not consider marriage as a purely civil matter. The DC further found himself in more confusion as he realized that he had to protect the interest of 'native' custom, particularly the wishes of the male elders who depended on the custom as a source of wealth and to conform to the 1931 Native Christian Marriage and Divorce Ordinance which made women legal subjects in adultery courts.

The letter written by J.L. Richard Omolo of Headquarter 2nd, Ech and Mill Records, East Africa on 29 March, 1947 to the secretary the LNC in Nyanza Province best summarizes the situation in Seme. In the letter Mr. Omolo explained that the high prices of cattle was a hindrance to many from getting married and warned that:

If this persisted regularly and gradually, at the end we shall find out that fifty per cent of Nyanza province people are lost. This was due to unfixed prices of what should be real cost of marriage. Members should kindly see to this point and discuss it properly and fix the necessary price of one head of cattle. Some may think that this is mere talking on, it is a true fact. You know very well that all people are not equal under the globe, which means that, some have enough riches but some do not. They who have can help their children to get married, but they who do not must find it difficult which will lead them to poverty unless this is brought out thoroughly, Nyanza province will have to leave out her best people (DC/KSM/1/12/6 1947, KNA).

All said and done, it was difficult for the Local Native Councils (LNC) to agree of the modality of bride-wealth stabilisation or reduction. In Seme, several reports indicated an increase in molestation of women in the localities- that is runaway wives who are arrested without a warrant or other authority, and girls who are unwilling to proceed to their chosen husbands (DC/KSM/1/36/37, KNA). This molestation could not be avoided, because bride-wealth return, considering hard economic situation, was beset with difficulties as some men and girls engaged in marriage negotiations without consulting elders. Equally, male elders were in a way attempting to assert their authority on women and girls attempting to escape from marriages, unaware that women and girls had become legal subjects on their own right.

In Seme, every father-in-law wanted the benefit from the unfortunate situation by demanding excessive bride wealth than was traditionally accepted. The bride-wealth exchange instead became a basic source of wealth accumulation. The case of Owiti Hongo illustrated this. He attached an excessive bride-wealth on her daughter who had been married to Olewe. Olewe had paid seven cows in terms of money, but still had to pay nine more at the cost of Ksh 160 per cow (DC/KSM/1/21/11, 1952, KNA).

When this case was put before the DC of Central Nyanza in November 11, 1952 he acknowledged that he could do nothing as there was no fixed number of heads of cattle to be paid as 'dowry' for a wife. This was also a time when a father in law could settle old marriage problems, mostly in cases where the man had not paid adequate bride-wealth. In such a case the girl's father could refuse her travelling to visit the husband in town and even could marry her off to another man of his choice and who could pay adequate bride-wealth. For example, Joseph Ngeso who was employed in Mombassa had wanted to get his wife to stay with him and to his surprise, the DC wrote to him saying "*I have to inform you that your father-in-law does not wish to let his daughter join you before you pay him four cows as you only paid six.*" At the same time in May 1956, Moses Laban Onyango was rejected by his wife, Mary Akoth for not paying enough bride-wealth. (DC/KSM/1/22/202, 1956, KNA).

Similarly, the adoption of western forms of clothing, quarrels over quality and amount of clothing provided to co-wives, had become one of the principal items of conflicts within the homesteads. Men also felt that they had lost control over women in dresses and the elders thought they had lost control over young men in shirts and trousers (Hay, 1994: 12). Evaluating the grounds for divorce among the Luo, Wilson Gordon (1953) also concurred that the Luo woman were demanded, as a right, European type of dresses and that her children, or at least one of them, should have schooling. They also expected modern foods which must be bought at traders—such as sugar, tea, bread and other modern wares, such as tables, chairs, cups, knives, forks and iron cooking pots. Divorce was only granted if in the opinion of the court, the husband has been completely unreasonable and if the woman is determined to leave him.

The end of the Second World War also witnessed the expansion of widows in Seme location, as the area remained the hunting ground for KRA and labour recruiters. Male recruits were transported to other parts of the world where they were exposed to foreign diseases from which they either died fighting or in European labour plantations. The traditional safety net for widows was in the verge of collapse due to the introduction of hut tax. The tax payment discouraged men from taking care of widows, for the

fear of paying hut tax. This meant that many widows lost social status and economic security. With the breakdown of traditional welfare system of taking care of widows, most widows had no where to turn to as their incomes disappeared, their control over their children and their place in a wider society became ambiguous (Mutongi, 1999: 68). With lack of adequate compensation for these widows, it is evident that many faced considerable difficulties. These difficulties included raising children, generating subsistence income, and performing other domestic responsibilities. For the first time daughters rather than sons provided a valuable source of income for their widowed mothers and equally to fathers in terms of bride-wealth (Mutongi, 1999: 69). While this may have been the case among the Maragoli in western Kenya, in Seme the situation was a little bit different. Bride-wealth itself was not forthcoming as fathers and kinship heads forged an alliance, either to tactfully acquire it or delay their daughters into going for marriage. Some widows became professional petty traders within the emerging markets trading basically in foodstuffs and local brews (Hay, 1994). Others particularly young women and widows migrated to towns, such as Kisumu, Nairobi and even Mombassa to visit relatives never to be seen back again. But for widows and women married to migrant men, who had some training, this was an opportunity to seek for wage employment in the towns and mission centres. As it was in the towns where runaway women, widows, women with other marital problems could institute marriages on their own without the restrictions of the elders. The current Obunga, Kaloleni and Bandani are some of the known areas where women wrongly labelled as Misfit Mothers, Wayward Wives and Disobedient Daughters occupied, either selling local brews or trading. Although Dorothy Hodgson and Sheryl McCurdy frequently used these terms in their article appearing in *Canadian Journal of African Studies*, Vol. 30, 1996, I find them very applicable in the Seme context, particularly considering how the male elders labelled the migrant women.

While the changing social and economic environment in Seme may have been unfavourable to women, for some women it was an opportunity to think of themselves in new ways. The post war era opened up new vistas for some women and reduced their degree of control and severity of sanctions, which the family heads

had upheld on them. Tensions of forced marriages, dwindling bride-wealth exchange, extended male absences and soil conservation campaign that made Seme a different place, all combined to enable some women to reject kinship control and seek avenues for survival elsewhere. Equally the training that some women obtained enlarged their perception about themselves and about the environment in which they lived. A few of Seme women thought of their sexuality outside the context of kinship authority. The impact of Kisumu town, whose development was guarded under European cultural ideas about how men and women could live and work together was being felt in the whole of Seme location and the surrounding areas. Kinship heads remained to answer one and the most important question in the post war era—could women make independent choices of their sexual behaviour?

5. The rise and development of Ramogi African Welfare Association

From 1945 the male elders in Seme started to reorganise to contain marriage problems and the usurping of their traditional authority. This they did to limit the newfound and ever-increasing migration of women and young girls to Kisumu town. This urban-bound mobility angered old men in different ways and was explained in terms of the level of morality in Seme location. The old men accused these women of prostituting and were responsible for the moral decadence in Seme. To them, these wicked women lowered the number of cattle given as bride-wealth, limited the role elders could play in marriage processes, threatened traditional values and removed female labour from households. As a result the Luo Union (Riwruok Luo) whose main focus was on the general socio-economic development of the Luo community managed in 3 March, 1945, to successfully shift offices to Kisumu Town with revised rules and regulations, which could enable them, deal with wayward women and girls. The aims of the Union were broadened and now touched on every aspect of the Luo men and women in towns. Aim (d) and (e) thus enabled the Union to deal with target women. The two aims stated that the *“Luo Union shall study and then offer a united resistance against any unprogressive modern influence and to promote the welfare of the Luo individually or collectively in their places of residence”* (PC/NZA/3/1/368:

Institutions Associations, Luo Union 1945, KNA). The Union's revised rules and regulations became by-laws in Kisumu branch. The by-laws prohibited Luo girls and woman from practicing prostitution. It also prohibited the same from being married by European, Asian, and Arab or a Somali. The by-law only allowed Luo girls to be married to Luo men and according to Luo custom. On employment of women and girls, the by-laws argued that no Luo woman or girl shall be allowed to work in non-native beer shop and that no Luo woman or girl whose age is under thirty years shall be employed as an *ayab* (female domestic worker) provided that those over thirty years may be so employed on production of a written permit issued by the Luo union. (PC/NZA/3/1/316, 1945, KNA).

