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**MAKING LAW IN RURAL EAST AFRICA:
SUNGU SUNGU IN KENYA**

Suzette Heald
Crisis States Research Centre

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Making Law in Rural East Africa: SunguSungu in Kenya

Suzette Heald

Crisis States Research Centre

This working paper is the second in a series of three. The first, *Domesticating Leviathan: Sungusungu groups in Tanzania* (Crisis States Working Paper 16: series 1) traced the history of the *sungusungu* movement in Tanzania, paying particular attention to its development among the Kuria, in the Mara Region, to the north of the country on the border with Kenya. It discusses the distinctive accommodation that came to characterise the relationship of the government to the movement, strictly-speaking illegal but officially authorised, neither part of the state nor totally rejected by it.

This paper takes up the same issues among Kuria in Kenya, outlining in some detail the development of the first *sungusungu* group in 1998, in the context of an influx of small arms, state corruption and the changing face of theft. The focus is, however, on the creation of a new order as *sungusungu* groups sought to redefine political loyalties and establish a new moral consensus. A third working paper will look in more detail at the trials themselves, the judicial processes and decision-making and the significance of consensual judgements.

Introduction¹

Internal security is usually seen as pre-eminently a matter for the state and its specialised institutions of legislature, police and judiciary. Recent years have witnessed increasing disquiet over rising levels of crime and corruption in Africa, expressed at both national and international levels. Nor is this just a matter of lack of capacity, for the state itself is held to be deeply implicated, even felonious (Bayart et al, 1999). In the parlance of good governance, such states are deemed weak, fragile or in crisis. One response to this, and often under-reported, is the widespread development of vigilante-type organisations, in rural as well as urban settings, because local communities have sought to provide for their own security. Some of these are emerging under the banner of ‘community policing’. In the western model adopted in Southern and Eastern Africa, such organisations putatively come under the control of the police, with community forces used as an adjunct to the official services (Brogden, 2004). In Kenya, the success of this model is in considerable doubt because of the widespread corruption and distrust of the police itself (Ruteere and Pommerolle 2003). Arguably, the most successful form of community policing in Eastern Africa has been developed independently of the government and in opposition to both the police and the judiciary. This movement is known in both Tanzania and Kenya as *sungusungu* and in both countries the administration, charged with the overall maintenance of law and order in rural areas, has stepped in to protect local groups in an effort to prevent undue harassment by the police and courts.² In such areas, local law has effectively taken over from national law with respect to significant offences, most notably theft. We have then a somewhat ironic situation with hybrid forms of organisation developing, which are, strictly-speaking, illegal but are officially authorised, neither part of the state nor totally rejected by it.

Self-help in the sphere of crime tends to have a bad name, conjuring images of vigilante action, lynch mobs and kangaroo courts. This paper sets out to modify this view by examining the development and working of a *sungusungu* group in Kuria, a remote rural district in Kenya, lying in the south-west of the country on the border with Tanzania. It traces the history of the movement back to its origin in Tanzania where it emerged to counter a crime wave fuelled by the increasing availability of small arms. The main body of the paper is then concerned with the development of one Kurian group and how it arose to address the specific problems facing their localities. Stressing the agency of local people, it describes how they mobilised indigenous modes of governance and turned these to new ends, thereby creating new forms of political unity and consciousness. Its development also marked a decisive shift in what has become known as the ‘moral economy’ since forms of theft until then tolerated became subject to community discipline and surveillance. The community and its basic moral precepts were to be redefined. The last section of the paper turns to the national context, to the systemic corruption for which

¹ This paper is based on ethnographic fieldwork stretching back over twenty years in Kuria District in Kenya. In 2001/2, I focused on the development of the *sungusungu* movement by doing participant observation in Kenya and by travelling down through Tanzania to research the origins and history of the movement. Five months of fieldwork in 2001/2 was undertaken as part of the LSE Crisis States Research Centre programme. This was supplemented by a return visit in August 2005, made possible by a British Academy small research grant.

² In both Tanzania and Kenya, the governmental model in rural areas remains much the same as established at Independence, retaining an administrative hierarchy, with locally appointed chiefs reporting to District and Provincial Commissioners (Regional, in Tanzania). The administration retains wide powers over its areas of jurisdiction and is answerable directly to the President.

Kenya has become notorious and the way this affects the local populace. It provides the context for the alliance that has developed between this form of *sungusungu* and the administrative wing of the state.

Small Arms and Sungusungu

Some background must first be given on the *sungusungu* movement. This developed in central areas of Tanzania in the early 1980s following the 1979 war between Tanzania and Uganda. Demobilisation did not bring peace but a period of intense insecurity within Tanzania itself as disbanded militia, with small arms smuggled back from Uganda, took to theft in their home areas. The country became engulfed in widespread banditry, much of it by gangs, organised along military lines. In rural areas, this mainly took the form of stock theft, with such cattle raiding in turn feeding into local clan and tribal hostilities (Heald, 2003; 2006; Ndagala, 1991; Fleisher 2002). The Sukuma and Nyamwezi responded rapidly to this new threat, with village after village mobilising itself into a collective force to counter theft. It was this movement that became known as *sungusungu*.³ The state was in no position to oppose this development of self-help. Not only was administrative presence weak in remote areas but the impoverishment of the Tanzanian state after the war meant that there was little money to sponsor people's militias which had formerly acted as an administrative adjunct in rural areas. The political and administrative wing of the state almost immediately gave its sanction to the movement, and later attempted to develop it throughout the country in urban as well as rural areas.⁴ For the Tanzanian state under President Julius Nyerere, with his vision of an African socialism, the movement, one suspects, had not just a pragmatic function but an ideological one, a vindication of his belief in community power. Yet, in backing the movement, he faced the opposition of the police and judiciary who regarded the movement as illegal vigilantism and who, over the last 25 years, have initiated many prosecutions of its leadership. Despite this and the introduction of multi-party politics, the movement has survived, and indeed grown stronger in many remote areas where it offers a form of security adapted to local circumstance and contingency (Heald, 2002, 2006).

