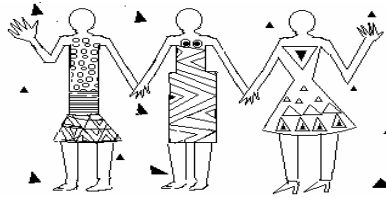


GROOTS Kenya

Grassroots Organizations Operating Together in Sisterhood



"Let us be masters of our own development"

**A Final Report on Grassroots Community Input
To the Commission on Legal Empowerment of the Poor – Hearing in Kenya**

Prepared

BY

GROOTS Kenya

P. O. Box 10320-GPO
Nairobi
TEL: 254-20-2718977/3873186
Email: grootsk@grootskenya.org

December 2006

Introduction

The Commission on Legal Empowerment of the Poor was launched in September 2005. The commission is made up of high level personalities and practitioners who are uniquely positioned around the world and believe they have the capacity and influence to advocate among their peers for legal reforms in developing countries. The commission believes legal empowerment which broadens the rule of law will provide a means to ensure people fully participate in development processes.

This report highlights the procedure and processes that was undertaken by GROOTS Kenya to facilitate grassroots community participation and making their contribution to the work of the commission on legal empowerment of the poor (CLEP).

Grassroots Contribution to the Work of the Commission on Legal Empowerment of the Poor

GROOTS Kenya (a network of women self-help groups and community based organizations in Kenya) has endeavored to provide a platform for grassroots communities to contribute to the work of CLEP. This is within GROOTS Kenya mission which is “to facilitate grassroots women and their communities to effectively participate in development processes”. With support from CLEP Secretariat, Forum for Environment and Development-Norway, and Huairou Commission, GROOTS Kenya was able facilitate 10 consultations meetings at the grassroots level across the country through community based organization. Other NGO’s that collaborated were Economic and Social Centre for Justice (Hakii Jamii), Miss Koch, Umande Trust, and Shelter Forum. The consultations were held in Korogocho, Mathare, Soweto, Kibera (four large slums in Nairobi City), Laikipia (focused on a pastoralist’s community), Kisumu and Mombasa (two large cities after Nairobi), Kakamega, and Nyeri (rural and predominantly agricultural) and Kitui (semi arid). The consultations achieved the two main objectives:

- A significant number of community members at the grassroots level became aware of the work of the CLEP.
- Communities had an opportunity to make their contributions to the work of the CLEP through community organizations and groups that are either based in some identified urban slums and marginalized rural areas across the country are.

After all the 10 consultations were done, representatives from each community came together for a 2 days national workshop to share their contributions and deliberate on priority areas that cut across various aspect of poverty and development without losing their unique living environment.

The national level workshop

Three (3) representatives were appointed from each region to represent regional deliberation at the national level. They converged at the YMCA on 1st and 2nd November 2006 organized with facilitation of GROOTS Kenya.

The following section highlights the proceedings of the grassroots community voices at the national forum held at the YMCA on the 1st and 2nd of November 2006. The report brings on board to the CLEP ideas that can be basis for interventions as agreed by each community in their consultation across four selected areas of focus namely:

1. **Access to justice**
2. **Business/Entrepreneurship**
3. **Property rights**
4. **Labour laws & rights**

The four key areas mentioned above were considered important by the regions and they were deliberated on during the grassroots community consultation meeting. However, participants agreed to add the fifth area of discussion on **WOMEN AND HIV/AIDS** increasing the focus areas to five in number. The participants found it necessarily to define the term “**POOR PEOPLE**”. In Kenya, categories of persons referred to “poor people” often include pastoralists, fisher mongers, subsistence farmers, hunters and gatherers, people with disabilities, squatters and internally displaced persons and people living in informal settlements threatened by inequality of urbanization processes. It was noted that even among these categories a **poor person** is that who is incapable of sustaining his/her livelihood, unable to access basic needs and or has significant mobility and intellectual limitation for instance physically or mentally challenged”. Women constitutes majority of the people inside this description.

During the national meeting all regional representatives made their presentations of what they discussed and recommendations arrived at during their community consultation meetings.



