

CAPACITY BUILDING WORKSHOP ON HUMAN RIGHTS FOR ELDERS OF THE CULTURAL STRUCTURES PROJECT



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Held in Kisumu County, 28th to 31st May, 2012

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ABBREVIATIONS

ADRAlternative Dispute Resolution
ARVsAnti-retrovirals
ART . . . . .	.Anti-retroviral Treatment
CBO . . . . .	.Community Based Organization
CRC . . . . .	.The Convention on the Rights of the Child
CSP . . . . .	.Cultural Structures Project
CEDAW . . . . .	.The Convention on the Elimination of All forms of Discrimination against Women
D.O. . . . .	.District Officer
FIDA . . . . .	.Federation of Women Lawyers - Kenya
HIV . . . . .	.Human Immunodeficiency Virus
IGA . . . . .	.Income Generating Activity
NACC . . . . .	.National AIDS Control Council
NGOs . . . . .	.Non-Governmental Organizations
OVCS . . . . .	.Orphans and Vulnerable Children
PLHIV . . . . .	.Persons living with HIV
TB . . . . .	.Tuberculosis
The Constitution . . . . .	.The Constitution of Kenya, 2010

ABOUT KELIN

KELIN is a legal NGO working to protect, promote and advance health related human rights in Kenya. Our objective is to undertake advocacy and provide leadership in enhancing human rights approaches in health and HIV strategies and programs. Our vision is the full enjoyment of health and HIV related human rights for all and our mission is to advocate for the promotion, respect and protection of health and HIV related human rights.

KELIN responds to legal, ethical and human rights concerns relating to health and HIV by:

- Providing legal services including legal advice and litigation to people who have suffered health related human rights violations – especially people living with HIV and other vulnerable groups – using KELIN staff and our network of pro bono lawyers.
- Strengthening and Building Capacity of health professionals, lawyers, community workers and people living with HIV on health and other related human rights including working from a rights-based approach in service provision.
- Engaging in advocacy campaigns that promote awareness of human rights issues in national laws and policies to governments, organizations and communities.
- Research on areas relating to human rights, legal issues and health, contributing to new legislation and supporting evidence-based change.

KELIN's current main program areas are around: promoting alternative dispute resolution in securing justice for vulnerable groups like widows and orphans, campaigning for sustainable funding for health services, ensuring the government effectively supports the rights of TB patients and facilitating various people in Kenya to know and use their human rights.

We continue to ensure government accountability in guaranteeing the progressive realization of the provisions of the right to health as envisioned by the Constitution of Kenya 2010.

For more information on KELIN and its work visit www.kelinkenya.org.

Forum: Capacity Building Workshop on Human Rights for Elders of the Cultural Structure Project

HOST ORGANIZATION	KELIN	
SITE/COUNTRY OF MEETING	Kisumu County, Kenya	
DATE OF MEETING	28 th to 31 st May 2012	
NUMBER OF PARTICIPANTS	MALE	FEMALE
	21	9

1.0 PROJECT BACKGROUND

In the provision of Legal Services for health related human rights violations, KELIN encourages the use of Alternative Dispute Resolution (ADR) mechanisms. Since 2009, KELIN has been implementing a project known as “Working with Cultural Structures to Facilitate Access to Justice by Widows and Orphans” that aims to utilize community structures (elders and community leaders) to boost the right to access, own and inherit property by vulnerable widows and orphans. In recognizing that the formal legal systems are not always accessible to many vulnerable women in Kenya this innovative initiative recognizes the power of culture and positively engages with it to ensure it operates positively for the protection of the rights of the vulnerable women and children.

Working with the community elders in Nyanza region in Kenya, this initiative has facilitated informal mediation between disputing parties providing the safe space to iron out family property disagreements. The success of this initiative has so far taken on 148 cases involving disinheritance of widows, of which 88 cases have been resolved in favour of the women, and 50 cases are still ongoing, 4 have been referred to other departments and networking partners, 4 cannot be traced and 2 passed away during the process. In addition, 17 semi-permanent houses have been built for the most vulnerable widows and their children within a 36 month period.

Total number of cases taken up since 2009	148
Completed successfully	88
Cases pending	50
Not traced	4
Referred	4
Died	2
Simple structures constructed	17

With the promulgation of the Constitution of Kenya 2010 (The Constitution), KELIN sought to strengthen the project by empowering its beneficiaries on health and HIV related human rights which would facilitate sustainability and better outcomes for the project. To this end, KELIN undertook a new initiative to build the capacity of the project beneficiaries on human rights issues that predispose women and children living with HIV within the Nyanza region to violations. The initiative would also strengthen the capacity of the elders on the provisions of the Constitution and developments in legislations impacting on the rights of women and children living with HIV.

2.0 EXECUTIVE SUMMARY

From 28th to 31st May 2012, KELIN held a four days residential capacity building workshop on human rights for elders of the cultural structures project. The workshop, held in Kisumu City was hosted by Mr. Allan Maleche (Executive Director), Ms. Melba Katindi (Advocacy & Training Officer) and Ms. Nancy Ondeng (Regional Project Officer (CSP), all of KELIN, with technical support from experts who facilitated some sessions. They included Commissioner Winnie Lichuma (an expert on gender and HIV), Mr. Ambrose Rachier (an

expert on land law and ADR mechanisms), Mama/Elder Asenath Odaga (an expert on the Luo Culture) and Professor Winnie Mitulla (an expert on devolution). The workshop also incorporated some representatives of key relevant agencies and KELIN partner organizations that are relevant in complementing the elders' work within the region. They included Ms. Migai (FIDA - a women's rights organization in Kenya), Ms. Murenga (Lean On Me - a community based organization that supports PLHIV), Mr. Konyango (a local Children's Officer) and Ms. Ochuma (a local Gender Officer).