In Kenya, the problems were no less acute. Although this country is the only one in East Africa to avoid the scourge of either external or civil war in the postcolonial period, the existence of conflicts in the surrounding states has led to an influx of small arms, seeping in over the country's borders. Thus, in the 1980s, the proliferation of small arms affected not only Kuria living in the Mara Region of northern Tanzania but their clansmen over the border in Kenya. This area too saw an enormous escalation in patterns of clan raiding and warfare in the early 1980s. In Kenya, wars between Kurian clans were largely under brought under control by a general mobilisation following upon a Presidential amnesty on guns in 1985 and many were collected in at this time (Heald, 2000). Though the intense insecurity of the early 1980s was to an extent brought under control by such measures, the problem of cattle rustling did not go away. Nor did the guns. Though many were collected during the amnesty, guns continued to enter the system through various routes. The security forces were one of them and a flourishing, if clandestine, village gun smith industry developed, with guns tailored to the calibre of available bullets.

³ There is an extensive literature on *sungusungu* among the Sukuma and Nyamwesi, particularly, Abrahams, 1987, 1989; Abrahams and Bukurura, 1993; Bukururu, 1996; P. Masanja, 1992.

⁴ For a description of this state-sponsored *sungusungu* among the Kuria of Mara Region, in the north of the country, see Fleisher, 2000a and 2000b.

National politics also played their part here. Kenya's home guard policies created a weapons imbalance between the Bantu-speaking Kuria and their Kalenjin neighbours to the East in the Rift Valley (Marwa, 2002). The tribal-based policies of Moi's KANU presidency in the 1980s and 1990s gave ascendancy to Kalenjin who were armed to defend themselves against incursions of Bantu settlers. Many Kuria had migrated into the neighbouring Trans Mara district in the Rift Valley during the 1980s, some settling there, others leasing land for a season's cultivation. There was periodic trouble between them and their Kalenjin-speaking neighbours. The Kenyan Government added to this tension by periodic forced evictions of Kuria settlers from 1987 onwards.⁵ In the 1990s, it also began to arm the Kalenjin Maasai and Kipsigis, creating thus a strong incentive for Kuria to acquire more arms in self-defence. In the 1990s, with another war to the north in Somalia, arms began filtering into the area through the Somali diaspora (Marwa, 2002).⁶ The intensity of raiding was again to increase and in 1998, borrowing ideas from *sungusungu* groups operating over the border, the first such group was established in Kenyan Kuria. This proved so successful that within a year the movement had spread throughout the district.

Kuria and its thieves

Cut in two by the international border, approximately two thirds of the Kuria live in Tanzania, in Tarime and Serengeti Districts of Mara Region. Those in Kenya had formed a division of South Nyanza District until Kuria was given a distinctive political identity by being granted district status in 1993. Its current five divisions follow – as the administrative structure always has – the major lines of segmentation between the sections or clans (sing. *ikiaro*, pl. *ibiaro*). From west to east, these territorial sections are Bugumbe (today divided into two divisions), Bukira, Nyabasi and Bwirege. Divisions are in turn divided into locations and these into sub-locations. The population of the district is currently estimated in the region of 170,000.

The success of tobacco farming in the 1980s, followed by the kind of centralisation given in district status, together with an elected Municipal Council, has in many ways transformed the area. Crops, especially tobacco, have opened up new opportunities for employment and trade. Kuria is now much more akin to other peasant 'straddling' areas of Kenya, combining subsistence agriculture with market orientated activities, than it was twenty years ago (Heald, 1999). Nevertheless, their agro-pastoralist heritage is still to the fore: one immediately knows when one enters Kuria territory because of the distinctive style of the homesteads. These still largely conform to the old pattern, with a circle of houses linked with a formidable stockade that encloses a central cattle corral. The peoples surrounding them do not construct their houses with the same attention to defence. This is somewhat of a puzzle in an area noted for cattle raiding, until one realises that the majority of Kuria raiding is internal. The territorial sections or clans stand in a relationship of permanent opposition to each other, an opposition which is lessened only by the sharing of a common totem or by geographic distance. The closure of the homestead as a tightly bound structure is thus carried over to the section, though, with continuous and dispersed

⁵ *Kenya Daily Nation*, 12 February, 1999

⁶ Police figures for crime, including guns and stock raiding, are not released in Kenya as this is regarded as a matter of national security. Marwa (2002) estimates that the number of guns circulating in Kuria in 2001 was about 1000 precision guns and an equal number of home-made ones. Based on information from focus group interviews, this can only be taken as an indication, though it is worth noting that this would give a ratio of guns to homes of approximately 1:12.

settlement, these boundaries are indiscernible to a casual observer. But territorial exclusivity is reinforced by a predominant pattern of marriage within the section. Within the *ikiaro*, this creates a dense network of kinship linkages. Generation, and particularly circumcision, age set also form an important axis of identification for men that continues throughout their lives and places them in a distinct hierarchical relationship with others.

Kuria cattle raiding is embedded within this structure. In the agro-pastoralist scenario, raiders have a dual role, as both defenders and attackers, reflecting a system which is based on reciprocal (albeit often unbalanced) raiding between groups. Celebrated in songs and verse, one captures the cattle of the enemy in order to marry a wife (Kjerland 1995) and the same raiders are there to defend one's own cattle against the depredations of the enemy. Yet the raiders' role is never simple. They operate in a particular political structure that, as indicated, among the Kuria is predicated on the opposition of Kurian sections against each other. This aspect makes raiders into heroes and defenders. However, in the circumstances of Kurian life, it also makes them deeply suspect. Theft, for as many years as anyone remembers, has been prompted by plainly pecuniary motives as much as by honourable bravado on the part of the young warriors (Heald, 1999, 2000; Fleisher, 2002). And, it is clearly in the thieves' interests to engage in the kind of raiding that outrages public opinion, upping the stakes and driving a cycle of vengeance raids into a situation of open war (Heald, 2000). 'War', with its inflammation of public opinion and general mobilisation for defence during the day as well as at night, serves to sanction and to mask their activities.