The Luo Union branch further did not expect Luo women or girls to be employed in Kisumu Township unless they obtained a permit from the Union. Frequenting township was also not permitted for women with no proper dwelling places in town. The Union, similarly observed that “*any Luo girl or woman found smoking cigarettes with the lit end inside the mouth and drawing money from the underwear pocket will be liable to prosecution*” (PC/NZA/3/1/316, 1945KNA). On 11 August, 1945 the Union did not hesitate to write to the DC of Central Nyanza about women and girls and what they intended to do. The union advised the DC to ensure that no Luo woman or girl, while employed as domestic female workers, are allowed to access any township without the consent of their parents or guardians (PC/NZA/3/1/316; PC/NZA/3/1/316, 1945, KNA).

Among Joseme, sex had never been a commodity that could be offered for sale in the market. Sexual matters were not personal or individual, but matters in which all members of the kinship were involved. The family group has a say over its usage. That was why any Luo girl who lost her virginity attracted less bride-wealth. Moreover the institution of widow guardianship ensured that all women (with few specific cases such as sickness or extreme disability), found husbands and thus were under family heads. Consequently, there were no loose women unattached who may be available for commercial sex. Thus, in Seme, prostitution was a colonial creation. It may have resulted from the uncontrolled

interaction between European values and African values at the local level.

Whereas the Luo Union was not specifically to deal with women and girls, during the same year, a more refined and robust welfare association emerged to basically focus on unwarranted behaviour of women and girls. It is difficult to trace when exactly the association that came to be called Ramogi African Welfare Association (RAWA) emerged. But it can safely be said that around October 1945 this group was already engaged in attempts to convince the colonial administration, particularly the PC of Nyanza to approve and support their initiatives in tackling the problem of migrating women. They argued that migrating women and girls had created a harm that could never be repaired in the areas around Kisumu (Secretary RAWA letters to PC Nyanza on 19 October, 1945). RAWA outlined its objectives in the letter they wrote to the Nyanza PC where they argued that the association was to prevent and prosecute all girls and women who were by then running away from husbands, parents and were engaged in prostitution business in townships, European and Indian farms, railway stations, mining companies and at trading centres in the 'native reserves'. That RAWA wanted to stop prostitution and/or illegal marriages between African girls and Europeans, Asian and other races. They demanded that the association be allowed to repatriate back migrating girls and women to their husbands and parents (PC/NZA/3/1/376, 1945, KNA). Object (b) of the association further warned that:

...this association demands the discharge of women and girls, at present employed in the medical department and various races residence in the town, as nursing sisters and ayah, since these women are notorious for their prostitutional activities, and are therefore a danger to the native community and a constant source of bad example to others in the reserves.

While the rest of the objectives resembled but not similar to those of the Luo Union, some were even more particular, for instance, RAWA in its objective (g), (h) and (k) detailed how prosecution would be entered against women refusing to join their husbands on transfer or retirement. It further included prosecution and repatriation all adults and juveniles wandering in town or near it. However, it was objective (k) that appeared punitive and

outrageous on women and girls found guilty. It demanded that that all women and girls prosecuted in a township or near it should have their haircut and dressed in gunny bag before repatriation (PC/NZA/3/1/376, 1945, KNA).

Since its formation, RAWA got involved in endless correspondence with the colonial administration; missionaries and those opposed to their intentions. It became a tool family heads could use against women and girls usurping their authority. They termed these women going for employment in town as prostitutes threatening the very foundation of the Luo customs and traditions. Women, trained or otherwise, did not seem to enjoy the fruits of their training as men came up with deliberate connivance between African patriarchs who felt that women were getting out of control and the colonial authorities to whom the control of women and children's labour by African men was necessary for both the establishment and consolidation of the colonial rule (Schmidt, 1991). African men and European seem to have been disturbed by the growing tendency of women and girls to exercise greater mobility and to flee the tyranny and drudgery of life in the homesteads during and after the Second World War.

The position of the colonial administration on the activities of RAWA, looked vague, as it was difficult to understand how associations like this operated throughout the whole of the post war period without any legality, despite its impact on women and girls. It was therefore, true that in many instances, women's labour was serving capital. When men were away, it was the women who were involved in agricultural production, both for home consumption and for capital. To avoid constant return of African men into the rural areas, the colonial government had to ensure that all was well at home. This was because their constant mobility to rural areas affected their labour output. But the workers also needed some sexual satisfaction. If this was not provided for, the labourers had to move to the rural areas to find it. This complicated the issue further. In fact the colonial administration without knowing found themselves in the struggle over location of women's labour. They had all the reasons to act with caution.

The dismal action of the colonial administration supports the extent to which they depended on the integrity of the proper functioning African family. The colonial administration wanted to

resist as far as possible what they considered 'detrribalisation' of the Africans. It was ostensibly on the foundation of 'tribal' authority and the family that the British built Kenya's colonial administration (Spencer, 1975: 139). The British colonial administration in Seme was thus interested in restoring the status quo. Without being fully involved, they seem to have supported the traditional authority so as to keep women and girls under control. These they did despite the available evidence that things were not well for the women as well as for the men. It should therefore not be surprising that the DC of Central Nyanza accepted RAWA's concerns saying:

I believe that there is much truth in the contestation that *ayah* are, in a majority of instances, women of loose morals. There is no doubt that the Luo in the locations around Kisumu are very worried about the influx of girls into the municipality and it would seem that much might be done by the police to get prosecution under section 149 of the penal code (keeping brothels), with perhaps the help of the association (PC/NZA/3/1/376, 1945, KNA).

The association blamed prostitution on, lack of supervision over Ayah both in private employment and medical department. They contended that women employed in the two sectors were the backbone of prostitution. And that this had encouraged other young women to take up life of immorality. They thus demanded that "*only early action would obviate the position, or else the harm already done will never be repaired. The women in municipalities have become advanced to the extent that they are inserting the lit end of the cigarettes into their mouth as a sign to show that they are prostitutes on hire*" (PC/NZA/3/1/376, 1945, KNA). But after interviewing many Luo, the DC of Kisumu-Londiani rejected this petition. He argued that the practice of smoking cigarette by reversal had been among the Luo for the last thirty years. He however accepted seeing several prostitutes smoking cigarettes in a normal way. More important in the PCs letter seems to support my own impression from oral interviews when he stated "*I visualize the employment of women in place of men in domestic service in the not far distant future and this will complicate things still further*" (PC/NZA/3/1/376, 1945, KNA).

Firstly, since the establishment of colonialism in Seme men, commonly referred to as *boys or boyi* (domestic male workers), took

up domestic labour in European and Asian homes. But after the introduction of social welfare activities in which women of Seme took leading roles, some of them on receiving training felt qualified enough to take up jobs as *ayab* within the European homes and within the Kisumu Township. These were jobs men had occupied. A clash over these jobs was unavoidable. But women had a much stronger case, as some of these domestic duties were traditionally theirs. It was shocking to women that urbanized men took their traditional duties. Secondly, some of the *shamba* boys felt that women were getting into their privacy. These women could watch them perform duties that were traditionally for them. Some of the migrant men in Kisumu had also developed clandestine sexual relationships when in the town. These men feared that migrating women could convey this unwarranted behaviour to their wives. By all means they had to fight this attempt. It was evident that migrating men from Seme got into sexual relationships with women and girls from other communities while they resisted the same on part of their women (Oral Information, Hesbon Nyongo, 2000). The third contestation concerned the safe guarding the community's purity against pollution by people from other communities or races. It also meant the removal of undesired competition for Luo daughter when it came to marriage. The people from Seme did not accept their daughters to be married to people from other communities as this could lead to a community of mixed blood or mulattos amongst them. Equally, losing their daughters and women to towns without fetching adequate bride-wealth mesmerized them. It was a great disappointment to family heads since they could not build their stock, marry more daughters-in-law and improve their wealth (Joyce Akeyo, Hesbon Nyongo, and Joyce Odayo, 2000).

As a consequence, by the end of 1945, RAWA had managed to repatriate some women to the localities. For example in November 30, 1945 the then head of divisional police in Kisumu wrote to the Provincial Superintendent of Police explaining that the association has already succeeded in sending Luo women who have gone astray back to their reserves, that about ten girls have run out of town by members of RAWA. Some of these women were dressed in gunny bags. This officer further observed that:

It is well known that many girls are running away from their

husbands and their homes to resist forced marriages—such resistance is being encouraged by the missionaries. The male local African wishes to retain his power over his woman. This RAWA may well be designed for that purpose. The secretary John Odera has admitted to me that this is one of the reasons for wanting to form an association (PC/NZA/3/1/376, 1945, KNA).

