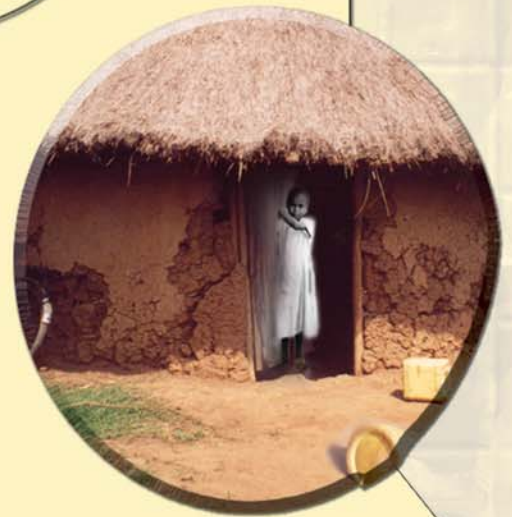


From Despair to Hope

Women's Right to Own and Inherit Property



The POLICY Project



USAID
FROM THE AMERICAN PEOPLE

GJLOS
Governance Justice Law Order Sector
REFORM PROGRAMME

From Despair to Hope

Women's right to own and inherit property

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POLICY Project – Kenya

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To the widows and orphans whose stories appear in this report, and many more that will come after you, part of the successes of this project will always be attributed to your bravery, commitment and endless determination to claim your rightful ownership and inheritance rights to property. As your voices continue to be heard, you will not have to fight it alone any more.



Maina Kiai, Chairman,
Kenya National
Commission on Human
Rights

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Executive Summary

The right to own and inherit property is a crosscutting right that traverses the realm of civil, political, economic, social and cultural rights. This right is central to the true empowerment of everyone in society (men, women, boys and girls) and is a key developmental right. It is the common right to all societies and cultures. It is a right cherished by all members of the community in all cultures, as it not only identifies them but also determines their well being. It is central to securing the dignity of all members of the society.

Emerging legal and social trends, as they relate to the ownership and inheritance of property, indicate a practice that has largely worked out to the detriment of women in virtually all communities and social classes in Kenya. They include the laws relating to property, to marriage and dissolution of marriage, land registration systems, and the social and cultural attitudes that determine the actual enjoyment of these rights. The power of culture, combined with the lack of access to the justice system, due to the high cost and prohibitive procedures, makes it impossible for the vast majority of women in Kenya to enjoy the right to own and inherit family property. There is an increasing alienation of women and the emerging trends of the abandonment of community's communal responsibility to care for the vulnerable within the society.

Compounding the problem is the HIV/AIDS pandemic, which has caused massive destitution, displacements, blame-passing and mistrust in nearly all communities in Kenya. The high stigma associated with it has increased the vulnerability of women in this regard. In no other community in Kenya is the twin problem of societal and cultural practices - which discriminate against women and thereby translate into widespread of HIV/AIDS - more stark than within Luo Nyanza.

It is against the backdrop of the realisation of this continuing trend of violation of women's (especially, but by no means limited to widows) right to property ownership and inheritance rights and the urgency of the problem in the face of HIV/AIDS pandemic that the POLICY Project – Kenya (funded by the Futures Group) and Kenya National Commission on Human Rights (KNCHR) (funded by the Governance Justice Law and Order Sector reform program) came together inspired by the same need to work on enhancing the enjoyment of this right by women in Kenya. The partners recognize that the cultural structure is the main governance structure in the lives of almost all communities in Kenya. They therefore, elected to dialogue with elders to secure the rights of women.

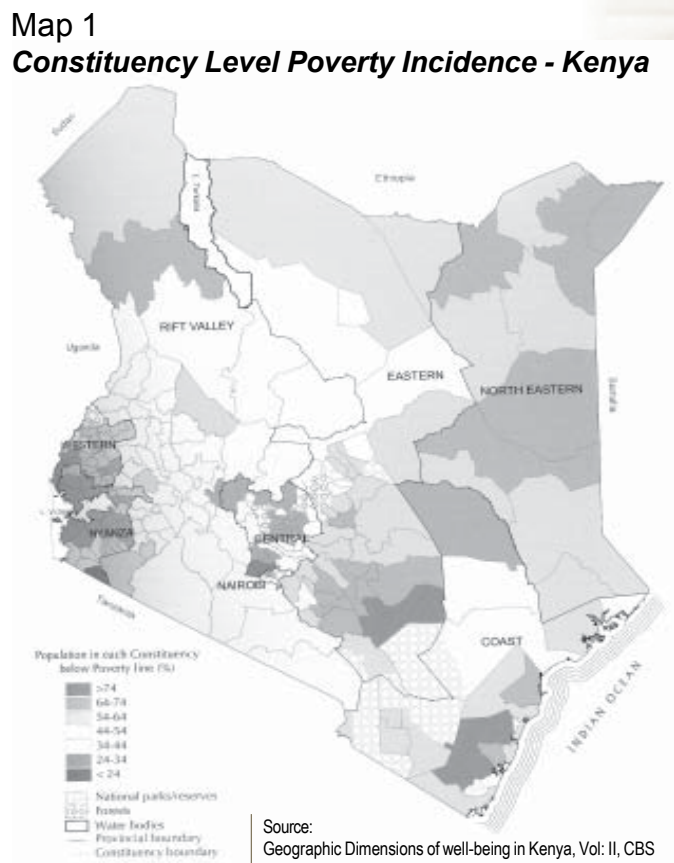
It was decided to initiate the project, in the first phase, within the Luo Community, where the Luo Council of Elders mechanism already exists. The work in Nyanza is being done in partnership with the Jaramogi Oginga Odinga Foundation (JOOF). In the second phase, it is hoped that the experience on the project in Luo Nyanza shall serve as a reference point for similar initiatives in other communities within the country.

The Project - conducted through a series of consultations, capacity building workshops and forums - has over the past one year borne results and revealed important lessons. In the first year of the project, more than 20 widows have been or are being reinstated back to their homes as a result of interventions by elders. Its primary objective of exploring opportunities for strengthening women's rights to own and inherit property has been largely fulfilled by the recommendations, observations and reports of Success stories that have come from the workshops. This would ultimately have the result of stabilising and improving the country's economy, reducing social tensions and improving community support systems for vulnerable members.

Background


The population of Kenya is about 30 million people. About 52% of the population is female. The majority of Kenyans rely on agricultural or subsistence farming for their livelihood. Eighty nine percent of the labour force for this subsistence farming is made up of women. Women also participate in large numbers in commercial agriculture. Ironically, women hold only 5% or less of the land in Kenya. Land is a symbol of security and status in the Kenyan society. Owning or accessing it, opens one's options to enjoy more rights.

Poverty diagnostics in Kenya indicate that poverty rose during the 1990s. According to the *Investment Programme for the Economic Recovery Strategy for Wealth and Employment Creation 2003 – 2007* (Ministry of Planning and National Development, March 2004), the proportion of the population living in poverty has risen from about 48.8% in 1990 to more than 56% in 2003. The *Investment Programme* further reports that: “In step with poor economic performance, key social indicators during the 1990s also worsened. Illiteracy rates increased as enrolment rates in primary school declined... Life expectancy declined from 57 years to 47 years between 1986 and 2000, while the situation in infant mortality and HIV/AIDS worsened.”



The number of people infected with and affected by HIV/AIDS in Kenya is high. The worst impact of this epidemic is felt by women and girls. Many of these are widows, young girls and grandmothers. The spillover effect has resulted in many destitute and vulnerable children (including orphans). A total of 1.3 million women in Kenya today live with HIV/AIDS. Over 1.2 million children are orphaned or made vulnerable by HIV/AIDS (OVC), and 75% of these are in the hands of grandmothers.

The *Investment Programme* reveals the geographical variations of poverty, indicating that in 1997, Nyanza Province had the greatest proportion of its population living in poverty (63%). The key factors highlighted as affecting household consumption are low agricultural productivity and poor access to markets;



unemployment or low wages; living in areas with poor infrastructure (especially roads); living with HIV/AIDS or with disability; being a member of a minority or other groups that are discriminated against; and living in an area with a poor and degrading environment. The poor also attribute their poverty to natural calamities, traditions, and cultural beliefs and practices that deny women access to productive assets.

The *Investment Programme* recognises that social and cultural norms emphasise the unequal power status of men and women, with some traditions favouring male dominance, thereby resulting in low social status of women.

Nyanza Province, with an estimated population of 3,825,752 (1999 census), comprises of 32 political constituencies. The poverty incidence in Nyanza as a whole is 65%. These constituencies contribute 19% to total national poverty, with an estimated 2.73 million poor people.

The Kenya law of succession

By Otiende Amollo

Succession refers to the disposition of the estate of a deceased person through transmission of property upon his demise. The concept of succession/inheritance exists in all communities, including ancient civilisation and modern state. The underpinnings of the concept are three basic assumptions/considerations:

1. Man, by his nature, needs to acquire property for his sustenance and to be able to live a good life.
2. Man dies and leaves behind his property, whose ownership should be continued by those who are left behind.
3. Man instinctively wants to control his property even upon his demise.

Despite universal applicability of these considerations, each society has its own rules, procedures and/or guidelines on the devolution of property of a deceased person. Indeed, before statutory law of succession came into force, African Customary Law of Succession governed the indigenous Kenyans as was provided for in Article 2 of the 1887 “Order in Council”.

Pursuant to this Article, each community was guided essentially by its own unique customs as far as succession and transmission of the property of a deceased person was concerned. To this end, Luo Customary Law thus governed the Luos on succession and inheritance.

Generally speaking, and as is generally obtained from some customary laws and practices, women’s rights to property are unequal to those of men in Kenya. Their rights to own, inherit, manage, and dispose of property, are under constant attack from the respective customs, laws, and individuals who believe that women cannot be trusted with or do not deserve property.

