

Proceedings of the
Pacific Regional
Consultation on
Women's Rights to
Adequate Housing
and Land

Our Land

Our Homes

Our Culture

Our Human Rights



Proceedings of the
Pacific Regional Consultation
on
“Women’s Rights to
Adequate Housing and Land”

**in cooperation with the UN Special
Rapporteur on Adequate Housing**

Nadi, Fiji

12 to 15 October 2004

Organised by

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Habitat International Coalition – Housing and Land Rights Network
(South Asia Regional Programme) (HIC-HLRN-SARP)

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- Alison Aggarwal, Asia Pacific Forum on Women, Law and Development
- Kelera Finau Elder, Pacific Regional Rights Resource Team

List of Acronyms and Abbreviations

ALTA	Agriculture Landlords Tenant Act
APWLD	Asia Pacific Forum on Women, Law and Development
BRA	Bougainville Revolutionary Army
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBO	Community based organizations
BLF	Buka Liberation Front
BPFA	Beijing Platform for Action
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic Social and Cultural Rights
CRA	Conzinc Rio Tinto of Australia (mining company)
CRC	Convention on the Rights of the Child
ECOSOC	Economic and Social Council
FWCC	Fiji Women's Crisis Centre
HART	Housing Assistance Relief Trust
HIC-HLRN	Habitat International Coalition – Housing and Land Rights Network
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Covenant on the Elimination of all forms of Racial Discrimination
ICESCR	International Covenant on Economic Social and Cultural Rights
IDP	Internally displaced person
IWRAW-AP	International Women's Rights Action Watch – Asia Pacific
LGBT	Lesbian, gay, bisexual and transsexual people
MDG	Millennium Development Goals
NGO	Non-governmental organization
NZAID	New Zealand Agency for International Development
OHCHR	Office of the High Commissioner for Human Rights

PACFAW	Pacific Foundation for the Advancement of Women
PNG	Papua New Guinea
PNGDF	Papua New Guinea Defence Forces
PTI	Punanga Tauturu Women’s Counselling Inc.
RAH	Right to Adequate Housing
RRRT	Regional Rights Resource Team
RTZ	Rio Tinto-Zinc (former name of mining company, now known as Rio Tinto)
SPDC	State Peace and Development Council
SRAH	Special Rapporteur on adequate housing
SRVAW	Special Rapporteur on violence against women
STD	Sexually transmitted diseases
UDHR	Universal Declaration of Human Rights
UNCHR	United Nations Commission on Human Rights
UNDP	United Nations Development Programme
UNICEF	United Nations Children’s Fund
UNIFEM	United Nations Development Fund for Women
VAW	Violence against women
WCAR	World Conference Against Racism, Racial Discrimination, Xenophobia and Other Forms of Related Intolerance
WSSD	World Summit on Sustainable Development

Preface

The Fiji Consultation on women and housing and land is the fifth in a series of civil society regional consultations that have played a critical role in unearthing the experiences of women facing violations of their right to adequate housing and land on a daily basis. These consultations have contributed enormously to the analysis of the state of women's rights to housing and land contained in the three reports that comprise the global study on women and housing requested by the UN Commission on Human Rights in April 2003.

Too often the United Nations is seen as a remote entity, operating at a level far removed from the grassroots. These regional consultations have served as a unique mechanism for bridging this gap, bringing together grassroots women's and civil society groups to further inform the normative content of the discourse on women's right to adequate housing.

Pursuant to this goal, the inter-regional consultation process has featured the training of participants from groups working on women's rights and housing rights, through the use of the Habitat International Coalition – Housing and Land Rights Network Tool Kit, on strategies and methodologies for the prevention of violations, monitoring, advocating for, and overcoming obstacles to women's enjoyment of their rights to adequate housing and land. Central to this process have also been the individual, and often intimate and courageous testimonies, provided by grassroots women and organizations working at the local and national level to inform UN processes.

