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# AFRICAN REGIONAL CIVIL SOCIETY CONSULTATION ON

## WOMEN AND ADEQUATE HOUSING

*Organized by UN-HABITAT  
in co-operation with  
the Office of the High Commissioner for Human Rights*

- for the United Nations Special Rapporteur on Adequate Housing -

**31 OCTOBER 2002, NAIROBI, KENYA**

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# 1. Rationale and background

This Regional Civil Society Consultation on “Women and Adequate Housing” was organised to:

- \* assist the UN Special Rapporteur on Adequate Housing in obtaining information for his study on “Women and Adequate Housing”, which he is to submit to the Commission on Human Rights by February 2003;
- \* obtain additional information on women’s rights to land, housing and property in the countries represented and to feed this information into the work of UN-HABITAT;
- \* make the findings and recommendations of this Consultation available to all those concerned;
- \* forge partnerships with civil society organisations working on issues concerning women’s rights to land, housing and property.

In September 2000, the UN Commission on Human Rights appointed Miloon Kothari as UN Special Rapporteur on Adequate Housing. Special Rapporteurs work in an honorary capacity and are based all over the world. They are appointed to work on special themes (such as housing, food, health, women & violence) or on one specific country. The three main areas of work of Special Rapporteurs are to:

- (1) report to the UN on the situation related to the special theme or country they cover;
- (2) investigate specific country situations; and
- (3) collaborate with governments, UN organisations and civil society on different subjects.

In his capacity as Special Rapporteur on Adequate Housing, Miloon Kothari has issued two reports in 2001 and 2002 respectively, which can also be found on the website of the Office of the High Commissioner for Human Rights: <http://www.ohchr.ch/housing>. In his first report, the Special Rapporteur uses a holistic, comprehensive definition of the right to adequate housing, which reads as follows:

*“The human right to adequate housing is the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity”.*

The main focus of his 2002 report was on discrimination, segregation and housing. For 2003, the Special Rapporteur will produce one general report on adequate housing and an additional report on “women and adequate housing”.

Since 1997, the Sub-Commission and the Commission on Human Rights have adopted resolutions on women’s rights to land, property and adequate housing. In Resolution 2002/49, adopted in April 2002, the Commission on Human Rights requested the UN Special Rapporteur on Adequate Housing to conduct a study on women and adequate housing. For the preparation of this study, the Special Rapporteur and his team developed a questionnaire to solicit information from States, local authorities, civil society and other stakeholders (also available on <http://www.ohchr.ch/housing> and <http://www.unhabitat.org>). In addition, regional consultations were organised, where testimonies and case studies could be shared. One regional consultation took place in Sri Lanka, the second consultation in South Africa (as a parallel event during the World Summit on Sustainable Development); the current meeting in Nairobi is the third of such

consultations. Presentations from Eritrea, Zimbabwe/Zambia, Rwanda, Uganda and Kenya were made. Questions and comments have been incorporated in the country presentations, except some comments on Uganda that were quite specific and more detailed and therefore have been indicated separately.

## 2. Introduction

The moderator, *Lucia Kiwala*, Chief of the Gender Mainstreaming Unit, UN-HABITAT, called the meeting to order at 9 a.m. All participants were welcomed and introduced themselves.

*Marjolein Benschop*, Legal Officer, Shelter Branch, UN-HABITAT briefly referred to the main reasons for organizing this Consultation. Firstly, to assist the Special Rapporteur in obtaining as much information as possible for his report on women and adequate housing, and secondly to feed this information into the work of UN-HABITAT. She mentioned the research on women's land housing rights that was published this year (Rights and Reality), and the need to keep updated on what is happening in the countries covered by that report. In addition, UN-HABITAT is looking into extending this research to other countries in Africa and ultimately other countries in the world.

*Jean du Plessis*, Deputy Director of the Centre on Housing Rights and Evictions (COHRE), an international NGO with its Secretariat in Geneva, had the opportunity to join the meeting for a few hours. He explained that COHRE has a Women's Housing Rights Programme, coordinated by Birte Scholtz: anybody interested in contacting COHRE can email Birte ([birte@cohre.org](mailto:birte@cohre.org)) or Jean du Plessis ([jean@cohre.org](mailto:jean@cohre.org)).

*Selman Erguden*, Acting Chief of the Housing Policy and Development Section and Coordinator, of the UN Housing Rights Programme UN-HABITAT, welcomed all participants on behalf of the Executive Director. He then proceeded to give a short overview of the mandate of the UN Housing Rights Programme, which is carried out jointly by UN-HABITAT and the UN High Commissioner for Human Rights. He highlighted the key factors in the implementation strategy of the joint Programme, such as the utilization of the capacity of civil society organizations and addressing gender imbalances.

*Miloon Kothari*, the UN Special Rapporteur on Adequate Housing, thanked all participants for coming. He elaborated on the reasons for the meeting, and on the process towards recognition of women's housing rights at UN level. Women's rights to land, housing, property and inheritance had been largely ignored at international and national level. Primarily because of civil society advocacy work, supported by numerous governments, the UN Commission on Human Rights and other UN bodies have now recognized these rights in a series of Resolutions. The text of these Resolutions can be found on the [www.ohchr.ch](http://www.ohchr.ch) web-site, and are also mentioned in the Rights and Reality report. The Special Rapporteur highlighted his three-fold mandate: Reporting and Research function (to the Human Rights Commission), Investigative function (also to the Human Rights Commission), and Collaborative function (with UN Agencies, governments, civil society etc.) Among the many dimensions of this work there is a very strong gender dimension.

The UN Special Rapporteur reiterated that his role at this meeting was mainly to listen to presentations, experiences, and discussions. In the late afternoon, a group discussion will take place on strategies on how to move forward.

### 3. Country Presentations

#### Eritrea

Presenter: Worku Zerai, researcher

##### ◆ **Introduction:**

Eritrea's population amounts to 3.5 million, consisting of 9 different ethnic groups.. The two predominant religions are Christianity and Islam. 80% of the population depends on agriculture, while 50% also engage in subsistence farming. 30-45% of households are female headed. Leading forces in efforts to achieve gender equality are the National Union of Eritrean Women and individual women;

##### ◆ **International law.**

Eritrea is party to the main international conventions and has tried to domesticate some of these treaties, such as CEDAW. However, some forms of discrimination are still allowed by law, for example against married women who have no independent rights to land or housing; land is allocated to the heads of households, usually viewed to be men.

##### ◆ **Relevant national legislation.**

Eritrea's *Constitution* (Art. 23) recognises property rights for each individual, but the language is still gender-biased. Pressure from women resulted in a new Article 5, which states that all rights apply equally to both sexes. According to the *Land Proclamation of 1994*, every person who has attained the age of 18 years is allowed to get land, irrespective of his/her sex. Under the Proclamation, the following categories of women can be allocated land:

- widows;
- divorcees;
- women above the age of 40;
- young unmarried women who have either accomplished their national service or got pregnant while doing their national service;
- unmarried women with children;
- ex-combatants, returnees, refugees, and internally displaced persons if in women headed households.

The village committees resisted allocation of land to these categories of women, and the government had to increase pressure to implement the Land Proclamation. In spite of these positive measures at national level, however, the majority of beneficiaries of land reform have been men. Married women are not registered as having any interest in the land that has been allocated to their husbands as heads of the household. In case of divorce, they can only obtain their matrimonial share through a court case. Poor women in particular are unable to pay for transportation to go to the regional office and the court. They end up having to leave the matrimonial property and having to approach the Village Committee to apply for a plot of land, without the means to develop it. In case her husband dies, the house is divided between the widow and her children. The sons always get half of the share. If there are no children, the law allows the widow to remain in the house, even when she remarries, but traditionally a widow has to leave the house when she remarries.

##### ◆ **Land administration and land tenure systems:**

The government owns the land, and citizens have 'user rights'. Local government distributes the land in co-operation with the Ministry of Environment. In every village, a Village Committee decides who is eligible for land allocation. Each Committee must include at least one woman. In practice, these women are not gender-sensitive and do whatever they are told. The reforms in land distribution that the Ethiopian military government and the national liberation fronts have attempted to bring, have mostly resulted in allocation of land to heads of households, who are primarily male. Women were not involved in the administration and distribution of this land and the intention of the policy makers to distribute land equally among women and men did not materialize in practice. The EPLF has tried to involve women in the distribution of land, but the women who were part of the committees were not gender-sensitive and their presence did not improve the situation of women.

Traditional land tenure types still predominate in some areas. Six traditional tenure systems exist, the two predominant types being "Diesa" (Village Ownership) and Extended Family Ownership. Under the *Diesa land tenure*, every community member who has become permanent resident of a village and can prove he is a male descent of the founding father of the village is entitled to a share of land. Women are only entitled to a share of village land, if they are single or if they do not wish to remarry after divorce from or death of their husband. A widow may also occupy her husband's land, but she cannot inherit it, as this is still communal land. Under the *Extended Family Ownership system*, a plot of land owned by an individual is the property of an "enda". An "enda" is composed of descendants of an individual founder of a family land holding, who are believed to have acquired the ownership of the land/house by occupation. An unmarried daughter is entitled to a lifetime enjoyment of a share of land equal with those of her brothers, but *only* if her brothers refuse to arrange her marriage and pay the dowry.