Luo customary law

By Catherine Mumma

Under Luo Customary Law, however, it may be said that there existed a communal system of ownership of property. Accordingly, property belonged to the community for the benefit of all members of the community. It then follows that in such circumstances, the Luo community recognised ownership and hence inheritance of property by women in as far as the holding thereof firstly for the benefit of all, and secondly for the benefit of the future generation is concerned. In any event, no person owned property in his personal capacity so that the issue of the right of the women to inherit did not arise.



Comm. Catherine Mumma.

The promulgation of the law of Succession Act in 1981 consolidated all succession laws. Technically, Luo Customary Law, like other customary laws, has no express place in the Act. Devolution of property of a deceased person is conducted in accordance with the universally established general principles bestowed by the Act.

Luo cultural provisions

By Asenath Bole Odaga

- Women are very important and valued and no major social function (including going to war in the old days) is done without consulting them.
- There is a lot of attachment to land, which is very valuable and is the symbol of economic security.
- Land was cleansed and treated as a human being.
- When calamities, such as abnormal deaths occurred, the elders found ways of cleansing the land, such as by sacrifice of a bull or a young animal.
- Land belonged to the clan or sub-clan.
- Usually, a man got a tract of land and parceled it out to his wife or wives.
- Each wife cultivated as much as she could. If she was a strong woman, then she managed to amass a large tract of land.
- Once her sons were old enough to marry, she gave part of her piece of land to her daughters-in-law.
- The man had no say on this because he also had his own tract of land known as *mondo*, where he grew his own crops to build his wealth.
- Nothing significant could take place in a Luo home without a woman's involvement.



Asenath Bole Odaga.

- When the husband died, she put on his clothes and took over as head of the home. She kept on the clothes until she was cleansed by a cousin or brother of the late husband. (It was believed that she was unclean and possessed of the husband's spirit which needed to be sent away; no one would associate with her until she was cleansed).
- The first wife inherited not only land, but all the other personal possessions of her husband, including the power he wielded on the home, his other wives and children.
- A Luo woman could be given land by her father, if her marriage did not work out. The piece of land would be a little distant from the main home.
- Change came with the advent of title deeds. Luo men became aware of the power of the title deed. This brought about confusion and misunderstanding.

Modern law combined with customary law and traditional and cultural practices have led to legal and social trends that have largely worked out to the detriment of women in virtually all communities in Kenya. These changes have interfered with the dynamics relating to the right to own and inherit property. They include the lack of documentation of the customary position on property rights, leading to abuse of culture, the land registration systems, the social and cultural attitudes that are increasingly alienating women, and the emerging trend of the abandonment of community responsibility for the care of the vulnerable within the society.

Women and land

By Prof. Okoth Ogenido



Prof. Okoth Ogenido.

Land ownership, access and control is central to the sustenance of the livelihood system in Kenya. It is the key asset at the centre of the right to own and inherit property. Although indigenous land tenure systems always protected the access rights of all members of the community, including women and children, this does not appear to be the case any longer. Social and cultural marginalisation of women (through, *inter alia*, the manipulation of outmoded customs and traditions; the globalisation of values and the extension of property systems and values to the exploitation of community resources) has led to further marginalisation of women in the land economy.

In addition, the devastating impact of the HIV/AIDS pandemic has left in its trail a big number of widows, particularly in their mid 20s to 40s, and minor-aged orphans. This is the most vulnerable age group, as they are usually unprepared for widowhood financially, psychologically, emotionally and physically.

How We Began

The Women's Property Ownership and Inheritance Rights (WPOIR) project is a joint initiative by the Kenya National Commission on Human Rights (KNCHR), and the POLICY Project/USAID. It is a national project, with the initial focus being on the Luo community in Nyanza. The two organisations are partnering with the Jaramogi Oginga Odinga Foundation (JOOF) and the Luo Council of Elders (LCE) in this community.

The project was initiated on the premise that “the right to own and inherit property is central to the true empowerment of all people in society, and is a key developmental right. It is a right that should be enjoyed by all members of the community (men, women, boys and girls) in all cultures. It is central to the dignity of all members of society.”

In a country where poverty levels are high and where the family unit depends heavily on the welfare of the woman, the denial of right to access property to women only serves to hurt society at large, especially the children, who are mainly depended on women.


The birth of this initiative was a result of the interaction of POLICY Project Kenya with a few well educated and economically empowered women who found themselves unable to claim their right to inherit or equally share family property due to the strong cultural influence that made it difficult for them to do so. The interest in the project was further sharpened by the number of cases that they learnt about widows and orphans affected and/or infected by HIV/AIDS, who were being denied their right to inherit family property.

Property and inheritance rights are very important to women in Luo Nyanza because this province has the highest HIV prevalence rates and highest number of deaths due to AIDS in Kenya. It is also the poorest region. This means that most women are widowed, sick, and have no access to food or shelter. Addressing their property and inheritance rights tackles one of their greatest areas of vulnerability and helps increase the stability needed to raise children and take care of their own HIV/AIDS related needs.

The POLICY Project Kenya saw the need to identify the issues that should be addressed so as to eventually lead to the ability of Kenyan women, particularly the more vulnerable ones, to enjoy their rights to access, own and inherit property. It facilitated a study on the legal, policy and structural framework in Kenya on the ownership and inheritance of property in Kenya in February 2004.

The study indicated that the existing legal and policy framework was largely protective of women's right to equally own and inherit land but it was not accessible to those who need it most. This is due to the cost, and procedural technicalities relating to the structures governing it. The study also assessed the projects by key civil society players who have been working on enhancing the enjoyment of this right. It found that frustrations of access were negatively impacting on the ability to





access the right through the formal structures. The study highly recommended the need to work with cultural structures, which are the first line of governance accessible to women, and to also target men as part of the target audiences for the different interventions.

POLICY Project Kenya then identified KNCHR as a key partner to work with. The Commission is an autonomous statutory body with the mandate to advise the Government of Kenya on all issues of human rights, educate the public on the same and monitor compliance by government agencies of human rights, including the international obligations that Kenya has undertaken.

The partnership began with a national consultative forum, where other stakeholders from government and civil society were brought together to share the findings of the study and its recommendations and to give further guidance on ways of working with cultural structures.

The forum took place at Merica Hotel in Nakuru from 9 to 11 August 2004. The representatives of relevant government departments, NGOs, CBOs and FBOs shared experiences they have encountered in the course of their work with regard to issues relating to the rights of women to own and inherit property in Kenya. The workshop benefited from the experience of formal administrative structures who have worked on this problem or have been confronted by this problem in the course of their work. Individual women who have sought remedial action in the formal structures - including courts, the office of the public trustees, the land control boards, etc. - also shared their experiences.

Participants were also taught a method of analysing power relationships between and amongst different structures in society to enable them plan and target their intervention for better outcomes. It was agreed that cultural power was the main force behind the violations of women's right to own and inherit property. The participants recommended working with cultural leaders and structures to enhance the enjoyment of this right.

The partners agreed to work in two communities to explore the viability of working with cultural structures. The Luo and Meru communities were selected as the first choice because of the existence of a cultural structure, the Luo Council of Elders and the Njuri Ncheke respectively. A decision was made to begin with the Luo community because of the strong presence of cultural practices in this community and the impact of HIV/AIDs on families. The community also had a network of groups that had expressed a need and willingness for intervention on behalf of the widows. The other reasons that guided the decision include:

- Evidence of patent abuse of cultural principles to deny women, and especially widows, secure access to land.
- The process of land adjudication and registration which has led to substantial expropriation of the indigenous land rights of women and children.

- Land use operations that have been severely affected by the prevalence of HIV/AIDS.

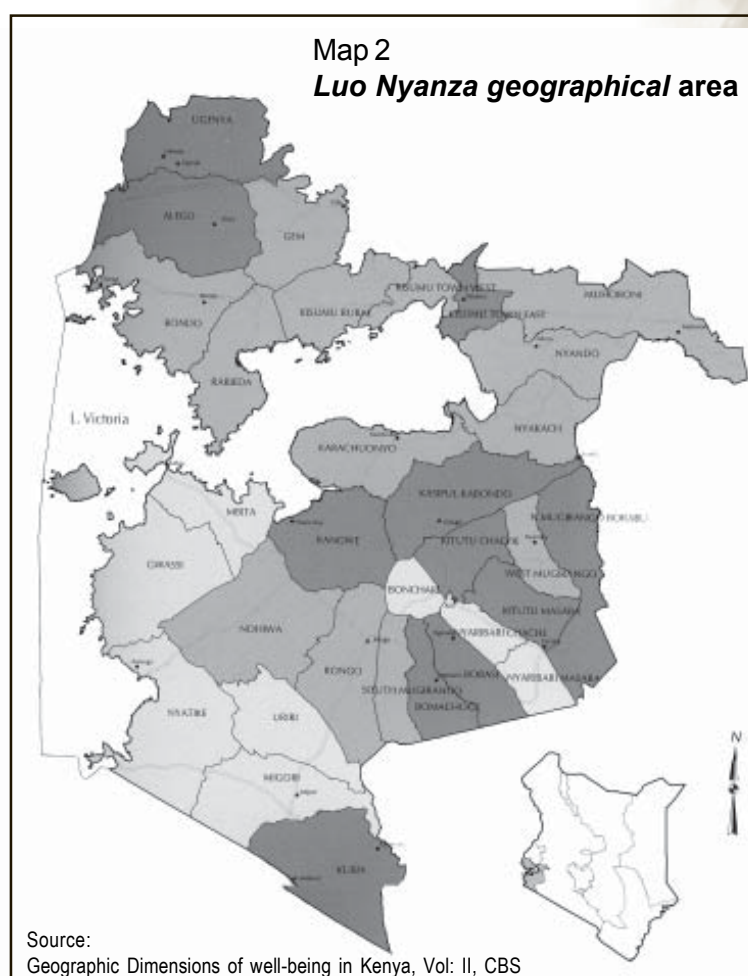
It is at this point that JOOF was identified as a partner in Luo Nyanza. The professionals in this community were also involved at various stages of the project. JOOF is one of the organisations that have previously been at the forefront in moving an initiative on advocacy strategies on HIV/AIDS within the Luo community.

