

## SUMMARY REPORT

### The Commission for Legal Empowerment of the Poor KENYA NATIONAL CONSULTATION 27-28 November 2006

**The views expressed in this paper are those of the author and do not necessarily reflect the views of the Commission on Legal Empowerment of the Poor**

#### **Purpose of report:**

To present key issues, shared learning on themes and forward-looking recommendations from the Kenya National Consultation.

#### **Consultation conclusion:**

An overarching conclusion was that the National Consultation afforded an opportunity for the constituent stakeholder group in Kenya to achieve a comprehensive common understanding of the relationships between poverty, exclusion, access to justice and the rule of law including property and labour rights.

#### **Background, format and participation:**

The Kenya National Consultation was organised in Nairobi on 27 and 28 November by the Commission on the Legal Empowerment of the Poor, facilitated by UN-Habitat in collaboration with United Nations Development Programme (UNDP)

The first of three consultations in East Africa (to be followed by Tanzania and Uganda), the meeting was organised to ensure interaction between a broad network of policy makers, academics, technical experts and practitioners, NGOs (non governmental organizations) CBOs (community based organizations) with a range of representatives from civil society and the media coming from many of Kenya's districts.

Over one hundred participants attended during the meeting's two days at the Safari Park Hotel with ideas and information being exchanged in animated dialogue between the groups and institutions represented.

These included:

- ❖ Government Ministries
- ❖ The Kenya Human Rights Commission
- ❖ UN agencies: UNDP, UN-Habitat, UNEP
- ❖ University of Nairobi, Kenyatta University, Kenya Institute of Public Policy and Research Analysis
- ❖ NGOs including Kenya Land Alliance, Groots Kenya, FIDA (Women Lawyers Association) Nairobi Informal Sector Confederation, Pamoja Trust, The Cradle Children's Foundation, PRIDE Africa
- ❖ Women's organizations including National Council of Women of Kenya, Kenya Business and Professional Women

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- ❖ Youth groups including One Stop Youth Centre and Young Professionals' Platform for Agricultural Research
- ❖ CBOs including youth HIV and AIDS support groups and Community Health Workers
- ❖ Civil society
- ❖ Representatives of donor programmes and international organizations and the World Bank

The conference programme focussed on 4 thematic areas:

- **Access to Justice and Rule of Law**
- **Labour Rights**
- **Property Rights**
- **Entrepreneurship and Finance**

Introductory papers on each topic were given by a designated technical expert supported by a panel of stakeholder representatives. Working sessions followed in which recommendations were elaborated and these reported back to the plenary session.

The meeting drew on the outputs of a brainstorming undertaken in Nairobi under the auspices of the Commission in October 2006 during which the following key questions falling under the four thematic headings were addressed:

- What is the nature and scope of the problem of legal exclusion in Kenya in both urban and rural environments, with a gender perspective, and what are the strategies for redress?
- What are the key mechanisms to empower the poor for self-development under the existing property systems in Kenya?
- What barriers are precluding poor people from utilizing their resources for self-advancement and what measures are required?
- How can the decent work agenda be advanced to resolve the problem of the working poor?
- What are the specific needs and problems faced by women who constitute the majority of the working poor?
- What are the barriers that micro and small enterprises face in growing their businesses?
- What measures can be taken to allow grassroots entrepreneurs to participate in expanded markets in urban and rural environments?

The National Consultation full programme is attached to this summary report.

In opening the meeting **Naresh Singh, the Commission for the Legal Empowerment of the Poor, Executive Director** set out the Commission's aspirations, emphasising its role as a conduit for the voices of grass roots practitioners, so their views will be heard by those in power. It was noted, "We need to listen very carefully because we do not know the answers – as the global community we can begin to bring these together once we have heard from you as people working with the poor. It's only after we have a full understanding that we can move to resolution." He continued, "Our hand will be strengthened through your voice.....share your answers to these, the most difficult questions – and we can amplify that voice....."

Key areas of Commission work were set out as the analysis of legal systems for their effects on poor people and communities, studying and disseminating best practices of legal empowerment of poor people, and consulting with communities on the ground on strategies and actionable ideas for change.

Encouraging participants to engage actively in the discussions, Mr Singh thanked the authors of the commissioned reports prepared. “The Commission is at a stage of listening and consulting with people, organizations, and communities in order to set its direction and refine its goals”, he said. Declaring “At the heart of the poverty eradication challenge is the need for changing power relations”, it was noted that the Commission will engage with the political nature of the issue, while there was recognition of the complex nature of the process.

In conclusion he said, “We are in place to bridge the voices and ideas of people with those of the development agencies. This Commission will seek to bring the global diversity of voices from the most vulnerable and remote places into our analysis, while remaining objective.”