The testimonies at Fiji were particularly informative, received from a diversity of women and men from communities and civil society organizations across the region, including Fiji, Vanuatu, Solomon Islands, Tonga, Kiribati, Cook Islands, Bougainville, Papua New Guinea and indigenous Australia. Each testimony explored the specificities of the contexts in which women were facing considerable violence and discrimination in their efforts to claim their human rights, and highlighted the vital contribution such grassroots dialogues offer to informing more amply the core content of the right to adequate housing.

As the issues of land and housing tend to feature prominently within the everyday language of Pacific cultures and societies, the Fiji consultation sought to focus on the interlinkages between women's access to land, housing and inheritance rights and the customary laws and traditions that typically govern decision-making processes related to such issues. In addition, the related issues of urbanisation and migration were also explored, with an eye toward further clarifying their connection to the lack of adequate housing.

Other themes arising from the Fiji consultation included the particular difficulties encountered by women belonging to particularly vulnerable groups, such as women suffering from disabilities, indigenous women, and lesbians, as well as the recurrent inconsistencies between customary law and national and international laws and constitutional provisions that guarantee equal rights for women. The ongoing retrogression in women's enjoyment of the right to adequate housing and land was also addressed, which was complemented by an examination of the impacts of urbanization, armed conflict, development and globalization. For many women throughout the Pacific region, the loss or sacrifice of their rights has become a routine occurrence, often with no recourse or remedy in sight.

The use of the concept of violence against women, as an inroads to understanding the ways in which women experience violations of their right to adequate housing, has proved particularly effective in furthering our understanding of the contexts within which women's rights are violated. Of particular note is the predominant use – often with impunity - of violence against women by State and non-State actors as a tool of patriarchal systems and structures that both prevents women from realizing their right to housing, and further entrenches the pervasive culture of silence that, heretofore, has hindered efforts at a thorough and rigorous treatment of women's housing issues.

During the Consultation as, one by one, participants shared their moving personal testimonies, it became clear that women in the region tend to experience discrimination on multiple levels. Grounding the understanding of women's rights and their violation in women's experiences elucidated further the need to apply a substantive equality approach to issues of gender equality, and an intersectionality approach to non-discrimination. By implementing such approaches, we become better able to address both structural and individual inequalities, as well as more closely examine the differential manifestation of adequate housing between individuals due to the compounded effect of converging sources of discrimination.

The many problems highlighted throughout the Fiji Consultation led participants to agree upon the need for much greater civil society and UN agency attention on these issues. They also offered several practical recommendations regarding the review of existing laws and revision of formal and customary legal practices that deny women equal access to housing, land and inheritance, the fostering of women's participation in decision-making processes relevant to housing and land, the creation of collaborative mechanisms to foster interaction with the United Nations, and the encouragement of further cooperation between women's interest groups and housing organizations.

It becomes clear, therefore, that the experiences of women shared during the consultations can contribute significantly to both strengthening standard setting at the national and international level, as well as informing processes of policy formation. Throughout the ongoing consultations, women demonstrated tremendous personal strength and tenacity through continual efforts to reassert their agency. This is reflected in the strategies identified for the local, national and international level, in the areas of legal strategies, state regulation, economic strategies, social mobilization and awareness raising, research, and direct action.

These regional consultations, begun in 2003, have inaugurated a process that since has extended to other regions of the world, including Asia, east Africa, the Middle East and North Africa, Latin America, North America, Eastern Europe/Central Asia and the western Mediterranean Basin. Of all the positive outcomes that these consultations have engendered, one of the most fruitful has been the cross-

fertilization of work on women's right to adequate housing, with appreciably increased linkages between housing rights networks and women's rights networks now in place across the globe. What remains to be seen, however, is how the world's government will respond to the deep-felt anguish that women have voiced worldwide as they continue to give expression to their adversity, and struggle to secure their right to adequate housing and land.