Rolling out the project in Luo Nyanza

A total of nine activities targeting various players were organised in 2004 on the project in Luo Nyanza. These activities yielded positive results, with some of the success stories enumerated in this report. The activities were:

- Widow mobilisation exercise
- Stakeholders' workshop – Sunset Hotel, Kisumu
- Public Meeting – Tom Mboya Labour College (TMLC), Kisumu
- Capacity Building for LCE – TMLC
- Women's Symposium- Nairobi
- Women's Forum
- Provincial Administration Workshop
- NGO, CBO and FBO workshop
- Documentation of the success stories (over the last 3 months)

In the pilot province of Luo Nyanza, the project is being implemented in 46 Locations in Migori District, 40 in Rachuonyo District, 38 in Nyando District, 20 in Suba district, 26 in Kisumu District, 19 in Bondo District, 30 in Siaya District and 26 in Homa Bay.



The intention of the project is that with the involvement of other partners and with adaptation to the local culture, it will be replicated in other areas of the country, such as Meru, Kisii, Maasailand, Kalenjin land, Borana land and the Coast – through the religious-based cultural structures of authority, such as the Council of Imams, and Supkem.

A session with widows

This was an exercise that was carried out in partnership with local NGOs and CBOs. It brought together a team of mobilisers to go to various parts of Luo Nyanza and identify cases of widows whose right to inherit property had been violated. The survey sought, among other things, to determine the problems women encounter on matters related to this right and to examine the socio-cultural and legal incompatibilities in order to facilitate a dialogue between them and the community leaders.



Monica Nyangun shares her story flanked by Dorothy Awino.

The session with widows, from 4 to 11 November 2004, revealed that women felt intimidated by cultural beliefs and felt helpless and defenseless when confronted by them after the death of their husbands. Many of the widows identified were young and did not understand the Luo customs very well. As a result of this, they were easily exploited. Some of them accused chiefs and sub-chiefs of colluding to defraud them of their rights. Many of them sought refuge in informal settlements, market places, their maiden homes or in other people's homes. Many of the widows were so intimidated that they even found it difficult to tell their stories. The mobilisation team had to counsel them to pick the courage and express themselves before their community leaders.

Meeting with the Luo leaders

The first meeting with the Luo leaders was held at Sunset Hotel in Kisumu. The objective of the meeting was to share the extent of the problem facing women, especially HIV & AIDS affected and infected widows when it comes to the enjoyment of the right to inherit property. The meeting was to also visualize this problem through the sharing of experiences by some of the widows with problems. The meeting was well attended by the Luo Council of Elders, political leaders, the professionals, and women leaders from the community.



Hon. Raila Odinga (then Minister for Roads and Public Works), Prof. B.A Ogot and Prof. Okoth Ogendo listen keenly.

The discussions included the presentation of: the project concept by the partners, Luo customary law on ownership and inheritance by women, the structure of the

council of elders and discussions on the individual cases. The key recommendation of the workshop was to strengthen the Luo structure of elders to intervene in cases of abuse of the widows rights. It was observed that most of the cases presented, indicated a violation and deviation from the Luo culture.

The workshop confirmed that the focus on working with the existing cultural structures and traditional ways of resolving community problems was not only appropriate but also necessary. Both the cultural and political leaders agreed to document the Luo customary law on inheritance in order to curb the exploitation of the culture by greedy people in the community. They also agreed to develop a declaration of resolutions and publicly pronounce them on World AIDS Day, to indicate their resolve to support this project and protect the rights of widows to inherit.

Public Baraza - World AIDS Day

On December 1, 2004, a *baraza* (public meeting) was held at Tom Mboya Labour College in Kisumu, to mark the World AIDS Day. The objective of the meeting was to principally give more Luo widows a forum to air their concerns (property rights and inheritance) before a gathering of a wider membership of the Luo elders so that constructive dialogue could be ignited at the community level, with a view to looking into ways and means of ameliorating the predicament of these widows, who reportedly are habitually victimised by their families and in-laws.

Through the massive community advocacy in the public meeting, the workshop was expected to convince the cultural leaders to take action and to intervene – leading to resettlement of disinherited widows and orphans.

The public meeting was aimed at leaders reaching a consensus and a declaration on women's rights to own and inherit property and land in Luo Nyanza. Over 500 participants attended, including, legislators, provincial administrative leaders, and various representatives of the Luo community – from the eight districts of Nyanza – and cultural societies.

The public meeting passed three main resolutions:

1. The Luo Council of Elders should intervene in the matters that were presented in the *baraza*, in consultation with the elders from the community where the widows or orphans came from, and the provincial administration.
2. The project should conduct an assessment to determine how other cases of concern in the Luo community can be resolved.
3. The council of elders should give a detailed structure of their representatives in every part of the community to visualise to the widows the points of intervention.

The public meeting further proposed the need to strengthen the capacity of NGOs, CBOs, FBOs and the community to begin to use the Luo elders as a structure of intervention. The leaders adopted a declaration in this regard.

Workshops and Fora¹

Capacity Building Workshop for the Luo Council of Elders

The Luo Council of Elders (LCE)² Capacity Building Workshop was held, as the first of a series of workshops and forums in the second phase of the Programme. The workshop was held from 11 – 14 May 2005 due to the key cultural and administrative roles of the elders in the life of the Luo community. Part of the broader objective of the workshop was to create greater awareness and understanding between the elders - as community gatekeepers of cultural practices - with a view to coming up with community-grown solutions to the problems. The workshop sought to involve the elders into interrogation of their own system of dispute-resolution mechanisms. The elders had an opportunity to review and appraise the role they can effectively play to defend, ensure and

protect women's and orphans' rights to own and inherit property, among other things.

The specific objectives of the workshop were to:

- Enlist a strengthened support of the LCE in participation and construction of streamlined modalities in securing access to property and inheritance rights for the widows and orphaned children.



Ker Meshack Riagu Ogallo (4th right) with some members of the LCE.

- Examine the adequacy of the existing *Ker*/LCE structures in terms of providing an effective vehicle for implementing the project, among other responsibilities, and ensuring and securing orphans, and women's rights to own and inherit their rightful property in the Luo community.
- Review and document the Luo culture as it relates to the care of widows and orphans, as well as their rights to ownership and inheritance of property/land.
- Identify positive aspects of the cultural framework that can be effectively used to strengthen women's ability to own, inherit, and enjoy such rights for the full benefit of their economic, social and cultural empowerment.
- Discuss the anticipated challenges and constraints likely to be faced in implementing the project, and propose best ways and means of overcoming them.

¹ All workshops/forums were held at the Tom Mboya Labour College in Kisumu City.

² The Luo Council of Elders (LCE) is headed by the *Ker*. It has a total of 28 Community Elders. At the district levels, it has 16 members. At the divisional level, it has District Committees, and at the location level, it has Location Committees made up of 8 members. It has 6 Community Members at the community level, and a Family Community made up of 3 members.

The workshop enlisted the support and participation of the 150 members of the LCE (predominantly male) in the formulation of modalities and guidelines for securing access for women and children to property ownership and inheritance. It was recommended that a women's forum be held for dialogue with the Executive Committee of LCE, to enlist their watchfulness and to make them active beneficiaries in the matter of property ownership and inheritance. The workshop identified the unique role of *Ker* and the LCE as having the likely ability to use their structure to solve some of the community's problems. Participants resolved to come up with guidelines on inheritance rights in order to prevent the practice of dilution and, in some cases, deliberate misconstruing of cultural norms. The elders expressed appreciation for being recognised and being called upon to solve the problems.



Ker Meshack Riaga Ogallo addresses the participants.

The Women's Forum

As a precursor to the Women's Forum, a one day symposium was held in June, at Nairobi's City Hall, for women living in the informal settlements of Nairobi. The Nairobi Informal Settlements Symposium, held on 14 June, 2005, brought together 50 women from the informal settlements of Mathare, Kibera and Mukuru. They were principally women who had lost their property, had been disinherited, or disagreed with or faced violence from their in-laws, ending up seeking alternative shelter in the urban informal settlements.



Participants at the Nairobi Informal Settlements Symposium.

The Women's Forum, held from 28th June to 1st July 2005, was deemed necessary to help incorporate the perspectives of women opinion leaders so that women can become active agents in propelling the project forward. The forum came immediately after the Capacity Building Workshop for members of the Luo Council of Elders (largely male). It provided an excellent opportunity for women to share experiences and points of view, and to point out the greatest impediment to the enjoyment of their property ownership and inheritance rights. They further



Ker Ogallo shares a light moment with Dr Rose McCollough and Hon. Grace Ogot.

suggested best strategies in addressing the challenges posed by the demand for these rights. The forum provided an opportunity to bring women into the dialogue, and to provide a platform for their dialogue with *Ker* and the LCE. The forum revealed the adverse conditions that these widows and their children were living in. Many of the widows also expressed a desire to return to their matrimonial homes, as their suffering in the city was often

unbearable.

The diversity of the over 150 women leaders, and the Executive Council of the LCE, ensured that the emerging output represented women's experience across the region. Also present were opinion leaders, paralegals, farmers, freedom fighters, church leaders, counselors, Maendeleo ya Wanawake district leaders, CBO directors, women group leaders, home-based care workers, community health workers, programme officers, traditional birth attendants, councilors, community group leaders, retired teachers, writers, and herbalists.