Participants following proceedings at the national meeting held at the YMCA- Nairobi

Reports from community consultation demonstrated a lot of similarities on emerging issues. The disproportionate burden on women as a result of HIV/AIDS and its consequences were very evident from the presentations. After all presentations, participants went into groups to harmonize and concretize priority areas. The following recommendations were given as consolidated voices from the national consultation meeting:

GROUP 1

ACCESS TO JUSTICE

Issues

1. Some of the African tradition and cultures that deny people their rights are highly retrogressive and often discriminate women. Some of them include early and forced marriages, female genital mutilation and exclusion of women gender in decision making.
2. Debt cancellation – Most of the loans provided to the past and current government regimes is through corrupt negotiated deals by the west and corrupt politicians in the recipient countries. The poor are not involved yet they shoulder the burden in paying back legally through taxation. The delivery of most basic services like education, shelter, health is sacrificed in order to pay the debts. Instead of government spending national revenues in servicing the needs of its people, it is servicing the needs of the west whereas this money is already stuck in the same countries through business and bank accounts that benefited from these loans.

3. Access to legal services

- The court system is very far, so unreachable to the common person and mainly the poor in the villages and in informal settlements. Delayed hearing of cases has made people stay in remand for long while they are just suspects (Decent rational of the legal system). Rich people never stay in remand as they are able to pay for bonds. The services of a lawyer / Advocate are very expensive for poor people.
- Compensation for illegal acts should be done on the poor e.g. compensation for stolen goods and killing is never done even when the poor is proofed innocent before the court. Lawyers and insurances always take the compensation.
- The process of acquiring justice has been challenged by inadequate knowledge on legal protection among poor people who cannot read and neither are they able to access such important information anywhere in their communities. Excessive bureaucracy in accessing legal services and high charges required has made the poor give up.
- Reducing the power of chiefs criminalizing poor people in the local community without proper evidence hence in stilling fear among community members. Negative altitude towards woman in decision making as far as the culture is concerned should be eliminated.

RECOMADATIONS

1. Demanding for land compensation e.g. lands taken away by white settlers from the poor for instance in Naivasha, Laikipia, Coast province and central highlands should be returned and divided among the poor communities.
2. Educate /Enlighten the people on their rights Dissemination of Information
3. Decentralization of legal institution /justice at the local level to facilitate speedy hearing of cases heard and compensation of the poor on illegal acts done on them.
4. Unconditional canceling of national debts and the funds channeled to improve the lives of poor people.

5. Most national policies and laws protect women rights but there is a gap between their existence and implementation. There has to be deliberate investment to educate women on national policies like the land and constitutional processes.
6. All local development committees should have fifty percent of women representations and selected by women not appointed by their families and politicians.

GROUP 2

ENTREPRENEURSHIP

RECOMMENDATIONS

1. More value and priority should be put on the local products like sugar, textile, rice etc in order to protect the local industries. There is a lot of dumping of goods and products through corrupt deals particularly that of farm produce that have rendered the small scale farmers poor.
2. Micro finance should be reformed so as to do a way with those conditions that put more obstacles for the poor to access loans. To that end, the conditions on security/ guarantee should be flexible so as that the few assets owned by the poor like livestock and land etc can be attached on control.
3. Moreover community initiatives like merry-go-round should be recognized, supported and strengthened to provide effective sources of loans as they have amassed important skills and track record. Review the current existing micro finances institutions and truly assess if their target is the poor woman or have shifted the target to be seen to be sustainable. A new set of microfinance system drawing lessons from merry go rounds and daily savings and managed by grassroots women themselves should be created to support women to acquire properties.
4. Government should assign a budget for women every year but not to be managed by politicians. Create a fund for women to sustain their own livelihoods and that of their families.
5. All intended development initiatives should use women groups and other organized community groups as entry points for community development as these groups are already sustaining their communities. It is sad that many development initiatives are led and controlled by external interested parties only once resources are available.
6. The government should formulate a comprehensive policy to regulate and streamline the informal sector in business. Currently the by laws are fragmented and related to sectors within small scale trading. More is needed towards recognition, enhancement, improvement, and

patenting of Jua-Kali innovations and investment. It is prudent to allocate in annual budgets resources for research and investment in jua kali sector.

7. The process of authorization/ licensing to hawkers and small traders should be short, affordable and flexible. Each entrepreneur sector situation should be analyzed in order to approve the best and affordable license for it.

8. Innovative trader's especially young people should be supported with leased assets by the government for example tractors, welding machines e.t.c.

9. Government should invest in marketing and promoting ecotourism business particularly in indigenous communities just as the government is marketing hotels and parks in cities, coasts and protected areas to provide pastoralist with stable alternative incomes.