This escalation into war became a constant threat after 1980 with the influx of small arms. Guns profoundly changed the nature of raiding, shifting the balance decisively in favour of the raiders. Before this, raiders came by stealth and were vulnerable to the poisoned arrows of the homestead's defenders. With guns, raiders came brazenly, often openly challenging the homestead and even when this was not the case, fear of guns made the defenders less ready to risk defence. Nor, from the 1980s onwards, has raiding been just a matter of cattle rustling. Ambushes along the roads, often at bridges, became a regular feature in Kuria, usually at night but also – at bad times - during the day. Those robbed in this way were occasionally shot if the vehicle failed to stop and were invariably beaten up. *Matatus* – in Kuria, meaning ordinary saloon cars used as taxis - carrying traders were a particular target but the nightly risk effectively brought road transport to a halt after 7.00 pm and, at times, even earlier. Vehicles of many kinds were also stolen; the motorbikes of the field officers employed by the tobacco companies were regularly hijacked, often causing death or injury to the rider. Moreover, the looting extended to other things too, things which unlike cattle 'could not run'. Schools and Missions lost their water pumps and generators; businesses their posho (maize flour) mills. When the first solar panels were introduced in the mid 1990s, these too were lifted. There seemed to be nothing, however heavy and well protected, that could not be taken by these well-organised thieves. Once over the border in Tanzania, they were rarely recovered. No section of the community was immune from the depredations of thieves.

It was a matter of some speculation as to how many thieves might be living in a given area or neighbourhood. The answers might range from very few to almost everyone. In the most notorious areas, people might hazard 'everyone', with, say, the exception of the Pentecostal preacher and even he might be cited only as a probable exception. Such 'bad areas' were to become known as 'Israels', an epithet thought apt because they were in a position to out-gun

everyone else. Yet, was it just ‘some families’ or all? A panel survey I did in 1985 and in 1994/5, which covered the whole of Kenyan Kuria, allowed me to estimate that 13% of homesteads harboured thieves (based on reputation, the fact that a man of the home had recently been killed while raiding, or was in prison, or on remand for theft).⁷ Such families also tended to cluster together. With a system of male partible inheritance, where sons inherit equal shares of land from their father, neighbourhoods become dominated by close patrilineal kin. One aspect of this is that the identity of thieves was rarely known outside such areas.

This was one aspect of Kuria raiding that made it difficult to tackle: the other was the nature of the raiding gangs themselves. They did not operate with a fixed membership, but were recruited on an *ad hoc* basis, a man recruiting between two and five other associates for a particular foray. This pattern of shifting alliances was predicated upon the widespread networks that thieving families tended to develop, networks that facilitated raiding in many areas and the easy movement of guns from one transient ‘gang’ to another. Many were intermarried across the boundaries of the sections, thus marking their alliances out from other men’s which, as indicated earlier, were predominantly within the section. Such alliances carried down over the generations and were contracted anew with the current generation. Not all such men would be actual raiders (though they might have been raiders in their youth) for the networks included important accomplices who hid or marketed the stolen cattle. Some of these might be butchers or cattle traders. Others might have important official links which could be activated to protect the thieves as necessary. Thus many people in the community had an interest not in combating the raiding system but in perpetuating it. Some profited through direct involvement, others more indirectly. Chiefs, police and security personnel played both sides; often demanding payment from those who solicited their help in tracing thieves but also widely believed to be lending guns, organising raids or taking bribes to turn a blind eye.

The tentacles of the raiding system spread out from the thieves, laterally through kinship connection and vertically through their ability to bribe officials, making it difficult to estimate the degree of involvement and equally difficult to counter. This generated widespread suspicion and mistrust. The neighbour who joined your tracking party (*hahini*) in an attempt to recover your cattle might be the very one who had led the thieves to your door and explained the nature of the homestead’s defences. The chief whom you had called to help, and promised a cow in the case of recovery, might at the same time have accepted a rather greater inducement from the thieves. Even in cases where your party had (with the appropriate payment) got official help and the police managed to arrest the thieves, there was little guarantee that the Court system would convict them. It was much more likely that the thieves or their confederates would bribe the police (or the magistrate) and after a short period on remand they would be free again. The extent of the trickery made it difficult to gauge its full measure. The effective merging of the ‘official’ with the ‘unofficial’ system, as is usual with corruption on this scale, creates a powerful coalition of interests that it had seemed impossible to counter.

Breaking such a system, then, was not just a matter of identifying a few miscreants but of challenging the very basis of social life, the nexus of loyalties and interests which bound people together and was embedded in the habitus. It was this nexus that made the thieves largely

⁷ Some of the main results from this panel survey can be found in Heald, 1999.

‘untouchable’ since they were protected by kinship loyalties, as well as by the self-interest of the many who profited. Though action against thieves had been taken many times in the past during times of crisis, it rarely had been effective for long. For example, many guns were collected in 1985 when President Moi had declared an amnesty. Assemblies throughout the district had mobilised then and acted vigorously against the thieves to extract guns. Thereafter, periodically, similar assemblies were called to denounce thieves in attempts to stop a cycle of vengeance raids and avert war (Heald, 2000). Thieves might then be expelled or cursed by the *inchaama*, the conclave of ritual elders, or referred to the police. Such measures were usually effective only in the short term: the thieving went on. With the formation of *sungusungu*, a standing form of organisation was to be developed and harsher measures adopted.

The very nature of the *iritongo* (pl. *amatongo*), the word used for both a community and its assemblies, the one implying the other, needed to change and be recast. *Sungusungu* did not emerge spontaneously, out of a Durkheimian uprising of the collective conscience, but was a conscious act of design. It began in one area and its story is thus best told through the accounts of men of that group. That it then triggered a popular mood is shown by its rapid spread throughout Kuria.

The *Iritongo* of Bukira East

The *iritongo* of the location of Bukira East, the location in which the District administration is based at Kehancha, was the first to develop the organisation and thus provided the template for those that followed throughout Kuria. The beginnings of the *sungusungu* can here be told in large measure through the testimony of the man who instigated the formation of the first group. This was Mathias Mwita and he became secretary of the group and kept exemplary minutes of the meetings for the first five months of its operation. Mathias himself was a man in his early thirties, a junior householder, with a wife and young children, living in the wild borderlands to the north of the location, where Bukira meets Nyabasi and Maasai. After secondary school, he spent several years working for the Cereals Board in Nairobi. He left, he said, as his prospects for advancement were poor and returning to Kuria, as a staunch Presbyterian he played an active role in his local church. Through this he was connected to numerous organisations including the National Church Council of Kenya and other NGOs. His family too was influential and respected, with an elder brother who had been elected to a Government administrative post as the sub-chief, responsible for the sub-location.