For geographical diversity, participants came from all parts of Luo Nyanza and as far as Nairobi informal settlements. There were self-confessed 'senior widows' (women who have been widows for over thirty years) as well as recently widowed women. Among the key challenges that the women identified as affecting their access and enjoyment of the property and inheritance rights were:



Hon. Dr. Phoebe Asiyó makes a passionate point.

1. Land rights insecurity among Luo women, particularly widows (and orphans) arise from factors such as the threat to the Luo marriage institution due to weakened bond to community values.
2. Community structures governing access to land are no longer working, primarily because land is increasingly becoming individualised and commercialised.
3. The system of Community Education and Adjudication of disputes has broken down, and *duol* (elders hut), no longer exists.
4. Women are sometimes their worst enemies when they do not cultivate meaningful relationships with their husband's family, or assert their rights as permanent members of their husband's community.
5. Aspects of obsolete cultural practices are being used to oppress or marginalise women.

At the end of the forum the women resolved to:

1. Sensitise, create awareness and educate the people of Luo Nyanza region on all aspects of positive customary law relating to ownership and inheritance of land, especially as they affect widows and orphans.
2. Join hands with the Luo Council of Elders in publicising the aims and objectives of this project in order to ensure that its outputs are beneficial to all communities.
3. Create awareness of the Luo Council of Elders structures as an alternative dispute resolution mechanism for cultural matters in the Luo Nyanza region.

The Provincial Administration Forum



Mr. Busena, Deputy PC addressing the participants.

The objective of the two-day Forum, held from 6th to 9th July 2005, was to provide the Luo Council of Elders (LCE) with an opportunity to brief and inform the Provincial Administration ³officers in Luo Nyanza of the LCE's participation in the implementation of the project on women's right to own and inherit property in the face of the many young widows and orphans as a result of the HIV/AIDS pandemic. These women face and/or are threatened by looming possibilities and realities of land and property disinheritance. The participants discussed how to complementarily harmonise the (PA/LCE) independent structures for the benefit of supporting the Luo community in its endeavour to address the problem. The LCE and the PA discussed the nature of their respective revived, reconstituted and strengthened structures.

The specific objectives of the workshop were:

1. To brief the Provincial Administration officers and other participants about the Women Property Ownership and Inheritance Rights Project (WPOIRs).
2. To discuss the roles of the Provincial Administration (PA) and the Luo Council of Elders (LCE) in this Project.
3. To consult on how to harmonise the operational structures of the LCE and the PA in their approach to cultural and administrative interventions on the violations of the rights of women to own and inherit property.

The Ker, Meshack Riaga Ogallo, castigated the disinheritance of widows and orphans. He stated categorically that the action meted against widows and orphans by the in-laws and uncles, is madness. "They are not obeying the law of the land, or the cultural norms." He emphasized that, "Luo culture respects heavily the humane treatment of widows and orphans." He concluded, "*Bwana* PC, we as the Luo

³ The Provincial Administration structure is organized into four levels. A Provincial Commissioner (PC) heads the Province which is made up of many districts headed by the District Commissioners (DCs). Under the DCs are several divisions. The divisions are headed by Senior District Officers (Dos) or DO1 with a Divisional Officer DO in charge of a sub-division. The sub-division is made up of many locations. The Chief is in charge of the location and is assisted by the Assistant Chiefs, working at sub-location levels.

Council of elders, have formed District Committees, which I appeal to your DCs and DOs to recognize and work with, for the service of our people.”

The Provincial Administration Workshop made the following recommendations: officers of the Provincial Administration should have clear job descriptions which, among other things, should include recording and documentation of the number of cases involving disputes on inheritance of property/land, affecting women in general, and widows in particular; dealing decisively with acts of criminality disguised as cultural practices; availing at their respective offices, to members of the public, copies of the Kenya gazette and other relevant government publications; and including discussions on violations of women property and inheritance rights in their barazas/public forums.

Capacity Building Workshop for the NGOs, CBOs and FBOs

The Capacity Building Workshop for Community Based Organisations (CBOs), Faith Based Organisations (FBOs) and Non-governmental Organisations (NGOs) was deemed necessary to help incorporate the perspectives of these organisations, which are active change agents on the ground. Coming soon after the Capacity Building Workshop for Provincial Administration (governmental) (PA), the forum, held from 14th to 17th September 2005, provided an excellent opportunity for the community-based activists to share their knowledge and experiences on the rights issues; point out what they considered the greatest impediment to women’s enjoyment of their property ownership and inheritance rights; and to suggest best strategies for their collaborative efforts in addressing the existing and expected challenges.

The workshop also took stock of the progress so far made in the project, especially in the resettlement of dispossessed widows. Fortunately, the Luo Council of Elders, at their group meeting, disclosed a number of positive outcomes and success stories in resolving some of the cases previously reported to the past forums by victims. It was also encouraging that participants from different districts did come up with Action Plans, some with set time frame, which they intend to be using in defending women and children against property rights violations in their respective areas in the future. They requested the elders to give them the names of their contacts in the community, to direct to them women and orphans seeking help.

Media coverage

During the Provincial Administration workshop, a brief consultation was held with some of the journalists in Kisumu to discuss media coverage. The consultation revealed that the journalists themselves felt a need to get a better understanding of the issues and to develop effective strategies for coverage, not just of the seminars, but issues affecting women. They expressed a need to get a better understanding of gender issues as well as the rights of women to own and inherit property.

It had been observed that media coverage of women’s property rights issues, on the whole, tended to be sensational, focusing on the negative elements of culture. The stories were also often shallow, insensitive to the plight of the women and not cognizant of the universality of this issue countrywide. They were often portrayed as individual and at most parochial/community problems. The current coverage

seems to indicate that this is a Luo Nyanza issue, caused by Luo cultural traditions, such as *Ter* (wife “inheritance”), and does not apply in other regions of Kenya.

During the workshops, it was noted that journalists often attended the opening and closing ceremonies only, to capture the voices of the personalities represented. Their interviews were also largely limited to well known personalities. Their questions were often generic and did not appear to be informed by the on-going deliberations.

It was proposed that there was a need to look into effective ways of moving the project objectives forward, from the perspective of the media; and to obtain more effective media coverage that was not limited to a Luo Nyanza perspective, but coverage that would raise the plight and interventions on the issue of women’s rights to the national platform.

Whereas the project focus of the pilot project has been on Luo Nyanza, it was felt that the media coverage should bring the issue out as being representative of the plight of women on a nationwide level. The effect of such coverage would be to have a ripple effect and to encourage other elders and stakeholders to begin to act in their specific regions long before the project is replicated elsewhere.

They proposed the following:

1. A two-day media forum (1 day in plenary, 1 day in the field – conducting interviews and compiling actual reports/features for transmission).
2. The Nairobi-based News Editors and Features Editors should be included in the Media Forum, to enable them appreciate the gravity and importance of the issue, thereby becoming more receptive to the stories from the field.
3. All the materials and speeches from the seminars should be sent to them to enable them compile feature stories.
4. Make use of the existing Radio channels for features and live interviews. They pointed out that in the region; Radio was the most effective and most patronaged medium. They recommended that discussions should be held with the producers, to include this topic on their programmes. The key stations are: Radio Lake Victoria, Ramogi FM; KBC Luo Service. Special mention was made of the programme “Abila”, a discussion programme incorporating Luo elders.
5. Assistance is needed by most reporters in terms of tape recorders, for wider coverage.
6. Trips to be organised to affected areas/people, for TV/radio/newspaper features, on an on-going basis. This can be undertaken independently by the journalists, provided transport allowances are provided. Other trips can also be undertaken jointly with the project co-coordinators.

Following these recommendations, Internews organised a two-day training for 7 Nairobi-based journalists. The programme included sharing knowledge with journalists on the coverage of women’s property ownership and inheritance rights. Catherine Mumma, a commissioner with the Kenya National Commission on Human Rights (KNCHR), briefed the journalists on inheritance rights and the situation in Kenya.



Impact so Far: *Case Studies*

More than 10 widows have been resettled to varying degrees, so far, through these interventions. Through the cultural structures, a number of Elders have played a significant role in assisting displaced widows and orphans. Several NGOs, CBOs and FBOs have also been instrumental in educating and assisting the widows and orphans. Some, such as the Akado Women's group even have a regular feeding programme for the orphans. The Orongo Widows and Orphans Group has provided a shelter to some displaced women.

The Provincial Administration and the legal structures have also played their part. Through these interventions, there is evidence that several women have been empowered and now know their rights to property ownership. Others have gained through reduced vulnerability, as they feel there are people out there, looking out for their interest. A number have gained access to HIV/AIDS interventions.

It is anticipated that the ripple effect of these interventions, especially if well coordinated and harmonized, will be far reaching in the years to come. These successes are demonstrated through the stories contained herein.

Empowerment of Women



Priscilla Oluoch.

Priscilla Oluoch, a dynamic 36-year-old lady from Mosop, Kipkaren, got married in 1990 at Oyugis Parish Catholic Church, to Oluoch from Kochieng Sub-Location, Kamagak East location, Rachuonyo District. Their marriage was further witnessed by the Chief, who wrote them a customary marriage certificate. After their marriage, they had two sons. Her first son, Maxwell Omondi is 12 years old, and in standard 8. The second son, Mark Oluoch is 10 years old, and in standard 5.

Priscilla had a 17-year-old daughter who passed away in 2004 after a long kidney illness. She left behind a nine month old child. Priscilla's daughter was buried in Eldoret, near her maternal grandparents' home due to antagonism at the Kochieng home at that time.

Priscilla's woes began when she lost her husband in 2001 after a long illness. Her younger brother-in-law wanted to 'inherit' her. She refused to accept this as she had already gone for an HIV test and found she was HIV positive. She declared her HIV status to the family but they did not believe her. Her brother-in-law insisted but she stood her ground for the sake of her children. The family also accused her of tarnishing the good name of their son. Her father in law had died earlier. Her mother-in-law did not give her any support as she herself has been inherited twice.