The training brought together 21 elders, majority of who are currently working with the project and few others from neighboring regions that have expressed interest in adopting the same approach.



Inclusion of more women into the elders structure was encouraged during the forum

Prior to the commencement of the project in 2009, some of the elders had been trained by KELIN on the rights based approach. The broad objective of this particular workshop was to strengthen the capacity of the elders on emerging human rights issues and development in the law with regard to protection of the rights of women and children especially those living with and affected by HIV. This knowledge would facilitate a better informed arbitration process.

During this workshop the participants were updated on the provisions of the Constitution that relate to women, children and Persons Living with HIV (PLHIV). They discussed HIV, developments in its management and addressed numerous misconceptions surrounding this. They engaged in lively deliberations on legal and ethical issues in HIV and were familiarized on the provisions of the HIV and AIDS prevention and Control Act. The participants were introduced to the land policy in Kenya and the recently enacted land laws. They also debated on the proposed provisions of various family bills that are to be enacted for the protection of women's property rights.

There was an exciting session where the participants talked about the Luo culture on women property rights and interrogated various cultural practices that would need to be addressed in light of the provisions of the Constitution.

Finally the participants had a provocative session on opportunities for their recognition and involvement in the devolution process and prospects for their strategic collaboration with relevant key government organs that would complement their work.

The mode of facilitation was dominantly interactive deliberation sessions complemented by Power-Point presentations, question & answer sessions, experience sharing, video documentaries and healthy debates among the participants.

At the conclusion of the workshop the participants had a brainstorming group discussion where they reviewed their progress and resolved on the way forward. Going forward, they resolved to continue encouraging amicable resolution of land disputes and raise community awareness on the issue. They called upon KELIN to strengthen their capacity in case documentation, and keeping proper records in order to standardize implementation and sustainability of their activities within the project.

They also decided to become actively involved in relevant ongoing legislative developments within the County and to aggressively advocate for their recognitions within the village administration structures.

The workshop ended with the participants reiterating their continued commitment to ensuring access to justice for vulnerable widows, orphans and others in their communities.

3.0 OVERVIEW OF TARGET GROUP

In determining the content and scope of the training, a simple needs analysis was conducted by randomly sampling five people from the target group. This process helped in the identification of particular issues of relevance within the community and areas of interest amongst the target group. This guided development of the program content and the identification of suitable facilitators.

The target group were all respected and recognized as elders within their clans, aged between 57 and 76 years. Most of them were retirees in formal employment such as former teachers and civil servants, who currently engaged in community development initiatives and farming.

A majority of the elders were literate and articulate in both Kiswahili and English but occasionally expressed themselves in the local language - Dholuo.

Most of the participants were selected for the workshop based on the criteria that they were active and recognized community elders who were committed to the project. A few of the participants were elders from neighboring communities who have shown an interest in adopting the initiative. All the participants were to have a good understanding of the relevant issues and have the potential of effectively communicating the knowledge acquired to others.

Our efforts to incorporate women participants were faced with the challenge that only a few women were currently recognized as elders as this was customarily a male dominated entity. After consultation with the larger group of elders, we identified 21 elders, 4 of whom were women.

4.0 SUMMARY OF WORKSHOP

4.1 INTRODUCTION AND CLIMATE SETTING

The forum began with a word of prayer, followed by participant introductions facilitated by Nancy Ondeng, the Regional Project Coordinator for the Cultural Structures Project.

4.1.1 *Expectations*

The participants shared their expectations, which were as follows:

- i. Gain a deeper understanding of the Constitution
- ii. Learn more about the rights of women and children
- iii. Understand the relationship between human rights and culture
- iv. Discuss the progress of the project
- v. Discuss HIV and the role of elders in addressing stigma
- vi. Learn more on the laws that the elders can adapt in their work
- vii. Develop strategies to address challenges in service provision by the elders and advocate for government recognition and support
- viii. Explore how to involve other communities in the initiative
- ix. Network and share experiences
- x. Receive a Certificate

4.2 INTRODUCTORY REMARKS

Adera Osawa: Luo Council of Elders

Opening remarks were made by Elder Adera Osawa, a senior member of the Luo Council of Elders. In recognition of the success of the project in the region, Mr. Osawa thanked KELIN for reinforcing the role of elders' structure. He noted that the workshop was timely as the knowledge gained would enable the elders better serve their people. He was also proud that it presented the opportunity for them to share their work with other communities. He pointed out that this would facilitate access to justice for more vulnerable people.

He reiterated that the role of elders has been and continues to be the maintenance of peace and harmony among the various clans within the community particularly in the protection of vulnerable women and children.

He cautioned against the vice of greed that has lead to the misinterpretation of culture over the generations. This had manifested in the ill-treatment of vulnerable groups, a case in point being the denial of property for widows.

In calling the participants to action, Elder Osawa appealed to the elders to remain committed to their obligations in society. He declared that despite culture being dynamic, it is the role of the elders to diplomatically ensure that it remains in good taste and protects the rights of the vulnerable.