**Hon Minister, Professor Kivutha Kibwana, Acting Minister of Lands, Minister of Environment in the Government of Kenya** welcomed the Commission’s initiative in mounting the National Consultation by saying, “In this very important process we can see the elaboration of a vision upon which this country can draw for future policy development.” He addressed the participants, “In this dialogue the solutions come from the stakeholders like you. We are trying now to make the national land policy and since it is the Kenyan people who people have the solutions... it makes a lot of sense to take these processes seriously as we move forward at a national level on property and labour rights, to strengthen opportunities for business, and to enhance access to justice and rule of law.”

***“The Commission did not arrive in Africa with answers; we came with questions”***

Secretary Madeleine Albright, co-Chair of the Commission on Legal Empowerment of the Poor

**Secretary Madeleine Albright, co-Chair of the Commission on Legal Empowerment of the Poor** stated how the Commission is sponsoring the Consultation so that local organizations, expert and government at all levels have a voice. She said that the Commission is looking for solutions that are both local and global since under-development affects every continent. Secretary Albright described poverty as “a prison in which far too many people are trapped – a prison that is overcrowded and without justice. We need to find the key.”

Speaking of the many anti-poverty strategies that have been tried in the past she said that, “Our goal at the Commission is not to start over, but to do better.” She touched on the current global proliferation of conurbations and the under-served nature of these, saying that, “one reason the people living in the difficult conditions there are not helped is because their governments often do not even know who they are – in many cases the children do not have birth certificates.” Describing ten of millions of the world’s people as “scratching a living from the informal economy, with no employment records, no taxes paid, no employment protection,” she noted how the lack of legal rights makes it harder to accumulate savings and escape poverty, harder too, to seek justice if the victim of a crime, and referred to how this vicious cycle hurts individuals, families and societies as a whole.

“The fundamental question that the Commission is here to explore” she continued, “is how best to ensure that the poor are able to participate in the legal economy and to benefit from the protections of the law...because the larger goal of inclusion for the poor will benefit every society. We need to hear of options that are practical and will be accepted by the local cultures.”

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The Millennium Development Goals contain an overarching goal for the Commission, with the aim of improving the lives of 100 million people living in slums by 2020 as a key dynamic within the Commission's agenda.

Articulating the incentive behind the far-reaching empowering impact of the Commission's work she noted, "People who have a stake in their communities are more likely to have hope, and those who have hope are more likely to care about the future."

Five elements of empowerment were set out as: establishing secure rights to land, expanding access to credit, improving government services to create a better environment for activity by the poor, ending corruption, and fostering greater participation in democracy.

Strong economies, it was noted, do not come from "the ripples created by the rich, nor from government hand-outs, they come when the energy and initiative of the majority is rewarded by the opportunity to profit from efforts made." Secretary Albright concluded by recognizing the critical point in world history where we stand today, one where the world is aware that we cannot prosper if we do not seize the opportunities to realize the vision of more equitable world. "To that end, we pledge our best efforts" she said "and respectfully request your advice and support in this, our joint endeavour."

International community support to the objectives of the Commission's work in Kenya was underlined in the statements from the representatives of UN-HABITAT, UNDP and United Nations Environment Programme (UNEP).

***"If we do not deal with land, the most politically sensitive and difficult agenda, we will fail to address the root cause of poverty in many countries, especially in Africa."***

Dr Lars Reutersward, UN-HABITAT Director, Global Division

**Dr Lars Reutersward, UN-HABITAT Director for Global Division** characterised the nature and level of commitment to the Commission's overall agenda in stating, "We have always pushed the land tenure issue as a critical component for poverty alleviation and economic growth." Bringing out the African dimension it was noted, "Seventy five per cent of Africa live in slums; this, combined with inequitable distribution of resources and anti-poor policies, has led to rising urban poverty which is impeding the sustainability of cities and impacting on their economic viability." In showing that overall, urbanization has not been accompanied by economic growth it was noted how Kenya fits into a general description "where high rates of urban population growth, high prevalence of unskilled labour and the HIV and AIDS pandemic are responsible for further undermining poverty reduction efforts."

The drafting of the new Housing Bill (2006) and the establishment of the Housing Incentives and Financial Reengineering Committee were noted as key national initiatives supporting sustainable urbanization. The scale of the challenge was clearly articulated in the concluding statement which noted, "If we can change the land agenda we have the key to economic prosperity."

The statement by **Mrs Elizabeth Lwanga, UNDP Resident Representative**, emphasized the synergy of the Commission's mission with UNDP's core mandate of achieving sustainable development through working with governments to realize the Millennium Development Goals (MDGs). The MDG of reducing by half the proportion of people living in extreme poverty by 2015 was noted as an overarching UNDP policy goal – although the far distance to go to bring this about in the little available time left was remarked upon.