Together, Priscilla and her husband had owned 5 heads of dairy cattle. A tearful Priscilla recounted how when her husband died, her brother-in-law sold off two of their cows without her consent. She did not go to the Chief to report him because she was afraid. Two cows later died and only one is left. The family land had not been subdivided and this made access to land for agricultural purposes impossible. Her *nyieke* - wives of her brothers-in-law also stopped associating with her as she had not been 'inherited.' Being the wife of the first son, it was traditionally expected that she would be the first to plough and harvest so long as she had a husband or 'inheritor.'

Most of Priscilla's neighbours were *Jodak* (people who are not living on their ancestral land). These neighbours could not intervene directly to save the situation as they were not from the same lineage (clan). One day, Priscilla found out about a plan to have her forcefully 'inherited.' Her family had called a meeting at her mother-in-law's house. Sensing trouble, she escaped. She went to see the Chief, Tobias Oula about the threat to her life. The Chief encouraged her to find an alternative abode within the area, rather than returning to her parents' home.

Priscilla, who had gone to school upto Form IV, was then working as an Agricultural Extension Officer, with Oyugis Integrated Project. She took a loan, bought a piece of land at Kochieng sub-location and built herself a house with the help of her support group from MSF. She worked with the project until her contract expired in May 2005.

Priscilla tried in vain to access her late husband's benefits from Amani Centre where he had worked. She had also learnt that upon her husband's death, Amani Centre had also collected some money, through *harambee* (communal effort), about Kshs 47,000, for the children's school fees, but this was never released to her. She sought intervention through *Ker Riaga Ogallo*, who is related to her late husband, but unfortunately Amani Centre soon collapsed.

Recently, the Chief, the District Officer and *Ker Riaga Ogallo* have intervened in Priscilla's matter and the family has now agreed to give Priscilla access to her late husband's land. Her brother-in-law, in whose name the land was registered, has agreed to sub-divide it and give Priscilla the title deed for her parcel. Oyugis Intergrated Centre facilitated the building of her new house. She has bought a dairy cow to generate income as well as supplement



Priscilla Oluoch's house.

the family's milk needs, especially as she intends to live with her grandchild. She has also planted some Napier grass for the cow. Priscilla also has access to the only dairy cow left from the five she originally had. She does not intend to move back to her marital home but she is happy that she can now access the land for the sake of her sons. She visits her mother-in-law who in turn visits her in her new home. The friction has reduced. Her mother-in-law loves the children. Her brother-in-law, however is distant and hostile and does not visit. Her children are happy in their new home.

She has been on ARVs for the past 10 months and is doing well, although she suffers from frequent heartburn. She should drink milk at least twice a day, but is not always able to get enough.

Some of the challenges Priscilla faces today, include the fact that her elder son will be going to Form 1 in 2006, and she does not know where she will get school fees for her children. She is also anxious to get a job so that she can feed and sustain her family, and to get the title deeds for both parcels of land she now owns.



Priscilla Oluoch in her house.

Reduction of Vulnerability

Rehema (*not her real name*), a 37-year-old woman, member of the Akado Women's Group, is from a neighbouring country. She got married in Kasgunga sub-location, Gembe West location, Suba District, in 1991, as a second wife. She had four children but two died. Her husband had been seriously sick for three years and finally died in 2002. The following year, her co-wife died. Until his death, all she knew was that he had typhoid.



A group of PLWHA at Akado.

After the death of her husband, her step-son ganged up with his cousins to take away all her belongings, including furniture. Her mother-in-law tried to chase her away from the house her husband had built for her. She reported the matter to Chief (now late) Ouma Kadipo. The Chief intervened, warning the family members against harassing her, and encouraging her to stay on.

Rehema was later 'inherited' by a man from Kadem (*Jakadem*), who was passing by and had a child with him. Later on, her brother-in-law wanted to 'inherit' her.

They agreed to go together to Akado Women's group for HIV testing. She was found to be HIV positive while he was HIV negative. They agreed not to marry. She is not yet on ARVs.

Three months ago, due to the continued intervention by the Chief, community elders and Akado Women's Group, some of Rehema's property was returned to her. Although she does not yet have a title deed for her land, she now lives peacefully on her piece of land without fear of being thrown out or harassed by her step son any more.

Women's Property Rights and HIV Intervention

Mary Achieng Bunde, (Bunde is her father's name which she proudly announces



Mary Bunde with nephew Moses.

that she has maintained), 39, was married to Edward in 1991 of Kaswanga sub-location, Gembe West location under Chief Kowuor, Suba District. She has two children, a 22-year-old daughter who is married, and a 19-year-old son, in standard 7. She also takes care of her late brother-in-law's three orphaned children, among them, Moses, who ushered us into the house.

Mary's husband died in 1998. While her husband was sick, she had a problem in the uterus. She was in Russia Hospital in Kisumu for four months before surgery – uterus removed. She returned home two months later and found her husband very ill, unable to get out of bed. She took care of him in her weak state for another year before he died.

By 1996, Mary had tested for HIV and found that she was HIV positive. "I am much better now. My CD 4 count has increased to 577 from 97 when I started treatment. It's just my weight that bothers me sometimes. When I am stressed, I really lose weight. I know that everyone goes through stress, but sometimes that depression just creeps in, especially on those of us who know we have the virus. I just find myself thinking that, maybe the person I am talking to does not respect me just because I have the virus. Sometimes I just find myself wallowing in self-pity." She laughs and adds, "Anyway, I don't dwell on that self-pity because I am a born again Christian. Without salvation I wouldn't be here today." She gets her ARVs from MSF in Homa Bay every two months. The Matatu fare to Homa Bay is Kshs. 150.

After the death of her husband, her brother-in-law put a lot of pressure on her to 'inherit' her. Knowing her status she said, "No way, I will live alone! Thereafter, there was so much friction in the home, I was forced to leave and go to live in the town." By the time Mary moved to the nearby shopping centre in 2002, her roof was leaking, the younger child was very sick, and her brother-in-law would not help her repair it.

Mary's mother-in-law had been the second wife and had died, and the remaining mother-in-law did not want her and therefore, sided with her son. The troublesome brother-in-law died a year ago and his wife followed early in 2005. She died the day Mary went to visit her after learning of her illness. Mary decided not to return to the town centre since her brother-in-law, who had caused all the problems was no longer alive and there was nothing she was running away from. She also found that there was no-one left in the home to take care of the orphans. One of the two girls we had seen on the mat outside was the eldest, followed by Moses, and the youngest one was in a private school that did not observe the holiday. (The other girl on the mat was the daughter of Mary's sister, who was visiting),

Mary's son insisted that he wanted to return to his paternal home to build a house (*simba*), rather than build on the land that her father, Mzee Bunde, had given her to settle on in Mbita. "I realized that my son was right and also since the man who had been causing me trouble was no longer alive, I felt encouraged to stay on." Her father-in-law had died before dividing the land, although he had demarcated it for each of his two wives. Each wife had one son, both of whom were dead. She therefore knew exactly where to build.

Although Luo culture requires that a widow cannot build a home or put up a house without a husband or 'inheritor', Mary was able to do so in April this year (2005), with the support of her Church members and the Akado Women's Group. "After my husband's death, Akado Women's Group really helped me. They had been my friends for a long time." She obtained financial assistance from the National AIDS Control Council (NACC) through the Constituency AIDS Control Council (CACC) development programme. This assistance came through the PLWHA support group that she leads.



Mary Bunde's house.

She is very vocal about her status. She was the first lady in the area, to disclose her HIV status, hence the nickname 'First Lady.' "Of course my children know my HIV status. You have to disclose your status at home before you do so outside," she states emphatically.

She plays a leading role in advocacy, groups that support widows and in Church. She is an active member of Akado Women's PLWHA Support Group, WOFAK, and CACC Committee, amongst others. She attends regular weekly meetings and the allowances of about Kshs 300 weekly, help her take care of her now larger family. She supplements this income by selling firewood. She also gets some food support from Akado Women's Group for the orphans. That makes a big difference for her.

She feels settled and comfortable in her new home and elated on being a grandmother. Even though she has no title deed for the parcel of land, she does not feel threatened in any way that she will lose it.

After attending the Women's Property Rights Forum in Kisumu this year, she realised the importance of support systems that protect widows and orphans' rights. "I encourage widows to be steadfast on their rights and to remain truthful. God is faithful and just. He has blessed me with five children. I am happy. I was not wanted, but I am the only one remaining in this homestead now. I am comfortable. Even if I get a small amount of vegetables, I can share this with my family," she concludes.

Intervention through Cultural Structures

Dorothy Achieng', is a 25-year-old widow from Kano, Kimira and married in Kajulu 1B sub-location West Kanyamkago location, Migori District. She has two daughters aged 4 and 2 years. Also under her care are two total orphans of her late brother-in-law, one in standard 3 and the other in standard 1.



Dorothy Achieng'.

Dorothy's husband died in September 2004 after being seriously sick with continuous hiccups for 3 weeks. She herself is fine, and has not gone for any medical checkups. Her husband was from a large polygamous family of four mothers. His mother was the third wife and she had only two sons. His father had divided the land among his sons before he died. Dorothy's husband, therefore, had his portion of land, though without a title deed.

Dorothy's problems started soon after her husband's death. Her step brothers-in-law started harassing her to leave saying, "no one stays on a piece of land or homestead where everybody has died." They also claimed that because she only had daughters, she had no right to stay. Her father-in-law's brother also insisted that she needed to be 'inherited,' and even threatened to do it himself.

Dorothy took the matter to the area elder from the Luo Council of Elders, Abel Ombuor who is one of her step brothers-in-law. Mr. Ombuor, a respected member of the community, with authority in the homestead, intervened and assured her of his protection. He warned the others not to interfere with her. He also gave her a sewing machine to enable her make school uniforms for sale, to take care of her children and the young orphans under her care.