4.3 OBJECTIVES

Melba Katindi, gave a brief overview of the project, sighting the numerous success stories that informed the need to strengthen the project even further. She noted that the need to sensitize the beneficiaries on the developments in law was aimed at up scaling the impact of the project beyond individual clans to County level.

The empowerment of the beneficiaries would enable them to champion their own cause within the community and at the same time engage effectively in Constitutional implementation through County legislations. A good understanding of the processes would facilitate their participation in ensuring development priorities address their needs.

The objectives of the workshop were as follows:

- i. Understanding the legal provisions protecting the rights of children, women and PLHIV
- ii. Identifying and addressing various challenges raised by legal and ethical issues in HIV
- iii. Demystifying myths about Luo Culture and property rights of women
- iv. Discussing legal provisions on land rights and the mediation process adopted within the CSP
- v. Appreciating the role of elders in protection and promotion of women's land and property rights
- vi. Understanding the opportunities presented within the devolved structure of the Constitution

5.0 SUMMARY OF SESSIONS

5.1 THE CONSTITUTION AND HUMAN RIGHTS

Commissioner Winifred Lichuma: Expert on Human Rights, Gender and HIV; KELIN Board Member and Chairperson of National Gender and Equality Commission

The session began with a general discussion on human rights. The facilitator engaged the participants in expressing their understanding on the types of human rights and related principles which she pointed out are all incorporated in the Constitution. She explained that rights came with obligations and responsibilities and noted the obligation of the Government to respect, protect and fulfill human rights.

She then explained that the Constitution ensured that all these rights were actually enjoyed by the people. They discussed the significance of the Constitution of Kenya in ensuring enjoyment of these rights. The participants were then taken through an in-depth breakdown of the provisions of the Constitution and they discussed how these related to women, children and PLHIV, pointing out opportunities for the elders to expand their efforts.



Commissioner Lichuma engages participants on the provisions of the constitution relating to human rights

Finally, the commissioner educated the participants on the numerous provisions the constitution that safeguard property rights especially for women, she encouraged the elders to continue their work stating that the recognition of cultural structures in the resolution of land disputes within the community complements their innovative approach to dispute resolution.

Plenary

- › During the session participants discussed different tasks customarily assigned to men and women within the community. In appreciating respect for and promotion of culture as a right in itself, it was observed that some of these roles have no relevance in present times and others were clearly not in conformity with the provisions of the Constitution. They observed that in light of these provisions, there was need for the elders - as the custodians of culture - to carry out a detailed interrogation of these practices and strategize on the best way to address them within the community in order to promote equality and non-discrimination.
- › The elders also noted the importance of affirmative action in ensuring more women are recognized and respected as cultural elders and incorporated within the existing structures. However, they noted they observed that the women elders had a significant obligation to championing this as role models by living up to the expectations.

5.2 OVERVIEW OF HIV AND AIDS

Ms. Maureen Murenga: Executive Director, Lean on Me

The facilitator began by exploring the participants' knowledge on HIV, questioning them on their understanding around HIV transmission, progression, prevention and management. The participants were fairly informed on the issue.

After clarifying their enquiries on prevention and treatment, she updated them on biometric developments on the benefits of early and consistent treatment on prevention efforts.

The facilitator then addressed various cultural myths around HIV in the region. Maureen demonstrated the effect of HIV related stigma in the community and the importance of talking openly about sex and HIV in an effort to address this stigma. She reiterated that addressing stigma will encourage testing by more people and facilitate a better quality of life for those living with HIV.

Plenary

- › *The participants noted that customarily, it was the role of the elders to address issues of self respect and morality including discussing sex and relationships. They engaged in a passionate discussion on the need to revive this obligation in order to promote frank discussions about sex and HIV among the youth in their communities.*

5.3 LEGAL AND ETHICAL ISSUES IN HIV AND AIDS

Mr. Allan Maleche: Executive Director, KELIN

The session started with a general discussion around the sources of Law and the process that led to the promulgation of the Constitution in 2010, where the participants openly shared their views and opinions.

After establishing the distinction between legal and ethical issues, Mr. Maleche challenged the participants to analyze the facts of the case of **Midwa vs. Midwa Case No. 197/2000 EALR [2002] 2 EA 453(CAK)** and identify contentious issues raised by the ruling.

A lengthy discussion pursued around various legal and ethical issues including issues around HIV testing, custody of children, right to ownership of matrimonial property, lack of knowledge on HIV issues that results in stigma and consequently discrimination.

Mr. Maleche enlightened the participants on the legal provisions that address the various issues raised looking at the provisions of the Constitution and statutes such as the HIV and AIDS Prevention and Control Act 2006, the Sexual Offences Act and the Children's Act.



Mr. Maleche engages the participants on legal issues relating to HIV

The facilitator concluded by proposing some key roles that the elders could take up in addressing legal and ethical issues relating to HIV including community advocacy against HIV related stigma by giving information and encouraging people to get tested.

Plenary

- › *The elders had a healthy debate on the benefits and challenges of voluntary testing as compared to mandatory testing. They agreed the best way forward was by encouraging every one to know their status voluntarily.*
- › *They were all in agreement that the elders had a significant role to play in raising awareness and sensitization of their constituents on their rights and responsibilities in the management of HIV within the community.*

5.4 SUCCESSION AND FAMILY LAW

Ms. Peres Migai: Program Officer, FIDA

The participants shared their understanding on the issue of succession going into various practices around succession in the community. The participants discussed the various cultural myths that discourage people from writing wills. The facilitator addressed these myths and enlightened the participants on the importance and components of a simple valid will.