As Mathias explained, 1998 started badly. Whilst the votes in the National Elections were being counted at the District headquarters in Kehancha, and the place was bristling with police, thieves made an audacious daylight swoop. They got away with all the cattle held in the police pen despite being pursued into Maasailand. Shortly after this, in March, there was a large raid on a wealthy home near Kehancha and fifty nine head of cattle were stolen by a gang armed with guns. The gang was a mixed one, with thieves from their own territory, Bukira East, together with Maasai and probably also – people suspected - anti-stock theft personnel.⁸ There was a lot of shooting that night, with one of the tracking party shot dead as he tried to prevent the gang’s escape over the territory’s border. A son of the homestead also sustained a serious bullet wound

⁸ The network of thieves currently, as well as in the past, often stretches beyond ethnic boundaries. For thieving in Colonial Kenya, see Anderson, 1986.

in his leg. Many people lost cattle in this raid as it is a regular practice to set out cattle in another's herd. Even one of Mathias's cows was taken, a milch cow that he had given his sister to provide milk for her children.

It was after this that Mathias realised something had to be done. The situation was so bad and there were so many thieves that almost everyone was forced into some kind of involvement, even if only for protection. The thieves, as he said, had become the 'rulers', and the police were in their pockets, as were many of the chiefs, while ordinary people were terrorised. Mwita had some experience of the *sungusungu* which had three years previously reconstituted itself in Tanzania (Heald, 2002, 2006). On one occasion when Mathias had been robbed he traced the thief down through Bukira territory into Tanzania. There he was confronted by the local *sungusungu* and had to employ them to trace the thief. He never got his cattle back as the thief escaped south to Mwanza and he did not have enough money to pursue the case there. Nevertheless, he used his time in Tanzania to enquire into the organisation of the *sungusungu*, its virtues and its faults. The idea of establishing such an organisation in Kenya was thus an available option, though it was to differ in many respects from its Tanzanian counterparts.

As a first step, he wrote a letter to the District Commissioner requesting that a *sungusungu* organisation be set up to counter the security problems.⁹ The DC did not reply so he wrote a follow-up letter. This time there was action, with John Egesa, the DC, replying through the two sub-chiefs in the location and the acting chief, giving permission to hold an *iritongo* or assembly. As has been mentioned, the word *iritongo* is used both of an assembly and of the community it represents. It is normal to call such meetings at times of crisis, particularly over theft. However, this was a small *iritongo* comprising only fifteen ten-house leaders and elders, to discuss the feasibility of setting up *sungusungu* in the area. As a result of this, on 23rd April, they called another larger *iritongo* and set up the organisation, electing a caretaker committee of 13.¹⁰

The first problem, as Mathias saw it, was to make sure all sections of the community were represented and would actively participate in the organisation. Equally important, since cases were to be tried, was to ensure the committee was structured so that it would be seen as impartial and not based on sectional loyalties. Each of the lineages and age sets was to be represented on this first committee. Thus men from all thirteen lineages (*egesaku*) represented in the location were recruited. Additionally, they made sure that they included three members from each of the age sets of the ruling generation of *abagaaka*, that is married men in charge of their own

⁹ This section is based on interviews with Mathias Mwita in 2001 and 2002 and other members of the committee and community at the time. It relies also on the excellent minutes of the first meetings of the committee and *iritongo* that Mathias wrote during the time he was secretary from April to September 1998. Many of these initial minutes were typed up in Swahili (courtesy of the District Commissioner) and copies deposited in his office. The rest were kept in large ledger books, and were rarely quite as complete as the first set of minutes. They were also rather more haphazardly compiled, depending on the ability and acuity of the secretary at the time. They contained however a list of all cases heard, with varying amounts of detail about each case. Mathias's minutes on the other hand, were mainly concerned with organisational matters and the committee's reflections and resolutions in dealing with problems as these arose. In addition, I interviewed *iritongo* leaders throughout Kuria, and attended both committee meetings and meetings of the full *iritongo* of Bukira East in both 2002 and 2005, this being the *iritongo* to which I belonged as a resident in the area.

¹⁰ The committee was formally elected on 3rd July by the *iritongo*. Mathias held his post as secretary, though many other members of the committee were replaced. The committee has varied in size over the years – rising and then falling again back to this original number.

homestead. The chairman was chosen from the senior set, the secretary (Mathias) from the youngest, and the treasurer from the middle. Later, two women were also added in line with national policies of gender inclusiveness. The other key official was the *komanda* (commander) of the *sungusungu*, a term which might be used for the whole organisation or, as in this case, just for its policing arm. The *iritongo* had a single committee but the policing arm was divided into two, based on the two sub-locations, each with its own deputy commander. For election, reputation was again important; the men recruited needed to be of good character but this provision did not rule out reformed ex-thieves, of whom there are a great many in Kuria.

The committee then represented the major political divisions within the location.¹¹ The lineages, the age sets, responsible for the disciplining of their own members, and also a member of the *inchaama*. The *inchaama*, or conclave of ritual elders, undertake the magical protection of their areas through a sequence of secret rituals. They also decide the timing of circumcision ceremonies and rule on other matters of general interest to the community, most particularly concerning peace and war.¹² In the past, it is they who would have led the *iritongo*, a role largely usurped by the chiefs of the local administration in the recent past, except on major issues of war where the *inchaama* might still be in ascendancy. However, if the old structures for loyalty were incorporated, its leaders in this area were predominantly to be 'new men'.

Of the first office-holders, five had previously had some professional or other formal sector employment. The 1990s had witnessed a wave of retirements and retrenchments as the public sector had been cut back in the wake of structural adjustment policies enforced by the international agencies on the Moi Government. The chairman had been an armourer in the army, the treasurer had retired from a post with the Ministry of Land and Surveys, the secretary as mentioned above had worked for the Cereals Board, and the assistant secretary had been a teacher. All now were primarily farmers, as were the ordinary members of the committee, a few of whom had similar prior experience. The prime qualification for office and to be on the committee was probity, though this was always a case of 'more or less'. Nevertheless, they represented solid citizenry, that is, respected men with some influence. One, indeed was a councillor, and two acted as chief's assistants, the lowest (and unpaid) level of the official chiefly hierarchy. Their experience of modern sector work and indeed, in Mathias's case, of Church organisations, put an emphasis on formal constitutions and procedures.