GROUP 3

PROPERTY RIGHTS

Recommendations

1. Historical Injustice- Most of the poor people were displaced by the colonial governments from their ancestral lands to pave way for large scale cash crops and cattle farming. In addition during the emergency, a lot of the families were uprooted and relocated elsewhere destroying the social cohesion. After Kenya got its independent, land was reverted to the hands of rich Kenyan people and the remnants of colonial governments (white settlers). This is considered to be the origin of the huge divide between the rich and the poor and pushed many to informal settlements in later years. The destruction of societal values by colonialists, capitalist and neo colonialism has continued to impact on poor people negatively particularly women and children. In regard to past injustices against common people in Kenya, all the land under 99 years lease should not be renewed but be redistributed to the poor people.
2. An important element of justice is security of people and their properties. Justice demands that government upholds and protect the sanctity of life and property. To that end no person should suffer or have his or her life endangered unless it is as a result of a punishment for crime proven by the court of law. Secondly, legitimate property must not be forcefully acquired unless it is fully compensated for and the process agreeable to the owner.

3. The speedy implementation of the draft National Land Policy is central to solving very pertinent issues touching on land which include objective reforms in land tenure systems, use and management of land and land based resources among others. The government through the land ministry should make sure that the land policy is entrenched in the constitution.
4. The law in regard to adverse possession of land should be repealed to include public land. Consequently persons who have lived in a given land for 12 years or more must have ownership of such land and be allowed to develop it. But in the event that the government wishes to utilize such land for public good those settling in it must be fully compensated.
5. Information of the existing public properties should be made public and the poor to be involved in utilization and use of such properties. Allocation of public properties like houses and land has benefited only rich people in the past which has escalated the huge gap between rich and poor.
6. All public lands settled by the squatters for more than 12 years but was sold to private developers without the knowledge of the squatters must be repossessed by the government and given back to the squatters.
7. There is need to halt further growth of slums by implementing proper laws that govern possession and distribution of land in Kenya.
8. Any public resource including funds is the property of the citizens and as such they have a right to participate and decide how they are generated, distributed, utilized and accounted for. Any law or regulation that stifles that spirit must be declared injurious to public good.
9. The need for adequate housing must be respected hence eviction guidelines must be formulated to curtail homelessness, destruction of property, infringement of human rights and to ensure that the rule of law is respected during eviction.
10. The law of co-ownership of property in families between husband and wives be passed and enforced immediately.
11. The government should enforce laws that ensure no person is discriminated against on property ownership especially in regard to inheritance. In the same vain matrimonial property must be equally owned by the spouses and therefore:
 - Distributed equally among the spouses in the event there is dissolution of the marriage.

- Is left in custody of their surviving spouses in the event of the death of one spouse.
 - Is left in the custody of the children or is held in trust by a custodian in lieu of the children as provided for by the law.
12. Government should ensure that secondary education is free/fully supported for children from poor families since this is the current education level that allows one to be considered literate. We commend the impact made by government devolved funds for example bursaries. However, a large number of poor families for example small scale farmers and traders are still spending all their investment to take their children to secondary school. To support children particularly girls to ascend the economic ladder and be able to acquire property, affirmative action on access to education must be enhanced.
 13. The government must put in place structures and mechanisms of curtailing piracy and counterfeiting by patenting and protecting both intellectual and mechanical property rights to enhance industry, innovations and wealth creation.
 14. Resources in different areas should benefit the local community and decision made concerning the use of such resources must involve them for example regions with National parks, Coastal beaches, Forests and mines.
 15. Grassroots women initiatives of acquiring property mainly through credit and savings should be recognized, supported and strengthened to provide sustainable sources of livelihoods.
 16. The government should domesticate and implement internationally agreed instruments/ treaties which Kenya is signatory to and that are intended to protect and safeguard access and ownership of property rights of her citizen.

GROUP 4

LABOUR RIGHTS GROUP

1. Recognize and acknowledge the role of informal sector as a contributor to large business either in providing markets or services.
2. Stream lining the rights of laborers in informal sectors e.g. minimal wages
3. Make laws to compel and persuade profit making companies to share profits with their workers e.g. horticultural companies, coffee industries, communication companies, sugar cane industries that are currently posting huge profits in Kenya.