Ms. Migai then educated the elders on the law of succession discussing both testate and intestate succession. She pointed out that personal law including customary law was recognized in issues of succession and inheritance.

The facilitator then introduced the participants to the three bills popularly known as the Family Bills, i.e. the Marriage Bill, the Matrimonial Property Bill and the Family Protection Bill. Two of the elders acknowledged that KELIN had facilitated their participation on behalf of cultural leaders in the consultation process of developing these bills by the Commission on the Implementation of the Constitution.

Ms. Migai informed them of the relevant, contentious provisions of the bills and invited them to make submissions on the same.

Plenary

- › *Participants said that customarily divorce was not recognized and women were often buried in their first husband's homes! This posed a challenge in efforts of peaceful reconciliation as the current wives oppose inheritance by the 'prodigal' wives children.*
- › *The elders were concerned at the lack of law to compel their children to care and provide for older parents who are unable to provide for themselves. The participants were generally pleased with the proposal to recognize polygamous (including customary) marriages within the legal system as it protects all the spouses. They also seemed agreeable with provisions for the protection of spouse/s right over matrimonial property*
- › *There was a heated discussion on the role of dowry and the proposal in the bills to do away with dowry as a pre-requisite component of customary marriage. Also of contention was the question whether a married daughter had the right to inherit from her biological home as proposed in the bills*
- › *The elders agreed that they can sensitize and support the community in writing simple wills that will help reduce disputes around family property. They also resolved to deliberate further on the contentious provisions of the three bills and make their submission to the Commission on the Implementation of the Constitution.*

5.5 UNDERSTANDING LUO CULTURE ON PROPERTY RIGHTS IN RELATION TO WIDOWS AND CHILDREN

Elder Asenath Odaga: Cultural Expert, Gender and Development

Before the session, the participants had a moment of silence in commemoration of the elders they have lost over the years since the inception of the project. This session was very interactive as the participants were simply exchanging ideas and views on culture and traditional practices. Ms. Odaga made inquiries that guided the discussions beginning with what comprised property and its ownership. It was noted that majority of property was considered communal property and rights were assigned as to control, access and usage; wives had access and usage of property whilst the husband had control over the property.

The facilitator led the participants in addressing the controversies that arose upon the death of the husband particularly in honouring the right of access and usage of the land by the wife. Several reasons came up, including greed and the disintegration of the family unit in modern generation. Whilst some of the elders were reluctant to admit the continued existence of the practice of wife cleansing, the facilitator cautioned against the culture of denialism. Instead she proposed the creation of a safe space for widows who want to voluntarily find another man to take care of them and their children to do so without driving the virus further.

The facilitator ended the session by challenging the elders to interpret cultural practices in a way that will mitigate the circumstances that increase vulnerability of women and girls to HIV and other health risks, especially in light of the provisions of the Constitution.

Plenary

- › *The discussions brought into light an interesting fact that despite the wife being viewed as property that was protected jealously by the family, it was nonetheless acknowledged that the marital house belonged to her.*
- › *The elders observed that cultural issues were brought about by modern socialization that has broken down the extended family unit. Most families moved to the city and are rarely interacting with those in the village. Harmony is hard to achieve after the death of the husband when the 'modern' family moves back to claim the property in the country side. They reiterated the responsibility of the elders in trying to address this in an effort to restore values of honour, loyalty and mutual respect among family members.*
- › *The elders proposed to have further consultations in smaller constituency groups to discuss the issues in detail and deliberate further at the close of the day's sessions.*

5.6 LAND AND PROPERTY RIGHTS

Mr. Ambrose Rachier: Land Rights Expert; Chairperson, KELIN Board and Chairperson of the Equity Tribunal

The objective of this session was for the participants to gain a comprehensive understanding of the new laws and policies on land and appreciate the role of the Elders in the devolved administrative systems dealing with land. The presentation by Mr. Rachier, who led the drafting team that developed these laws, sought to enlighten the participants on the provisions of the Land Act 2012, the National Land Commission Act and the Land Registration Act. He begun by expounding on the national events that these land reforms.

The participants shared their experiences highlighting numerous land problems faced by Kenyans including land grabbing, irregular and illegal allotment of public land, tribal clashes/ethnic violence and post election violence, which manifested as a land dispute.



Mr. Rachier enlightens the participants on land and property rights

Mr. Rachier then expounded on the ongoing reforms enlightening the participants on some legislative measure that have been incorporated to remedy the past mischief surrounding land.

He ended the session by emphasizing on the recognition of traditional dispute resolution mechanisms in land conflicts as set out in the Constitution. To this end he implored the elders to strategize on their involvement in the development of the Community Land Law Bill, which is yet to be drafted, in order to ensure recognition, adoption and ownership of their innovative initiative in the resolution of land disputes by national government organs.