The Provincial Superintendent likewise referred RAWA members to various laws relevant to their intentions. The sections he found relevant included section 177(1), 177(8), 146 to 149 of the Penal Codes, Government Notices 800/45, 567/1931, Immigration Ordinance and Vagrancy Ordinance. The officer, however demanded, an active and wholehearted co-operation of the association in bringing information and evidence to the colonial administration. But the entering of some Italian co-operators into the villages to get women, gave RAWA adequate reasons to convince the PC of their intentions. Using this excuse, members of the association caused a lot of panic to trained and qualified African women and girls migrating to search for employment in Kisumu Town. It was this that forced the inspector of schools to order that trained women be registered as professionals to safe guard them from the fear of being returned to the reserves (PC/NZA/3/1/376, 1945, KNA).

The colonial administration was not prepared in any way to fight this problem. They found their hands tied by the British law and the capitalist demands. In many instances, they preferred members of RAWA to raise the same issues in the native tribunals. The colonial demands were to be met at any cost, and it was in doing this that the British law had to be protected. The PC of Nyanza without hesitation, referred members of RAWA to section 13(a) ordinance 39 of 1930 which read that “*the native law and custom should only prevail in the area of jurisdiction of the tribunal, so far as it is not repugnant to justice or morality or inconsistent with the provisions of any order of the King in council or with any other law in force in the colony*” (PC/NZA/3/1/376, 1945, KNA). This section governed the actions of any association, which interested itself with the maintenance of law and order. Unfortunately most of the RAWA proposals were repugnant to justice and morality of the laws in force in Kenya colony. This was a great disappointment to RAWA.

Thus as from 1946 the association went outright to attacking the very foundation of the British law in Kenya. RAWA secretary, John Odera's letter to the PC explains it all. He notified the PC that:

Prostitution was not taking place between Ramogi women and other 'tribes' irrespective of caste (hence its absence from the tribal custom). It, however, originated from Europeans and Asians settlement in the colony and whose racial custom it seems has need... This practice obviously enticed African men, women, girls and boys after sometime, to follow this non-African practice. It must be recalled that, the then customary habit was between boys and girls, who were confined to native co-habitation and depended on mutual consent according to tribal law. It would be great discouragement to which in the past and the present, is their only source of unity in the every day village life is being replaced by a British law-a law of a race with a thousand years of civilisation... who would allow a virulent to flood his dwelling, if he can divert or stop it? Surely, people would be free without any such practices and roguery would diminish (PC/NZA/3/1/376, 1945, KNA).

As from July 31, 1946 RAWA resented various laws applied in the Kenya colony and asked for the integration of old laws and customs into those of the colony. Among the sections of resented laws included Laws of Kenya 1930 part II page 701, Native Tribunal Ordinance section 13(a), arguing that the provisions of this ordinances do not recognize the right and the importance of 'tribal laws' and customs in the areas concerned. That the Laws of Kenya volume X page 242, Native Christian Marriage and Divorce Ordinance 1931 section 10 was also opposed on grounds that it deprives the parents and the relatives powers to direct their daughter. Whereas under the native laws and customs women and girls of what ever age, whether married or not, just as well as men or boys are subject to parents or relatives directions. RAWA argued that the existence of these laws were responsible for the destruction of the community's unity and the prevailing moral decadence. On marriage, the association demanded that any dispute arising from respect to marriage contracts should, in the first place, be left in the hands of local elders known as *jodong ragwar* for decision with an option to appeal against any order

made by the said local elders to the chiefs court and then to the tribunal courts (PC/NZA/3/1/376, 1946, KNA).

As the arguments on which law should prevail should native law and custom come to conflict with the laws of the colony ranged, the PC of Nyanza complained that he had received information that charges are preferred against a number of women in towns, including widows and young women who were employed. He insisted that the native law and customs could only prevail so long as it did not come into conflict with the laws of the colony. He advised the association that within the laws of the colony, a widow or a girl, after attaining majority was no longer subject to her father's direction (vide native Christian marriages ordinance 1931 and cap.167, section 19). He then listed areas on which prosecution could be taken to include "*girls not being widows who have not yet attained the age of 18 years (contrary to native law and custom, leaving her parents home without consent), married women on complaint of the husband (adultery according to native laws and customs), women who keep a house, room or who let rooms or place of any kind whatsoever for purposes of prostitution*" (PC/NZA/3/1/376, 1946, KNA). By September, 1946 the *Kenya Confidential* indicated that the association's members had managed to follow a European who accompanied a married African woman to the native location. The European and the woman entered a room in which children of a family would ordinarily have slept and occupied the room with the African woman. Because police were called, no nasty incidence was reported and the woman openly boasted to the members of the association that she habitually co-habits with Europeans as she finds it lucrative (*Kenya Confidential*, PC/NZA/3/1/376, 1946, KNA).

The association then proceeded to Kaloleni in Kisumu. Here they arrested four women, punished them severely and sent them back to their rural homes. They at the same time invited father's and husbands to look for their girls and women in the township and prosecute them before township tribunal for leaving their father's homes without being married or having their father's permission contrary to native law and custom. In the case of a married woman, she was to be accused for adultery (see minutes of RAWA and PC Nyanza meetings 1946). RAWA further arrested women and girls found in the township for more than 48 hours

without identification pass or work. The Debating Society who constantly opposed the Association reported that RAWA had arrested many women and children. These women stayed for the whole day without food, had their hair shaved and dressed in a gunny bag. On the advise of the PC, RAWA declared that 'native' customs hold that girls and women, even when aged 50 and over are simple—remain at home as "*it would be madness to drive them away just because they are over 18 years or when daughter is married, father and husband must combine together in order to direct the girl along proper lines and it would be a folly to let her go her own way simply because she happens to be over 18 years*" (Jakobo Nyamita Amimo contribution during RAWA meeting with PC in Kisumu Resting house, 1946, KNA). That the "*allegation by women that they were not being properly cared for by their husbands was totally untrue*" (Eliakim Ndola as above, 1946).

To strongly consolidate its powers, between 1947 and 48, the Association came up with supplementary rules and regulations arguing that it was hard to think of eradicating such evils, but the future looks darker for the Ramogi people with this state of affairs in progress. That the future looked bleak unless drastic steps are taken by the Association in assisting the authorities to combat the menace of evils according to the will of the people and for the well being of the present and the future Ramogi generation. The additional rules and regulations included distillation of Nubian gin, livestock trade licensing, and disrespect for males, child neglect with regard to education and roaming in the township. Part four of the regulations basically focussed on marriage. Section 4 of RAWA laws and regulations demanded that, any one who intends to marry should fulfil the usual tribal obligation of marriage before the girl or woman's parents or relatives with liaison (Jagam) who has personal knowledge of both the bridegroom and the brides parents for reasons that, marriage without liaison often leads to dissatisfaction and trouble between the married couple and becomes difficult for elders to settle. RAWA in recognition of this concept sought to bring action against the following offences contrary to 'tribal' customs through or before the authorities for contravening the marriage laws and customs:

Any one who shall divorce his wife with whom he had been in union before he placed the case before the woman's or girls parents or relatives, liaison and RAWA of the area concerned

to prove reason necessitating a divorce. The same was to apply to women or girls aspiring to divorce husbands. No man or boy should get married to another girl or woman until dissolution of the bounds of her previous marriage is effected. The same was to apply to women and girls. No man shall take a girl without her parents or relative's consent. Any one who is not a member of Luo tribe, found having intercourse with Luo or other African tribe's girl or woman is guilty of offence and will be reported before the court by the above association. The RAWA is emphatic against producing a community of mixed blood or mulattos amongst Luo tribe and its members and the whole community is determined to arrest any Luo girl or woman found loitering in the township in the township without proper means of livelihood (PC/NZA/3/1/376, 1948, KNA).

On 19 October, 1948 RAWA wrote to the PC of Nyanza this time on Christian missionaries, mission centres and medical department. To the missionaries the letter was very particular about women who ran away from their husbands and stayed within missions. RAWA demanded, *“the practice should stop as it creates a lot of bad feeling between missionaries and Africans. It is being looked at by old men and young alike with abhorrence. Suppose the husband of the woman who stays with the mission dies, the consequence are always very difficult to settle according to customs. The worst offenders in this case were the Roman Catholic missionaries”* (PC/NZA/3/1/376, 1948, KNA). RAWA demanded that the medical department refuse to engage the women or girls without first obtaining the permission from husbands or father of the girl. As a result, the Association managed to make it difficult for women to acquire jobs or employment at the medical departments and mission centres. But the PC of Nyanza looked adamant as he directed that the medical department was only to engage women and girls as hospital dressers after their application had been sent to the DC for approval. The DC as a matter of procedure consulted with his staff and if necessary would refer the matter to the girl's home for opinion before engagement at the medical department. However, in Seme elders became notorious in turning down applicants arguing that either such women were married and committed in their marriages or bride-wealth had been paid for them or they

were just waiting to join their husbands (Oral information, Monica Orogno and Joyce Akeyo, 2000).