4. All individuals in Kenya should be employed according to their qualifications and with a given contracts according to a clearly laid out job description.
5. Enforcing policies/ laws which guard the job security for employees for instance working as a casual laborer for long without being employed permanent should not be permitted.
6. Rights of people living with HIV/ AIDS to work must be guaranteed and protected

GROUP 5

Women and HIV/AIDS

The special role played by women in supporting families and communities particularly in the upsurge of HIV/AIDS was underscored. Women and children are mostly impacted by HIV/AIDS and women continue to shoulder the burden disproportionately. Coupled up with poverty women have been left helpless in many circumstances suffering with their children hence requires special attention to realize their economic potential and their uniqueness in participating in development processes. Due to poverty young girls in particular have continued to become vulnerable and to succumb to pressure and demand for survival some resolve to prostitution which make them more susceptible to HIV/AIDS as compared to men. In relation to this topic on women and HIV/AIDS, the following recommendations were arrived at:

1. There is need for sustaining women at the grassroots level through economic empowerment for instance through women led microfinance programs with affordable interest, managed by women themselves.
2. In each government financial year there should be a budget set aside for women and people living with HIV/AIDS.
3. The government should recognize major contribution by home base caregivers across the country in facilitating prevention, management and treatment of HIV/AIDS by empowering them through income generating activities to support their livelihood.
4. Children orphaned and or living with HIV should be given special attention through free education, food, free ARV/ART, free access to VCT and counseling services.
5. Donor organization should fund community based organization and groups which work directly with people living with HIV/AIDS to ensure resources reach them effectively.



Participants in a group discussion on women and HIV/AIDS

After final recommendations were given as listed above, 8 representatives were selected and were tasked with the responsibility to review the document before submission and or presentation to the CLEP during the national hearing conference on 27 and 28th November 2006.

Committee Meeting held on 26 November 2006 at Covenant Guest-House

During this meeting the selected representatives with support of GROOTS Kenya secretariat reviewed recommendations agreed upon during the community consultation in the national meeting. They also had a chance to prepare a presentation on property rights which was presented during the national hearing on 28th November 2006 at the Safari Park hotel.



Selected representatives reviewing the recommendations of the national meeting and preparing for the national hearing

National Hearing Meeting held at the Safari Park Hotel on 27-28th November 2006

As a follow up of the work of the commission on legal empowerment of the poor, 11 grassroots community members across the country including 9 women and 2 men were facilitated by GROOTS Kenya to participate in the national hearing meeting held on the commission on legal empowerment of the poor held 27 and 28th November 2006 in Safari Park Hotel. During the meeting several presentations were made on the four thematic areas including access to justice, entrepreneurship, property rights, and Labour laws and rights.

During the national hearing the commission secretariat requested GROOTS Kenya to give a presentation on property rights. Grassroots recommendations on property rights were presented by Violet Shivutse a grassroots women from Shibuye Community Health Worker group in Kakamega district in western province of Kenya. All presentations were rich informative and generated a lot of discussions. Presentations were followed by group discussions and plenary sessions where presenters from respective groups shared what they had discussed. This resulted to concrete recommendations from the participants which if implemented will improve the lives of poor people in Kenya. Recommendations arrived at during the national hearing will be presented during the regional meeting in January 2007.



Violet Shivutse a grassroots woman giving a presentation on property rights during the national hearing meeting

GROOTS Kenya participants among others grassroots communities suggested that live testimonies from grassroots women/ community will add value to the regional hearing in January 2007. We believe that when the poor people are given the opportunity to give their lived experiences and challenges associated to poverty in relation to the four thematic areas will add more weight to recommendations to be arrived at. There was consent from the secretariat to follow up this suggestion although they did not mention who will give their testimonies at the regional hearing.

MADELEIN ALBRIGHT MEETING WITH GROOTS KENYA PARTICIPANTS

Grassroots community participants at the national hearing had an opportunity to have a face to face meeting with Madeleine Albright. We were privileged to share our community initiative in fighting poverty and grassroots contribution to the work of the commission on legal empowerment of the poor. Ann Wanjiru grassroots women from Mathare slum shared caregivers work in providing care and support to people infected and affected by HIV/AIDS in the slum and invited her for Mathare Mother Development Centre Red Ribbon award presentation which was given on the 1 December 2006 during the worlds AIDS Day. Ann Wanjiru also shared their achievements, challenges facing their home based care work and gave recommendations.

In addition, Sylvia Museiya a young girl from Yaku pastoralist community from Laikipia gave a presentation on the struggles and plight of women in the rural areas which has continue to make women poor and vulnerable to HIV/AIDS. Most women in the rural have inadequate capacity to address their problems since most of them did not have an opportunity to go to school. This has contributed to high level of property dispossession among women since they lack information legal protection and human rights which would have helped them to follow up such cases to secure what is rightfully theirs. Women have are knowledgeable, talented and have ability to initiate and manage several development project given opportunities, conducive environment and adequate resources. This is evident from their on going grassroots women initiative for instance merry-go-round which if are strengthen can serve as saving and credit and or revolving funds.