Plenary

- › *The participants were concerned as to the adequacy of compensation given to those whose land is compulsorily acquired. Mr. Rachier advised that the best protection would be to have your land independently valued so that you can use the determination to claim equitable compensation.*
- › *The participants were enraged that the internally displaced persons as a result of the post election violence had not been allocated land as assured by government. Mr. Rachier informed them that the Ministry of Special Programmes was mandated to ensure this process was finalized.*
- › *The contentious issues of the entitlement of a married woman to her biological father's land came up for debate again during this session.*
- › *One of the participants suggested that special consideration be given to arid and semi-arid land that belongs to pastoralist communities who are ever on the move.*

The participants' other queries bordered on legal consultations; almost each participant gave a case scenario for which they expected a solution by the facilitator. It was agreed that any legal advice required would be channeled to KELIN through the regional officer for a well informed legal opinion.

5.7 UNDERSTANDING ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

Mr. Ambrose Rachier: Land Rights Expert; Chairperson, KELIN Board and Chairperson of the Equity Tribunal

Mr. Rachier began the session by asking the participants to recall their experiences growing up with regard to various disputes in the family and community. The participants shared on traditional disputes, how they were resolved, consequences and forms of punishment for the actions. Mr. Rachier then noted that similarly in legal interventions, not all disputes needed to be resolved in court.

He pointed out the various forms of ADR recognized in law, noting that traditional dispute resolution mechanisms were not recognized under the provisions of the **Constitution at Art. 159(1) and (2)**.

The facilitator observed that the traditional ADR was a very good system as it was affordable, accessible, expeditious and acceptable as the community had confidence that the system would dispense justice expeditiously. The facilitator encouraged the elders to be guided by provisions of the Constitution in any actions taken by the elders including considerations on the provisions of the bill of rights.

"The Ogae was the head of all the elders, and when a dispute arose he appointed both men and women to sit as the elders to resolve the dispute. However, the women would sit on the ground and the men would take up the chairs. The women's response could only be allowed when prompted by the Ogae. So there were no permanent courts, each sitting was reconstituted by the Ogae upon necessity and comprised experts around the subject matter.

Prior to these resolutions, a sitting was held where beer was served to the elders for purposes of consultation and to signify unity and oneness. Thereafter, they would summon the disputing parties.

The elders communities the cultural ADR mechanisms as the adjudicators were non-partisan and would rarely be influenced by a person's wealth. This is getting harder and harder."

Quoted by an elder during the session

Plenary

- › *The elders engaged in comprehensive deliberations on their formal recognition as provided under Article 159 of the Constitution of Kenya. The facilitator encouraged them to initiate discussions with the Chief Justice to showcase their work and demand formal recognition.*
- › *In recognition of their role within the justice system, the facilitator reiterated the need for each arbitration process to be well documented including the circumstances that informed the settlement. The elders requested further technical support from the legal experts within KELIN in ensuring their decisions are recognized within the systems of the courts and registration of land.*

5.8 OPPORTUNITIES PRESENTED BY DEVOLUTION PROVISIONS IN THE CONSTITUTION OF KENYA

Prof. Winnie Mitulla: Expert on Devolution and Political Science

Professor Winnie, who is the head of the team that was tasked to develop the draft laws on devolution, informed the participants that the County legislation as initially drafted included provisions for the recognition of Elders in governance at village level, and took them through some of the key provisions of the devolution bills. They discussed the proposals for the criteria for establishment and appointments into the village governance structure and their responsibilities which had included mobilizing community participation, monitoring policies and projects including providing feedback to government. However the same were scrapped and left for legislation at individual County level.

The facilitator sought to enlighten the participants on the initial proposals in the County legislation on village government where the involvement and recognition of elders was paramount. She proposed various roles and functions for the elders at village level such as mobilization of community for participation in governance and development initiatives, reviewing village priorities and assisting sub-county administration, monitoring implementation of policies, providing feedback and performing other welfare issues at village level.

She stressed on the importance of elders to be at the fore front of citizen participation particularly in the County Citizen Forum. She informed the elders that they would need to assert themselves in order to be formally recognized and incorporated in governance strategies at county level.

Plenary

- › *Whilst admitting that the elders' structure needed to be formally legislated and incorporated in administrative work, they were concerned about the pollution of the principles governing their institutions by formal governance structures which were very political.*
- › *Further deliberations were necessary to see how to strategize on how to pressurize County governments to legislate on governance at village level including establishment of council of elders as proposed in the draft bills prepared by the Task Force on devolved governments. They committed to discuss further the provisions as drafted.*

5.9 DOCUMENTARIES AND VIDEO SESSIONS

The participants had various visual sessions during the workshop. They watched films on various CBO initiatives; the first one highlighted issues of HIV and community sensitization and the second one focused on the role of communities in ensuring accountability in governance through public audits. They also watched several short videos on the cultural structures project developed by KELIN over the years.

5.10 REVIEWING THE PROJECT

Nancy Ondeng: Regional Coordinator, Cultural Structures Project, KELIN

At the beginning of the session, the participants watched two videos developed by KELIN on the cultural structures project. They were able to share their observations with regard to the project as brought out in the short videos which had been developed several years apart.

They pointed out the increasing impact as demonstrated by the number of cases identified, arbitrated on and resolved within the four years of the project.

Nancy took the participants through the background of the project. She discussed the trainings of elders prior to the inception of the project. She then reminded them of the objectives and expected outcomes of the project.

The participants contributed on the impact of the project activities of the project including the success in arbitration of inheritance disputes and resettlement of widows.

Nancy also discussed the expansion of the project with the bicycle project that was aimed at mitigating the vulnerability of the girl child and the current trainings.

Nancy requested the elders to discuss the progress of each of their groups and make presentations on their observations in light of the knowledge gained within the workshop.