Drawing on the thrust of the agency's 2005 Human Development Report for Kenya the perspectives of Income, Basic Needs and Capacity were highlighted and it was noted that translating these into improved conditions of living through successful national initiatives to be implemented in Kenya - in line with the GOK Economic Recovery Strategy - will bring to bear a rights-based vision encompassing poverty eradication, job creation, improved governance, efficient public service delivery and an enabling environment for business and investment.

The inequalities inherent in the Kenya national context were demonstrated with the economic breakdown shown as one where 56 percent of Kenyans live below the poverty line while 10 percent of the rich take home 48 percent of all incomes and 10 percent of the poor take home only 1.8 percent of all incomes.

**Mr Kilaparti Ramakrishnan, UNEP Policy Advisor**, noted that global partnership is key for UNEP in its approach to development, saying "UNEP's Division of Environmental Law promotes the environmental lens throughout the development planning, implementation, and evaluation we undertake. We look forward to moving together to facilitate the legal empowerment of the poor."

This statement was reiterated by **Achim Steiner, UN Under-Secretary General and UNEP Executive Director** who addressed the Consultation subsequently and noted how management of climate change, the cause central to the UNEP mandate, has a direct and inviolable link to legal empowerment of the poor. In encouraging the process of consultation in Kenya the need for political will in regard to implementation of findings and recommendations was noted, "since the best laws are only as strong as the enforcement mechanisms and willingness of governments to act."

## **THEMATIC AREA 1 - ACCESS TO JUSTICE AND RULE OF LAW**

Chair:

Sheila Ngatia, UNDP

Panellists:

Dr. Connie Ngondi-Houghton, Human Rights Lawyer,

Mrs Anne Amadi Deputy Executive Director, FIDA Kenya

***"Involve the poor – let us not fantasize for them – let them come with their voices and let them re-create society again....."***

Dr. Connie Ngondi-Houghton, Human Rights Lawyer

Speakers in this panel shared an overview of the constraints the poor face in this regard. The national context was articulated by **Dr Ngondi-Houghton, Human Rights Lawyer**, as one where, "The ruling class has since independence used the rule of law in its struggle to balance the deeply rooted imperialist interests with the economic aspirations of people living in extreme poverty and the need to meet the imperatives of a unified nation in the context of an ethnically stratified society, while underpinning its legitimacy and survival and facilitating economic accumulation – this scenario being within the context of a patriarchal society which discriminates against women and the vulnerable. " The critique continued, "The edifice of the legal and justice system...is not designed to cater for the interests of the poor, women, children, workers, refugees and other vulnerable groups," and stated, " There are large gaps in the Constitution and laws on substantive provisions for the rights of these groups;... the entire system is broadly insensitive and exclusionary."

Reforms or initiatives to empower the poor could be advanced, it was noted, through using the law to move the goals of the State towards the interests of the poor. Relevant policies in Kenya today, it was suggested, are the Economic Recovery and Wealth and Employment Creation Strategy 2003, and the newly launched Kenya Vision 2030.

The customary justice system, it was observed, is much preferred by the majority of poor, especially in the rural areas. Opportunities here for accessing justice within the system are challenged however by cost, discrimination against women, children, youth and poor men, and by corruption, since the system is being taken over by local administration officers as the institution of 'traditional elder' withers away, and individualism and other principles of capitalist economy take over. This system is however being strengthened with infusion of principles of natural justice through the work of NGOs and FBOs.

In conclusion it was stated that the country's current law reform stance and programmes, if effected, will conceivably afford more Kenyans - especially the poor and vulnerable groups - much improved access to justice. Positive direction was noted in that, "The proposed Constitution provides a very progressive platform for pursuing the power and rights dialogue and achieving new standards and norms providing dignity for the people."

Particular emphasis was placed on the doubly disadvantaged situation of women by **Mrs Anna Amadi, FIDA Kenya, Deputy Executive Director**, whose presentation reviewed the difficulties of access, noting how technical, administrative, geographical and logistical factors, as well as corruption, all mitigate against women, with particular reference to property, matrimonial and sexual offences cases. In regard to the recently passed Sexual Offences Act it was noted with regret that, "We are highly unlikely to achieve the goals of the act because resources are lacking to implement the appropriate strategies to ensure it's properly applied."

**Mr Ekuru Aukot, Executive Director from Kituo Cha Sheria (Organisation for Law)** focussed on those least able to access justice, the marginalized and peripheral groups in Kenyan society, with particular reference to ethnic minorities and those in the remote rural areas of the country's north east. In a context described as "historical underdevelopment" it was noted that these areas make up 35 percent of Kenya's land mass but receive few resources and for example, have no fixed courts available to those living there, with only a mobile system in place for them. It was noted that community-based organizations (CBOs) are undertaking projects. Reinforcing political will to implement good governance measures and build up these areas through poverty reduction schemes along with the much wider application of the Legal Aid Scheme was encouraged.