The first job of the provisional committee was to draft by-laws to govern the organisation. These were formally agreed by the committee on 11th June. The first section governed the general aims and jurisdiction of the *iritongo* and the second was specifically addressed to the limitations of the jurisdiction of the *sungusungu* and the rules governing their behaviour. These were then sent to the DC with a request for his formal permission for the setting up of the *iritongo* and asking him to inform the police and the courts so the groups would be protected from arrest. Yet, as the by-laws make clear, even this early on, the *iritongo* faced difficulties. Some of these came from the overall context in which they operated: there was the issue of bad publicity, of police complicity with the thieves, and of court cases being taken out against them. An initial arrangement,

¹¹ Other areas put less attention on lineages even at the beginning. For example, in Nyabasi West the committee was much smaller and lineage never important. The same went in Bwirege, where representatives were chosen on the basis of locality.

¹² For more detail on the nature of traditional leadership, see Ruel, 1991.

brokered by the DC and Officer in Charge of the Police Department (OCPD) broke down when police released thieves who had been arrested by the *sungusungu* and placed in police cells. Thereafter, the *sungusungu* guarded their own remand cells, which later came to be located in the office block they built for themselves, and which also became the sub-location headquarters, housing an office for the sub-chief. The *sungusungu* remained in danger of police arrest, however, and of charges against them being taken to the courts. However, over time, an unstable *modus vivendi* developed between police and *sungusungu*. The original agreement - that the *iritongo* should hand over thieves it had tried to the police to prosecute - was never resorted to as local justice was to prove enough. However, cases that were initially reported to the police were left to them to avoid any direct conflict of interests. The *iritongo* only dealt with such cases if and when the court processes failed and a complainant referred them back to the community. The situation with the chiefly hierarchy was a little different. A local chief was part of the community and was aligned with the interests of the *iritongo*. The exclusive concentration of the *iritongo* with theft here provided a dividing line between their areas of jurisdiction. All cases apart from theft were, as before, to be taken either to the chiefs and headmen to resolve, or where more serious, to the Kenyan courts.

However, there were problems internal to the organisation as well. The switch from old loyalties and prerogatives to the new way which stressed loyalty to the *iritongo* as a single entity, and the importance of peace and the common weal, was far from easy. There was an initial problem with the incorporation of one member of the *inchaama*, who continued to advocate old measures of retaliation and the use of the oath. The oath is used in Kuria mainly to test the veracity of testimony but in this area belief in its powers had waned. No magical sanctions were to be used in this *iritongo*, though Christian prayers began and finished each meeting. Moreover, the loyalty of the *inchaama* was always subject to some doubt, since their powers might be used for, as well as against, thieves. Even where the *inchaama* collectively curse a thief, it takes only one of their number to perform the secret rituals to undo it. It was perhaps not irrelevant to the decision to depose this particular member of the *inchaama* that his lineage was discovered to harbour some of the worst thieves in the area.

The incorporation of age sets also created problems. In the past, the primary responsibility for disciplining men had fallen on their age set, which had the power, as did the *inchaama*, to both shun and curse. Such sanctions were often invoked against those who did not attend when summoned to their meetings. A man shunned in such a way would have to placate his age set by providing an extravagant feast to beg their forgiveness. Such threats were now brought into operation in order to enforce attendance at meetings of the *iritongo* where, initially, members of each age set sat together. At the beginning, attendance at the *iritongo* was mandatory for all adults and a fine of 500 Ksh was specified in the initial by-laws for failure to attend (over twice as much as for registering a case). The age sets took it upon themselves to collect this money, and it soon became apparent that considerable coercion was being applied, often unjustly. Traders and professional people were excused attendance since trials were held during the working day but they were being harassed by their age set. Moreover, this money was not being handed over to the *iritongo* committee to be used for community projects as was intended and the committee discovered that the age sets were planning separate feasts for themselves. The committee decided at this point that the power of the age sets had to be broken – at least within the *iritongo* organisation. By mid-July, age set organisation ceased to be a formal part of the *iritongo*, and the rules on attendance were relaxed thereafter. The initial rule of attendance was deemed important

to make sure all were cognizant with the organisation and all agreed to its methods and operation. These early *amatongo* drew three thousand or more people but by 2002 attendance at the usual weekly trials could be counted in hundreds rather than thousands, as people attended according to their interest in a particular case or set of issues.

If the older instruments of coercion needed thus to be modified and countered, there were further difficulties with the explicitly new policing arm of the *iritongo*, the *sungusungu*, which had effectively displaced the age-old reliance on age sets and *inchaama* as the disciplinary force. Very soon, they were seen to be undisciplined. Often drunk or high on bhang, they too exceeded their mandate, ran rampage, and accepted bribes. In June, they went on strike, demanding payment for their services. This could not be said to be entirely unreasonable, as the policing jobs they did were burdensome and indeed dangerous. Arresting suspects, bringing them to trial and rounding up witnesses, as well as attending the *iritongo*, being responsible for discipline within the *iritongo*, and a host of daily surveillance activities of the butchering outlets and markets, meant that their job was full-time. Furthermore, they could be called upon to answer an alarm at any time, day or night. There was also the question of payment for the committee members whose duties were also onerous, time-consuming and, it should be said, dangerous since they too stood in danger of being targets of the vengeance of thieves brought for trial. While the committee agreed that they should have a sitting allowance of 200 Ksh for every meeting they attended to prepare for an *iritongo*, settlement with the *sungusungu* was more difficult since they held out for more money than the committee felt it could afford. Embarrassingly, the *sungusungu* went on strike for the meeting to which the District Commissioner (DC) had been invited on 26th June and, since suspects had not been rounded up, there were as a result few trials on that day. This did not seem to have affected the attitude of the DC who was fulsome in his praise.