Miloon Kothari
United Nations Special Rapporteur on Adequate Housing
March 2006

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Executive Summary

The *Pacific Regional Consultation on Women's Rights to Adequate Housing and Land* (Fiji, 12 - 15 October 2004) is the fifth in a series of regional meetings¹ held in cooperation with the UN Special Rapporteur on Right to Adequate Housing (SRAH), Mr. Miloon Kothari, in preparation for his reports on women and adequate housing to the United Nations Commission on Human Rights.

The Commission on Human Rights received the Special Rapporteur's preliminary report on women and adequate housing in 2003. In its responding resolution², the Commission affirmed that discrimination against women in land, property and housing was a violation of human rights, and encouraged governments to support the transformation of customs and traditions. The Commission also requested the Special Rapporteur to submit a second report in 2005.

In preparation for his second report, the Special Rapporteur participated in a regional consultation to identify the key housing and land issues for women in the Pacific region. The Pacific consultation was organised jointly by the Fiji-based Regional Rights Resource Team (RRRT), Habitat International Coalition – Housing and Land Rights Network (South Asia Regional Programme) (HIC-HLRN), the Asia Pacific Forum on Women, Law and Development (APWLD) and the International Women's Rights and Action Watch – Asia Pacific (IWRAP-Asia Pacific). 21 representatives of women's and community groups from Fiji, Vanuatu, Solomon Islands, Tonga, Kiribati, Cook Islands, Bougainville, Papua New Guinea and Australia participated. 5 resource persons from Australia, India, Egypt and Fiji facilitated the consultations. (See Annex A for a complete list of participants and resource persons)

As land and housing rights are intimately connected within Pacific cultures and societies, these consultations had a specific focus on the linkages between land, housing and inheritance rights of women, particularly in the contexts of traditional and customary norms, violence, urbanisation and migration.

The objectives of the consultation were:

- To examine the contexts and obstacles for women's rights to land and adequate housing in order to promote substantive equality for women and thereby inform the normative content of the human right to adequate housing;

¹ Other regional consultations have been held in East Africa, Asia, Latin America and the Middle East/North Africa (2002-2004).

² Resolution 2003/22 'Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing'.

- To enable participants to articulate, within the human rights framework, cases of discrimination against women in relation to land and housing in the context of poverty and livelihood, land use, property and inheritance issues, globalisation, development, fundamentalisms, militarisation, and intersectional discrimination;
- To examine issues of state and non-state actors' accountability with respect to women's rights to land and adequate housing;
- To exchange approaches and strategies so as to strengthen women's groups working on women's rights to land and adequate housing; and
- To provide preliminary findings and recommendations for the report of the UN Special Rapporteur on Adequate Housing (SRAH) for 2005 on women and land and housing, state accountability, and strategies for follow-up.

To meet these objectives, the consultation was structured in two sections:

1. Training on methodologies for monitoring and implementing women's right to adequate housing (2 days);
2. Presentation of personal testimonies of housing rights violations to the Special Rapporteur on Adequate Housing (2 days). (See Annex B for the Agenda)

Through the training, participants were introduced to the work of the Special Rapporteur on Adequate Housing and a range of other UN mechanisms (e.g. NGO parallel reporting, intercessional treaty body mechanisms) that can be used to enforce human rights standards. The training was based on the *HIC-HLRN Tool Kit and Loss Matrix*, which provides a general framework for monitoring and advocating for women's human right to adequate housing. The Tool Kit also guided the development of strategies necessary to address the violations of women's human rights to adequate housing. Within this framework, participants also contextualised the elements of the human right to adequate housing in the Pacific region, focusing on the different manifestations of discrimination against women, on the identification of the sources of this discrimination, and on possible redress measures and remedies. Participants explored different models of equality, and deepened their understanding of the substantive equality model applied in the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), which ensures both *de jure* and *de facto* equality (i.e. prohibiting gender discrimination in both purpose and effect). Participants were introduced to the concept of intersectional discrimination, which recognises the compounded discrimination women face when discrimination on the basis of gender combines with other grounds for unequal treatment, such as race, disability, age, ethnicity, caste, and sexual orientation. Participants used the structure of the Tool Kit, and the principles of substantive equality and intersectional discrimination to develop and present their testimonies to the Special Rapporteur.