***Increased access to justice – the constraints, the challenges in the Kenya context.....***

- extreme poverty and non-affordability of legal services
- poor domestication of international human rights norms
- lack of political will
- the public's ignorance of rights and the law
- lack of accessibility to public information
- archaic laws, legal language and practice lagging behind social change
- conflict between customary and formal law
- impunity of law enforcement officers in violating law
- low morale due to poor conditions of work for law enforcement agencies
- poor management of law enforcement institutions
- inadequate physical infrastructure

**...and for women, more difficulties still:**

- high cost in prevailing circles of poverty
- illiteracy
- cultural and social constraints
- no access to resources
- practicalities and timing, logistics and child care
- geographical access
- lack of awareness

**Workshop Session 1**

**Key question: Does the legal and justice system work for the poor?**

**Consensus:**

The legal system does not work to the advantage of the poor in Kenya. One major element of the problem is the fact that the poor lack awareness of their rights and are in need of information about justice and the rule of law

**Recommendations:**

1. Implement community based citizenship awareness campaigns on the various aspects of human rights and the legal system in Kenya in all languages.
2. Advocate for all Kenyans to vote for active members of parliament who will push the agendas for the poor and demand the implementation of all human rights violation report recommendations.
3. Implement a pro-poor inclusive approach in developing and reforming policies relating to the legal system in Kenya. This means ensuring that the needs of those living on the margins of society are placed at the centre of the process.
4. Organize consultations with poor communities which can result in dissemination of testimonials which can assist to promote self determination strategies.
5. Establish functional government-run legal aid mechanisms so that Kenyans can access legal advocates, advice and resources at a local level.
6. Decentralize the legal system to allow all Kenyans easy access, and train community elders, chief magistrates, District Officers, MPs and local leaders in all areas of human rights.
7. Set up alternate dispute resolution centres.
8. Implement reforms in the judiciary in terms of salary, benefits and zero corruption to improve the conditions

**THEMATIC AREA 2 - LABOUR RIGHTS**

Chair:

Mr Davinder Lamba, Mezingira Institute

Panellists:

Dr Winnie Mitullah, University of Nairobi

Mr Joseph Mutura, Treasurer Toi Market

***“Voice and representation are key for the poor - yes, we can give them information about their rights - but how do they then access these rights?”***

**Dr Winnie Mitullah, University of Nairobi**

**Dr Winne Mitullah from the University of Nairobi** raised the question of how, in an informalizing economy, we can best facilitate the organization of poor people to demand for their rights. She noted, "In Kenya the so-called informal economy of micro and small enterprises generates over 90 percent of employment - but the quality of jobs generated is comparatively poor compared to the few created within the formal sector." These informal sector jobs lack the "pillars of decent work", a concept which comprises worker's rights, proper working conditions, legal and social protection, representation and voice.

Other elements of the enabling environment that should be in place were described as appropriate infrastructure and services, business development services, expanding business opportunities and ensuring workers' rights through efficient local governance.

Describing the boundaries between formal and informal sectors as "fluid", Dr Mitullah went on, "The government of Kenya has put in place a policy framework for micro and small enterprises but legal provisions are still to be enacted. The use of outdated legal provisions is cumbersome and hostile to the growth of this sector." Enforcing policies and Acts of Parliament for employment in the informal economy is challenging, it was noted, with local governments yet to begin addressing the issue. The role government plays in this labour market is, at the minimum, to ensure the right to collective action and the enforcement of minimum standards.

It was observed that labour organizations for such collective action are weak in this sector so that their use to lobby or advocate is limited. It was observed, "Turning the economy of Kenya...will depend on how the government handles the informal economy and its workers. ..What is required is an enabling environment and protection of the worker's rights. This should begin with workers getting organized." However, the situation was not portrayed as an optimistic one since it was described in conclusion as one where "They (the poor) don't want to hear any more discussions – they just want things that will change their lives – but in order for things to change, first we have to get them to organize themselves. "

**Mr Joseph Mutura, Treasurer Toi Market** gave a first person account of work in the microenterprise sector, describing the evolution of the Toi Market cooperative venture undertaken there by the market traders. Noting how access to credit is the major stumbling block he said that the support institutions for microfinance sometimes "leave poor people poorer than when they found them." In relaying the success story of the market's development from very small beginnings (see Community Case Study 1 box) he noted some of the constraints overcome, including the fact that daily fees have to be paid to council officers while vendors are not provided with drainage, toilets, water, infrastructure, electricity. Mr Mutura pointed out how as traders' numbers grew their power grew too. "We overcome these barriers by establishing a cooperative which is, in effect, a locally based savings and loan scheme," said Mr Muturi. "This allowed us to resist unrealistic requirements from the Council since together we had more power to assert our rights." A salient factor in Toi's success was seen as the awareness creation which was undertaken so cooperative members have been able to apply a self - determination approach to the problems they confront.