Enforcing the rules within the organisation was one thing and was difficult enough but from the beginning the committee was not undifferentiated and of one mind. Disputes arose and many of these related both to political ambition and in effect to the thieves themselves. Members of the committee were from different lineages, lineages which harboured long-standing as well as more recent grudges. All were linked in various ways to the accused thieves so that their actions were subject to suspicion. Although the main trials of suspects were held before the full *iritongo*, with all lineages represented, and although the judgement was based on consensus as to the value of the evidence produced and after confession by the accused, members of the committee often came under suspicion of surreptitiously helping a kinsman. Surveillance of the actions of committee members became a key task, both by other members of the committee and by the community. The expedient of regular elections to the committee – every four to five months – was adopted to counter bribery, with those who had come under suspicion losing their position.

The new value in all this was loyalty to the *iritongo*, as the prime focus for affiliation, over-riding lineage loyalties. The location was not a unit which had any customary loyalty attached to it, especially in this area where most of the settlement followed gold mining, though the mine had long since been closed. The elements of different lineages which composed the location had no specific ties to each other beyond membership of the wider section. Over time, some identity had been given to the geographic area though the administrative system, of which it currently formed a location, with a chief and two sub-chiefs. With the establishment of *sungusungu*, common citizenship was stressed and the unity of the *iritongo*. To speak or act against the *iritongo* became

a punishable offence and was added into the by-laws. Lineage loyalties never completely disappeared, however, and the issue of ‘spoiling the *iritongo*’, by challenging its authority and introducing division, was one that reappeared in some form at every *iritongo* that I attended both in 2002 and 2005. Then, very often, past or present members of the committee would stand up to testify how they had stood by while their own brother was beaten and even on occasion had participated in such action.

From the beginning, the *iritongo* faced formidable difficulties and these were never to go away completely. Embattled on all sides, those whose power rested on other affiliations, whether new or old, pursued their own agendas and were often accused of ‘spoiling’ the *iritongo*. Moreover, apart from their potential to lobby committee members on behalf of themselves and their kin, it did not take long for the thieves to fight back in other ways. Committee members and *sungusungu* were threatened. As early as 11th June 1998, the home of a *sungusungu* was attacked with the clear aim of killing him. Not finding him at home, they beat up his wife and destroyed property. Aroused by the alarm, neighbours rose to the defence of the home and managed to shoot two of the attackers with arrows. The following morning, the trail of blood led them to a wounded man who was made to confess and name his accomplices. The one case of killing recorded in the minutes refers to this event, with the angry crowd then lynching the suspect. The rest of the attackers escaped but the following day an *iritongo* was called and took the decision to burn down their five homesteads. Such an action constitutes effective banishment and was the first time to my knowledge in over 20 years that such harsh action had been taken in this particular area. In the crackdown of 1985, the house of a primary school headmaster had been stoned, a form of curse, and afterwards he was imprisoned for several years for theft. He returned after this to become Secretary General of the Teachers Union, something not unusual in Kuria, where a reputation as a one-time thief does not act as a permanent stigma and may indeed attract some respect. Of those who attacked the *sungusungu* in 1998, two were killed in subsequent raids, but two others were eventually allowed to return, after confessing their crimes and begging the forgiveness of the community. No more houses were fired in this area though *sungusungu* have continued to be attacked and killed. Hospital bills thus form a major expense of the *iritongo*, as do defending court cases taken out by thieves or their accessories against the *sungusungu*, most on the grounds that their property has been unlawfully sequestered.

In other areas where *sungusungu* spread, the initial actions against thieves were often more drastic. In the first year, there were undoubtedly a number of killings and serious woundings. It varied from area to area, just as the organisation of the *iritongo* itself varied according to local circumstance. All were to have committees and a new policing arm, but some worked more closely with the local chiefs and some were dominated by *inchaama*. There were uniformities in the punishments, however. Throughout Kuria, fines and *legeza* came to dominate - restoration coupled with retribution. A convicted thief was made to compensate his victim, or victims, and additional fines were levied to pay for the work of the *iritongo*, and indeed to aid in community projects. Fines were also imposed on false accusations and on witnesses who gave false testimony. But whippings, beating and *legeza* were the main means both to extract evidence and to punish. *Legeza* I was told was a traditional sanction for theft but, if so, it was one not used for many years and its Swahili derivation would seem to point elsewhere. *Legeza* means ‘unlocking’, and has a double meaning, to do with both the unlocking of evidence (confession) and the means by which this is done, the unlocking (breaking) of the ankles. The aim here is to prevent a thief from ever running again. In the most serious cases, it is clear that rather more was broken than

just the ankles but the aim in general was not to kill, and most men were said to heal well enough to walk and to cultivate and some I met who had been punished in such a way survived without even a limp. These beatings are delivered by sticks, sometimes tipped with metal bolts.

Beating was, and is, an accepted part of Kuria life and no one expresses horror at these measures. The police have long extracted evidence in such ways. Probably more serious from an economic point of view for the thieves are the fines. Where the thief had few goods, the fine falls first on the family and if that is not forthcoming, the thief's land is sold. It was stressed that this was never all of it, but there is no doubt that many were, and are, seriously impoverished by this. Such punishments thus constitute part of the process whereby the rural poor are dispossessed, in a situation of growing social inequality and pressure on land.

Unity in Kuria?

Though many admitted to scepticism at first, the *sungusungu* organisation proved both successful and resilient and rapidly spread through Kuria. Eighty-eight guns were collected in just the one location of Bukira East, mostly of the homemade variety but including nine modern weapons, one of which came from the security service. By 25th September 1998, in his last set of minutes (he resigned at this point from the committee), Mathias reported that seventy-eight cases of theft had been registered in the five months of the *iritongo*, with forty-four of them having been heard and judged. The rest were still in process. Many had doubted if the *iritongo* could work and whether its aim 'to bury theft in its grave and to forget about it' could be achieved.¹³ The success of this first group provided the precedent and the organisation then rapidly spread throughout Kuria.

As it spread, so did the need for cooperation between different groups. Permission was needed to cross the territorial boundaries in pursuit of a thief or stolen cattle and, as quickly became apparent, thieves frequently had charges to answer in more than one location and often in more than one division. Liaison became essential but always difficult especially where it involved different sections and where it ran up against embedded opposition and suspicion. Trust was difficult. As the Kuria concede, there can be no ultimate peace in Kuria as long as the *ibiario* are there. Yet the *amatongo* (pl. of *iritongo*), with their new anti-theft mandates, were a powerful force at the beginning in trying to overcome this barrier. By 1999, with *amatongo* operating in all the *ibiario*, steps were made to set up a district *iritongo*, known as '*mungano*', to act as a court of appeal and to hear cases involving men of different *ibiario*. It was set up with high hopes, with the idea that it would serve as a unifying force for the whole district, but foundered after a year. Too many interests pulled in opposite directions.