5.11 GROUP WORK: SUSTAINING AND STRENGTHENING THE CSP

Below is a tabular representation of summarized feedback from the group sessions on the progress, gaps and opportunities for expansion and sustainability of the work by the different elders groups:

CONSTITUENCY, COUNTY	PROGRESS OF INITIATIVE	GAPS AND OPPORTUNITIES
Kabondo Kasipul, Homabay	<ul style="list-style-type: none"> - Seven cases successfully resolved and widows reinstated on land - Two widows benefitted from resettlement] - 15 children benefitted from the bicycle initiative 	Increased advocacy towards deterrence from this practice
North Rachuonyo	<p>The project has recently scaled up to this area Three cases have been identified so far.</p>	Increased transport support to facilitate coverage of entire Rachuonyo which is very vast
Nyakach	<ul style="list-style-type: none"> -Twelve cases successfully resolved and widows reinstated on land, with the families of seven women taking responsibility for resettlement - Five widows benefitted from resettlement - 15 children benefitted from the bicycle initiative 	<ul style="list-style-type: none"> - Registered as a CBO, office operational - Support by World Vision in construction of houses for widows - Support for proper documentation of cases e.g. computer donation - Increased transport support to facilitate coverage of entire Nyakach which has rough terrain - Support in securing equipment for office - Exploring alternative support for construction of houses
Nyando	<ul style="list-style-type: none"> - Seventy cases reported - Fifty cases successfully resolved and widows reinstated on land - Seven widows benefitted from resettlement - Five additional houses supported by political aspirant - 15 children benefitted from the bicycle initiative 	<ul style="list-style-type: none"> - Increased transport support to facilitate coverage of entire Nyando - Follow up with the Children's officer and Gender officer to explore opportunities for collaboration - Pursue formal registration for their group
Muhoroni	<ul style="list-style-type: none"> - Twenty Five cases reported - Thirteen cases successfully resolved and widows reinstated on land - Three widows benefitted from resettlement - 15 children benefitted from the bicycle initiative 	<ul style="list-style-type: none"> - Develop work plan for community sensitization - Exploring possibility of poultry keeping/sugarcane farming or other forms of IGA to support their activities
Kisumu West	<ul style="list-style-type: none"> - Adopted the initiative and have begun work on their own - Fifty cases have been identified - Hoping for KELIN's support 	- Expansion of the KELIN CSP to this area
Bungoma	<ul style="list-style-type: none"> - Reached out to KELIN after the radio advocacy initiative in mid 2011 - Interest in adopting the CSP to revive the Bukusu council of elders 	- Expansion of the KELIN CSP to this area

5.12 CREATING LINKAGES

Melba Katindi: Advocacy and Training Officer, KELIN

This session took a slightly different approach. The objective of this session was to facilitate networking of the elders with other key government organs that would complement their work.

Melba moderated a dialogue session with two speakers from government, namely Mr. Konyango, a local Children's Officer, and Ms. Ochuma, a local Gender Officer. Both were representatives from the Ministry of Gender, Children and Social development.

Melba began by building momentum on some fundamental areas of interest for the elders by raising questions with regard to the mandate of both departments and opportunities for collaboration with the elders.

The Children's Officer discussed the structure and mandate of the Children's Department, including the department's role in rehabilitation, registration of children's institutions, foster care and adoption. Mr. Konyango and Ms. Ochuma discussed the legal provisions in relation to child offenders and the role the elders can play in the identification and referral of children in need of care and protection within their communities where the department may not necessarily have contacts. Mr. Konyango also informed the participants of the availability of a toll free child help line where any incidences could be reported and shared his personal contacts with them for direct communication.

The Gender Officer clarified the misconception that her department was only addressing issues of women and explained that by ensuring gender mainstreaming the government was addressing how the responsibilities assigned to men and women by society affect their enjoyment of certain rights. She acknowledged numerous opportunities for women's economic empowerment within the Ministry of Gender including various loans and grants availed for vulnerable groups. But she mentioned that men also benefitted from cash transfer programs that the government was rolling out for needy orphans and older persons.

The moderator then opened the deliberations inviting questions from the participants.

- › *The participants were apprehensive at the age limitation set for adoption claiming that many of them were still capable of taking care of children. Mr. Konyango clarified the difference between foster care which the participants were referring too and adoption which is preceded by a detailed legal process to establish the suitability of the parents to be to ensure the child will be best provided for.*
- › *The elders were apprehensive about the criteria of the beneficiaries of the cash transfer programs explaining that no proper consultations were made to establish that the proposed beneficiaries were the most deserving. Ms. Ochuma encouraged the participants to be actively involved in these processes and shared her contacts for any feedback in relation to irregularities in the procedure*
- › *The elders were alarmed at the increasing rate of minors committing suicide and asked whether the government had adopted any strategies to mitigate the circumstances that lead to this. They were informed that a comprehensive counseling program had been incorporated into the officer's curriculum to help intervene in cases troubled families and depressed children.*

6.0 WAY FORWARD AND ACTION PLAN

Below is a tabular presentation of the action plan developed by the elders after the training:

WHAT	WHERE	HOW
Community Sensitization on the Constitution	Kabondo Kasipul, Homabay	-Organize a joint meeting with D.O
	North Rachuonyo	- Link with trained widows to strategize on collaborative community sensitization efforts
	Nyakach	- Incorporate human rights sensitization within the Cultural day activities
	Nyando	- Share materials and knowledge acquired with fellow elders who did not participate in the workshop
- Follow up with the Children's officer and Gender officer to explore opportunities for collaboration	Muhoroni Bungoma	- Collaborate with chief for sensitization during chiefs barazas
Conduct more arbitrations	Kabondo Kasipul, Homabay North Rachuonyo, Nyakach Nyando Muhoroni Kisumu West Bungoma	-Meeting with KEDAC member to address cases reported - Expand target area to cover the whole of Karachuonyo
Support for resettlement of widows	All	- Exploring alternative support for construction of houses - Follow up with the Children's officer, Gender Officer and NACC regional office to explore opportunities for collaboration - Exploring possibility of IGA for sustainability of activities
Increased reporting on other Human Rights Violations	All	- Monthly reports to KELIN on other violations identified and action taken
Increased Advocacy for the recognition of elders structures	All	- KELIN to avail relevant legislations - KELIN to update elders on developments - Elders

7.0 TRAINING METHODOLOGY

The mode of facilitation was dominantly through interactive deliberation sessions complemented by Power-Point presentations. The expertise of the facilitators was appropriate in light of the lengthy Question & Answer sessions, and this promoted healthy debates among the participants.

The video documentaries varied from issues ranging from HIV to public audit as a tool for promoting accountability, facilitated learning and experience sharing among the elders. The Constitution of Kenya, the tool developed by KELIN on working with cultural structures along with other relevant statutes and the slides from the workshop were provided to the participants for ease of reference during and after the workshop.

The group discussions were followed by plenary sessions, where groups reported on the progress, challenges and recommendations in strengthening the project.

8.0 CHALLENGES

- i. Language: some elders preferred Dholuo to English
- ii. Discussion were largely in Dholuo and rappouter was not converstant with the local language

9.0 RECOMMENDATIONS

Below are recommendation captured by discussion with the elders at the close of the meeting

- i. Scaling up support for the elders to champion community mobilization on human rights advocacy.
- ii. Increased elders' involvement in HIV and AIDS advocacy particularly in addressing stigma and discrimination in collaboration with the regional NACC officials.
- iii. There is need to seek further support for the elders - as the custodians of culture - to carry out a detailed audit and documentation of practices that are in contravention of the provisions of the Constitution and strategize on the best way to address them within the community.
- iv. KELIN should encourage affirmative action and hold the elders accountable in ensuring more women are recognized and respected as cultural elders and incorporated within the existing structures. Pursue support for the women elders to champion advocacy on the same.
- v. Pursue further engagement with the elders as community champions in the promotion of will writing including addressing other related legal issues such as birth notification and registration for children.
- vi. Advocacy for national and county recognition, regularization and remuneration of elders' structures as proposed in the draft bills prepared by the Task Force on devolved governments.

ANNEX I: CASE STUDY

“One day, while my radio was tuned to Mulembe FM-our local radio station, I heard about this initiative by KELIN. After listening to Rhoda’s testimony on the show, I was impressed that the initiative benefitted members of our community. The proposal to encourage use of cultural structures as an alternative to the court inspired me into reviving the institution of the Bukusu council of elder. Not discouraged by the resources, I moved throughout the community informing the community about what I had heard and the benefits in adoption of this approach for our people. This has attracted a lot of interest from the people who elected seven representatives as elders. I call upon KELIN’s support in making this move a success so that we can extend access to justice to even more beneficiaries in other neighboring communities.”

Pastor Martin Wanyonyi – Bungoma

ANNEX 2: PROGRAM



CAPACITY BUILDING WORKSHOP ON HUMAN RIGHTS FOR ELDERS OF THE CULTURAL STRUCTURE PROJECT

Royal City Hotel and Conference, in Kisumu County, from 28TH to 31ST May 2012

P R O G R A M

OBJECTIVES

- Understanding the legal provisions protecting the rights of children, women and PLHIV
- Identifying and addressing various challenges raised by legal and ethical issues in HIV
- Demystifying myths about Luo Culture and property rights of women
- Discussing legal provisions on land rights and the mediation process adopted within the CSP
- Appreciating the role of elders in protection and promotion of women's land and property rights
- Understanding the opportunities presented within the devolved structure of the Constitution