## **Workshop Session 2**

**Key question: What barriers do poor people face working in the informal sector?**

### **Consensus:**

A major constraint for the successful pursuit and development of micro and small enterprise businesses in the informal sector is low awareness of labour laws and

regulations, combined with limited government initiatives to enforce legislation and bring about a supportive regulatory environment.

### **Recommendations:**

1. Implement an awareness campaign at a grassroots level to educate Kenyans on labour rights and laws, possibly by developing community based information centres.
2. Address the endemic corruption in the judiciary so that equitable treatment is given to all.
3. Establish security for those with disabilities and HIV and AIDS.
4. Encourage the formation of more unions to advocate the rights of staff and workers, ensuring that the information is available in all languages
5. Enforce the labour laws on all companies, especially hiring laws and those on sexual harassment.
6. "Kenyanize" the labour laws and review the minimum wage based on the current level of inflation
7. Ensure that the poor and disabled are represented in the reform processes
8. Develop and foster a working culture that allows equal representation of all classes and peoples in Kenya including youth

## **THEMATIC AREA 3 - PROPERTY RIGHTS**

### **Chair:**

Erika Lind, UN-Habitat

### **Panellists:**

Prof Okoth-Ogendo, University of Nairobi

Prof Clarissa Augustinus, Global Land Tool Network

Mr Ondugu, Kenya Land Alliance

Mrs Violet Chivutse, Groots Kenya

***"There is another side of empowering the poor that we have to pay attention to, and this is the disempowerment of the rich."***

Mr Ondugu, Kenya Land Alliance

**Professor Okoth-Ogendo** opened the panel with references to a background paper "Formalizing "Informal Property Rights" authored for the Commission and noted that the thrust of this is to examine the nature, structure and dynamics of the property system in African countries. In Kenya this will serve to assist in "translating the outcome of the current debate on land reform policy into law."

The paper demonstrates that this translation is a complex process, noting for example that livelihood systems are affected by new and socially disruptive property relations and that the poor will very often lose through the operation of the market. In addition the paper suggests that formalisation - as the process by which "informal activities, participants and entities obtain legal recognition" - is likely to work against the poor unless it is accompanied by support services and infrastructure. The political and economic advantages of formalisation may, it was noted, have been overrated.

The Professor posed the question, "Is the state legislative process the only source of legality?" "What needs interrogation" he went on, "is whether the view of legal regulation which suggests that activities conducted without documentation are "illegal" or "extra-legal" - hence essentially informal, is an adequate view.

He noted that such an “excessive fixation” with the formalization of indigenous property systems is now giving way to a new land rights reform paradigm. That paradigm argues that what is needed is comprehensive reform of Africa’s property framework. It is based on evidence which shows that the Anglo-European property systems represent serious impediments to economic change and development. Contemporary research, he concluded, is beginning to expose systemic malfunction in those systems. Without radical reform, they are unlikely to be integrated within Africa’s political economies.

**Professor Clarissa Augustinus** spoke of the Global Land Tool and said that, while there has been extensive global discussion around land policies that work for the poor, there has been insufficient attention paid to the development of implementation methods. What is required now are universally accessible and affordable pro-poor land tools. “These tools are not yet on the shelf when experimentation in land tenure reform is under way,” she noted, although they are essential for creating societies where there is sustainable equal access to land and its use, and they will be developed through upscaling the work of the Global Land Tool Network (GLTN) at country and global level. “Without them, delivery of the MDGs will be blocked” it was noted.

GLTN areas of focus include affordable land rights and records, land tax, land information and planning, land administration management, law enforcement, land tax and valuation systems, all implemented within a governance framework. A key concern in this regard was demonstrated by the question “Do we continue to deliver land titles without addressing governance issues, transparency, involvement of grassroots organizations, gender?”

Among examples of GLTN activities described were the development of normative land policy implementation approaches for increasing security of tenure for the urban poor, Expert Group Meetings and regional workshops for the transfer of knowledge, managing partnerships including with grassroots organisations, the Improvement of implementation methodologies, especially in regard to gender and institutional issues identified by partners, and the harmonisation of global partners’ efforts.

In conclusion it was stated that Africa is at the frontline in experimentation with individual land titling. In the Kenya context, as in other countries, the application of this implementation will require political will over long periods of time, with a block to good progress being insufficient professional and trained personnel to undertake it.