The DC was said to outlaw it as he was advised that the district *mungano* was encouraging war between the *ibiario*. This was strongly denied by the location *amatongo* that I interviewed in 2002. Their impression of these events was altogether different and was backed with evidence. A district *mungano*, in their view, would have spelt the end of raiding since it would have the mandate to round up suspects from all the *ibiario*, to try them and to enforce compensation. The charge was that some councillors were linked to the thieves whose cases were coming up for trial and it was these councillors who worked against it. The councillors were also said to fear that a

¹³ Report of the secretary of the *iritongo* Bukira East location dated 25th September 1988.

democratically elected district *mungano* would challenge their own prerogatives and legitimacy as the people's representatives. Indeed, from the very beginning, some councillors saw the *amatongo* as a threat to their influence.

When Kuria became a district in 1993, a Municipal Council was established in Kehancha, the main town and administrative centre, to run the affairs of the district. Impoverished and with few powers, it had little capacity at that time to further development in the district. However, the powers that it did control were significant, relating in the main to market licensing, of both goods and produce and, most importantly, of cattle. The council was responsible for issuing licences to trade and for certifying legitimate transactions. Additionally, it created a political cadre of elected representatives, representing the electoral wards and an axis for patronage. The Bukira East *iritongo* ran into a problem with its councillor from the beginning, with great misgivings as to whose side he was on (theirs or that of the thieves). Indeed, his main contribution seems to have been leading to a split in the *iritongo*. Within two months he had formed a 'shadow committee' which included notorious raiders in its membership. He was finally dismissed from the committee for working against it.

The bringing down of the district *mungano* was a considerable blow to the location *amatongo* as they no longer had a forum to hear cases where more than one division was involved – and these were the more intractable cases. Several cases that had initially been referred to the district languished thereafter, though procedures for joint *amatongo*, involving locations from more than one division, were resorted to on occasion. Cooperation could not be relied on, however, and enforcing the return of cattle to a complainant from another *ikiaro*, was extremely difficult. Whether a district *mungano* could ever have really worked well is an aspect worth considering. Though there were strong arguments in favour, by definition it would not have had the kind of community knowledge and participation that made locational *amatongo* so effective as a check on corruption.¹⁴ However, such a *mungano* clearly had enormous symbolic as well as practical value, in the recasting of political loyalties and in the formation of Kurian identity beyond the section.

The question that this leaves for the future is: what do these assemblies presage? What does it mean when the populace turns on its thieves? What significance can we read into it? The *iritongo* emerged to fight the crime that gripped the Kurian moral imagination. Cattle raiding, on the cusp of the old structure of economic endeavour and the new commercialism, points to the nature of the economic transition in which all are involved, as the old way of life and its modes of accumulation no longer serve. Whereas twenty years ago, wealth was still measured in terms of cattle and children, now it is measured in money, property and the ability to educate your children. With the switch from pastoralism, coupled with subsistence agriculture, to production for the market, huge disparities in wealth are increasingly apparent and entrenched. The times when a poor man could, with hard work and a little luck, become rich are long past. To bury cattle 'theft in its grave and to forget about it', thus could be said to signal the change in the moral economy which accompanies such radical transformations. An irony of the present is that

¹⁴ Divisional *amatongo* had been set up at the same time to act as a courts of appeal from those at the locational level but these ran into disrepute because of the corruption of the leadership. By 2005, they still existed but were largely ignored.

cattle theft might be largely dead simply because there are few cattle left. People no longer divest themselves of their herds for fear of theft but because so very little pasturage remains.

The *iritongo* and the State

The *iritongo* set out to control theft but in order to do so they needed to transform the nature of the political community. These assemblies have created a new kind of unity, stressing the common weal over factional interest. The question is, then, do they hold out other possibilities for the future? Will they move from a community police force to something resembling a 'community government', able to intervene and mediate in affairs that affect the populace, a buffer perhaps between the past and the uncertain future? Will their success in fighting their own corruption, be effective also in fighting the corruption of the state?

When Kuria was made a district, this brought the state nearer, with the establishment of a new district administration, headquartered in Kehancha. Kuria were proud of this new status and some even thought that this would bring order to an area which, admittedly, had been only lightly administered through the previous decades. However, the influx of new personnel (who were never Kuria) to staff the administration, who were subject to frequent transfers, has over time made the disorder and chaos that is the Kenyan state much more evident. Rather than bringing order, the pervasive corruption of state officialdom has become ever more corrosive.

The corruption of the Kenyan state regularly hits the headlines of the world's press, with international donors freezing funds, suspending loans and imposing new conditionalities. Such headlines concern the top political leadership and their propensity to siphon off donor money. But, such corruption goes all the way down, embedded in every institution of the state. Though all the bureaucracy is corrupt in one form or another, if any institutions represents this dark side of the state for the populace it is the those that are charged with countering it: the police and the judiciary. The police and judiciary regularly score highest in Transparency International perception surveys. For example, the Bribery Index of Transparency International Kenya of 2001¹⁵ showed that the Police topped the league with almost 69% of those interviewed across the country having paid a bribe in the year. The Judiciary had been paid by 32.3% but the smaller proportion of the population involved was easily made up for by the differences in the money extracted. In the case of the police, the average amount of a bribe was 631 Ksh (around £5) but in the case of the judiciary it soared to 10,334 Ksh. In 2004, four out of five encounters with the police were reported by those surveyed to involve bribery¹⁶ and here rural areas were hit hardest, in that the amount paid to the police rose from 805 Ksh in 2003 to 2,377 Ksh per person per month in 2004. Much of this was accounted for by new regulations over *matatus* and by better funding of the police department which gave them the ability to set up (yet more) road blocks. The pariah nature of the state and its personnel is a feature of daily experience.