Dorothy does not need to move out of the homestead because her husband was the last born son. She is settled and is working hard on her six-acre farm. She hires out some of it, while she farms on the rest. Her wish is to get enough fabric in order to increase her production of school uniforms. She is not yet keen on or interested in getting re-married or 'inherited.'



Achieng' with Mr. Abel Ombuor, a member of the Luo Council of Elders.

Women's Empowerment and Property Rights



Martha Auma.

Martha Auma is a 37-year-old mother of three children – a 15-year-old son in standard 8, a 13-year-old son in standard 6 (living with an aunt), and a 10-year-old daughter in standard 5. She comes from Tanzania. She met her husband who was a businessman in Sirare and they got married in 1985. Her home is in South Kamenya sub-location, Kamenya Location.

She was referred to as 'jamwa' - a foreigner, by her brothers-in-law when she lost her husband in October 1993. They saw no need for her to continue living in their homestead. Claims were rampant that he had been bewitched by one of his brothers. She took her children and returned to Tanzania.

While Martha was away in Tanzania, her mother-in-law decided to divide the parcel of land among her sons as she too was a widow. She called in the elders and the chief to witness the sub-division. Her 5 sons wanted the land to be subdivided into 5 portions but their mother stood her ground and insisted on dividing it into 6, with Martha and her children in mind. This nearly split the family but the mother-in-law stood her ground and with the support of the elders and chief, she kept a portion for Martha in absentia.

When Martha returned and found her house had collapsed, she succumbed to community pressure to be 'inherited' in order to build a house. Unfortunately, this house did not last long and collapsed. She spent some time moving from home to home, looking for a place to sleep with her children. On many occasions she was out in the rain and cold. When she could not bear it any longer, she approached Mr. Asiyo, a neighbour and husband of her former MP, Hon. Phoebe Asiyo (team member), for help. Mr. Asiyo intervened and provided some material for the house she now lives in. This time round, Martha opted to build her house without a man (*inheritor*).



Martha's mother-in-law.



One of Martha's sons.

This time around, Martha's mother-in-law defiantly stood in to support her. She sat on the traditional stool as an elder and supervised the building of the house. Martha now has a home she can call her own. Martha's mother-in-law continues to support her and considers her one of her own. Each of the brothers-in-law have moved and established their own homes.

Lately, Martha has been in poor health and has not been able to access the medication she needs. She cannot even adequately provide for her children. She is very weak and cannot tend to her farm.

By the time of going to press, Martha Auma had passed away.

Intervention through Cultural Structures and Property Rights

Evelyne Awino is 28 years old and has already lived a full life. She got married in 1994, to her elder sister's husband when she died. This was arranged by her father, as a replacement for the late sister. Her husband was from Magunga sub-location in Gwasssi, Migori District, living in Mombasa. She has 4 children, 2 belong to her late sister and 2 are her own. The boys are aged 13, 11 and 7, and the girl is 17 years old. The girl has not been well and is being taken care of by another sister of Evelyne's.



Evelyne Awino.

Evelyne's marriage was shortlived, as her husband died in 1997. She has undergone a lot of harassment from her brother-in-law who is also the Chief of Magunga location. Before her husband's burial, the brother-in-law had already moved in to take all the documents he could lay his hands on – the bank book, NSSF Card, death certificate, arrears from African Safari Club where he worked, furniture, including beddings. This caused a lot of tension during and after the burial.



Evelyne's father.

After the burial, she decided to go back to Mombasa to inspect their rental houses. On return she found that her brother-in-law had demolished her house in the village. She lost all the livestock they owned. Frustrated, she took her children and returned to her parents. Her brother-in-law allowed her to go away only with her two sons who he did not accept as part of the family. She was forced to leave behind her sister's two children.

When, later on, she heard of the death of her mother-in-law, she attempted to attend the burial but was barred by her brother-in-law. Evelyne later sold the rental houses in Mombasa and bought a plot in Kisumu, Migosi, where she has built two residential houses, in various stages of completion. When she ran out of money, she did not pursue and therefore, does not have the title deed for the Kisumu plot.

The Luo Council of Elders member for Gwasssi, Walter Oduol, the member for Kasagam, Charles Andere Atong, the Nyalenda Chief Otieno Abisae, and the District Officer representing the Provincial Administration including other elders from the family (*libamba*) represented by a step father-in-law, have all been actively involved in Evelyne's case since she first presented it at the LCE Capacity Building Workshop.

Evelyne has been invited back to her marital home and allowed to return and build a house. The elders have amicably resolved the dispute that led to her displacement. The elders and the Chief are also ready to organise and help her build a house.



Evelyne's mother with her grandchildren.

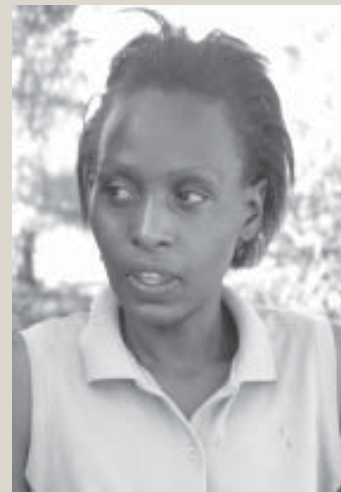
She is still living with her father, James Anyange and mother Loice Achieng' in Nyalenda, West Kolwa, Kanyakwar, Kisumu District. Evelyne is ready to relocate but does not wish to immediately interfere with the children's schooling. Her health has also seriously deteriorated, and she is just recovering from an attack of Herpes Zoster and mouth sores. She is quite weak and in a lot of pain. She is a member of WOFAK, Kisumu Branch.

Her immediate challenge is to get the title deed for her plot in Migosi. She was told she needed Kshs. 11,000 for that, and she does not have enough money.

Women's Empowerment and Intervention by CBOs

Despite the lingering bitter memories of her husband's death, **Betty Tom's** life is gradually returning back to normalcy. Her charming face and overwhelming confidence hardly betray the harrowing experiences that she has waded through following the death of her husband, Tom Oyomo, in 2004.

Betty lives in Buoye Sub-location, East Kolwa Kano location, Siaya district. She was the only wife of Tom Oyomo, who left her with two boys and one girl aged 9, 5, and 4 years respectively.



Betty Tom.

Hardly had Betty recovered from the shock of her husband's death when another chapter of nightmare was opened in her life. Her young brother-in-law – attracted by Betty's youthfulness and charm – subjected her to traumatising moments as he repeatedly attempted to "inherit" her forcefully. Under the guise of alcohol and drugs, the young man subjected Betty to verbal and physical abuse whenever she resisted his lustful overtures.

"At one point I was so frustrated and wanted to do away with myself and my children's life. I loved Tom and I am not interested in anybody else, especially an irresponsible man. All I want is to take good care of my children," says Betty.

Unable to withstand the sufferings anymore, Betty – whose parents too passed away – sought refuge at her maternal grandmother’s place and then in Nairobi, at her friends’ place. She would occasionally come back to her marital home and then leave.

Her mother-in-law, a born-again Christian, was increasingly getting worried about her daughter-in-law’s restlessness. She approached Florence Gudo of Orongo Widows and Orphans Group and asked her to counsel Betty. Florence had earlier attended the Nakuru Workshop and was aware of the widows and orphans’ property and inheritance rights project by POLICY Project, Kenya National Commission on Human Rights (KNCHR) and the Jaramogi Oginga Odinga Foundation (JOOF).

This encounter was an eye opener for Betty. “Florence told me about the workshop. I came to know my rights and this kept on empowering me. I realised that I have a right (in my marital home) and that I can speak on behalf of my husband,” says Betty, her radiant eyes piercing through the gloomy weather courtesy of the dark clouds hanging over the Kano plains.

Armed with this knowledge, Betty returned back to her marital home and was welcomed by her parent’s-in-law. She has been given a piece of land to cultivate. Her beaming face now shows the face of a woman in harmony with her environment. Her parents-in-law, who were present during the interview, confirmed that her newly found peace is for real.



Betty Tom with her children.

Her brother-in-law does not bother her any more. “Joining the CBO has influenced my life. He now fears me since he knows that I am aware of my rights. He views me as a superior person. I could not be here had I not joined Florence’s group,” says Betty.

Despite the peace of mind, there are some hurdles to clear. Betty looks forward to building a bigger house, as her current tiny house cannot accommodate her family comfortably. This forces her to cook from outside. “This is my kitchen,” she says as she points at the cooking stones outside her house.

Betty is the first born in a family of nine other children, who are now distributed among her relatives following the death of their parents. Despite her meagre income, she has to support them whenever possible.

This is in addition to her own support to remain strong and healthy since she is positively living with HIV. She has publicly declared her status and even helps other women living with HIV to overcome the stigma associated with the disease. She is not currently on ARVs but relies on herbal medicines.

Intervention of Legal and Cultural Structures

She is a tiny lady with a big heart of determination. This is the impression that you immediately get of this never-say-die lady from Onyinyore sub-location, Aluor location, Siaya district.

Looking at **Monica Nyangun's** tiny frame and the face that clearly indicates that she has been through life's turbulence, peace of mind is what you would immediately wish to her. Until recently, when hope began appearing in her horizon, peace of mind had been the last thing she had known for many years.

Monica is about 50 years old. She was married in 1975 but her husband passed away in 1997, leaving her with a huge chunk of fertile land. And this land has been her source of tribulations.



Monica Nyangun.

Her woes began when her brother-in-law, who is a teacher, attempted to defraud her of her piece of land. He had asked her to thump stamp a forged title deed under pretence that he was transferring the land in her name while the title deed actually bore his name. Bad blood between the two developed when Monica realised the forgery and began fighting for her rights.



Monica Nyangun points at the banana plantations that she used as her shelter when her houses were burnt down.