The testimonies were grouped under the five themes of:

- Violence against women and the human right to Housing
- Indigenous land rights and rights to natural resources
- Discrimination and segregation in eviction and housing
- Legal, customary and religious practices as obstacles to land, property, and inheritance
- Housing, land and property rights of women (migration, shift to urban areas, urban settlements)

The key regional issues for women in the Pacific, in relation to the human rights to land and housing, that emerged from the training and the testimonies included:

- The lack of equal participation of women at all levels of decision-making relevant to the realisation of the rights to adequate housing and land. This is reinforced by traditional norms and religious practices that give supremacy to men and thereby omit women from decision-making forums. Women are also absent from the processes in which government policies on land and housing are developed;
- The perpetuation of patriarchal cultures and systems that discriminate against and oppress women in custom, in religion, in the family, and in the community. These are reflected strongly in inheritance systems that directly discriminate against women. Patriarchal structures and unequal power relationships between men and women are reinforced through different forms of violence against women. Patriarchal values and systems are further reflected in State institutions, which work to limit women's access to grievance redressal mechanisms;
- As a result of intersectional discrimination, specific groups of women, particularly lesbians, women with disabilities, indigenous women and ethnic women are more vulnerable to violations of their rights to adequate housing and land;
- Gender discriminatory customary and civil laws restrict women's scope to challenge such discrimination and seek redress. This is compounded by confusion arising from conflicts between customary and constitutional law, conflicts within various constitutions, as well as conflicts between domestic customs and international human rights law. Politicians, judges and law-makers often fall back on cultural norms that may discriminate against women. Additionally, the policies of donors and regional bodies (such as the Asian Development Bank) are often inconsistent with international laws and human rights standards of non-discrimination;
- The retrogression in women's enjoyment of housing and land rights. This is due to phenomena related to mixed marriages (i.e. inter-marriages between matrilineal and patrilineal systems), the feminisation of poverty (where women are forced to consistently live in poor conditions, which can be a form of violence in itself), armed conflict, violence against women, development (rights of traditional land owners are being eroded by settler communities and multinational corporations) and most importantly, increasing population, migration, urbanisation, overcrowding and the reduced availability of land. The lack of accountability of States and donors coupled with a tendency of donors to focus on short-term interventions, does not ensure the development of adequate long-term measures to prevent further retrogression.

Throughout the consultations participants shared examples of strategies that had been effectively used in the Pacific. They also identified further strategies at the local, national, regional and international level that could be used to advance women's human rights to adequate housing and land. The Consultation concluded with recommendations made to the Special Rapporteur on adequate housing that included:

- Address women's equal rights to inheritance as a critical element of women's rights to adequate housing and land;
- Recommend that States review customary and national laws that deny women equal rights to adequate housing, land and inheritance, and resolve any conflicts that exist between customs, laws and human rights standards; and

- ◆ Recommend that donors implement gender policies that ensure the protection of women's human rights to adequate housing and land, and review their internal policies and project guidelines to ensure that they do not negatively impact indigenous women's rights to adequate housing and land.

The findings from this Consultation were presented in the Special Rapporteur's 2005 interim report on women and adequate housing. A final report on women and adequate housing will be presented to the UN Commission on Human Rights in 2006. It is also hoped that the Office of the High Commissioner for Human Rights will produce a publication on women and adequate housing in 2006, which will outline many of these issues in more detail. Finally, a summary of the evaluation responses by participants of these consultations is contained in Annex H.