RAWA thus succeeded in limiting the Some women's responsibility of taking care of their welfare. They were not free as they thought. They could not take up opportunities in Kisumu Township despite their training. The family heads branded them names such as wicked women, disobedient daughters or prostitutes. As indicated, the association impacted negatively on women, particularly those married to migrant men, widows, runaway women and women with marriage difficulties seeking for survival in the townships. It undertook to stop, inspect, arrest and detain any African woman or girls visiting relatives in the town, attending church services or going about their lawful business to bazaar or market. They further shaved the hair of any woman or girls they arrested (PC/NZA/2/3/1/376, 1951, KNA). To Joseme, a Luo woman or girl could not go to town on her own wish because this was tantamount to prostitution (*chodo*) and ones, particularly older men, strongly condemned it.

Some women responded to RAWA demands in different ways. Some women asked, "*How they could wash outside the guard and leave out the inside?*" (Oral information Canon Nyong'o, 2000). How could they punish women and leave the men? Archdeacon L.J Beecher who wrote to RAWA secretary in November 1945 also observed the same. He noted to RAWA that "*but why not do something about the men who insist on using prostitutes? Why not make them shave and wear sack cloth? If men stopped using them, their trade would disappear*" (PC/NZA/3/1/376, 1945, KNA). Equally some of the RAWA members fell into women traps and became part of their prostitution activities. Some women even bribed RAWA officials for their survival as some migrated and stayed in the interior and remote parts of Kisumu town. Other women took to trade in safe areas, like Luanda and Butere (Oral information, Hesbon Nyong'o, 2000). Privileged women married to educated persons and members of the debating club in Kisumu joined together to attack RAWA, arguing that its demands were repugnant, uncivilized and outdated. They petitioned the colonial government through their wives to put a stop to the activities of the association. They claimed that the association had made it difficult for married women to visit their husbands in town.

Conclusion

In this paper, I have attempted to analyse the extent to which Seme women, girls and elders responded to the social and economic changes accentuated by the process of colonialism and missionary activities in post war era. The major forces that catalysed these social and economic transformations included the colonial demand for taxes and labour, missionary activities, the development of the railway line (which contributed significantly to the increase of British influence in Seme), and the growth of Kisumu Town. The most outstanding of all the impacts was the institutionalisation of male labour migration from the localities which exacerbated women's economic and social responsibilities as a majority of them were compelled to undertake duties that were traditionally meant for men. The institutionalisation of male labour migration deprived many women of love and companionship for a long time. It is no wonder that marriage, as a result, experienced savour difficulties. The situation was such that a majority of the men were unable to gather adequate bride-wealth, women rejected marriages they were unhappy with and girls refused to proceed to prearranged marriages. It was equally more economical and convenient to take back an errant wife than to be entangled in an effort to reclaim the original bride-wealth. Deliberately or not, colonialism and missionary activities in Seme location, transformed the very nature and meaning of both marriage and household responsibilities. For instance, marriage became a relationship of absence consisting of lengthy periods during which husbands and wives lived apart from one another. As a consequence, the daily reproduction of the household had to be shouldered entirely by the women. Therefore, post war era in Seme ushered in an era in which social institutions highly cherished were progressively challenged and rendered unstable.

The reaction to these were varied, some women endured the difficulties in their marital homes experimenting with a number of economic possibilities including the intensification of agriculture during the short rainy period, the growing of white maize, groundnuts, cotton and other cash crops. Other women adopted new crops and seed varieties using a stronger and long lasting hoe to cultivate. As well others tried with remarkable success long and short distance trade involving a variety of

commodities. These hardships eventually led a sizeable number of women and girls to reject what was traditionally expected of them and to act and behave like men. Others run away from their husbands to live with other relatives in far away places either trading, selling beer or in wage employment. Other women contracted new marriages on their own and disregarded arranged unions.

The extension of the British power in Seme was not at all a negative development to all women and girls. The structures that were associated with the British presence encouraged some women and girls to challenge the authority of the elders for their own well-being. As these developments inspired and created many opportunities for women and girls in the townships, they however signalled to the elders the onset of social chaos never witnessed before in Seme. As a result, as from 1945, disenchanted elders met and reorganised the Luo Union to deal with those failing to conform to traditional norms and values. Threatened as they looked, these elders managed to revamp an association called RAWA to reverse the perceived disintegration of the Luo society. RAWA became an effective tool to be used to curb what the elders thought of as a menace confronting the Luo. Unfortunately, this association hindered and mostly discouraged qualified women from taking up wage employment in Kisumu town, particularly in sectors such as medical departments, Asian hotels and as domestic female servants in European and Asian homes. Women's exercise of mobility, sexuality and cash earnings became articulated as a crime against the well-being of the Luo society. The post war era was a decade in which the battle line between the male elders and migrating women was definitely drawn.

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Oral sources

James Awuor (5 Dec. 2000) South West Seme, 70yrs

Joyce Akeyo (11 Dec. 2000) South Central Seme 81yrs

Hesbone Nyong'o (13 Dec. 2000) Maseno, 90yrs

Festus Olang (13 Dec. 2000) Maseno 71yrs

Joyce Odayo (18 Dec. 2000) South West Seme, 81yrs

Awuor Ochoro (18 Dec. 2000) South West Seme, 76yrs

Monica Orogno (21 Dec. 2000) South West Seme, 70yrs

Naboth Obolla (22 Dec. 2000) North Central Seme, 81

Joseph Obumba (22 Dec. 2000) North Central Seme 82yrs

Janes Nyagudi (2June 1999) South West Seme, 78yrs

Henry Jura (28 Dec.2000) South West Seme, 65 yrs

Archival Documents

Covering dates	Document reference number	Title of the document
1905, 1906, 1909	PC/NZA/1/1	Nyanza Province Annual Report (NPAR)
1942–1945	PC/NZA/3/1/358	War Contribution
1942–1947	PC/NZA/2/17/15	Industries
1942–1945	PC/NZA/3/1/358	Associations
1944	PC/NZA/2/20/20	Female Labour
1944	PC/NZA/2/1/161	Female Labour

Covering dates	Document reference number	Title of the document
1944	PC/NZA/3/13/6	Female Labour
1944–1950	PC/NZA/2/1/169	African Welfare
1945	PC/NZA/3/1/321	Ramogi
1945	PC/NZA/2/2/91	Ramogi
1945	PC/NZA/3/1/358	Post WAR Development
1945	PC/NZA/3/1/572	African Welfare
1945	PC/NZA/3/1/368	Associations
1945	PC/NZA/3/1/570	Post War Development
1945–1947	PC/NZA/2/3/1/376	Associations
1945–1951	PC/NZA/3/6/131	Training of Africans
1946	PC/NZA/3/15/85	Native Land Tenure
1951–1955	PC/NZA/3/1/548	Development
1953	PC/NZA/3/1/324	Associations
1955	PC/NZA/4/4/91	CNDAR
1956	PC/NZA/4/4/101	CNDAR
1956	PC/NZA/4/4/92,94,97, 101	CNDAR
1956–1958	PC/NZA/3/1/563	Community Development
1958	PC/NZA/4/4/105	Community Development
1945	DC/KSM/1/1/194	Social Welfare
1945–1950	DC/KSM/1/1/19/6	Social Welfare
1946	DC/KSM/3/1/307	Ramogi
1946-1949	DC/KSM/1/4/10	CKDAR
1947–1958	DC/KSM/1/22/202	CKDAR
1947	DC/KSM/1/12/6	CKDAR

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1947–1950	DC/KSM/1/1/196	CKDAR
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Transport et pauvreté au Kenya

Chantal Béranger*

En Afrique de l'Est, au Kenya, comme ailleurs le chemin de fer est essentiel pour le transport public des passagers et des marchandises. Cependant si durant la période coloniale le train était le principal mode de transport, aujourd'hui le véhicule routier l'a dépassé et la population comme la plupart des entreprises utilisent des camions, des autocars, des mini-bus (*matatu*), des automobiles pour leur déplacement personnel et pour le commerce. Actuellement la route permet le transport de 70 % des marchandises débarquées au port de Mombasa. Le chemin de fer véhicule seulement 16 % des conteneurs.