The African Union-led initiative to develop a Land Policy Framework through a clear policy mandate which has been established with application to countries right across the continent will help to move this forward. As a solution for Africa led by Africans being formalized through the mechanism of NEPAD, it was noted that this is potentially highly dynamic initiative.

**Mr Ondugu**, of the Kenya Land Alliance outlined definitions of the poor in Kenya with particular regard to land rights, noting how the situation in Kenya is highly inequitable and skewed. Elaborating this, “Women and young girls” he noted “are the most marginalized from land rights and entitlement,” and he enquired, “How effective would it be to bring all our women and join their names with their male family members on the title deeds of property all over this country?” Pastoralists, who use two thirds of Kenya’s territory in their nomadic and semi-nomadic herding of flocks, were noted as the second most marginalized group, with the third group of the most poor the squatters who do not enjoy rights to the land they squat on. Fourth are the fisherfolk. These, it was noted, “have been excluded by those carving up the Kenyan coast and waterfronts for tourism and other uses, so that you cannot then fish from water or the land.” The fifth marginalized group is the hunter/gatherers who these days, are excluded from public and private property. Further, the plight of those who live with disabilities, the slum

dwellers and street hawkers were referred to. In a concluding statement it was stated that, "Legal empowerment of the poor in Kenya requires re-distributive land reforms and these are, of course, highly controversial. There is another side of empowering the poor that we have to pay attention to, and this is the disempowerment of the rich."

**Mrs. Violet Chivutse** of community-based organisation Groots Kenya spoke about the work of home-based care givers and presented the deliberations of ten groups working to assist those impacted by the HIV and AIDS pandemic in urban slums and areas of rural Kenya. The main thrust of her argument was contained in the statement, "Land governance is an issue and the government must consider land governance through a human rights lens." Additionally she referred to the need for "reconciliation of the historical injustices of past land distribution. She noted that the speedy implementation of the National Land Policy will help resolve land conflicts although she noted, "The policy may be in place but down on the ground it's not being applied in practical ways." She recommended, "The government must ensure that the Policy is entrenched in the Constitution - and the poor should know that the Policy is there to protect them, and have had the education to know how to seek help when they need it." Furthermore she noted that a clear policy on squatters' rights, slum upgrading and participatory processes to develop policies must be in place.

### **Workshop Session 3**

#### **Key question: How can the poor access land tenure?**

#### **Consensus:**

The main concern here was that Kenya has been plagued with corruption and fraud within the land registration and titling sector, with recommendations made in the Ndungu Report on land corruption yet to be implemented.

#### **Recommendations:**

1. Lobby for human rights with regards to the safety and security of poor individuals and families going through forced evictions
2. Educate the poor regarding property and ownership rights, especially women, the disabled and children.
3. Investigate increased utilization of pro-poor land tools for registration and titling of land for the poor which are fast and affordable
4. Define other ways and mechanisms of simplifying the land registration process, such as formation of groups to define and secure rights for the group. This would give them a louder voice.
5. Simplify the registration process to make it easier for the public and more transparent
6. Encourage the Government to establish a land commission that will work to distribute land to the poor.
7. Provide up to date information on issues impacting Kenyans with regard to land rights.
8. Implement recommendations of the Ndungu Report commissioned by the Government to deal with those implicated in massive land grabbing and corruption.

## **THEMATIC AREA 4 - ENTREPRENEURSHIP AND FINANCE**

Chair:

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Mrs Cate Ambrose, Commission on Legal Empowerment of the Poor

Panellists:

Mrs Sunita Kapila, Kenya Gatsby Trust

Mr David Mwasika, Land Economist

Mr Eliud Moyi, Policy and Government Analyst

***Let's come up with keys to unlocking potential because that's what can really move the smallest businesses forward. Let's identify the linkages they can make with markets so they can grow - because market growth is what it takes to get out of poverty.***

Mrs Sunita Kapila, Kenya Gatsby Trust

**Mrs Sunita Kapila'** s paper was entitled, "Unleashing the Entrepreneurial Potential of Micro and Small Businesses in Kenya" and she looked at the challenges the poor face in accessing opportunities in the formal sector. She noted the formal and informal sector do not exist independently of each other, and gave the statistics that Kenya's private sector accounts for 81 percent of its GDP and that over 90 percent of Kenyan enterprises are microenterprises (MSEs) employing 1 to 10 employees. Most are located in the informal sector and women own half of these MSEs.