◆ ***Access to financial resources.***

Land alone does not guarantee housing, and there is an acute need for access to financial resources by way of loans, credit facilities etc. In addition, food production is difficult for women headed households, because in Eritrea oxen are used to plough the land; to handle oxen requires a lot of muscle power and traditionally handling oxen is seen as the domain of men. Women heading households therefore need to hire men to plough their land, and often do not have the resources to do so. In some parts of Eritrea, an NGO called 'Accord' gives women oxen on credit: thus, a woman with an oxen can make an arrangement with a man who has no oxen – he ploughs her land, and can thereafter use her oxen to plough his own land.

◆ ***Special groups.***

There are no provisions for women with HIV/AIDS, disability, and (in terms of access to credit etc.) female headed households.

◆ ***Affordability.***

In urban areas, the market determines the rents. There is an acute shortage of housing in the country. People spend all their income or even more on rent. The main victims are women headed households and poor households in general. In rural areas, every household owns their house, but as mentioned before women often cannot afford to develop the land and/or build a house.

◆ ***Habitability.***

No specific provisions exist that protect women in particular. There is a provision obliging the land administration body to allocate land in a contiguous area. Another provision prohibits excessive disturbance to neighbors.

◆ ***Location:***

Once the government allocates land for housing, it attempts to build schools, health facilities, water points etc. Nevertheless, women in remote areas fail to benefit from such services. There are plans to bring social services to remote areas of the country.

◆ ***Access to information:***

There is no policy known to the presenter on access to information, which is related to housing.

◆ ***Access to public goods and services:***

Eritrean macro-policy states that all citizens have equal access to public goods such as water, health care, sanitation etc. There are attempts to provide health services and bring water closer to the home and free of charge. However, less than 10% of the population has access to potable water. Women can only access this water if they can afford to pay.

◆ ***Main barriers to implementation of women's equal housing rights:***

(1) There is a strong belief that giving women land in their own right would jeopardize the stability of the society. It is thought that if women would be empowered they would leave their marriages.

(2) The level of awareness among women about their rights is very low; women were made to believe and accept that land belongs to men only. As a result, many women do not think they could aspire to have user rights to land in their own right. The overwhelming majority of women does not know about the existence of the Land Proclamation, and does not claim their rights.

(3) Many female heads of households were unable to use their plot of land for housing, due to lack of resources. As a consequence, many women in male-headed households fear to claim independent user rights to land.

➔ ***Recommendations:***

- a. Gender sensitization of the relevant government officials, in particular those officials responsible for implementation of laws.
- b. Consideration should be given to 'individuals' as opposed to heads of households. As a minimum measure, a certificate of land should be registered in the names of both husband and wife.
- c. Access to credit must be drastically improved to allow female headed households to build a house and/or develop their land.

## Zimbabwe and Zambia

Presenter: Chesya Mtamira, Programme Officer,  
Women and Law in Southern Africa (WLSA), Zimbabwe

### Similarities:

#### ◆ **International law:**

Both Zimbabwe and Zambia are parties to CEDAW and their governments have pledged to implement the obligations of this Convention. In practice, however, no real efforts have been made to ensure that the provisions of the CEDAW are domesticated into national laws or translated into policies to improve the lives of women.

◆ **Constitutions:** the Constitutions of both countries still allow for discrimination in the areas of customary law, family law and personal law matters such as adoption, marriage, divorce and inheritance – the very areas that greatly affect women.

#### ◆ **Legal system and land tenure types:**

Both Zimbabwe and Zambia inherited a dual legal system from colonial times: statutory law coexists with customary law. Another dimension now is that religious law plays a large role in women's lives. At independence (Zambia: 1964, Zimbabwe: 1981), both countries had three major land tenure systems:

- (1) customary land tenure;
- (2) state/crown land tenure (game reserves/parks); and
- (3) freehold or private land tenure.

The indigenous people continued to occupy any land that was not expropriated by the colonialists and this land was still administered in accordance with their customary rules and practices. In the customary concept, women had no direct relationship with the land nor could they make any claim to it except through their male relatives or husbands.

#### ◆ **Access to Land, Housing and Related Services:**

In urban areas, access to land requires information and money, and the process for allocation is long and tedious. Inadequate finance, lack of planning capacity and misdirection of finances have caused inability by local authorities to deliver the infrastructure and services that constitute adequate housing. Women in general are unable to obtain properly developed housing units. While municipal housing schemes exist, such houses are allocated to husbands and sons, even if women helped to pay for and improved the houses. Upon divorce from or death of their husbands, in-laws often move in and evict the women.

### **ZIMBABWE:**

#### ◆ **Land (re)distribution:**

More than 65% of the rural population is dependent on land for food production and animal grazing. However, land is unevenly distributed, along racial and class lines. Most white commercial farmers owned the majority of the land in the high rainfall regions, while most of the small-scale black farmers owned about 5% of this land and the majority of the population owned the land in the low rainfall areas. At independence in 1981, the resettlement schemes were created: African small-scale farmers acquired land through the government in previously white-owned commercially farmed areas. Most of this land was allocated to landless, black, married men. Refugees from the liberation wars and some widows obtained land. Women and Law in Southern Africa (Zimbabwe

chapter) conducted research in one of these resettlement areas, and found that out of 60 people that had been resettled in that area, only 3 were women. The government accessed land for the resettlement schemes by purchasing the land from the white farmers on an open, commercial land market. However, the current land acquisition seeks to compulsorily acquire land from white farmers under the 1992 Land Acquisition Act. The methodology of redistributing the land appears unclear, and in terms of allocation it was not possible to get any further information or statistics on how many women may benefit.

◆ **Relevant national legislation:**

➤ *The Constitution:* Section 23 of the Constitution allows discrimination in the area of customary law, family law and other areas such as adoption, marriage, divorce and inheritance. A number of Commissions have reviewed the Constitution, and women's organisations submitted a comprehensive paper to the latest Commission, and recommended that this discriminatory provision in the Constitution be removed. However, this recommendation was not considered at all by the government.

➤ *The Communal Land Act, Cap. 20* states that all communal land vests in the President. All those with vested rights are entitled to continue to exercise their rights on customary land. Those without vested rights may apply to the relevant district council to acquire occupation and user rights. However, *in granting the permit to use this land, the district council must have regard to customary law*, which excludes women from acquiring land.

➤ *The 1992 Legal Age Majority Act.* Until 1992, women had been considered as legal minors. In 1992, the *Legal Age Majority Act* was adopted, finally giving women majority status and enabling women to administer properties and estates. However, the Constitutional provision that still allows discrimination has been used to argue that the Legal Age of Majority Act has no effect on customary law and cannot grant women rights that they do not enjoy under customary law. The disastrous effects of a Constitution still allowing for discrimination can be seen in the Magaya case (see below under *Jurisprudence*).

➤ *The Matrimonial Causes Act* attempts to deal with the division of property upon divorce. A study was done regarding matrimonial property cases, which found that upon divorce, the majority of women leave their matrimonial property rather than going to court. They took kitchen utensils and a few household items. The few litigants that went to court used the Matrimonial Causes Act. This Act however leaves a lot of issues to the discretion of the judges, the majority of whom are chauvinist. The judges tend to accept the arguments brought forward against women's attempts to obtain matrimonial property. In most of the cases, where women did go to court, they were unsuccessful because the judges:

- deemed the value of the contribution of women to be insignificant. Significance was counted in terms of cash, not in terms of indirect contributions such as home making, rearing of children or childcare.
- ruled that customary law did not give rights to women to own homes;
- ruled that the wife had misbehaved and did not deserve any share of the property or home.
- considered that the wife was still young and could still get married again and earn a living.
- considered that the marriage had not subsisted long enough for the wife to be given anything. In one case, 9 years was seen as not long enough.

In summary, a lot of the judges in these cases the women's contribution to the matrimonial property was completely ignored.

◆ **Jurisprudence:**

In the notorious Magaya case, customary law was used to thwart the rights of Venia Magaya. Venia was the eldest daughter of Lennon Magaya, from his first wife Emma. On the strength of his marriage to Emma, Lennon Magaya had acquired a municipal house on a rent-to-buy scheme in one of Harare's high-density suburbs. Then he took a second wife. After he died, the house was to be transferred to his heir. Venia, the eldest daughter, applied to be her father's heir. At the community court (which was presided over by a female officer), Venia was indeed appointed as heir to the estate of her father. However, Venia's half-brother from her father's second wife and other male relatives then contested this appointment. They went to the magistrate's court and argued that customary law does not permit a daughter to inherit from her father's estate. The magistrate agreed with this argument and substituted one of the half-brothers as heir. Venia then appealed to the Supreme Court, which dismissed the appeal with the argument that the appointment of male heirs to estates of deceased African males remains unaffected by the Legal Age of Majority Act. The judge, reading the judgement, found *that the Legal Age of Majority Act had no effect on customary law and could not grant women rights that they did not enjoy under customary law*. Moreover, the judge found that the woman's inability to inherit was partly due to the fact that women were perpetual minors under customary law, and more importantly, that Zimbabwe's society was patrilineal and patrilocal. The court found further that, *although the practice of preferring males is discriminatory, it did not contravene the Zimbabwean Constitution, as it does not forbid discrimination based on sex in the distribution of a deceased person's estate under customary law*. The Magaya case took Zimbabwean women's rights 100 years back – advocacy around this issue is continuing. WLSA Zimbabwe has published a small book on the case (Venia Magaya's Sacrifice - A Case of Custom Gone Awry), hoping to get more attention from women and the international community about this issue. They are also making a documentary on it. But the Supreme Court is the highest decision making body, so there was no appeal within Zimbabwe. Venia died in 2000.