If, as Anderson (1983) has it, the nation is an imagined community, the state could be said to be an even more imaginary source of legitimacy. But, like the nation, it is one that still serves. State

¹⁵ Transparency International, Kenya Bribery Index 2002, www.tikenya.org/documents/BribIndex02.pdf, accessed 5th April 2006

¹⁶ Transparency International Kenya, Findings of Transparency Kenya's 4th National Bribery Survey, 2005, www.transparency.org/surveys/dnid/Kenya_bribery_index2005.pdf, accessed 5 April 2006.

authorisation in some form was essential to protect *sungusungu* groups from the police and judiciary. When Bukira East sent their by-laws to the District Commissioner with a request for his formal permission to form the *iritongo*, they asked him to inform the police and courts so that the groups would be protected from arrest. The DC was also asked to inform the Human Rights Commission, though Mathias doubted whether he acted upon this. Nor was this support just symbolic. The *iritongo* initially relied on the good offices of the District Commissioner. The DC in 1998 was John Egesa and he took credit for his active encouragement of the way they spread throughout the district. He went on, with less success, to advocate setting up a similar form of organisation in his next posting in Pokot. The *iritongo* initially benefited also from strong political support, with the local MP and Assistant Minister for Energy, S.R. Manga, lobbying the President. President Moi also visited the District to encourage the organisation.

Despite frequent changes in personnel, the DCs who followed Egesa have largely followed in his footsteps, giving their support to the organisation, though with greater or lesser enthusiasm. But, they are still essential in both giving legitimacy and in mediating the conflicts that ensue between the groups, police and courts. The DC chairs the district security committee which includes the OCPD, the anti-stock theft officer, and the intelligence officer. By and large, the compromises have worked out – but with the *iritongo* keeping as far as away from the police as possible. A potential new threat came with the introduction of a Magistrate's Court in Kehancha, the first in the district, in 2002 but this too they have weathered. A further threat came in June 2005, when the Government, following what were it has to be said rather unsuccessful attempts to operate 'community policing' schemes under the police in Nairobi and elsewhere, proposed this for Kuria. The leaders of the *amatongo* rejected the scheme, refusing to have any truck with the police in any form. The OCPD complained in August 2005 that he was repeatedly sending messages to the leaders of the groups to come and meet with him, without response. Yet as the chairman of the local group told me, they had told the police what they thought of them in June and he couldn't see what more he could possibly say.

The *iritongo* could be said to have given voice to a new mood of reform that was to become evident in subsequent events. The success of the 2002 elections, when KANU was voted out and Kibaki's Rainbow Coalition (NARC) was elected in on an anti-corruption ticket, gave cause for optimism. Corruption, however, continued and on an even greater scale, though changing somewhat in its character. With the abolition of the *harambee* (on which corruption was blamed by the Kibaki Government) less money now filters down. The *harambee*, though it could be used for unwarranted extraction by leaders, was also important as a redistributive mechanism, through which political leaders maintained the loyalty of their constituents through conspicuous generosity to needy causes and the poor. In this, they resembled giant potlatches, as political leaders called in their debts by asking their associates to sponsor or contribute to such events.¹⁷ The Kibaki Government has used other tactics, by allocating central Government funds (and also a large amount of money for HIV/AIDS) to constituencies and districts, providing considerable powers of patronage to men at that level. One man, who told me to simply call him 'Mr. Chairman', in fact chaired all the District committees which disbursed funds in August 2005. The large modern houses that have been built in the last couple of years in Kuria are a standing testament to the scale of the new disparities in wealth in the district. Corruption does not explain

¹⁷ These were not, of course, the only *harambees*. These were regularly held by churches and private citizens to raise funds for projects or to help those in difficulty. All now have disappeared.

all of this but the very rich in Kuria are no longer those who work outside the district in the professions or business, or as traders within the district: they are now more likely to belong to the ruling clique.

Iritongo action against 'ordinary thieves' has gone a considerable way to solving one problem that threatened the life and livelihood of people in the district. The political elites are largely beyond its reach, although moves were afoot in August 2005 to at least bring some 'briefcase' CBOs to book, once again with the sanction of the DC. Briefcase CBOs (Community Based Organisations) is the term which has come into usage for those organisations which put in applications for social improvement projects (most notably in the HIV/AIDS area) and then disappear as soon as they are financed. These were largely beyond legal control, but were a subject which the DC agreed the *iritongo* could tackle. When the DC announced this policy to an *iritongo*, it was said to have met with immense enthusiasm. In this case, the *iritongo* leaders I talked to were wary because of the hatred of the population of these new kind of 'thieves'. They were concerned to act first in the area they saw as the more immediate threat to the entire population, namely HIV/AIDS. Using the *amatongo* for education was one way, but there was strong opinion in favour of universal testing in their areas. For this, however, they need the cooperation of the District Hospital and such testing is ruled out by current protocols.

The interest of both these moves is that it gives notice of the potential of the *amatongo* to extend their activities into areas other than common theft and to negotiate a new moral order. I know of no other community which could come to an equivalent HIV/AIDS strategy to act as a brake on the spread of otherwise unchecked infection. Nor of another organisation with the capacity to carry it through. However, once again, to be successful they need some sanction from the state and it is as yet unclear whether this is, will be – or could be – forthcoming, given the current strength of human rights legislation in this area. Nevertheless, though the future trajectory of the movement is as uncertain as is that of the Kenyan state, *sungusungu* stands as an important experiment in self-assertion, of taking democracy back to its local roots. If crime and corruption cannot be controlled from the top, then they hold out the possibility of reformation from below.

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Discussion Papers

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The Crisis States Research Centre aims to examine and provide an understanding of processes of war, state collapse and reconstruction in fragile states and to assess the long-term impact of international interventions in these processes. Through rigorous comparative analysis of a carefully selected set of states and of cities, and sustained analysis of global and regional axes of conflict, we aim to understand why some fragile states collapse while others do not, and the ways in which war affects future possibilities of state building. The lessons learned from past experiences of state reconstruction will be distilled to inform current policy thinking and planning.

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Development as State-Making: Collapse, War and Reconstruction



Cities and Fragile States: Conflict, War and Reconstruction



Regional and Global Axes of Conflict



Crisis States Research Centre

Development Studies Institute (DESTIN)

LSE, Houghton Street, London WC2A 2AE

Tel: +44 (0)20 7849 4631 Fax: +44 (0)20 7955 6844

Email: csp@lse.ac.uk Web: www.crisisstates.com.