Le réseau ferré fut construit pour des raisons à la fois géostratégique, militaire et économique où l'Ouganda et les sources du Nil étaient les principales motivations. Nous n'allons pas reprendre ici l'histoire de la construction des chemins de fer du Kenya que l'on peut trouver dans de nombreux ouvrages (Hill, 1949 ; Amin, Willetts, Matheson, 1986), mais aborder la période contemporaine. Le réseau ferroviaire kenyan est important et s'étend aujourd'hui sur 2597 km (KRC¹). Il est composé d'une voie « dite principale » qui relie le port kenyan de Mombasa à la capitale de l'Ouganda, Kampala, et de voies secondaires.

Si durant la colonisation et jusqu'en 1993 le chemin de fer avait une position de quasi-monopole, l'Etat imposant le rail pour le transport des marchandises, la situation s'est modifiée au profit de la route. En effet, depuis l'indépendance en 1963, les routes bitumées ont augmenté de près 400 % passant notamment de 6730 km en 1985 à 8937 km en 2003 (CBS²) soit 2207 km de plus. Le parc automobile est passé de 398 000 véhicules en 1993 à 668 000 en 2003 (251 000 en 1985) (CBS).

* Doctorante, UMR Prodig, Université Paris 1, IFRA.

¹ KRC: Kenya Railway Corporation.

² CBS: Central Bureau of Statistics (Republic of Kenya - Nairobi).

Pourquoi ce glissement vers le tout routier ? Il est lié à l'intervention politique dans la gestion, les opérations et les politiques des prix dans les années 1970 jusqu'au début des années 1990 ; la KRC n'a pas pu résister à la concurrence croissante de la route (World Bank). Depuis 1993, les bailleurs de fonds ont pratiquement cessé d'allouer des crédits à la KRC qui a donc dû améliorer sa gestion. Par ailleurs le temps de transport par train est long et il n'existe pas de train de passagers et de marchandises chaque jour pour toutes les directions. Si la voie unique, la sinuosité et la pente de la ligne, en zone montagneuse, sont des raisons à cela, c'est surtout le manque de locomotives puissantes, le manque de wagons et de voitures de voyageurs qui en sont responsables. Ensuite, la concurrence rail-route n'a pas facilité les choses à la KRC d'autant que les transporteurs routiers, pour la plupart, assurent une maintenance minimum de leur véhicule afin de réduire les coûts et avoir des tarifs bas. Pour les mêmes raisons, les camions sont surchargés, roulent trop vite, sont dangereux, polluent, et détériorent les routes. Dans le même temps, la maintenance des routes n'est plus assurée faute de budget suffisant. Au bout du compte, nous avons d'une part une compagnie de chemin de fer à bout de souffle, d'autre part un réseau routier complètement dégradé. Malgré des prix légèrement plus bas que la route, la perte de confiance des clients de la KRC a été inéluctable. Ainsi la concurrence rail-route non maîtrisée a affaibli le rail et comme de surcroît l'Etat n'a pas les moyens financiers d'entretenir les routes, c'est tout le système de transport public qui s'est effondré.

Alors que la pauvreté augmente depuis un peu plus d'une dizaine d'années, cet article a pour objet de comprendre si la politique des transports a une incidence forte sur le développement économique des plus pauvres. Nous examinerons l'offre et la demande de transport puis les conséquences de celles-ci.

1. L'offre de transport

Nous savons que la ville de Nairobi s'est créée grâce au chemin de fer et qu'en 1902, le coût d'une tonne de fret transporté par chemin de fer était de moins de £10 alors qu'il était de £130 par des porteurs humains. Le chemin de fer a révolutionné le

concept du temps-distance au Kenya en faisant passer de 75 jours à pied à 3 jours par le train, le temps de transport entre Mombasa et Kampala. Le rail a permis la réorganisation des échanges en les rendant plus sûrs, ouvrant ainsi le commerce au monde par le port de Mombasa et à l'intérieur du pays par les gares des villes traversées (Ogonda, 1992).

La construction de la ligne de chemin de fer a été réalisée de façon à ce que les communautés européennes ne soient pas éloignées de plus de 40 km d'une gare seules ont dérogé à cette « règle » les régions de Sotik-Kericho et de Narok-Mau Escarpment bien qu'au départ la ligne passait à Elementeita mais en 1949 un réalignement a été opéré sur Gilgil (Ogonda, 1992). D'ailleurs on peut remarquer sur une carte que les pistes mènent vers la voie ferrée en suivant au mieux le relief, surtout dans la Province Centrale. Les fermiers portaient les produits agricoles à la gare, et le train effectuait le trajet le plus long jusqu'au port de Mombasa.

Ainsi le chemin de fer a été la charpente du peuplement colonial. Il a facilité la croissance des centres urbains traversés par une voie ferrée. Il a été le fer de lance de l'économie coloniale dirigé vers l'exportation notamment des produits agricoles bien qu'il ait permis d'enrayer une famine autour de Machakos, en 1898–99, en transportant du riz pour le peuple Akamba.

Puis beaucoup plus tard, dans le cadre du développement du transport en Afrique, l'Organisation des Nations unies a proclamé les Décennies des Nations unies pour les transports et les communications en Afrique (UNTACDA I et II), la première entre 1978 et 1988 et la seconde de 1991 à 2000. Les Décennies avaient principalement pour objectif d'encourager la construction de routes transafricaines praticables en tous temps, notamment la route 8 Lagos–Mombasa de 6260 km. En outre, plusieurs corridors de transport de transit ont été retenus ainsi que des programmes pour faciliter le transport dans ces corridors, en Afrique de l'Est, Mombasa–Kampala–Kigali–Bujumbura–RDC (corridor Nord) est l'un de ceux là, de même que Dar-es-Salaam–Kigali–Bujumbura–RDC (corridor central) (ECA). Si tout le monde s'accorde à dire que le secteur des transports est un élément déterminant du développement, les efforts financiers ont

été jusqu'à présent dirigés vers les infrastructures de transports routiers.

Avec le corridor Nord, le port de Mombasa dessert l'Ouganda, le Rwanda, le Burundi et la RDC avec une route de 2100 km, une voie de chemin de fer de 1338 km (Mombasa–Kampala) et des services de ferry sur le lac Victoria. Le doublement de la voie de chemin de fer par une route, dans un but du partage des charges, est-il profitable au développement des pays sans littoraux ainsi que pour le principal pays de transit : le Kenya ?

Qu'en est-il actuellement pour les populations kenyanes ? Aujourd'hui le transport routier est le mode offert à la population et aux entreprises (camions, camionnettes, autocars, *matatus*, taxis, automobiles). Les pauvres (plus de 60 %) ne possèdent pas d'automobiles. Ils marchent à pied, roulent à bicyclette ou bien utilisent des chariots tirés par des hommes ou des ânes. Il existe aussi le transport par chemin de fer, en troisième classe. Mais les trains de passagers ne sont pas quotidiens. Ils sont lents, souvent de nuit sauf sur les lignes secondaires. Cependant bien que moins cher que le transport routier, l'utilisation du train fait l'objet de certaines restrictions, et des lignes sont fermées aux passagers.

Les restrictions de transport :

Si les voitures de passagers de 3^{ème} classe existent entre Mombasa, Nairobi et Kisumu, depuis le 10 juillet 1995, il n'est plus possible à la population de porter des marchandises, au train, dans les petites gares. Seules les gares de Mombasa, Nairobi, Nakuru, Kisumu, Eldoret, Butere et Kitale sont habilitées au transport des petites marchandises. Il s'agit du renforcement d'une recommandation existante (1988). Et depuis le 16 mars 1998, compte tenu du manque de wagons, les périssables ne sont plus transportés. Le poids minimum pour un transport par train est de 10 tonnes. En revanche un passager a le droit de transporter avec lui 70 kg en première classe et 40 kg en 2^{ème} et 3^{ème} classe ce qui est trop peu pour faire du commerce. Cette interdiction est venue du fait que les passagers occupaient plusieurs places assises avec leurs paquets alors qu'ils ne payaient que leur place de transport. Il y avait donc un manque à gagner pour les chemins de fer. Actuellement, la KRC qui perd de l'argent, accepte toutes les

petites marchandises sur les trois lignes secondaires en fonctionnement. On peut voir notamment des sacs de pommes de terre être chargés dans le train sur la ligne de Nanyuki, mais aussi des meubles, des bicyclettes et autres biens personnels.