◆ **Housing construction:**

Unlike Zambia, Zimbabwe has experienced a rapid expansion in housing construction – mainly due to workers' housing cooperatives and loan facilities from banks and building societies.

## **ZAMBIA:**

### **◆ Matrilineal system:**

Most of Zambian society is matrilineal: descent passes to males through the mother's line. Now that more women are educated and acquire property through their husband or buy household goods, many Zambians are considering the nuclear family rather than the extended family. Being in this nuclear family, women think the property would belong to them and their children in case their husbands would die. However, customary law still dominates, and the urban variant has resulted in the practice of 'property grabbing' becoming commonplace: after the husband has died, his relatives grab everything in the house, including the title deed. The wife is seen as someone who does not belong to the family, even if she paid part of the mortgage and worked for/on this house.

### **◆ Relevant national legislation:**

➤ *The Constitution*: Section 23(4) of the Zambian Constitution allows discrimination in the area of customary law, family law and other areas such as adoption, marriage, divorce and inheritance.

➤ *The 1995 Land Act* provides that anyone with customary tenure can apply for and obtain title to that piece of land. *However, it is the men who hold customary land, and it is virtually impossible for women to obtain customary land.* In urban areas, access to land requires information and money (to develop the land), which is what most women do not have. The process for land allocation is long and very tedious. It is also very centralized, making it difficult for women from outside the capital to go through these processes to get land. One has to pay high fees and commence the construction of a structure/dwelling house within 18 months; this is not enough time for many people.

➤ *The 1989 Intestate/Succession Act*. Prior to 1989, various customary laws governed inheritance of the estates of those who died intestate (without leaving a will). This created hardship, particularly for those married to a spouse from a different ethnic group. Property grabbing was a frequent phenomenon. Since the adoption of the Intestate/Succession Act, property grabbing has decreased. According to this law, surviving spouses have a life interest in and children inherit most of a deceased person's property and estate. Where there is more than one spouse, they must share the life interest. The Act, on paper, appears to represent a breakthrough for women's rights, but there are many shortcomings: it does not specifically guarantee women's rights to property and certain sections of the Act actually operate to disinherit women. An example can be seen in Section 9, which deals with the house of the deceased as part of his estate, without taking into account that this house might have been a matrimonial home, which the wife contributed to. The home is seen as the deceased husband's estate, because it was registered in his name. The widow only gets a life interest (she can live there until she dies or remarries), which she has to share in case her husband had more wives. In contrast, a male surviving spouse could remain in the house, even if he remarries. The HIV/AIDS pandemic has further deteriorated the situation for women: in practice, widows suffering from HIV/AIDS are told they should leave the land, since they will die soon anyway. When women try to have land registered in their own name, they face a lot of pressure from the community and the family not to do so.

### **◆ Matrimonial property cases.**

Few women take matrimonial property cases to court. In court cases, it appeared that people had to keep receipts of what they had bought, which is a very impractical

approach. Lack of money, lack of knowledge, lack of legal literacy, and pressure from families and also the church all act against women to take their cases any further. Even those women that resist all that pressure have to face the long and tedious legal systems – most women are not willing/able to pursue the cases through the courts. Societal attitude is that there must be something wrong with a woman who pursues her case through court; she is ostracized. Many women therefore prefer to drop such cases.

◆ **Affirmative action policy:**

To improve women's access to and control over land, an affirmative action policy has been adopted recently: 10% of the land that is advertised by the Ministry of Lands is reserved for women. But most of this land is in the rural areas, is not serviced, and not easily accessible. Even though this is termed as affirmative action, not much thought has been given to the fact that women have little or no access to credit to develop the land. For example, it is difficult for women to access credit for housing finance. They must have some kind of immovable security in order to convince the bank to give a loan. Only women with a very good job can access credit. The actual consultative process that preceded this program was inadequate, half-hearted and did not involve the stakeholders. Most women do not know about this program and have not made use of it.

**Conclusion:**

Although some effort has been made to adopt laws in both countries, these laws have not made provisions for women to really access their rights. Women in Parliament are seriously underrepresented (e.g. in Zambia there are only 8 women in Parliament) and are not gender sensitive. The process of selecting candidates is handled within each party, and very few women get selected anyway. Inadequate laws combined with societal attitudes add up to quite a bleak picture. Very often we talk about women as a separate group, but this is about ourselves. What are we doing as individuals?

**Case Study: Chesya B. Mtamira's story**

Chesya, a lawyer by profession, was married with two daughters. She and her husband bought land and constructed their home. Both the land and the house were registered in the husband's name. A while ago, Chesya felt the need to have her name included in the ownership of the property, but her husband refused, arguing that he was the one who farmed this land. She then started urging him to put the property in their daughters' name. He agreed, but never quite got round to doing it. He had one excuse or another for the delay.

One day after a drinking spree, he came home and evicted Chesya. She is now homeless and still fighting for what is rightfully hers and her daughters. She is 'lucky' in the sense that she has the income to take legal action in this case, but what about women in a similar situation who do not have the means to take such a case up in court?

What is very interesting about this case is that even a lawyer, who spends her working hours fighting for the rights of women, does not have immunity against this kind of injustice. Her case shows how difficult it can be to reach agreement between wife and husband on these issues and how important it is that the law lends a helping hand by providing for joint registration.



### **Recommendations:**

- a. train judges on the obligations Zimbabwe and Zambia have under international law (their countries being party to the major relevant human rights instruments);
- b. conduct gender training for parliamentarians;
- c. link up to networks in the region that have successfully lobbied for constitutional reform (for example: (1) to get the provisions amended that still allow for discrimination against women in areas of personal law, such as adoption, marriage, divorce and inheritance; (2) to introduce a provision that prohibits discrimination against women in the application of customary law;
- d. increase pressure from international community regarding the Magaya case and the need for constitutional reform.

## Rwanda

Presenter: Annie Kairaba, Director,  
Rwanda Initiative for Sustainable Development (RISD)

- ◆ **International law:** Rwanda is party to the major international human rights treaties.
- ◆ **Post 1994 situation:**
  - the country had lost more than 1 million people in the genocide;
  - more than 2 million people were refugees in neighboring countries;
  - more than 700,000 'old case' refugees (1959 war) returned home and had to occupy houses left behind by those who had fled in 1994;
  - there was insufficient security to undertake important housing programs;
  - more than 400,000 housing units had been destroyed and an unknown number needed reconstruction;
  - more than 180,000 families belonged to the vulnerable groups;
  - many families of genocide survivors did not have houses and were injured and traumatized;
  - economic production was non-existent;
  - currently, about 70% of households in Rwanda live below the poverty line. 45% of households is headed by women.

- ◆ **Land administration and tenure system:**

The state has the ultimate title to the land. The people of Rwanda have user rights, either under statutory or customary law. Women constitute the majority of the Rwandan population, particularly in agriculture. However, very few women have their own user rights over land. Post-1994, widows have been allocated plots of land, but in many cases they do not have the resources and capacity to utilise and develop this land. The current law obliges a user right holder to develop his/her land within three years. If this deadline is not met, the user right holder loses the plot.

- ◆ **Post-1994 policies/programs:**

The *Villagisation Program* ("imidugudu") is a group resettlement scheme implemented by the Ministry of Lands, which involved resettlement of groups of refugee returnees to selected villages. In these villages, the community members had to build their own houses. Women and orphans form the majority of resettled persons under this program. While a good number of people have shelter now, they do not have any certificate or other kind of evidence they can use to prove that they actually have the right to live on that land. In other words, no legal mechanisms are in place to protect them against eviction. Widows also risk eviction by in-laws. According to the government, the distribution of land for the villagisation process was done in a consultative way, but at grassroots level people say they were forced to cooperate in this. The houses are built in a rushed manner, and there are no health centres, potable water sources, schools, or roads.

While women traditionally are not supposed to build, they have started to do so anyway after the war. Still there are some jobs they cannot do (e.g. making bricks, iron sheets and other heavy manual work), and in this they have to rely on men. Some men do this work for women in exchange for food. There are cases of women, especially widows, being sexually abused when they cannot pay for the assistance that men provide. Lack of protection is a major issue. Some of these widows had previously been allocated land

elsewhere, but since they had not been able to develop their land within the required three years, they were told to move into the villages. The land they had to leave behind was then redistributed.

The *National Habitat Policy* was issued through a Decree of the Ministry of Lands in 1996. Priority actions carried out in the framework of the implementation of this policy are: (1) resettlement of refugees and displaced persons; (2) construction of housing units for genocide survivors; (3) identification of sites for resettlement of 'old' refugee caseload; (4) eviction of occupants of premises who were not entitled to that occupation, in order to enable the rightful owners to return to their houses.

The focus of this policy is both rural and urban, but its implementation is mainly benefiting the urban people. It deals with *construction of houses* for government employees, and granting of *housing loans*. No specific provisions are made for women. Since most women do not have good jobs, and do not have any other security, they are excluded from the opportunity to obtain loans. In rural areas, the policy has not really been implemented yet, apart from the villagisation policy component. Households and families in rural areas build most houses themselves, having to use their private savings. This situation, combined with household poverty, results in precarious types of housing that mirror the level of the households' income. Lack of resources is the main impediment to women's access to land, housing and property. Before the war, a woman could not get a loan without consent of her brother or husband. Now a woman can apply, but very few women have security like a house, and banks do not accept security of your salary: it has to be an immovable asset.