2

Overview of the Regional Consultation

2.1 Background

The four-day regional consultation on women's right to adequate housing and land was organised jointly by the Fiji-based Regional Rights Resource Team (RRRT), Habitat International Coalition – Housing and Land Rights Network (South Asia Regional Programme) (HIC-HLRN), the Asia Pacific Forum on Women, Law and Development (APWLD), and the International Women's Rights and Action Watch – Asia Pacific (IWRAP-Asia Pacific). The consultation was held at the Tanoa International Hotel, Nadi, Fiji. This event was organised with the support and cooperation of the Office of the UN High Commissioner for Human Rights (OHCHR) and with the generous support of New Zealand Aid and UNDP GOLD.

Attending the consultation were 21 representatives from women's and community groups from Fiji, Vanuatu, Solomon Islands, Tonga, Kiribati, Cook Islands, Bougainville, Papua New Guinea and indigenous Australia. An international group of five facilitators from Australia, India, and Egypt was complemented by facilitators and resource persons from RRRT and UN Habitat. In addition, 7 observers from GOLD (UNDP), the Fiji Human Rights Commission and the Tonga Ministry of Health were present.

The objectives of the consultation were:

- To examine the contexts and obstacles for women's human rights to land and adequate housing in order to promote substantive equality for women and thereby inform the normative content of the human right to adequate housing;
- To enable participants to articulate, within the human rights framework, cases of discrimination against women in relation to land and housing, in the context of poverty and livelihood, land use, property and inheritance issues, globalisation, development, fundamentalisms, militarisation, and intersectional discrimination;
- To examine issues of state and non-state actors' accountability with respect to women's human rights to land and adequate housing;
- To exchange approaches and strategies so as to strengthen women's groups working on women's rights to land and adequate housing; and
- To provide preliminary findings and recommendations for the report of the UN Special Rapporteur on Adequate Housing (SRAH) for 2005 on women and land and housing, state accountability and strategies for follow-up.

To meet these objectives, the Consultation was structured to have two main components:

- Pre-consultation training on methodologies for monitoring and implementing women's right to adequate housing (2 days);
- Presentation of personal testimonies of housing rights violations to the Special Rapporteur on Adequate Housing (2 days).

2.2 The UN Special Rapporteur on Adequate Housing³

Mr. Miloon Kothari (of India) was appointed by the UN Commission on Human Rights (UNCHR) as the Special Rapporteur for Adequate Housing (SRAH) (resolution 2000/9) in 2000. He was appointed for a period of three years and had his term renewed for another three years. The task of a special rapporteur is to report to the UN Commission on Human Rights on the status of the realisation of specific rights or of rights in a specific country. Special rapporteurs collect information for their reports through dialogue with States, UN bodies, civil society groups, and country missions.⁴ The SRAH's specific mandate is to **"focus on adequate housing as a component of the right to an adequate standard of living, as reflected in international instruments"**. (resolution 2000/9)

The Special Rapporteur on Adequate housing has defined the right to adequate housing as:

"The human right to adequate housing is the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity." (E/CN.4/2001/51, para. 8)

This broad definition enables him to include a wide range of related issues such as land, property, inheritance, water, essential civic services and forced eviction in his consideration of housing issues.

Special Rapporteur's focus on women and adequate housing

Since the beginning of his mandate the Special Rapporteur has always placed specific emphasis on highlighting women's right to adequate housing. In speaking about his mandate before the Commission on Human Rights in 2003, the Special Rapporteur stated:

"In pursuing my mandate, I have followed a holistic approach, based on the reality that all human rights are interrelated and indivisible. The right to adequate housing cannot be fully realized if separated from other rights such as the rights to food, water, sanitation, electricity, health, work, property, security of the person, security of home, and protection against inhuman and degrading treatment. This approach has required me to examine a range of issues related to adequate housing, including land, forced eviction, access to water and sanitation, health, poverty and the impact of globalisation. Within this broad framework, my particular focus has been to develop a strong gender perspective, consistent with the right to non-discrimination and on the rights of particular groups, such as children, indigenous people and minorities."⁵

³ See Annex C for the full power point presentation.