In the ensuing tug of war, Monica's house was twice burnt down by her brother-in-law and warned of dire consequences if she did not vacate her land. Her son's house was also burnt down when he spoke against the injustice meted against his mother.

She reported her tribulations to the area assistant chief but he refused to listen to her since he was her brother in-law's close friend. In fact, he was colluding with him to evict Monica from her land. As a result of this animosity, Monica's son was repeatedly arrested on trumped up charges and arraigned before the Siaya court.

Despite the sufferings, Monica refused to move from her marital home. She spent cold sleepless nights under the banana

plantations when her houses were burnt down on both occasions. The bananas still stand as a veritable testimony of Monica's tribulations.

The Siaya district magistrate, Ms Dolphin Kayila, got interested in Monica's case because of her son's repeated arrest and arraignment in her court. It was this magistrate who introduced Monica to Dorothy Awino and Mrs Asenath Odaga. The duo had gone to her court for orphans and widows' cases during the survey and mobilisation process for the stakeholders' workshop for the project.

Monica was invited to tell her tale at the stakeholders' workshop, which consisted of the representatives from Policy Project, the Luo Council of Elders (LCE), the provincial administration (PA), and JOOF. Many people wept. This meeting was a turning point in Monica's life. Since then, she has been closely working with the project partners and now there is bright light at the end of the dark tunnel that she has been groping in.

"My case is now well known to everybody, including the government. My brother-in-law and the sub-chief do not bother me anymore. I thank madam (Ms Kayila) and the project (Policy, JOOF, KNCHR) for helping me," she says.

LCE's Mzee Okumu Onono has been instrumental in ensuring that Monica successfully fights for her rights. "It is God's wish those who are in the position to help should help the helpless. That is why I have always helped her," says Mzee Onono. He pauses momentarily and looks at Monica's son. "This boy would have died in prison had we not helped him. Every time they arrested him we stood surety for him," he adds.

Already, Monica has made significant progress in having the title deed changed to her name. She has paid Kshs 2,000 but requires 10,000 Kshs more for her to own the title deed. This is likely to delay her dream given that she can hardly afford her daughter's school fees at Aluor Girl's Boarding. She also has to grapple with medical bills as a result of her frequent illness.

Intervention of Cultural Structures

For **Benta Awino**, 40, the Akala Market in Ndori sub-location, South Gem location of Siaya district has been her home since 1995 when she fled from her marital home in the nearby village following her husband's death two years earlier.

Her rusty iron sheet and mud walled house has been a safe haven for her, far away from a brother-in-law whom she describes as a "mad man like person". It is here that she struggles to earn a living as a nursery school teacher-cum *omena* vendor, to fend for her five children – two boys and three girls aged between 24 and two years old. Two of the children are by a man who later inherited her and is the owner of the house she currently stays in at Akala.



Benta Awino.

“My brother-in-law was very cruel to my children and I. his actions, which are like a mad man’s, became unbearable. This even made his wife to run away. He used to threaten and beat me up,” Benta reminisces the reasons why she had to flee her marital home.

Beyond this hostility, the coast is now clear for Benta to return to her marital home and make up for the lost times. Her brother-in-law, who is the custodian of his late father’s land title deed, gave her in September 2005 a piece of land to settle on.

It was after Benta attended the Kisumu Stakeholders Workshop that she realised, through Dorothy Awino’s advice, that it was necessary to work with her clan elders to assist her in the resettlement process.

Her clan elder, Mzee Musa Ndenda, and the area sub-chief were instrumental in negotiating with her in-laws to allow her peaceful resettlement. The duo ensured that that the DO’s office was made aware of her case.

According to Benta, her children look at the prospects of going back home with great expectations. The marketplace has not provided the best atmosphere to bring up children because of the many dangers that they are exposed to. Already, one of her daughters dropped out of standard seven and is now a mother.

Courtesy of the project, what now stands between Benta and her sweet home is not the cruel brother-in-law. It is her fourth form son who, at the time of the interview, was sitting for his examination. He is being awaited to help her mother build her house.

Intervention of Cultural and Civil Society Structures

When **Benta Adhiambo Onyango** attended a seminar organised by the Ugunja Resource Centre, in Ugunja, little did she know that this could be any encounter with lady luck in her quest to resettle on the piece of land that she had been forced to vacate.

It was at this seminar that Adhiambo met the project team during the mobilisation for the stakeholders. After listening to her problems, Mrs Asenath Odaga and Ms Dorothy Awino invited her to give a testimony at a workshop whose theme was: “Women Voicing their Problems.” She was subsequently invited to attend the Stakeholders Workshop in Kisumu, making her case well known.

Adhiambo, 48, hails from Nyamasare village, Central Ugenya location, Siaya district. She was married in 1973 but her husband died in 1978 in Uganda, after a mysterious disappearance typical of the fate that befell many people during the dictator Idi Amin era.



Benta Adhiambo.

She left her marital home in 1982 when her father-in-law denied her access to her husband's piece of land. Besides this, she was unwilling to be inherited by a man who had been imposed on her by her sister-in-law. She sought refuge at her parents' home but later returned to Ugenya in 1998 and rented a house at the shopping centre.

Adhiambo has now gone back to her marital home and has been able to build both her house and her son's *simba* (bachelor's hut). Because her case is well publicised, she feels secure that no one can now bother her.

"My children and I are happy. We know live a better life," says Adhiambo, a mother of six children – three boys and three girls aged between 31 and 12. Her eldest son works in Naivasha.

Through the intervention of LCE member, Mzee Owino Nyada, Ugunja Resource Centre and the Methodist Church, Adhiambo has made significant progress in changing the title deed from her husband's name to her own name. The three advised her to write to her sub-chief and the lands office to put a lean on her land as she worked on the change process.

Adhiambo, who ekes a living from second hand clothes business, has already paid Kshs 3,000 for name change. She is required to clear Kshs 7,000 balance. She has to balance between raising this amount and medical fees for a big swelling on her left side of the stomach.

Intervention of Civic and Cultural Structures



Christine Awuor.

Christine Awuor, 34, is caught up in the complexities of a cultural dilemma that threatens her right to own and inherit the land left by her late husband in Magwena sub-location, Sakwa Nyang'oma location, Bondo district.

When Christine's mother-in-law lost her husband in 1955, she was inherited by a man who later on fathered Christine's husband. Before the inheritance, she had other children with her original husband.

According to the Luo customs, children born out of inheritance (*nyathi a tera*) still belong to the deceased, but not the inheritor, who is actually their biological father. It is because of this custom that Christine's husband continued to stay in his mother's original home although his biological father is still alive and owns a large chunk of land.

Things however changed following Christine husband's death in 1997. Her step-brother-in-law (the child to Christine's original husband and step-brother to her husband) denied her access to till the land that they had been living on. According to him, Christine's rightful share is at her husband's biological father.

Lack of access to farming land and the prospects of forced inheritance forced Christine to go back to Kisumu, where she had previously stayed with her husband since their marriage in 1987. This was after only two weeks following her husband's burial! She left two of her children with her husband's mother.

The Gender and Resource Centre in Kisumu identified Christine to attend a JOOF-organised seminar on women's rights in Bondo. At this meeting, she met with Dorothy Awino, who is the POLICY Project liaison officer in Kisumu.

Christine came to learn about the project on women's land rights and property inheritance and was introduced to an LCE member, Mzee Alogo. Her case gained prominence and is now well known to the area chief and DO.

This intervention has enabled Christine to be allowed access (but not to build) to till a piece of land owned by her husband's biological father and to go back to her house (which is on the land where her mother-in-law was originally married).

The problem of where Christine (and her two co-wives) should actually build her permanent dwelling place still persists as the culture puzzle remains unsolved. However, Christine feels that she has at least achieved one goal: that of being accepted back without being forced to be inherited by her brother-in-law.

She hopes to be given a place where she can settle permanently and build a better house for herself and children. A village elder present during the interview said that he would seek guidance from LCE from the issue since the village elders had failed to solve the problem.

Christine still stays in Kisumu, where she sells fruits besides a main street. She has got five children – four boys and one daughter.

Intervention of Civic and Cultural Structures

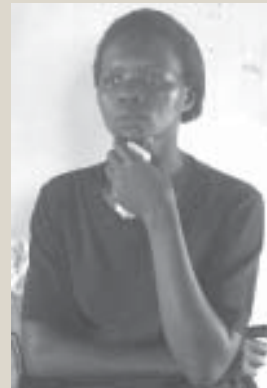
Even before her husband passed away, **Emma Achieng' Oluga's** relationship with her mother-in-law was frosty. When he passed away in 1996, Emma's life literally fell apart as she endured a trail of woes.

Whenever her architect husband (we were told he was draughtsman) got work in different parts of the country, he travelled with Emma. This did not please her mother-in-law, who felt that she needed to stay in the village instead of travelling all over. To make it worse for her mother-in-law, her husband treated his two step-mothers just like he treated her. Beverly Awando, the wife of an uncle, was perceived to be too close to Emma.

While he was still ailing, Emma's husband gave her his land's title deed for safe custody. On the same day that he died, he took her to the land, accompanied by her mother-in-law and the person he had bought the land from.

"I did not immediately understand why he was doing this. It was like he was showing me the boundary of our land. He insisted that I stay close to him. My husband died the same day," Emma vividly reflects on that day.

During the burial, Emma appealed to the mourners to help her raise Kshs 4,700, the amount that her husband still owed the person he had bought land from. Over Kshs



*Emma Achieng' Oluga
in a pensive mood.*

10,000 was raised. Her brother-in-law, Maurice, demanded the money but elders intervened, saying that the money had to remain with Emma.

After clearing the land debt, Emma went to Nairobi but found out that one of her brothers-in-law had not paid the three-month rent that he had been given for her house. Her neighbours came to her rescue and cleared the bill.

When she returned back to her marital home in Uyoma, she could not access her house. Her mother-in-law had locked it and kept the key. She had to sleep in another home. On the fourth day, she approached a village elder, Mzee Elly Odhiambo, who ordered her brother-in-law to open the door.