The overall long-term aims on Rwanda's development are laid down in *Vision 2020*.

Key objectives are: good governance (including respect for human rights), rural economic transformation, development of services and manufacturing, human resource development, development and promotion of the private sector, regional and international economic integration and poverty reduction. The reduction of inequalities arising from gender and age is mentioned specifically under the objective of poverty reduction. The *Poverty Reduction Strategy Paper (PRSP)* was adopted in June 2002 and its goals are set within the overall development aims of Vision 2020. One of the pillars for government action is institutional and legal change, including the work of the three constitutionally mandated commissions (the National Unity and Reconciliation Commission, National Human Rights Commission and the Constitutional Commission), the privatisation policy and the land policy. Gender is listed under the cross-cutting issues. One of the policy measures announced in the PRSP is shelter provision for the homeless, development of low-cost housing and "imidugudu" infrastructure. In the PRSP, the Government of Rwanda also acknowledges that the initial implementation of the "imidugudu" group resettlement schemes faced difficulties, such as poor planning and site-selection, as well as the lack of participation of the beneficiaries. Shortage of infrastructure and unsustainable communities consisting entirely of vulnerable people were the result. The new objectives are to select smaller sites, to only relocate people voluntarily and to plan the "imidugudu" in a participatory way.

The *National Land Policy* is being drafted and may be finalized by the end of the year, together with the Land Bill. In 1998, the government had started to work on the Land Bill before any land policy was in place. However, experiences from Uganda showed that it was better to first develop a land policy, which can then form the basis for land legislation. In the policy making process, civil society is being consulted. The first draft of this policy considered two options: (1) the land remains in the hands of the state; or

(2) the land will be privatized. In discussions with the grassroots, it came out that they preferred that the land remains in the hands of the state, because that protects the small farmers. The draft Land Policy confirms that all Rwandese enjoy the same rights of access to land without discrimination of women. These access rights will be registered in a title for security reasons (security of tenure and as a strategy to prevent future land disputes). This title would be transferable, but not if it would fragment land to below one hectare. Families cultivating land in common is emphasised and fragmentation of land through inheritance discouraged. The Ministry of Lands is also discussing and considering decentralization elements in this policy. An expert Land Advisor is funded by DFID and is trying to strengthen the linkages between civil society and this Ministry. *Poverty Reduction Program*: civil society has sent in contributions to lobby for the position that land needs to be taken as the main poverty issue in Rwanda. As a consequence, NGOs involved in land issues are now invited in poverty reduction program meetings.

◆ ***Relevant national legislation and policies:***

The Constitutional Commission is coordinating a national consultation process for the development of a new *Constitution*, which is to be finalized by next year. The Constitution has to guide the policies and legislation, so some new laws may be kept pending until the Constitution is adopted.

The *Law on Marriage and Inheritance* (or Part V of the Civil Code on Matrimonial Regimes, Liberalities and Succession) was passed in 1999. In terms of matrimonial regime, the law presumes community of property unless spouses make provisions for another matrimonial regime. While customary law denies women inheritance and administration of estates, the new law recognises women's right to a life interest: widows can use the property, until they remarry and/or until the children attain majority age. Sons and daughters have equal inheritance rights. Many people in the rural areas look at the inheritance law as benefiting urban women only. They also fear that this law will destroy the social fabric of the society. Control over land is often still seen as the man's role. Often, people do not want to discuss this new law. RISD has not found any case in rural areas where this law has helped in resolving inheritance disputes. In urban areas, property is often registered in community of property. Only monogamous marriages can be officially registered under civil law and the inheritance law only recognises inheritance rights in cases of officially recognised, i.e. monogamous marriages. As a consequence, monogamous, registered, marriages are becoming more popular in urban areas now. As a consequence, more people are officially registering their marriage. The inheritance law refers to the National Land Policy, but that policy has not been adopted yet. The draft Land Bill refers to the inheritance law, but land is not included in that law. Civil society lobbied the government for amendment of the inheritance law so that it includes land, but so far to no avail. Thus, the land issue is yet to be resolved.

The *draft Land Law* recognises that every person can enjoy the right to land, but does not explicitly mention women's equal rights. The law recognises customary landholders as customary owners, provided that they develop their land. Undeveloped land reverts to the state's private domain after three years (continuing the already existing legal provision on this issue). The transfer of a land title requires prior consent from all family members. As of yet, no provision on joint registration of land has been included in this draft law, but the marriage law presumes community of property. It is however

recognised that many marriages in Rwanda are informal, and that the rights of women and children in such informal relationships need protection.

◆ ***Land expropriation:***

Any development action in the public interest requires a prior expropriation by the State. This must be followed by compensation, but the state's financial resources are limited. In the rural areas, where the majority of people are still relying on customary law, the 'public interest' that an expropriation is based on is difficult to explain and creates confusion. In housing programs, expropriation leads to the eviction of the first occupant(s) for the benefit of the new occupant(s). The 'public interest' in these cases is not always manifest and clearly proven.

◆ ***Conclusion:***

There is a lack of concrete, adequate and gender-sensitive policies and laws. If these laws and policies would be put in place, it would be easier to lobby for a better position for women, through awareness raising. For example, it is the first time in the history of Rwanda that the government is developing a national land policy. In addition, there is an urgent need for paralegals, who could help in awareness raising and in providing advice.

➔ **Recommendations:**

- a. need to train more paralegals in the country, especially to reach the grassroots – at the moment, there are less than 40 paralegals in the whole country;
- b. a comprehensive study on women's land rights in the country needs to be conducted, linked to all the mentioned processes and policies, including the Poverty Reduction Program;
- c. more advocacy and lobby work to be done on government and parliamentarians for the adoption of adequate and gender-sensitive policies and laws;
- d. while new inheritance law was a big step, suggestions and strategies on how this law can benefit women more are necessary, especially in the rural areas;
- e. access to credit: a strategy on how access to credit for women can be facilitated and improved.

## Uganda - presenter: Harriet Busingye

### ◆ **International law:**

Uganda is part of CEDAW and other international human rights instruments. Some laws have been adopted to domesticate these treaties, for example the Children Statute. However, implementation and awareness of these laws are still a problem.

### ◆ **Current statistics:**

Women constitute about 50.9% of a total population of 25.6 million. They contribute to about 80% of the produce, and provide about 70% of agricultural labor. Over 97% of women have access to land (through male relatives). Yet only 30% has actual access and control over land/over proceeds of the land. Between 10-15% of the land in Uganda is registered – the rest of over 70% is customarily owned land. Women only own about 7% of the registered land. They do not own any customary land.

### ◆ **Land tenure system:**

The Constitution provides that land belongs to the people of Uganda, and it recognizes four types of tenure: freehold, leasehold, mailo (mainly existing in Buganda) and customary Tenure.

### ◆ **Legal and Policy Framework:**

Since 1986, several policies and laws have been adopted that relate to land and gender issues. Examples are: affirmative action policies for female applicants to public universities, free primary education to up to four children, the 1995 Constitution, the National Gender Policy, a National Action Plan for Women, the Land Act, and the Poverty Eradication Action Plan.

*The Constitution of Uganda* has decent shelter included under its objectives. The right to individual ownership of property is also laid down. To strengthen the position and rights of women, the Constitution explicitly:

- prohibits discrimination on the basis of sex and affirms equal treatment of women and men in all spheres of life under the law (Art. 21);
- declares all laws or customs that are inconsistent with the Constitution null and void (Art. 2(2));
- mandates government to take affirmative action in favour of marginalised groups on the basis of sex or any other injustice created by history, traditions or custom (Art. 32);
- mandates affirmative action specifically for women for purposes of redressing gender imbalances;
- prohibits enforcement of any laws, cultures, customs or traditions, which are against the dignity and welfare of women or which undermine their status (Art. 33(5) and (6)).

*The Land Act of 1998* requires the consent of spouses and children before any sale or transfer of land can take place (in cases where the family ordinarily resides on this land and derives their sustenance from it – Section 40). However, the majority of couples in Uganda is not legally married, which excludes the spouses from the protection of Section 40. Most men still do not consult their wives before selling land that they jointly occupy with them, and in other cases consent is given under duress or another woman is paid to pose as the spouse. In other words, the control over land this 'consent clause' provides for women is limited, and the clause is open to abuse. Section 28 of the Land Act provides that any decision taken on customary land must follow the customary

practices of a given area or community, *but if this decision denies women or children access to land, it will be null and void.* The Land Act also provides for a one third representation by women on most land management institutions. Regarding customary land, the Regulations to the Land Act now provide that all members of the family must be registered on the certificate of customary ownership. The co-ownership clause still needs to be included in the Land Act, as only then will women have equal land rights and can they exert some control over that land. The *Poverty Eradication Action Plan (PEAP)* also recognises that women need to have control and ownership of land. The *Plan for Modernisation of Agriculture (PMA)* makes note of the fact that the issue of land ownership and inheritance by women, who are key stakeholders in agriculture production, has not yet been resolved through legislation.

*National Gender Policy:* this Policy was adopted in 1997 and aims to guide all planning and resource allocation in the implementation of all development programs, with a gender perspective. All policies and programs have to be guided by the National Gender Policy (NGP). Ministries and civil society organizations have used the NGP to provide basic guidelines for engendering government sectors, and district and local council activities. A *National Action Plan for Women* was developed in 1999, and establishes a framework for implementation of the NGP, by determining the priorities, strategic actions and indicators for monitoring progress. Four critical areas that the Action Plan is concerned with: (1) poverty, income generation and economic empowerment; (2) reproductive health and rights; (3) legal framework and decision making; and (4) the girl child and education.