Les lignes ouvertes ou fermées :

- **Eldoret–Kitale** fonctionne de façon saisonnière uniquement pour les marchandises (avril/mai et octobre/novembre). Elle est fermée depuis mai 2005, par manque de locomotive il n'y aura pas de train en octobre et le transport de passager est arrêté depuis 1972.
- **Gilgil–Nyahururu**, depuis une quinzaine d'années la ligne est fermée aux marchandises et aux passagers. Une remise en service a été effectuée pour 4 mois en 2004 mais le trafic de marchandises n'était pas suffisant pour rentabiliser ce tronçon. Il est de nouveau fermé.
- **Kisumu–Butere**, Butere qui n'est relié que par des pistes est désenclavé par le rail. Cette liaison avait été arrêtée car non rentable mais la demande publique par l'intermédiaire de services sociaux a été très forte et les trains circulent de nouveau quatre fois par semaine dans les deux sens (Maiga, KRC). Les 62 km sont parcourus en 3h50. La composition du train est de 3 voitures de 3^{ème} classe et d'un ou deux fourgons. En 1990, la liaison était quotidienne.
- **Konza–Magadi** a été privatisée et fonctionne uniquement pour les marchandises (Soda Ash). En 1962, un train quotidien de passagers circulait sur ce tronçon.
- **Mombasa–Nairobi**, le trafic de marchandises se fait le plus souvent de jour. Un train de passagers circule la nuit « Jambo Kenya Deluxe ». Il part à 19h et arrive le lendemain à Nairobi à 9h, soit 14h de voyage pour faire 530 km. Il circule trois fois par semaine entre Mombasa et Nairobi (mardi, jeudi et dimanche), de même entre Nairobi et Mombasa (Lundi, mercredi et vendredi). Le train est composé généralement de 3 voitures de 1^{ère}

classe (2 couchettes par compartiment), 9 voitures de seconde classe (4 couchettes par compartiment), 4 voitures de troisième classe (70 places assises confortables par voiture), ainsi que de 2 fourgons de queue, une voiture restaurant (28 places) et une voiture cuisine. Le personnel assure 4 à 5 services de restauration essentiellement vers les passagers de premières et secondes classes composées d'une forte majorité de touristes. En 1962, il existait, chaque jour dans les deux sens, un train semi-direct, départ 18h30 de Mombasa, arrivée à 8h00 à Nairobi (soit 14h de voyage) et un omnibus, départ à 15h30 et arrivée à 7h10 à Nairobi soit 15h40 de transport. En 2002, la liaison est assurée quatre fois par semaine et en 2005 trois fois seulement.

- **Nairobi–Nakuru–Kisumu**, comme pour Mombasa–Nairobi, sur ce tronçon circule des trains de marchandises et la nuit un train de passagers « Port Florence Express » fonctionne trois fois par semaine. Il parcourt les 398 km en 13h15. Le train est composé généralement de 3 voitures de 3^{ème} classe, d'une ou deux voitures de première classe, d'une voiture restaurant, d'une voiture cuisine, de trois ou quatre voitures de seconde classe et d'un fourgon de queue. La voiture restaurant est peu fréquentée pour la restauration mais l'est plutôt pour un prendre un verre au bar ou bien assis autour d'une table. En 1962, il y avait deux trains quotidiens.
- **Nairobi–Nanyuki**, remise en service en 2004, traverse le pays kikuyu où circulent des trains de marchandises et de voyageurs. Le train de passagers, composé de 4 voitures de 3^{ème} classe (80 places par voiture) et d'un fourgon de queue, part le samedi de Nairobi à 8 h et arrive à Nanyuki à 17 h, soit 9 h pour faire 220 km. Le retour se fait le dimanche. Un omnibus lent mais très apprécié de la population car la ligne passe souvent loin de la route et permet ainsi de désenclaver les villages traversés par le train. En 1962, les trains étaient quotidiens.

- **Nakuru–Eldoret–Malaba** est sans train de passager depuis 6 ans. Il n'est donc plus possible pour la population d'aller à Kampala en train. En 1962, il existait dans chaque sens : 4 trains entre Nairobi et Nakuru (2 omnibus et un semi-direct chaque jour et en plus un semi-direct les lundi, jeudi et samedi). Gilgil–Thomson's Falls avait deux trains chaque jour et est fermé actuellement. Nakuru–Eldoret–Kampala avait un omnibus chaque jour et un semi-direct trois fois par semaine.
- **Voi–Taveta** est une ligne internationale où circulent des trains de marchandises pour la Tanzanie. Un train de voyageurs de troisième classe fonctionne régulièrement deux fois par semaine. Il part à 5 h de Voi et arrive à Taveta à 10 h, soit 5 heures pour parcourir 105 km. En 1990, la liaison était quotidienne.
- **Un service de banlieue**, Nairobi–Limuru et Nairobi–Thika, existe du lundi au vendredi. Ce service fonctionne à la limite de la sécurité, avec des trains bondés, en raison du manque de matériel roulant.

On remarque que non seulement le temps de transport est extrêmement long mais qu'en plus les trains ne sont pas quotidiens. C'est un handicap majeur dans le choix du mode de transport par la population. De plus le nombre de trains par jour a largement diminué par rapport à 1962, dernière année avant l'indépendance. La population est donc obligée d'utiliser les transports routiers qui sont non seulement quotidiens mais en plus relie chaque destination plusieurs fois par jour beaucoup plus rapidement.

2. La demande de transport

Le Kenya Railways Corporation étant dans l'impossibilité d'organiser le transport de voyageurs de manière à desservir chaque destination de manière efficace a vu son trafic baisser en nombre de passagers/km passant de 1597 en 1988 à 731 en 1989, et à 295 en 2003 (à noter que dans ce total figurent les touristes empruntant le Mombasa–Nairobi). Alors que l'enquête menée, en juillet–août 2005, en compagnie d'un Kenyan parlant le Swahili, le

kikuyu, l'anglais et le français, notamment sur la ligne de Nairobi–Nanyuki et celle de Kisumu–Butere, a montré que la population préfère le train pour des raisons de confort, de coût et de sécurité :

En train :

Le confort : les places assises sont confortables, les gens ne sont pas trop serrés, ils peuvent : étendre leurs jambes, se lever, faire quelques pas, utiliser les toilettes, regarder par la fenêtre, lire, écouter un walkman ;

La convivialité : le transport familial est aisé pour tous notamment avec les enfants et les personnes âgées. Il est plus commode également pour les malades. Il est possible de manger et de boire sans être bousculé. L'intérieur du train est calme. Les passagers peuvent parler avec leurs voisins alors que dans les *matatus*, la radio dont le son est très fort indispose beaucoup de personne ;

La sécurité : les passagers du train se sentent en sécurité dans le train. En matatu, ils sont stressés et ils ont peur des accidents. Ils sont serrés, les genoux bloqués contre le siège de devant (les accidentés ont la plupart du temps les jambes brisées). Il n'y a pas de toilettes, en cas de nécessité l'autocar s'arrête en pleine nature. Si les *matatus* ou les autocars paraissent plus rapides, ils ne le sont pas autant qu'ils pourraient l'être, car il y a beaucoup de perte de temps. Le matatu ou l'autocar ne part que lorsqu'il est plein, et l'attente peut durer plus d'une vingtaine de minutes. Ensuite la traversée des grandes villes est extrêmement longue. Prenons l'exemple d'Eldoret, l'autocar s'engouffre sur la place centrale qui sert de gare routière. Il y stationne plus d'une heure, en plein soleil, dans un encombrement semi-organisé. Le conducteur attend que les véhicules placés devant lui se remplissent. Ensuite le bus ou le mini-bus fonce pour rattraper le « retard ». Les accidents de *matatus* remplissent les pages des journaux kenyans, les plus graves ont les honneurs de la télévision, au moins un par semaine. En 2004, la vitesse a été limitée à 80 km/h et les ceintures de sécurité sont devenues obligatoires. Mais les accidents, s'ils ont diminué, sont encore très nombreux.

Le transport des bagages en train est facile, il suffit de mettre sa valise sur le porte bagage disposé au-dessus de sa place assise ou bien si les bagages sont plus nombreux ou plus

volumineux, il est possible, en payant, d'utiliser le fourgon de queue. Alors qu'en matatu seule de très faibles quantités peuvent être transportées, de même en autocar où les bagages sont placés dans la soute. La peur des vols de bagages et des détournements de véhicule est présente chez tous les enquêtés.

Le coût du transport par train est inférieur à celui des *matatus* et des autocars. Il en va de même pour le transport de marchandises ;

En fait le potentiel de personnes à transporter par le train est très important mais tous reprochent le manque de train lorsque la ligne est ouverte et l'absence de train lorsque la ligne est fermée. La demande de transport par le chemin de fer, pour faciliter le commerce, au moyen de trains quotidiens, de directs, semi-directs et d'omnibus a été très claire pour l'ensemble des enquêtés.