She went to her parents' home in Kano after the incident but she was still determined to return to her marital home. While in Kano, she joined Orongo Widows' and Orphans Group and learnt a lot about women's property rights. "When I returned I found a pick-up loaded with my bricks right next to my house. Nobody could answer me when I asked what was going on," she recalls. At a public *baraza* called to discuss the issue, her mother-in-law publicly disowned her and called her a prostitute.

"I was very hurt. I asked her why she should call me a prostitute yet I had stayed in the home for nine years after the death of my husband," she says with a tinge of bitterness.

Life became even more difficult for her. Her mother-in-law forced her to move from her house. But just before she left, her 12-year old daughter passed away in Kisumu after being bitten by a strange animal.

"I informed my brothers-in-law but they laughed at me, saying how could death find me where I had gone to seek refuge. My brother-in-law told the person I had sent that they were going to ask their dead brother for permission to bury my daughter on our land," she recalls, fighting back her tears.

The brother-in-law repeated the same ominous statement when Emma took the body to Uyoma for burial. She was, however, assisted by her Church, to bury her child. After the burial, she left and continued seeking accommodation from Beverly, and other well wishers. She was thereafter employed as a teacher at Okela primary school before moving on to Chianda School.

Her search for solace and greener pastures moved her from one place to another. Amid the sufferings, Emma's relationship with her mother-in-law gradually improved and she was even able to send her two sons back to Uyoma. She was recently shown a place to build her house.

Mzee Edwin Onyuka, a member of the Luo Council of Elders, was instrumental in ensuring that Emma returns to her marital home to reclaim her rightful property. "Already there is land set aside for Emma, she can put up a house any time. They have no problem now. I am handling the matter and it is alright. It is contained," says Mzee Onyuka, confidently, in flawless English.

Mzee Onyuka reiterates his commitment to helping widows whose property and inheritance rights are violated. He however, laments that lack of transport is the main problem that most elders face. They have to traverse a wide area, using their own money, which is very scarce.

CBO Profiles

Akado Women's Group – Mbita, Suba District

Akado Women's Group had its humble beginnings from the Tom Mboya Health Centre on Rusinga Island. A group of nurses from the Centre felt the need to mainly empower the women in their community. Founder member Joyce Ouma, recounts how the women never acknowledged their own usefulness or productivity in the society in spite of the fact that they were the ones who woke up early to make breakfast, and handle most of the domestic and economic chores, such as fish trade.



Akado women's group centre.

The Centre started in 1987 with 26 members, 20 women and 6 men. By 1990, after many teething problems, such as being accused of misleading women with the intention of breaking up homes, the membership dropped to 10. This did not dampen their spirit. They became more focused and treated their meetings with utmost confidentiality.

In 1999, 24 other women's groups saw the need to come together in order to plan the way forward for women and harmonize the relationship between members and the community within Mbita. Through funding from a German organisation, the Government of Kenya, and support from friends, the Akado Centre was built.

The Akado Centre, with a very dedicated staff, is a complete Health Centre that offers most of the basic services required within the community. It has an ultra sound machine, an X-ray machine with a radiographer who comes twice a week, an autoclave. The rooms include observation rooms, a VCT Centre, a delivery room, a laboratory, a TB laboratory, with the only TB chamber in Suba District, and a well stocked pharmacy.

The Akado programmes include PMTCT, Home-based care, caring for the elderly, caring for and supporting orphans, intervention for displaced widows, a PLWHA

Support Group, which is registered and meets regularly, with a membership of about 36. The Centre has a felt need for ART services. Currently, they can now only refer their clients to Mbita Health Centre or Sindo. Due to the distance and transport costs, some clients are discouraged from accessing ART services in those centres.

The Orphan Care Programme presently supports 105 orphans in 5 nearby schools. Akado offers monthly check-ups, prepares and delivers lunch (rice/beans/fruit) twice a week to the eagerly awaiting children. With support from the National AIDS Control Council (NACC), the Centre is able to buy school uniforms and a set of home clothes for the orphans, as well as visit them periodically. Some of the challenges the Centre faces when dealing with the orphans include the need to provide appropriate care for very young orphans whose parents have died from HIV/AIDS related illnesses. Some guardians are not willing or able to take care of the orphans.

Suba District has the highest HIV prevalence rate in Kenya, currently at 41%. Of these, 75% are between 18-25 years. More females than males are infected. The Akado initiative hopes to reduce this by actively participating in advocacy and awareness campaigns. The Akado Centre members have visited TASO in neighbouring Uganda in order to learn from the TASO experience.

Orongo Widows and Orphans Group - Kano

Orongo Widows and Orphans group was started in 1996 by Florence Gundo. It was registered in 1999 as a widows' prayer group whose objective was to educate the widows on their rights. At that time people in the community were drinking a lot of *chang'aa* (local brew) and the moral conduct had degenerated. The widows' prayer group was started to address the morality in the community. Many group members themselves later became believers in Christ and decided to help the orphans within the area. They found 512 orphans. That number was too big for the group to handle, so they identified the most needy ones who numbered 288. They also brought on board 7 mentally retarded children and 4 lame people.



Orongo widows.



Some of the women's crafts.

Florence Gundo in her herbal garden.



Soon, many people rushed to this group for help. Some widows were chased from where they were married and then they came to Orongo. They were accepted as group members, though the group was still struggling. In 2004, Florence attended a workshop in Nakuru, organized by the POLICY Project Kenya. She learnt a lot about human rights and when she returned, she taught what she had learnt to the group. They then mobilised everybody and taught them about their rights. They did this through the Chiefs' barazas and churches. As a result of this awareness creation and mobilization, some of the widows who had been chased away got the courage to return to where they had been married.

Orongo is made up of spiritual leaders, traditional herbalists, traditional birth attendants and women groups who are trained in various income generating skills. They make various crafts, farm, and process traditional herbs, which are sold far and wide for sustenance. Their activities include:

- Providing a forum for prayers, sharing and teaching skills to the orphans and widows for earning a living;
- Providing shelter to those without a place to turn to;
- Helping the sick widows and orphans access medication;
- Helping in the resettlement of those who had been displaced from their homes
- Teaching widows about their rights.

Profile of an Elder



Mzee Onyuka

Mzee Onyuka, a vibrant and very articulate elder, has been involved in helping women in his community. His commitment is visible. Within a very short time, he has helped several women to resettle or pursue the rights to their properties. "Emma's mother-in-law knows what the elders are capable of doing and she cannot not joke about it. If Emma had told me her story in the beginning, she would not be where she is today," he quips. He is highly respected and knows what is going on around him. He offers practical solutions and goes out of his way to listen to all sides of the story.

Mzee Onyuka had been a teacher for many years. With regard to the project on Women's Right to Own and Inherit Property, he says, "I think it is a very good idea and is worth pursuing. I wish I had known about it earlier but I am glad you people have come and that we have shared. Many people have problems but they don't know where to go for assistance and therefore, there is need to create awareness through projects like this one."

Lessons Learnt/Challenges

In the one year that the different activities have taken place, it can be said that the project has been very successful. There are some key lessons and challenges that can be drawn from the experience so far, which can serve to improve upon future activities on the project and similar projects. They include:

- 1) The need for greater advocacy to get all elders in the community to support and implement the project through reactivating and strengthening the traditional dispute resolution mechanisms.
- 2) High levels of poverty impact adversely on the ability of reinstated widows to fully enjoy the right to inherit property. A number of widows have been accepted back but are unable to relocate due to lack of funds to build simple houses. Others have processed their titles but do not have the fees to redeem them.
- 3) The dilemma of passing on the ownership of property, especially clan land, to very young widows who are expected to remarry is posing a greater challenge. They are easily displaced by their in-laws due to their weak community attachments.
- 4) The difficulty of resettling widows in an environment that is totally new and, sometimes not welcoming at all. This is usually the resettlement from urban to rural areas where some of the family members are often times unfriendly.
- 5) The need for the Luo Council of Elders to be economically supported and empowered to carry out continuous advocacy in the entire community.
- 6) Lack of knowledge on the Luo customary law on inheritance by women. In some cases, widows took off because they feared a culture which they do not fully comprehend and understand.
- 7) Lack of understanding of the effects of the land registration system. In most cases, in-laws disinherit widows of their land by registering title deeds in their own names.
- 8) Lack of access to HIV/AIDS treatment and other health services in the rural areas. This has hastened the death rate and weakened the widows' ability to advocate for their right to inherit.
- 9) The need to specifically and urgently address the plight of orphans who lose both parents at very tender ages and are not able to secure their rights to inherit family property in terms of ownership.
- 10) Low awareness of property ownership and inheritance rights among women. Most women, therefore, as a consequence fail to assert their rights to property and allow their in-laws to disinherit them. They believe that there is nothing that they can do.
- 11) The lack of capacity by the partners to begin similar projects in other communities where many requests have been made for the same by stakeholders.

Conclusion

This report indicates that the preliminary impact of the project in protecting the rights of women and reducing vulnerability to HIV and the chances of death due to AIDS, has largely been positive. From key informant interviews, it is also emerging that as the women benefit, so do the children. Our hope is that the women will not suffer the double burden of living with HIV positive and having to be landless.

In phase two of the project, the partners seek to enhance women's access to life saving medication, highlight the plight of orphans, address the issues with other key partners and continue tackling the burning issue for women, which is poverty and/or lack of education, resulting in lack of economic empowerment.

The Future

Considering that the project partners are limited in terms of scope and resources, this pilot project is presented as a model that can be used in other areas of Kenya. This model can be used to replicate a similar thrust in other areas, or with interventions in other domains.

The narrow field of women's right to own and inherit property is opened wide for other players to make their inputs. The numerous challenges encountered and needs identified are also entry points for other partners.

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