The Ministry of Housing, Works and Communication is drafting a *national housing policy* and there are plans to draft a housing law. Through this Ministry, projects were set up for the provision of low-cost housing. Some of these projects are specifically designed to meet women's needs to housing. But information was not available from the Ministry on the procedures of allocation. The main principle in the project is that houses are allocated to families, and not specifically to women. But women can participate in this decision-making process. At least 30% of the decisions made on houses (who occupies them and how) must be made by women. In practice, it is not easy to see this happen. So far, over 1,000 units have been built in these projects, and most of these are in Eastern Uganda. The Ministry has also tried to construct roads and schools within this project and facilitate women to obtain loans to be able to purchase these houses. In general, There is marked improvement in housing conditions in Uganda. Ownership of houses only increased with 2%, and mainly in urban areas.

*The Marriage Act* coexists with customary law. The *Marriage Act* allows women to own property, and requires a husband to maintain his wife and children. Upon divorce, courts can decide that property be divided equally among wife and husband, depending on evidence concerning the contribution made by parties. If a woman is married under customary law, she is not allowed to own property. Upon divorce, she cannot take anything from the home. In some customs in northern Uganda, the woman is allowed to take some property if the husband has forced the wife to leave. This is clearly in violation of the constitutional provision that prohibit discrimination against women in the application of customary law.

The *Succession Act* entitles widows with children to have a life interest over one third of the estate (if the husband was married to more than one wife, the surviving wives have to share this one third). The children inherit 75% of the estate, regardless of whether they are male or female. If there are no children, then the widow is entitled to 50%.

(These rules apply where the deceased has not left a will). But in practice, women do not inherit land, except in areas such as central Uganda. In general, a widow would have to go to court to have her inheritance rights enforced.

◆ **Judicial System:**

Uganda's judicial system includes the local community level (village, parish and sub-county level), where there are three informally structured courts (Local Courts I, II and III). Lawyers are not needed in these courts; people from the village can represent themselves. It is possible to appeal from a decision of a local court right up to the High Court and Supreme Court. However, in matters of inheritance and division of property, one has to go directly to the formal courts (Magistrate's Courts at sub-county or district level, and the High Court).

◆ **Culture:**

Culture is one of the strongest institutions in Uganda, and it is very difficult to change it. According to the customs and cultures in various parts of Uganda, land belongs to the clan. A woman marries into the clan of her husband. Upon marriage, a plot of land is allocated to the man and upon his death it passes from father to son, while women neither inherit from their parents nor from their husband. The matrimonial home is mostly built on this land and is also considered to belong to the husband. These customary rules can change from time to time, but mostly they shift to suit the patriarchal system and are often enforced against women.

Example: in western Uganda, a woman had bought a piece of land together with her husband and built a house on it. The couple had no children. When she lost her husband due to HIV/AIDS, the clan took the land and immediately sold it off. The clan members said that since the husband had died of HIV/AIDS, his widow could die anytime, and therefore she did not need to make any claims to the land, since she did not have any children.

The Uganda Land Alliance is handling this case, trying to help this woman in recovering this plot of land.

Another example, of a case that is still in court: a woman was given land by her father when he was still alive. She constructed a house on it. Upon her father's death, her guardian (paternal uncle) in conjunction with clan elders, declared that she had to vacate the land. The reason they gave was that she had disobeyed her uncle. She was evicted. She has gone to court to recover her land.

Such cases and other studies conducted by the ULA show the extreme powers that men have over land matters, which are embedded in the clan or family setup, and have denied women their assurance and incentive to stability in the home. In many areas, women are even seen as property and are 'paid for' through the dowry, a view that contributes to the conviction of many that women cannot own and inherit property in their own right. One man told the ULA that a woman is like a tractor: 'You pay for her, so she comes to work on your land, and therefore she cannot inherit'. In addition, in Eastern Uganda, women are inherited.

◆ ***Advocacy and awareness raising activities:***

The Uganda Land Alliance, an umbrella of numerous organisations, still continues its lobbying activities for inclusion of the spousal co-ownership clause in the Land Act. In addition, it coordinates a campaign on women's land rights. Land rights information centres have been established in five districts. In these centers, community paralegals assist in solving disputes at community level and provide information on land rights.

◆ ***Conclusion:***

Uganda's laws and policies are gender-sensitive, but in terms of women's equal rights to land, housing and property, more is still to be done. The co-ownership needs to be included in the Land Act, the housing policy and law still needs to be adopted, as well as the Domestic Relations Bill (which overhauls the current marriage regime). In addition, awareness raising campaigns are crucial to start changing cultural attitudes.

◆ ***Some comments:***

- the moderator, from Uganda herself and having worked in Uganda with the Ministry of Gender for nearly nine years, agreed that a lot of progress has been made, but reminded the participants that these changes did not come overnight. Women took advantage of the transitional period in the history of their country, and lobbied strongly up to the highest level. In addition, there was a united front between the government and the NGOs. In Parliament, the women Parliamentarians also had to unite and lobby the men and the women. There are advantages to really having to move together. There were women in the constitutional committee, but also a total mobilization of women from the grassroots took place. The whole process around the constitutional review was very well organized, and the strong partnership between government and civil society was very important in this process.
- Marjolein Benschoop, who conducted research on women's land, housing and property rights in Uganda, mentioned that she was very impressed with the work of paralegal networks in Uganda. In addition to the paralegals working at the land rights information centers run by ULA, there are various other networks: in the communities where they work, people discuss what the Constitution, the Land Act and other relevant laws mean. She came across cases where widows had been threatened with eviction, but where trained paralegals had intervened, discussed with traditional leaders that such evictions were no longer acceptable and that the customs that discriminate against women must be challenged. In various cases, these discussions had led to the decision not to evict the widow. While there is still a long way to go, and there are still issues to address, important steps have been taken that could provide an example to other countries.
- Esther Mwaura (GROOTS, Kenya) confirmed that indeed there are great developments in Uganda, and that she noticed this when dealing with Ugandan officials (in contrast, it is still difficult to approach parliamentarians in Kenya). But she wanted to know *how* Kenya can learn from what has happened in Uganda. The presenter replied that at the very beginning it was not easy to work with parliamentarians and government. ULA then went to the grassroots communities, to get information and then present it to the government. Ministry of Lands then granted permission to ULA to persuade MPs to visit the grassroots and verify this information. Then about 10 people (ministers and MPs) indeed visited communities. This approach has helped the working relationship with the

government. Within the communities, discussions with men and women on gender roles are helping in changing views. The Special Rapporteur mentioned that part of the answer to this question could be that there was a new beginning, a fresh start, in Uganda, as opposed to Kenya. This partly applies to Rwanda as well: not only was there a new beginning, there were also institutions set in place: Human Rights Commissions, a strong civil society. Let's hope that this is going to happen in Kenya as well. Annie Kairaba (Rwanda) mentioned the Landnet (an African regional network dealing with the land issue), where it was stressed that government also needs to be included. In Rwanda this approach indeed works well. While the NGOs do not compromise, they do work with the government as partners.

➔ **Recommendations:**

- a. further lobby for inclusion of co-ownership clause in the Land Act;
- b. continue and widen advocacy and awareness raising campaigns, to try to change the cultural attitudes;
- c. as part of the awareness raising activities, further expand paralegal networks and land rights information centers.

## KENYA

- different presenters -

### (1) Widows and Orphans Welfare Society of Kenya (WOWESOK)

- presenter: Hilda Orimba, Executive Director, WOWESOK -

#### ➤ Background:

Cases of widows and orphans who are *evicted* from their matrimonial/family home by their in-laws are widespread. This often happens with the full knowledge of law enforcement officers, whether or not bribed by the male relatives. Disputes between co-wives (who either do or do not know about each other's existence beforehand) often erupt upon the death of the husband. With the usual accompanying poverty and the exploitative attitude of the relatives, the widows often end up in very poor structures. In urban settings, most widows and orphans live in the slums under very pathetic conditions. Simply because it seeks to empower widows and orphans, WOWESOK has been met with resistance and hostility by chauvinist Kenyans.

#### ➤ Testimonies of widows:

#### Testimony: Catherine Nyaera's Story

Catherine from Kisii district was married for 20 years to a woman called Florence.<sup>1</sup> When the woman died, Catherine resided in their 'matrimonial' home. One of Florence's daughters and son-in-law, in collaboration with the District Land Registrar, the District Social Development Officer and the Assistant Chief, chased Catherine away from her 'marital' home, and warned her never to come back. They took the title deed, divided the property among themselves and moved in. Catherine slept in the forest for five months.

Then she heard of WOWESOK, who helped her report the matter to the police. The case was taken to court and the case was also reported to the District Commissioner, who was supportive of Catherine's case: he went to the house to see the situation for himself, and then arrested the Assistant Chief. The Court decided in Catherine's favor, and the title deed was returned to her. She now lives peacefully on her land, and her children have gone back to school.

1) *There are various formats of woman to woman marriage among the different ethnic groups of Kenya. In some areas, a married woman who does not bear a son, is allowed to 'marry' another woman. Any children born under this arrangement are seen as belonging to the married woman. In other cases, single, usually well off, women can also choose to 'marry' a woman who will bear children for them.*

### **Testimony: Agnes M. Mweu's story**

Agnes comes from Machakos but used to live in Nairobi with her husband. When her husband died in 1996, her sister-in-law, posing as the deceased's wife, took possession of her brother's two houses in Nairobi, evicting Agnes in the process. The sister-in-law now lives in one of the houses and has put out the other for rent. She also took the death certificate, collected the pension and kept it for herself.