Une remarque a été faite plusieurs fois : lorsqu'il n'existe pas de train, les agriculteurs ne cultivent pas pour la vente. En effet ils ne peuvent pas vendre leur production, car les prix des transports routiers sont trop élevés et ils ne font aucun bénéfice, voire même perdent de l'argent. Ainsi les surplus agricoles finissent par pourrir alors que ces paysans sont très pauvres et ont besoin d'argent.

Par ailleurs des souhaits ont été exprimés :

- Vendre plus rapidement les billets et ouvrir le guichet plus longtemps pour faciliter les demandes de renseignements ;
- Faciliter et aider à la prise en charge des marchandises lourdes (sacs de pomme de terre, de maïs etc.) en gare notamment pour les plus faibles physiquement (les femmes, les personnes âgées, les malades) qui font du commerce ;
- Contribuer à l'amélioration des flux de marchandises par un effort de communication vers la population, bien souvent les pauvres ne savent pas comment utiliser le train ;
- Eviter la hausse des tarifs sans prévenir car le pauvre arrive avec juste le compte de monnaie pour payer son billet, si le tarif a augmenté, il ne peut pas monter dans le train ;
- Offrir des arrêts à des points stratégiques différents des villes pour faciliter le transport des produits agricoles.

Enfin, souvent a été abordé le problème des intermédiaires entre l'agriculteur en campagne et le vendeur en ville. Les

intermédiaires exploitent les paysans qui au final ne gagnent rien sur leur production. Un prix de base fixé par l'agriculteur et un service de transport efficace et bon marché contribuera à ce que le chemin de fer devienne un régulateur économique entre ville et campagne.

3. Conséquences de l'absence de moyen de transport nécessaire au plus grand nombre

Le coût du transport routier empêche donc le commerce pour les plus pauvres c'est-à-dire la grande majorité des paysans. De fait la migration rurale s'est accrue vers les villes, la population urbaine est passée, de 1989 à 1999, de 3,9 millions de personnes à 5,4 millions. La majorité des migrants ont été des jeunes adultes âgés de 20 à 49 ans à la recherche d'emploi. Entre 1998 et 1999, une migration positive a été enregistrée dans la région de Nairobi (+ 192 110), de Mombasa (+ 68 420) et de la Rift Valley (+ 167 475). Alors que les régions Ouest perdaient 54 038 hab. et l'Est 42 603 hab. Les régions centrales ont eu également une migration positive de 21 569 hab. bien que des districts se dépeuplent [Murang'a (- 28 174) et Nyeri (- 11 467)], de même pour Nyanza qui enregistre 28 492 migrants de plus, alors qu'à Homa Bay la population a diminué de 4514 personnes ainsi qu'à Siaya (- 10 462) (CBS, 2004). Les migrants sont surtout des hommes. Les femmes mariées restent au village pour s'occuper de la famille et faire de la culture d'autoconsommation. Les femmes célibataires figurent comme extrêmement pauvres d'autant que l'accès à la terre est très difficile. Cependant ces dernières années, les jeunes femmes participent de plus en plus à la migration notamment celles venant des régions Centre et Ouest.

La pauvreté des zones rurales, du fait notamment du manque de transport nécessaire aux besoins des populations agricoles, est un frein non seulement au développement mais est plus précisément une ouverture à la migration des plus pauvres vers les bidonvilles des zones urbaines où s'entassent les gens en demande d'emploi. Demande à laquelle l'offre ne peut pas répondre d'une part parce que les emplois en ville demandent une qualification professionnelle que ne possèdent pas les arrivants, et d'autre part parce que le niveau scolaire en swahili et en anglais est

trop faible pour pouvoir accéder aux formations. La population urbaine active est dominée par les hommes mâles, ayant suivi un enseignement primaire complet, secondaire et plus (CBS, 2004).

La ligne de Nanyuki vient de rouvrir. Il convient d'attendre quelque temps pour connaître l'impact de la réactivation des échanges par la voie ferrée, pour le commerce et pour la baisse de la pauvreté. Cependant cette ligne fonctionnait jusqu'à Thika, et on peut constater des poches de pauvreté dans des districts situés plus au nord, ceux-ci contribuent pour une part à la pauvreté des districts, alors que nous sommes en plein territoire Kikuyu où le pourcentage de population en dessous du seuil de pauvreté n'est que de 5 à 10 % alors qu'il est de 25 à 30 % et plus dans le Nyanza (CBS).

L'observation des cartes «Where are the poor?» (CBS, 2003) montre que les régions du Nyanza, Western, et de East-South sont notamment celles qui ont un écart négatif au seuil de pauvreté le plus important. De plus le Nyanza et le Western accusent les densités les plus hautes du Kenya (Nyanza, moyenne 350 hab/km², Kisii, Gucha, Nyamira, Vihiga et Kisumu 509 à 886 hab/km²). East-South est moins dense mais enregistre un nombre d'habitant élevé (4 631 779 hab., 1999). Le nombre d'enfants par femme est de 5 à 7 alors que pour les régions les plus riches il est de 3 à 4 (CBS, 2003), (Kenya 4,9). Les provinces de Nyanza et de Western sont aussi celles où l'on vit le moins longtemps (38 à 44 ans). Hormis le North Eastern très peu peuplé, c'est à nouveau Nyanza qui détient le record avec le moins d'enfant vacciné (Nyanza : 38 %, Kenya : 57 %, région centre : 79 %). C'est aussi Nyanza qui a la mortalité infantile la plus importante du Kenya soit : 133 pour 1000 naissances avant le premier anniversaire, et de 206 pour 1000 morts avant l'âge de 5 ans.

Si l'on compare la population totale de chaque province avec le nombre de malades et le nombre d'hôpitaux, de centre de santé et de dispensaires (Fig. 1), avec les éléments ci-dessus, on remarque que bizarrement il y aurait moins de malades que l'on pourrait attendre dans le Nyanza et le Western (de même pour le North East). Est-ce une réalité ou bien s'agit-il d'un vide statistique inhérent au fait que les malades ne vont pas tous dans les centres médicaux et / ou qu'ils sont décédés avant d'avoir pu s'y rendre — ce par manque de transport bon marché — et de fait ne sont pas

recensés comme malades. Ou bien s'agit-il qu'il n'existe pas suffisamment d'institution de santé. Ce qui n'est pas réellement vrai pour le Nyanza plutôt bien doté par rapport aux autres provinces, bien que légèrement inférieur à la moyenne pour le nombre de lit d'hôpital pour 100 000 hab. (si l'on ne tient pas compte de la province de Nairobi, capitale du pays).

Fig. 1: Comparaison du nombre de malades avec la population totale et le nombre d'établissements de santé par province

Province	Population Recensement de 1999	N° de malades enregistrés	Institution de santé			Lits d'hôpitaux	
			Hopitaux	Centre de santé	Autres centres et dispensaires	N° de lits	N° de lit pour 100 000 hab.
Nairobi	2 143 254	655 039	54	36	312	7 005	328
Central	3 724 159	2 804 912	46	49	367	4 421	177
Coast	2 487 264	2 239 339	58	75	671	6 736	145
Eastern	4 631 779	2 976 608	6	9	56	1 537	160
Norh East	962 143	166 750	51	81	349	7 513	202
Nyanza	4 392 196	1 740 399	88	151	968	11 240	161
Rift Valley	6 987 036	2 436 694	87	108	303	10 006	228
Western	3 358 776	133 651	59	84	167	5 920	178

Source : Central of Bureau of Statistics, 1999, 2000, 2004

Si en général, ces régions sont traversées par une route goudronnée, en plus ou moins bon état, la plupart des districts n'ont que des pistes en terre, difficile ou impossible à emprunter en saison des pluies. En saison sèche, elles sont bourrées de nids de poule qui rendent les trajets longs et dangereux, augmentant le coût du transport car les véhicules consomment plus de carburant et s'usent prématurément.

La question du transport au Kenya est non seulement importante, mais vitale pour les populations les plus pauvres soit : 11 367 000 pauvres pour 21 618 000 habitants (CBS) en zone rurale (52 %), auxquels il faut ajouter les pauvres des villes qui n'arrivent pas à s'insérer dans la vie active urbaine (hormis dans l'informel) soit : 2 277 000 pauvres pour 4 924 000 habitants (CBS) en zone urbaine (46 %). Le pourcentage de pauvreté total a augmenté depuis 1990 (1980 : 48 %, 1990 : 46 %, 1999 : 51 %) a priori au moment où les chemins de fer ont connu des difficultés et où la route assure la presque totalité du transport de voyageurs et de marchandises.