Currently, many of the MSEs are constrained by shortages of cash, appropriate technologies and skills, and function due to subsidies which are largely derived from government, it was noted. The question was posed that, with the huge potential of this sector, "Is this the way Kenya needs to go forward in its efforts to advance pro-poor work in future? "

Lack of consistent quality and adequate quantity are key constraints precluding large businesses from purchasing supplies from the MSEs, particularly of agricultural produce. The need for the public and private sector to come in and lend their support to advance the sector was noted. Saying that, "The private sector comprised of the agricultural, trade, manufacturing and service sectors has a broad base of small producers who are often not aware of their market location and its potential", it was noted how awareness creation, information and skills enhancement is being mostly done by civil society organizations ranging from large producer associations to CBOs. The fact that facilitation within the sector has to be built into the profit margin and become part of the process so that reliance on donor and NGO funding is reduced was noted.

Observing that current small business licensing legislation allows local authorities discretion in licensing so that corruption can impinge on implementation, it was noted that to improve the business environment for all enterprises licensing reform is being undertaken. The revision of local government byelaws is seen as a priority in this respect. "Access to credit is not the hurdle in this country but linking to the appropriate market is," it was stated, while it was noted that, "50 percent of Kenya's industrial capacity is underused."

The recent Private Sector Development Strategy drawn up by the Ministry of Trade and Industry and its objective of enhancing competitiveness of MSEs through increased linkages was referred to, and optimism expressed about its ability to build capacity and improve the business environment, labour market processes and institutions. Encouraging women and youth as those who can benefit from positive discrimination in this area was seen as a priority.

In conclusion it was stated that the key to forward progress is to "grow the formal sector and build chains for commodities to reach markets....Change has begun. Deregulation, deepening of markets, legal vigilance and supportive institutional reform must also continue and resources for this must be made available."

**Mr David Masika** made an exposition relating to the Kenya Cotton Board in his presentation. He described how during the 1990s, despite the country's rich potential to grow the crop, there was effectively no cotton produced in Kenya, No Cotton Board existed and there was no legal framework to assist producers in developing, marketing or fixing prices for the internal marketing or export of the raw or processed material. He noted the gender inequity in production by saying, "Cotton in this country is farmed by women but owned by men." Describing progress, he noted that today there is a Cotton Act but that still no regulatory body as such is established. He referred to the World Bank matching grant for development of the crop which has been received. In proposing how the situation can be ameliorated and further enhanced as a growth sector and he stated the importance of putting producer groups together to share information resources on planting and harvesting methodologies, as well as for marketing techniques and to agree the fixing of prices. In terms of growing the sector it was noted that currently the cotton goes to the gin for processing and the producer receives the lint as his primary product, but that the seeds are as yet not processed to benefit the farmers although there is high potential for a secondary product, since diesel fuel can be extracted from seeds.

***"Nothing can come to the bottom if we have confusion at the top"***  
Mr. Eliud Moyi , KIPRA

**Mr. Eliud Moyi** of Kenya Institute of Policy Research and Analysis (KIPRA) made a presentation focussing on SME development and policy and opened with the question, "How can government and the existing regulatory bodies better support small enterprises in this country?" He noted that the SME sector is frequently let down by the fact that laws and policy are too slow to reflect developments and assist with the evolving realities of business practice on the ground. He gave as an example that the current policy framework finally materialized in 2005 but that was the result of deliberations initiated in 2005 .

Weak monitoring in the application of regulatory mechanisms was also shown as a problem, which, combined with the absence of trained personnel, results in policy directives having little impact on the ground.

In relation to the role of youth and what this cohort could bring to the sector he said that this was "unexploited as yet. A new starting point is needed."

Overall, a lack of vision was noted, with the failure to offer those working in the sector the appropriate incentives, as for example the protection of intellectual property rights for manufacturing innovations. Generally, the sector suffers from under-resourcing, whether this is investment in information communication technology or in supporting the organizations and associations that could marshal, advocate and lobby for an improved situation. The factor of "information asymmetry" was referred to as a constraint and the remark made that the flow of information requires attention before any true progress can be expected since, "Nothing can come to the bottom if we have confusion at the top."

#### **Workshop Session 4**

**Key question: What are the ways groups can organize to build capacity and share knowledge among the poor?**

**Consensus:**

The critical importance of strengthening linkages and the capacity to organize and self-determine business practice, was a primary consideration, drawing on existing networks and the support of the private sector as appropriate.