Agnes, who has a co-wife and nine children between them, now lives on a farm in their rural home, and even there the sister-in-law continues to harass her. In October 2002, Agnes was in court. The sister-in-law threatened Agnes through two boys who approached her saying that she needed to withdraw the case. Agnes reported this threat to the police station. She pursued with the court case on this matter.

Agnes is particularly bitter because her sister-in-law works with the United Nations in Nairobi and is not in financial need, while she and her co-wife are. She has now joined WOWESOK, and hopes to get what is rightfully hers. The decision in the court case is expected on December 2, 2002. (NB: in December, the court ruled that Agnes may repossess the house and that her sister-in-law must return the pension. The enforcement of this decision is however still pending, as the sister-in-law has so far not cooperated).

### **Testimony: Janet Kibaso from Migori district**

**Janet** and her husband's second wife have been fighting since the death of their husband. The co-wife's 25-year old son raped Janet's daughter, (his half sister), and threatened to kill **Janet** if she and her children did not move from the land that they jointly occupied. **Janet** reported the rape and the harassment to the Assistant Chief, but he insulted her, saying that the son had the right to abuse his half-sister and that the raped girl was the troublemaker and should be caned. He then advised her to take the matter to the elders, for them to divide the land among both wives and their children. Meanwhile the stepson tried to rape his sister again, but she ran away, and has not been seen since.

The elders demanded 500 Kenyan Shillings each to subdivide the land. **Janet** eventually raised the money and the land was subdivided, and **Janet** given her portion. She was then given six months notice to develop the plot, failure of which would result in the plot being taken away. She pleaded to be given at least one and a half years to mobilize resources but the authorities refused and said that the law stipulates a six months period. WOWESOK has now taken up her case.

### **➤ Recommendations:**

- a. Law reform to allow widows to automatically inherit property of their deceased husband. Statutory law should be implemented and traditional beliefs discouraged. Awareness raising is crucial.
- b. Boosting of women's economic status. Urban land should be set aside, especially for widows in the slums.
- c. Security of tenure should be ensured and unnecessary demolition of informal settlements avoided;
- d. A fund for education of poor orphans should be established;
- e. Investment in rural areas to discourage rural-urban migration;
- f. Affirmative action.
- g. Protection against sexual abuse.

(2) **Education Centre on Women and Democracy (ECWD)**

*PART I: presenter - Zedekia Ouma, paralegal, Siaya district*

- ECWD addresses issues concerning abuse of women, including rape, political violence, *property and inheritance*. In addition, women are empowered and encouraged to stand for elections. The Centre started with 20 paralegals in 1998, and now has trained over 150 paralegals, covering 5 districts. The paralegals provide legal aid and assist in preparing cases for court.
- Women provide 70% of manual work, but hardly share in rights to land or housing. Culture and traditions are big barriers. Village elders often play a large role in this respect. The Chiefs often conspire and frustrate widows in their inheritance claims. At times women have to try to bribe them to take a decision in their favor. Customary marriages are still very common in the villages; a man is supposed to pay for dowry, which contributes to the control he has over his wife. He considers her his property, without any say in most matters. This mindset contributes to domestic violence. Single mothers are outcast by their parents, and their children excluded from inheriting anything. Polygamy is another problem, with the different wives having to prove their marriage to the same man.
- In rural areas, it is difficult for a woman to rent a house on her own, as she will be asked where her husband is.
- **Recommendations:**
  - a. civil society, political leaders and Kenya's neighbors should push for the new Constitution.
  - b. Lobbying parliamentarians for adoption of more gender-sensitive laws;
  - c. Opinion leaders should help to increase awareness in different districts;
  - d. Girl child education should be pursued for all girl children;
  - e. Civil society and government should develop a strategy to help street boys, street girls and families on the streets;
  - f. Simple and easy access to loans and expansion of micro-finance to assist women, particularly widows;
  - g. Paralegals need more training, to enable them to pursue more cases and do more in each case.

### **Case Study on succession**

A woman was married and had six daughters. Her husband wanted sons, so he decided to marry another wife whom he hoped would give him sons.

She tried to stop him by reporting him to the local Chief, but the administrator said that the man had a right to marry another woman since she had not been able to give him male children. The husband went ahead and married another wife.

At this point, she heard about ECWD, and their paralegal network. She approached Martha, who helped her to go to court. The court ruled that the husband had to share the property with his wife, and that her daughters would be accorded all basic rights.

### **Case Study on succession**

Upon the death of her husband, a widow was chased away by her in-laws. She approached the elders, who were not willing to help her. She went to the administration. Nothing was done. She approached the paralegals, who assisted her to take a lawyer. The lawyer took the case to court, and the matrimonial property was returned to her. The children received some of the benefits from their father's former employment.

### **Case Study on customary divorce**

A woman was married under customary law. After getting 3 children, the husband decided to marry a second wife. The first wife was beaten all the time until she ran away to her parent's home.

She tried to come back twice but was abused again and fled again. She ended having to rent a house, and "used her body as land", in order to get food for the children.

Later, the matter came to the attention of ECWD paralegals, who assisted the woman. They went to talk to the elders, focusing most on those elders who are a bit more open-minded. The elders then accepted to give the woman a piece of land.

The paralegals also took the woman to the children's department, so that the husband was obliged to take care of the children. The woman is now divorced under customary law. The man is with the second wife, who is again being mistreated, and may end up needing help from the paralegals as well.

### (3) **Grassroots Women Operating Together in Sisterhood (GROOTS)**

*presenter: Esther Mwaura Muiru, GROOTS*

- GROOTS is a network of grassroots women self-help groups and organisations, and was built up in order *to allow grassroots women to speak on their own behalf*. They participate in meetings at different levels and organize local-to-local dialogues in the slums (dialogues with Ministry officials, local councilors, involved NGOs etc. on the main issues in the informal settlements, such as evictions). In addition, they document activities of women on the ground and organize peer-to-peer learning and exchange of women on the ground.
- One of the biggest challenges they come across is *the issue of property rights in connection with the HIV/AIDS pandemic*. Before their husbands die of HIV/AIDS, women often also get infected through their husbands. They take care of their husbands, but after he has died, women are usually told to leave.
- The majority of women do not know *what their rights are*, especially in the informal settlements. For a long time, women have not been involved in decision-making. Slowly, they are now getting more involved.

#### **Presentation: Sabina Wanjiku , GROOTS member from Mathare slums, Nairobi**

In the informal settlements, the grassroots communities, and especially women, do not know what their rights are. Since 1996, many evictions have taken place in the Nairobi slums. People come to say that this is land they have bought somehow. They don't care where the women and children who have lived there for so long will go. Most of the women do not know where to go when they are evicted and the orphans tend to start drinking. It is important that information is taken down to the grassroots communities, so that they understand and can ask for their human rights. In the last years, when Sabine has been working with other women, she has seen the situation improve. We've talked today about inheritance, but how do communities claim inheritance rights when the land belongs to the government? The land that our shacks are built on is not ours. The "houses" in the slums are 10 by 10 feet: how do you live in such a shelter, with children, grandchildren, and husband? How do you construct sustainable shelter for the family? Clean water is not available in the slums. Most of us use contaminated water. Grassroots women for a long time have not been involved in decision-making. Slowly, they are now getting more involved and hope that it will make a difference. No matter how good the laws are, the people who are supposed to be protected by those laws, need to know about it, and should even be involved in the process of formulating laws.

### **Testimony: Rose Auma's story**

Rose got married with an out of wedlock child. Because her in-laws mistreated her, she had separated from her husband. However, when he fell sick, the in-laws prevailed upon her to come and nurse him, and she did. Without knowing that her husband was suffering from HIV/AIDS, she became pregnant, and is now also infected. A week after her child was born, her husband died.

When she took the body to their rural home for burial, she was chased away with the body and her two children. She had to bury her husband alone, out of the home. Her home had been taken over by her in-laws (who had told the landlord that she had died) and had taken over all her properties.

She then returned to Nairobi where her sister took her in. Unfortunately, her sister was involved in an accident and died. She then had to move to the slums with her children.

Then one rainy day, when she felt she couldn't go on, she drank poison and tried to kill herself. She was rescued from the rain and taken to hospital by a member of GROOTS. When she recovered, she was introduced to GROOTS, and started attending their seminars. This is where she found others who shared her problem, and came to accept her situation. The GROOTS members encouraged her along, and now she is very strong in her determination to survive and look after her children.