Comme le souligne E.M. Irandu (2005), les montagnes, les collines et les pentes raides ainsi que le climat humide mais aussi les sécheresses gênent le transport et dans ces régions la construction et l'entretien des routes et des chemins de fer sont très chers. Cependant nous nous attachons à mettre en exergue que les relations entre les régions, entre les différentes altitudes (aux cultures différentes selon les altitudes comme au Kenya), sont indispensables aux échanges de produits agricoles, aux frottements des cultures pour un développement durable. Promouvoir les richesses d'un pays sans un réseau de communication fiable, irréprochable quant à son fonctionnement, pose problème à la fois pour les populations pauvres mais aussi pour les entreprises. Les coûts de transport élevés freinent les exportations et augmentent les prix à la consommation des pays sans littoral. Les pays enclavés africains ont des frais de transport en pourcentage de la valeur des importations de 20,69 (Pays en développement : 8,70, Afrique : 12,65, Afrique de l'Est 12,35). Ainsi la route apparaît comme n'étant pas le mode de transport le plus adapté en Afrique. Le coût par la route du transport de conteneurs Mombasa–Kampala (1440 km) est de 2,26 \$ / km (CNUCED, 2001), (Dar-es-Salaam–Kigali, 1650 km, 3,02 \$ / km, Dar-es-Salaam–Bujumbura, 1750

km, 2,96 \$/km) alors que par le train le tarif est d'environ 1,66 \$ / km pour 1000 à 1100 km (KRC, 2005). Si les ports et de fait les couloirs de transit de Mombasa et de Dar-es-Salaam ne sont pas vraiment concurrents (Charlier et Hoyle, 1995), on remarque que si les chemins de fer fonctionnaient de façon optimum (rapidité, ponctualité avec un nombre de locomotives et de wagons suffisants), la concurrence serait entre le rail et la route mais que le gagnant serait indubitablement le rail.

Si le coût de la construction d'un chemin de fer est supérieur à celui d'une route, son utilisation est moins chère et sa durée de vie est largement supérieure à celle de la route (rail plus de 40 ans, route goudronnée 3 à 4 ans, piste une saison). Le chemin de fer se pose en règle générale comme un meilleur intégrateur socio-économique (Béranger, 2004 et 2006) notamment pour les pauvres qui peuvent ainsi accéder, à moindre frais, aux marchés, aux centres de santé, aux écoles etc. Les réseaux marchands, routiers, ferroviaires ainsi que les équipements de santé, de scolarité, d'apprentissage etc. sont étroitement imbriqués et dépendants des uns et des autres. Compte tenu de l'importance stratégique, économique, sociale des transports, nous nous demandons qui doit en avoir la gouvernance au-delà de la gestion intrinsèque, et doit-il y avoir gouvernance ? La bonne gestion du rail et sa complémentarité avec la route peut-elle suffire à réguler l'économie du pays. Il semble que le chemin de fer relayé aux gares par des véhicules routiers sur un rayon de 40 km autour de la gare, soit une solution au développement durable comme sur la ligne de Nacala au Mozambique ? (Béranger, 2004, 2006).

La privatisation de la KRC et de l'UR (Uganda Railways) devrait être votée prochainement par les instances gouvernementales. La future concession pourra-t-elle financièrement acheter ou louer toutes les locomotives, les voitures et les wagons nécessaires au fonctionnement des lignes ? Pourra-t-elle payer les factures de réparation des locomotives actuellement en Ouganda et qui font cruellement défaut au Kenya ? Pourra-t-elle réhabiliter la ligne Nakuru-Kisumu ? Pourra-t-elle augmenter le trafic de passagers et le trafic de marchandises régionaux, nationaux et internationaux ? Autant de problèmes qui sans l'octroi d'un prêt semble difficile à résoudre sachant qu'auparavant la KRC s'est déjà beaucoup endettée. L'Etat remboursera-t-il les sommes

payées par la KRC pour réparer les routes ? La vigilance s'impose si l'on en croit ce qui se passe dans le cas de la privatisation de la ligne de Nacala (Mozambique – Malawi) où depuis cinq ans aucune amélioration n'a été opérée¹, pourtant les balances commerciales sont positives au Mozambique (de même au Kenya dans une moindre mesure).

La KRC et l'UR sont engagés dans une concession où les matériels de transport et les crédits seront contrôlés par une compagnie privée. Les entreprises pré-qualifiées pour cette privatisation étaient NLPI Private Limited of Mauritius, CANAC Inc of Canada, Maersk Kenya Limited, RITES Limited of India and China Railway First Group of China, UK-based Magadi Soda Company and Sheltam Trade Close Corporation of South Africa. On s'attend à ce que la concession licencie 20 % du personnel mais les licenciés seront soutenus par la Banque mondiale. Les effets attendus de la privatisation sont le passage du trafic de la route au chemin de fer (World Bank, 2003) de façon à réduire la congestion des routes, à diminuer la pollution et à attribuer moins de budget à l'entretien des routes. D'autres avantages liés à des prix de transport bas sont attendus : la promotion de l'intégration régionale, la croissance économique et commerciale devraient être stimulée et augmentée. La concession devra donc augmenter l'efficacité du rail tout en maintenant les services de marchandises et de passagers. Le secteur privé sera le moteur qui conduira l'économie alors que le gouvernement fournira l'environnement nécessaire (*Daily Nation*, mars 2005). Il semble que, compte tenu de la croissance prévisible du trafic, dans un avenir proche le doublement de la voie entre Mombasa et Nakuru deviendra indispensable, de même qu'une prolongation de la ligne de Kisumu pour traverser et désenclaver le Nyanza.

Le 14 octobre 2005, le Rift Valley Railways Consortium (RVRC) détenu majoritairement par la société sud-africaine Sheltam Rail Company a remporté la concession pour 25 ans. Ce résultat met fin au long processus de privatisation encouragé par la Banque mondiale. Les partenaires de cette concession se répartissent ainsi :

¹ *African Review of Business and Technology*, March 2005, Underfunding de rails, Nacala line, p. 45.

- Sheltam Rail Company (Pty) Limited, South Africa (61 %)
- Comazar (Pty) Limited, South Africa (10 %)
- Primefuels (Kenya) Limited, Kenya (15 %)
- Mirambo Holdings Ltd, Tanzania (10 %)
- Institute for Africa Development Trust (CDIO), South Africa (4 %)

La seconde offre qui a donc été écartée était menée par Rites Limited of India (70 %) avec Magadi Soda Company Limited of Kenya (30 %).

Le personnel des chemins de fer du Kenya a bien accueilli le choix du consortium sud-africain. Mais tous attendent de connaître les noms des licenciés et le montant de l'allocation compensatoire de perte d'emploi.

Le 31 mars 2006, après les accords et signatures finaux, le Rift Valley Railways Consortium entrera en activité, avec pour mission d'augmenter le trafic dans les 5 ans à venir. Le RVRC va notamment verser aux gouvernements 11,1 % de ses revenus réalisés dans chacun des pays (Kenya – Ouganda). Il paiera également 1 million de dollars (830 000 euros) par an au Kenya pour exploiter le service passager.

Par ailleurs Sheltam a été contracté pour fournir des locomotives sur la ligne de Nacala ainsi que sur la ligne de Beira au Mozambique. Ce groupe ferroviaire est donc actuellement en position de force dans le sud-est de l'Afrique.

Conclusion

Dans les dix prochaines années, en Afrique de l'Est et notamment au Kenya, l'avenir du rail sera d'être le moteur du développement durable, à la fois pour les plus pauvres et pour les entreprises. La politique des transports est incontestablement en relation directe avec la notion de développement à toutes les échelles de la société et à toutes les échelles du territoire (local, régional, national, international). L'interdépendance des réseaux de communication ferré et routier est à souligner, ils doivent être complémentaires et non pas concurrent au risque de disparaître l'un et l'autre, laissant ainsi la population dans le plus grand désarroi, la précipitant dans une plus grande pauvreté due à

l'isolement et au manque d'échanges entre les différents territoires. L'échec de cette privatisation remettrait en question la notion même de privatisation pour les transports ferroviaires. Le développement durable doit pouvoir s'appuyer sur un réseau de transport fiable. En dépit de quoi les efforts dans les autres secteurs (agriculture, agroalimentaire, industrie, éducation, santé etc.) seront vains. L'élévation du niveau de l'encadrement, de la formation aux techniques ferroviaires, à la maintenance, à la communication, à la commercialisation, à l'organisation, à la gestion financière ne sont-ils pas les fondamentaux nécessaires au fonctionnement des chemins de fer ? Cependant du matériel roulant est nécessaire pour relancer la vie économique de tous, pour une régression forte de la pauvreté.

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