Violet Shivutse also gave a presentation on community initiatives in protecting rights of women to own and inherit property. The presentation gave a highlight of good practices including formation of “watch dog” and dialogue with provincial administrators in Kendubay, Limuru, Gatundu and Kakamega which has realized great achievements in protecting women property rights. Community led initiatives and institutions were positions as the bench mark in which community needs can be addressed. Partnership among various institution that address issues of land and property rights was recognized as an important element to the realization of women right to own and inherit property.



Madeleine Albright following presentation by grassroots women during aside meeting with GROOTS Kenya

Grassroots women reiterated that law is only law if there is an element of justice. Recommendation was given by grassroots women for current land policy to be implemented which has unique ideas that can address challenges like women land and property right. This will enhance social and economic mobility which will in turn improve the livelihood for poor people of whom majority are women.

Moreover, Francis Owuor a street hawker in Kisumu city; the third largest city in Kenya, who participated in the community consultation meeting gave a presentation on challenges facing informal sector in Kenya. Women were positioned as the most affected by various challenges facing this sector in the country. City councils have failed to provide conducive environment and incentives to ensure poor people are able to invest in the informal sector. Continuous fights between hawkers and city council police has left many women injured since they are mostly affected than men who are able to run and save their property on time during demolition of stalls and or Kiosks. It is therefore time that the government recognizes the niche and the role of informal sector in alleviating poverty among poor people. Currently there is no comprehensive policy that governs the informal sector which makes it hard for the government to recognize or provide incentives.



A group photo of Grassroots community members and Madeleine Albright after the meeting

The national hearing concluded with a speech from the former US Secretary of State Madeleine Albright and Kenya acting minister of land Prof. Kivutha Kibwana. According to Madeleine's speech, the commission on legal empowerment of the poor is looking for ideas on how to improve life of poor people in developing countries around the world including Africa. Many poor people live outside the rule of law hence do not access legal protection. Most places inhabited by poor people have no access to government basic services hence make people vulnerable to many diseases who continue to live under poverty line. She attributed lack of legal rights as an impediment to development processes for instance inability to access savings and credit for poor people. She advanced that social and economic contribution from the poor grassroots communities in a country is always required to ensure participatory processes in development processes. "I did not come here to tell you what to do but to hear from you what you want to do" Madeleine Albright told the participants.

Madeleine Albright recognized the role of Huairou commission for working and supporting grassroots community to make their contribution to work of the commission on legal empowerment of the poor through GROOTS Kenya. She registered her appreciation of a meeting with grassroots community representatives in the commission organized by GROOTS Kenya on the 27/11/2006 at

the Safari Park Hotel. She termed the meeting with GROOTS Kenya participants as highly useful, with real voices and a special meeting of its kind she had ever attended. She appreciated the already ongoing contribution by grassroots community in alleviating poverty from the stories she heard from the women.

The acting Minister of Land Prof. Kivutha Kibwana in his speech thanked the commission on legal empowerment of the poor for its effort to assist poor people around the world. He appreciated the efforts of various stakeholders across the country in providing recommendations to the commission which will improve the living standard of the poor people. As a government representative, Prof. Kivutha Kibwana advanced that the Kenyan government takes the work of the commission seriously and is committed to follow up its findings and recommendations to improve lives of Kenyans.



Prof. Kivutha Kibwana the acting Minister of land giving his speech to the commission on legal empowerment of the poor

Conclusion and Acknowledgements

The contribution to the work of the commission by grassroots community is hoped to have a significant impact to further recommendation to be arrived at during the regional hearing in January 2007. Participants concluded that the work of the Commission on Legal Empowerment of the Poor is one more step towards realizing poverty reduction in the world. Past mistakes must not be allowed, where the rich and governments resign to the present glaring massive poverty among the largest portion of the world's population.

GROOTS Kenya indeed acknowledges support from CLEP Secretariat (for creating the opportunity for grassroots participation and providing financial resources), Forum for Environment and Development-Norway (for providing financial support through the connections made by Norwegian Peoples Aids in Tanzania), and Huairou Commission (for providing backstopping technical and networking support as well as financial resources) which led to a successful realization of these recommendations from the grassroots communities across Kenya. Special thanks go to various organizations that supported GROOTS Kenya in facilitating grassroots consultation meetings in different regions across Kenya including Umande Trust, Shelter Forum, Economic and Social Justice Centre (Haki Jamii), Legal resources foundation and Miss Koch. In addition, GROOTS Kenya highly appreciates the contribution of Raphael Obonyo in facilitating and report writing of the proceeding at the consultation meetings. A lot of thanks also go to community based organizations and groups that devoted their time to discuss and give unique recommendations to the CLEP.