### **(4) German Technical Cooperation – Small Towns Development Project (GTZ-STDP)** *Presenter: David Mshila, Project Coordinator*

- David provided background information on a project that consciously involved the community of an informal settlement in Voi, Kenya in every step of the upgrading of their informal settlement. After various options were discussed with the community, the community-based land tenure and management model of the Community Land Trust was chosen. The *Community Land Trust* gives local communities long-term control over the use and future allocation of land and their habitat. Through a process started with various Ministries, Voi Municipal Council and involved NGOs, this model was adopted and modified to suit the local situation in Voi, Kenya.
- Because Kenyan legislation on community land trusts does not (yet) exist, the traditional way of holding land had to be married to modern elements so that it would fit within the Kenyan system of individual ownership of land.
- The land was allocated to the Community Land Trust under one title (leasehold). The trustees are to hold the land in trust for the community, and cannot sell or mortgage the land. A mechanism has been built in the head lease that keeps the trustees in check. The boundaries of each individual plot, roads and public purpose facilities were surveyed and registered, and then each qualified member of the community obtained a sublease. **Low-income households, female**

- headed households and the elderly are given preferential access to land.** These subleases can be used as collateral for loans and can be inherited. If a member wants to leave, he/she can only sell the development but not the land itself and the Community Land Trust has the first right to buy.
- Community workshops and regular public meetings were held to ensure that members of the society all know their rights, obligations and responsibilities.
  - Three committees (one each at national, district and community level) were established to *coordinate the implementation* of the project, and various partnerships were formed with organizations and private sector agents, which among others resulted in lower costs of infrastructure improvements for the community.
  - In terms of housing, the national and local authorities recognize the existing structures in this settlement, but the structure owners are required to gradually improve their houses to confirm to local building by-laws. The project started in 1992, when there were no permanent houses in this settlement. Now, there are 88 permanent houses, 227 semi-permanently constructed and 150 temporary houses. Costs of construction were met through own savings, loans from employers, loans from the National Housing Cooperative Union and through self-help groups formed by some members. One of the self-help groups is headed by a woman and has been quite successful. The community has also built a nursery school, and is now planning to build a primary school. The provision of reliable water, improved sanitation and solid waste management has also been improved.
  - In order to prevent husbands from selling land or housing without consent of their wives, in the Community Land Trust **each plot, house or structure is registered in both the names of husband and wife.** Every member who has been allocated land must also provide for its inheritance and make known in advance who will inherit from her/him.
  - The Management Committee of the Community is composed of twelve members, two of whom must be women. The Trustees Board is composed of nine members (lessees, tenants and 'friends of the Community Land Trust) of whom one must be a woman.

**(5) Federation of Women Lawyers in Kenya (FIDA-K)**

presenter: Carol Agengo, lawyer with FIDA

- The state, represented by the President, holds the ultimate title to the land. The Government of Kenya controls land allocation, survey and the issuance and registration of titles. This has led to the perception that whoever wields the executive authority in Kenya can deal with land in any way that s/he chooses.
- Although women's right to own property is legally recognized in Kenya, the vast majority does not have adequate access to land, and even adequate participation in decision-making processes regarding allocation and use of such property, including the nature and size of housing units to be built.
- The courts have cases upon cases pending where *widows have been dispossessed* of their husband's property by their in-laws. Women are often rendered homeless upon their husband's deaths and others have been inherited

- along with the property. *Daughters* are also often dispossessed when their parents die. Many women are sent away with little, if any, means of survival. Matrimonial homes are often registered only in the name of the husband (as sole owners or sole tenants), and many *wives* have little control over income during marital discord. Thus, upon separation and divorce, women are often rendered without shelter, and little, if any, means of survival.
- Studies in Kenya indicate that 10% of women slum dwellers left their rural homes because their marriages broke down, 8% because they were widowed and 8% due to pressures of single motherhood.
  - Main *causes* of these problems are: patrilineal culture, lack of a supportive and sensitive legal system, poverty, lack of rights awareness, illiteracy, ignorance and insufficient access to credit. The HIV/AIDS has further worsened the situation.
  - The *Law of Succession Act* of 1981 also includes widows and orphans in polygamous marriages (while the *Marriage Acts* of 1902 only recognize monogamous marriages). Upon the death of the husband, matrimonial property becomes the husband's property **unless it is jointly registered in names of both spouses**. If it is not jointly registered, surviving wives only have a life interest, a tenancy for life or until re-marriage (which they need to share among them). If a man became widower, however, he would inherit his deceased wife's property absolutely. If the deceased leaves no spouse(s) or children, the father has priority over the mother in terms of inheritance. Another problem with this law is that agricultural land, livestock and crops in certain areas gazetted by the Minister are exempted from application of this law: in those areas, customary laws may continue to apply.
  - The outdated *Married Women's Property Act of 1882* is still used in terms of division of matrimonial property. While many marriages in Kenya are polygamous, this Act only applies to monogamous marriages, therefore excluding co-habitees. Section 17 of the Act gives the court powers to distribute property "without disturbing the established property rights". As most women in Kenya do not own property, even where they have contributed towards the matrimonial assets, they do not have equal bargaining power with men. However, in a few court cases, women's contributions towards matrimonial assets have been recognized, and matrimonial property was shared equally upon divorce.
  - The *Registered Land Act* does not exclude women from acquiring and registering property, (either alone or as joint owner) but no protection against abuse is built in. Cases have occurred where a man jointly registers land with a woman who poses as his wife, and this leaves the real wife unprotected. The need for awareness on such issues is great. **Registration of land has weakened the position of women**, as they mostly do not have titles.
  - Poverty in the *urban areas* is primarily expressed in the housing conditions in the slum areas and the informal settlements. Slum dwellers need security of tenure in order to be able to improve their housing conditions, and need to be able to transfer, inherit or even use their titles to secure credit. They need an inexpensive and accessible property rights administration system, and to escape exploitation from the slumlords. Women and children form the majority of the poor. In addition to the many problems and overriding poverty that slum dwellers face in general, the women are also affected by the lack of basic services such as privacy and proper sanitation.

- Due to limited control by women over household expenditure, there is less money available for essential commodities and services such as food, shelter, health and education.
- In many cases, men who live in the towns to earn a living become infected with HIV/AIDS, and then return to the village where their wife/wives take(s) care of them. While they thus risk also becoming infected, the women can no longer spend their time working on the land; the land lies fallow and the small income previously sent from the towns by the husbands dries up. If the women survive, they face the succession problems compounded by the customs. If they do not survive, they leave their children in a very difficult position.
- Good news is the Family Court in Nairobi, which was established less than a year ago and which deals with all family cases, including those related to marital property and inheritance. This Court has made tremendous changes; the long delays that occurred are shortening dramatically, and improvements in the administration of justice can be seen.
- The current *Constitution* still allows discrimination in matters of adoption, marriage, divorce, burial and devolution of property upon death or other matters of personal law. The new *draft Constitution* includes women's equal right to inherit, access and control property (Section 35), the right to adequate housing (Section 59), the right to water in adequate quantities and of satisfactory quality (Section 61) and the right to a reasonable standard of sanitation (Section 62). While it allows customary laws to apply, it prohibits any law, culture custom and tradition that undermines the dignity, welfare, interest or status of women. Sections 235(4), (iv) and (v) provide that within two years of coming into force of the Constitution, Parliament shall enact a law for "the protection of dependants of deceased persons holding interest in any land including the interests of spouses in actual occupation of the land." It also provides for "the recognition and protection of matrimonial property, in particular the matrimonial home during and at the termination of the marriage." These are very good steps, but implementation mechanisms are still lacking. Moreover, "adequate" is not defined. And what if Parliament does not adopt the law in the time required?
- **Recommendations:**
  - a. A public land act should be adopted and the sovereign authority of the state should be de-linked from the radical land title.
  - b. The Registration Land Act should recognize the rights of use as a registrable interest;
  - c. The government needs to build a system that is nationally uniform and sustainable to enable it administer the property rights of the urban poor in a justiciable manner;
  - d. The Married Women's Property Act of 1882 needs to be overhauled. Women should have the same property rights as men, irrespective of their marital status. Consent should be required before all transactions in relation to matrimonial property. Both husband and wife should jointly own matrimonial property as joint tenants in law and equity. The wife's contributions to a matrimonial home should be specifically recognized.
  - e. The Law of Succession Act should be amended to stipulate that widows acquire an absolute (and not a life) interest in their deceased husband's estate, irrespective of their marital status. Matrimonial property in a

polygamous situation should be divided amongst the respective wives according to their respective contribution;

- f. The (draft) Constitution should define “adequate”, and implementation mechanisms should be designed for its progressive provisions. Furthermore, the responsibilities of the government that correspond to the rights laid down in the Constitution need to be worked out in more detail.

## 4. Shared problems

The Special Rapporteur and UN-HABITAT staff thanked all presenters for the very informative presentations. The presentations and testimonies of today confirmed that discrimination in the area of housing rights is primarily affecting women. While there are differences between the situations in the countries described today, some of the problems that are shared include:

- *lack of sufficient access to credit;*
- *registration* of land/housing rights mainly in the name of men (as 'heads of households'), has disadvantaged women greatly;
- widows only have the right to a *life interest* in their deceased husbands' estates, as opposed to their husbands who enjoy absolute inheritance rights;
- *HIV/AIDS* is further exacerbating the situation for widows and orphans;
- the considerable *contributions* that women make to the matrimonial property are often *not recognized* and upon divorce, many women end up with nothing;
- *eviction of widows and orphans by their in-laws* upon the death of their husbands/fathers is a widespread problem in Zambia, Zimbabwe, Uganda and Kenya, while in Eritrea and Rwanda the obstacles women face in development of their plots of land can lead to eviction and resettlement by the state, and leaves the women in a destitute situation;
- the tradition of *dowry* contributes to the view that women are men's property and cannot own property in their own right;
- if laws and policies are in place that recognize women's rights, *paralegals* play an important role in their implementation at grassroots level;
- *lack of awareness* among women and men are a major obstacle in realizing women's equal rights to land, housing and property;
- *patrilineal traditions and customs* coupled with lack of awareness of women's rights are difficult, but not impossible, to change.