DATE	TIME	SESSION	PROPOSED FACILITATOR
Monday 28/05/2012	8.30 – 9.00 a.m.	Arrival and Registration	Melba Katindi: KELIN
	9.00 – 9.15 a.m.	Pre-training Evaluation	Melba Katindi: KELIN
	9.15 – 9.45 a.m.	Introduction and Climate setting (Expectations)	Nancy Ondeng: KELIN
	9.45 – 10.00 a.m.	About KELIN (Objectives of the Workshop)	Melba Katindi: KELIN
	10.00 – 10.30 a.m.	Welcome Remarks	Mr. Adera Osawa: General Secretary, Luo Council of Elders
	10.30 – 11.00 a.m.	TEA BREAK	
	11.00 – 1.00 p.m.	Session 1: The Constitution and Human Rights (Introduction to human rights, human rights principles, discussing relevant provisions of the e Constitution and how they relate to women, children and PLHIV)	Commissioner Winifred Lichuma: Chairperson, Gender Commission; KELIN Board Member
	1.00 – 2.00 p.m.	LUNCH BREAK	
	2.00 – 4.00 p.m.	Session 2: Overview of HIV & AIDS About HIV and AIDS (Modes of transmission, how HIV works in the body and its progression to AIDS, Common misconceptions, Treatment Control and Management, Effect of Stigma)	Maureen Murenga : Lean On Me / NEPHAK
	4.00 – 4.30 p.m.	HEALTH BREAK	
END OF DAY			
Tuesday 29/2012	8.30 – 9.00 a.m.	RECAP	Melba Katindi: KELIN
	9.00 – 10.30 a.m.	Session 3: Legal and Ethical Issues in HIV and AIDS (The HIV and AIDS prevention and control Act, 2006: Consent; Testing; Confidentiality; Gender and Culture)	Allan Maleche: KELIN
	10.30 – 11.00 a.m.	TEA BREAK	
	11.00 – 1.00 p.m.	Session 4: Family relations and succession(Wome n's rights and violence against women, Children's rights, The Family bills in relation to matrimonial rights)	Peres Migai: FIDA
	1.00 – 2.00 p.m.	LUNCH BREAK	
	2.00 – 4.00 p.m.	Session 5: Understanding Luo Culture on Property rights in relation to Widows and Children	Asenath Odaga: Cultural Expert
	4.00 – 4.30 p.m.	HEALTH BREAK	
END OF DAY			
Wednesday 30/05/2012	8.30 – 9.00 a.m.	RECAP	Melba Katindi: KELIN
	9.00 – 10.30 a.m.	Session 6: Land and Property Rights (Understanding the new laws and policies: and the role of elders in the devolved systems created by the laws)	Ambrose Rachier: Land Rights Expert / KELIN Board
	10.30 – 11.00 a.m.	TEA BREAK	
	11.00 – 1.00 p.m.	Session 7: Understanding Alternative Dispute Resolution Mechanisms (Legal provisions on Mediation, Principles of Mediation, the role of the Mediator and the provisions of article 159 of the Constitution)	Ambrose Rachier: Land Rights Expert / KELIN Board
	1.00 – 2.00 p.m.	LUNCH BREAK	
	2.00 – 4.00 p.m.	Sustaining and Strengthening the CSP (What has worked, challenges, recommendations)	Nancy Ondeng: KELIN
	4.00 – 4.30 p.m.	HEALTH BREAK	
END OF DAY			
Thursday 31/05/2012	8.30 – 9.00 a.m.	RECAP	Melba Katindi: KELIN
	9.00 – 11.00 a.m.	Opportunities presented by Devolution provisions in the Constitution of Kenya (The County System), Participation and Accountability	Prof Winnie Mitulla
	10.30 – 11.00 a.m.	TEA BREAK	
	11.30 – 12.00 a.m.	Creating Linkages: Gender Officer and Children's Officer (Mechanisms of Protection for Vulnerable Widows and Orphans, Role of Elders and Opportunities for collaboration with the Elders within the CSP)	Jemin Onyango: Children's Officer, Nyando Lynett Ochuma : Gender Officer, Nyando
	12.00 – 12.30 p.m.	Way Forward and Action Plan	Allan Maleche: KELIN
	12.30 – 12.45 p.m.	Post-training Evaluation	Melba Katindi: KELIN
	12.45 – 1.00 p.m.	Closing Remarks	
	1.00 – 2.00 p.m.	LUNCH BREAK	
END OF WORKSHOP			

ANNEX 3: LIST OF PARTICIPANTS

NO	NAME	GENDER	ADDRESS
1.	Maurice Mbom Obonyo	M	Kisumu Town East , Kisumu
2.	Alfred Obonyo	M	Muhoroni Kisumu
3.	Kasuku .A.C.Kalolo	M	Nyando Kisumu
4.	Henry L.A. Orinda	M	Muhoroni Kisumu
5.	Jacob H. Oliech	M	Muhoroni Kisumu
6.	Eunice J. Awuondi	M	Muhoroni Kisumu
7.	Okul Henry Otieno	M	Nyando Kisumu 169 Ahero
8.	Festus Ogenga Sila	M	Kabondo-94 Kabongo
9.	Felix Okal	M	Nyakach Kisumu
10.	Obura V.A.N	M	Kabondo Elders Homabay County
11.	Joseph Okello Omol	M	Kabondo –Elder
12.	Joyce Orowe	F	Nyando Kisumu
13.	Josephine Ongombe	F	Nyando Kisumu
14.	John Odingo Okech	M	Nyakach Kisumu
15.	Martin Wanyonyi	M	Bungoma-Bungoma North
16.	Josiah O.S. Ondoro	M	Nyakach Elders;Nyakach Kisumu
17.	G.S Oyugi Anyah	M	Kisumu West District
18.	Judith B.A.Ouko	F	Rachuonyo North Box 60 Kojuang
19.	Nyandiko Ongadi	M	Rachuonyo North Box 61 Homabay
20.	Adera Osawa	M	Awendo Mgori County
21.	John Rasare Gome	M	Nyakach Elders Box 128 Pap-Ondit
22.	Maureen Murenga	F	Kisumu
23.	Peris Migai	F	Kisumu
24.	Asenath Odaga	F	Kisumu
25.	Jemin Onyango	M	Nyando
26.	Lynette Ochuma	F	Kisumu
27.	Mr. Rachier	M	KELIN
28.	Allan Maleche	M	KELIN
29.	Melba Katindi	F	KELIN
30.	Nancy Ondeng	F	KELIN