### **Recommendations**

1. Promote the use of effective media and community newsletters to provide up to date information on issues regarding entrepreneurship and finance. Mode of communication should be relevant to all especially those with disabilities such as the deaf and blind, and those who are not literate
2. Encourage the poor to form societies and self help groups where they can combine their savings to create their own micro finance institutions.
3. Educate the community on proper use of existing institutions for financing and accessing information
4. Develop social areas within the community so that people have an opportunity to express their views and issues, network and access relevant information.
5. Set up community information desks in each ministry to effectively disseminate information
6. Initiate training and capacity building on conflict resolution, business management, networking, financial management
7. Create relevant policies and regulations for the “jua kali” (informal sector) sector that give special consideration to the poor and physically disabled.
8. Young people should advocate for the non-political administration of the Youth Enterprise Fund

## COMMUNITY CASE STUDY 1

### **Toi Market – collective action succeeds at the largest informal market in Nairobi**

*“ Beware of the power of stupid people, especially when they’re in large numbers,” quoted by Joe Mutura, Toi Market Treasurer*

Toi Market sprawls its 5000 colourful crowded stalls over a valley bottom in Kibera, Nairobi’s largest slum settlement, where over 500,000 people make their homes. Originally where the Nubian tribal group settled, it was started in the 80’s by 10 women who sold fruit and vegetables. It flourished, but eviction threats were a constant hassle and eventually collective action was instigated by one marketeer and together, they others agreed to form a society. They set aside funds from their savings to finance the building of toilets in the market, and the general cleaning of the area. As a market, the vendors then decided to organize themselves. They needed a voice to advocate and speak for them, a voice to lobby for the security of the market. Support came from the very top once they had pleaded their cause with the President himself. President Moi’s convoy, stopping as it passed through the market, allowed the traders to ask for support and, gratifyingly, private sector assistance was forthcoming very soon after. As they began to be recognized as major players the marketers were joined by many more traders but they faced several problems as they grew their business. For example City Council tax made demands for payment. Sometimes the Council Officers would come to give eviction warnings. They would have to leave if they didn’t pay 25 shillings per day – but this was totally unrealistic since some vendors made no more than 50 shillings profit per day. So the marketeers resisted, and told the council that if they were to pay these charges, that the council should give services such as water, security, and cleaning. Today, the collective action and self-determination has paid off and the retailing success has continued so that group boasts 15 million in their savings account. The Toi Market Cooperative now operates as an independent micro finance institution and the market stalls enjoy security of tenure. A member of the umbrella group Kenya Slum Dwellers Federation, the market is so evidently well run it now meets the Nairobi City Council sanitation standards.

## COMMUNITY CASE STUDY 2

### **Kwale Women’s Group stands firm on property rights**

Kwale, the rugged remote area inland of Kenya’s south coast, is one of the country’s most disadvantaged regions. Life in the grass-roofed “bandas” under the flame and banana trees is harsh, and malnutrition and infant mortality is amongst the highest in the country. Women strive to support their families and have to seek whatever modalities they can to generate income. Kwale’s lush climate is good for agriculture and one group drew on this positive advantage some years ago by beginning to cultivate some available land to give them all year round fruit and vegetables as a product to sell. In the face of continuous fears of eviction, they opened up a market and built a loyal customer base. When eventually the landowners closed in and they were faced with eviction, they stood together to confront the evictors with solidarity. They refused to relocate. Instead, they offered to pay for the land with the savings they had now put together from the income they had generated from the proceeds of the vegetables and fruit sales. Today, still a successful and productive group, the women still survive on proceeds from this land.

### **COMMUNITY CASE STUDY 3**

#### **Trash collection brings unanticipated social benefits to Kangemi slum**

Living in Kangemi, a vast area of slum settlement within Nairobi, Joseph noted that the crime rates were really high and that there were too many idle youth with no income, causing chaos in the area. He called upon the 17 existing women's' groups and sent a request for them, to donate 2,000/- per group to help get the youth off the streets. They were able to raise 35,000/- Kenya shillings.

Joseph then gathered the youth and organized them to collect all the trash from the general area, which they did. It was agreed that for the first 3 months, they would not be able to earn anything. However, the venture was successful, and they began collecting service fees from the residents and by the fourth month, they were able to earn a salary of 400 shillings each. For many of the boys, this was a miracle. From roaming the streets, they were now able to eck out a living, even though many had not completed high school. The motivated youth speared ahead and now earn as much as 5,000 per month by cleaning and collecting trash and charging the residents a minimal fee.

### **COMMUNITY CASE STUDY 4**

#### **Gatundu – protecting AIDS-affected women and children's property rights**

Gatundu, a GROOTS Kenya member region, has had great successes with property issues for women and orphans. This began with the strong support of an assistant chief who hears cases of women and girls experiencing property grabbing and disinheritance. He then takes action on their behalf by providing proof of ownership papers. He also ensures that widows and orphans receive appropriate death certificates that would otherwise be used by the husband's or father's family to disinherit women and orphans.

The community "watchdog" group monitors cases of disinherited women and orphans and supports them with appropriate referrals based on individual cases. They also mobilize the community to support those struggling with property issues. One example of a watch dog initiative was the building of a house for a widow who had been disinherited by her late husbands family. This case was very encouraging because the land they built on was given to the widow by her father. Gatundu has shared their successes and challenges with other regions, helping them to develop successful intervention models.