## 5. Discussion

***Four central, cross-cutting issues*** were identified for further discussion:

1. The need for increased awareness;
2. Bridging the gap between laws/policies and implementation at grassroots level;
3. Domestication of relevant international standards and instruments and their availability at local level;
4. The inextricable linkage between the right to land, housing and inheritance

### 1. The need for increased awareness

Hilda Orimba (WOWESOK) emphasized that we must ensure that the awareness raised is sustained. Women at grassroots level need to be empowered. Paralegal networks need to be enhanced and 'widow courts' need to be supported.

Miloon Kothari (Special Rapporteur) replied that there will be an official mission to Kenya next year. During that mission, similar testimonies could be organized, and the subsequent report on Kenya can include specific recommendations, on what kind of support organizations should receive.

Marjolein Benschop (UN-HABITAT) referred to the UN-HABITAT Rights and Reality report, in which an appeal is made to donors to provide financial, logistical and moral support to paralegal networks. The work of the paralegals is among the most effective ways to bridge the gap between national laws on the one hand and the reality on the ground on the other hand.

Lucia Kiwala (UN-HABITAT) mentioned that UN-HABITAT's Partners Unit aimed at increased co-operation, sharing and mobilization of resources, and formation of synergies. In addition, she urged the strengthening of organizational, societal, and governmental networks, and reiterated the need and importance of also working with governments.

Zedekia Ouma (ECWD) mentioned that ECWD is sponsoring a radio programme entitled 'Wewe na Sheria Yako' ('You and Your Law'), which seeks to heighten awareness and education by focusing on the issue of women and property inheritance. He requested support for this radio programme, and for the empowerment of paralegals.

Carol Ageng'o (FIDA-K) noted that there is a need for co-ordination, collaboration and networking between organizations, instead of turf battles and competition. We should ensure broader coverage of target areas and avoid overlap of initiatives.

Lucia Kiwala (UN-HABITAT) agreed that an integrated approach is needed, to draw on resources, experiences and regional presence of the different organizations and work in coordinated way. But the policy makers and judges also need to be approached, trained and lobbied.

Harriet Busingye (Uganda Land Alliance) stressed that training of the judiciary is very important in awareness raising. The Uganda Land Alliance has trained all the members of the land tribunals in Uganda, together with the government. Alternative dispute resolution is also widely used: the communities are trained to resolve conflicts without necessarily having to go through the court system. ULA has also trained paralegals to be able to deal with conflicts. They have radio programmes at district level now, in local languages. The simplification and translation of the laws in local languages also helps a lot in raising awareness at local level.

Carole Ageng'o (FIDA-K) referred to FIDA's gender and legal rights awareness training program. FIDA trains new recruits for police officers at Kiganjo. While "you cannot teach an old dog new tricks", new recruits take it as part of their training. They needed the goodwill of the police commissioner and the government. The police spokesperson and senior officers now even come to the awareness sessions. FIDA also trains Chiefs and community leaders at grassroots level. They also go out on awareness campaigns and use local translators and interpreters.

Diana Gee-Silverman (Mazingira Institute, Kenya) mentioned that Mazingira Institute has addressed the issue of education of children on human rights issues by the incorporation of these issues into comic books. In Canada, law school students were trained when the new Bill of Rights had been adopted, and this also worked well.

Worku Zerai (Eritrea) stressed that awareness raising of policy and lawmakers is essential. If they are not aware, they often do not even come to workshops you organize. For example, when in Eritrea civil society organized a workshop on gender and land, the government did not show up. They need to understand first what this gender equality is all about.

Marjolein Benschop (UN-HABITAT) agreed and in this context shared some information on Tanzania. The Gender Land Task Force (an umbrella of various civil society organizations) in Tanzania was very successful in awareness raising among parliamentarians and government officials, and in lobbying for inclusion of women's rights issues in the new land laws of Tanzania. Among the reasons of this success was that the different organizations that were coordinated by the Task Force divided tasks among themselves in line with their different fields of work. For example, some organizations dealt with the media, others dealt with workshops at grassroots level, and yet again others focused on training of parliamentarians and government officials, while lawyer's organizations focused on the draft bills and laws etc.

Silvia Ragoss (WOWESOK) suggested that the youth should also be involved in awareness raising programs. To learn about basic rights already at school can influence large segments of society.

Lucia Kiwala (UN-HABITAT) extended that remark by suggesting that also out-of-school programs be set up, and that the curriculum in schools should be made gender aware.

Annie Kiraba (RISD, Rwanda) suggested that all organizations present draw up their own strategies on awareness raising and circulate them.

## **2. Bridging the gap between laws/policies and implementation at grassroots level**

Hilda Orimba (WOWESOK) mentioned that WOWESOK has translated some laws into local languages. Training sessions for administration, police, community and opinion leaders are also taking place, funded by SIDA and Royal Dutch Embassy. Again, awareness and legal literacy are crucial in implementation

Chesya Mtamira (WLSA, Zimbabwe) shared that WLSA has been using the training of trainers in different areas in Zimbabwe. These training activities have proved very successful with regard to traditional customs and rituals, and people are starting to question these customs more and more. The people who are trained to be trainers that WLSA selects are people who command respect in their community.

Harriet Busingye (Uganda) stated that Uganda has good laws and that the Uganda Land Alliance raises awareness on people's rights, but implementation of the laws remains a problem because the system and mechanisms are not (yet) in place. How are these laws made, and are the plans for implementation considered during the law making? The policy makers and civil society should work together on such implementation issues. If in one whole district there is only one court where people can go, that is not enough for implementation. Education alone is not enough if the infrastructure is not put in place. In the process of developing laws, it is also crucial to engage the communities so that they participate in the law formulation and amendment.

Worku Zerai (Eritrea) agreed that education/awareness is not enough; in addition there is a need to collaborate and collectively lobby for realization of goals, rights etc.

## **3. Domestication of relevant international standards and instruments and their availability at local level**

Hilda Orimba (WOWESOK) gave the Beijing Platform for Action and Copenhagen Programme of Action as examples of international instruments of which awareness was raised among all their members and among government officials.

Annie Kairaba (Rwanda) was concerned that among local organizations there is lack of information. The information on international instruments needs to be linked to local level. Websites are not enough. Many organizations at local level do not have access to internet yet, and even those that have them minimize the use of internet services in order to minimize costs. How can we have access to information and use the facilities? Could summaries of meetings etc. not be disseminated?

Lucia Kiwala (UN-HABITAT) stressed that even judges often do not know about the international standards. There is an information gap. When a resolution has been adopted, somehow the text of this Resolution should be widely disseminated and shared, with civil society but also with Ministries of Housing, Land, Gender etc.

Worku Zerai (Eritrea) explained that in Eritrea, there is a special program for adults during which different issues are discussed. She suggested that such a program could be used for dissemination of information on women's rights.

Marjolein Benschop (UN-HABITAT) raised another problem related to domestication of international standards and instruments: if the national and local laws do not conform to international standards, you need law reform or law formulation. In Kenya, the coordination issue that FIDA has referred to, is indeed a serious problem. It is important to create a firm basis of coordinated organizations before moving into lobbying for law reform.

Lucia Kiwala stressed the importance of coordination between NGOs and governments.

#### **4. The inextricable linkage between the right to land, housing and inheritance**

Miloon Kothari, Special Rapporteur referred to Commission on Human Rights Resolution 2002/49, which requests the Special Rapporteur to conduct the study on women and adequate housing. In this Resolution, land and inheritance are not explicitly included, even though both issues are referred to in the main text of the Resolution. How could the issues of land and inheritance, which are clearly inextricably linked to the right to adequate housing, be linked in his report?

Harriet Busingye (Uganda) offered to convey to the Special Rapporteur the information they have available at national level and within civil society on this issue.

Annie Kairaba (RISD, Rwanda) stressed that decision-makers need to be made aware of these links. In the Ministry of Lands they have separate departments dealing with habitat, environment and land. They are all doing their own thing. At the habitat department they do not link the issues to land, let alone inheritance. So also some awareness raising needs to be done on how to link the three.

#### **5. Other issues**

Hilda Orimba (WOWESOK) reminded the meeting that security issues should also be thought about. An alternative network for security, especially for widows and orphans, is important, and needs to be supported.

## 6. Closing Remarks

Lucia Kiwala (moderator) thanked all the participants for their informative presentations and testimonies, and thanked the Special Rapporteur for his commitment to women's land, housing and property rights. She expected that this was the beginning of a long-term relationship. She concluded that the participants had identified the main issues affecting women with regard to "Women and Adequate Housing", in relation to land and inheritance. The participants had also been able to identify the positive experiences: how women from different countries have attempted to address these difficult issues. The overriding question is how to deal with customary law. In the presentations, the participants have showed what strategies can be used to change the mind set, and they have also come up with suggestions on how to realize women's rights at national and local level. She stressed that we need to coordinate amongst the civil society organizations and the governments. We have to expand our networks and see how we can link up to the international level.

The Special Rapporteur thanked all participants for coming and sharing their experiences. He promised to do his very best to incorporate the rich experiences shared. He thanked Lucia Kiwala for her excellent moderation, the commitment of UN-HABITAT, and Marjolein Bens Chop for her work over the past month to make this meeting possible.

Lucia Kiwala also thanked Marjolein Bens Chop and expressed the wish that the research that she has undertaken will be extended to other regions in the world. She hoped that all participants had gained as much as she had and wished them a safe journey back to their respective homes.

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\* Attended the meeting briefly