⁴ See Annex D for an outline of the methodologies used by the Special Rapporteur on Adequate Housing.

⁵ Commission on Human Rights, Statement of Mr. Miloon Kothari, SRAH, 4 April 2003.

In 2003, the SRAH submitted his first report on women and adequate housing (E/CN.4/2003/55). The report found that there was a significant gap between the legal recognition of women's right to adequate housing and the actual fulfilment of those rights. Some of the reasons identified for this gap included:

- ◆ Gender-neutral laws, which failed to recognize the special circumstances of women;
- ◆ Predominance of discriminatory customs and traditions;
- ◆ Bias in the judiciary and public administration;
- ◆ Lack of access to affordable legal remedies, credit, and information on laws and rights among women;
- ◆ Male-dependent legal security of tenure systems; and
- ◆ Impacts of globalisation.

The report also identified the needs of specific vulnerable groups of women in obtaining adequate housing. Such vulnerable groups included: women-headed households, widows, women from indigenous, minority or descent-based communities, women living under occupation, women who have been forcibly evicted, women who have faced domestic violence, women who have faced ethnic and/or armed conflict, girl children, elderly women, women living in extreme poverty, women with disabilities, and women with HIV/AIDS.

The Commission on Human Rights in resolution 2003/22 'Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing', affirmed that discrimination against women in land, property and housing was a violation of human rights and encouraged governments to support the transformation of customs and traditions. The Commission also encouraged more human rights education concerning women's rights to land, property and housing, and requested the Special Rapporteur to submit a second report in 2005.

In preparation for his report, the SRAH developed a questionnaire (see Annex E), which he has disseminated to States, international organisations and civil society groups for response. The questionnaire seeks information on the status of women's rights to adequate housing, particularly for vulnerable groups of women (e.g. disabled women, racial/ ethnic minorities, sexual minorities, refugee women etc.).

The questionnaire was developed as both a training tool for the human right to adequate housing, as well as a tool for collecting relevant information. The questionnaire is divided into sections. The first section examines the legal and policy framework (i.e. general questions on the status of laws and policies). The second section focuses on specific elements of the human right to adequate housing, based on the elements identified in the HIC-HLRN tool kit.⁶ The questions have been crafted to highlight women's experiences of the human right to adequate housing.

The Special Rapporteur has been participating in a series of regional consultations with civil society groups in preparation for the 2005 report. The consultations are being conducted with women's groups in different regions to collate information on, and advance the analysis of, women's housing rights.

⁶ The thirteen elements identified in the HIC-HLRN Tool Kit include the seven elements outlined in the Committee on Economic, Social and Cultural Rights' General Comment 4, as well as elements identified through subsequent work with civil society groups.

Each consultation provides a unique opportunity to listen and learn from participants' experiences. Each consultation also brings together groups working on violence, gender and housing issues. The Pacific Consultation is the fifth in this series of regional consultations.

The previous consultations yielded several positive developments within local women's and housing rights movements. The consultation in Latin America led to the formation of a Latin American network that has met twice since the consultation. (See Annex B for other methodologies used by the SRAH)

2.3 Introduction to the Legal Concepts and Framework of the Human Right to Adequate Housing

The Special Rapporteur's approach to analysing women's housing and land issues is firmly grounded in the human rights framework. Four key tenets of this human rights-based approach are:

1. The common heritage of humans - This commonality emerges from our common human needs and dignity, which we all share as human beings, and which we express in our ideas of home, society, and morality,. This forms the universal basis of human rights;
2. The common language that frames human (and inter-State) discourse and dialogue – Human rights is the language we use to assert our claims; it is the language of international jurisprudence;
3. The protection of people from harm – This requires the practical application of the human rights framework, which includes using human rights daily in all professions and walks of life, monitoring violations, promoting alternative solutions, and ensuring accountability of all parties. Human rights are also remedial and may be invoked in the event of a violation or impending violation;
4. Tools for building a better community, society and world – Human rights are practical and preventive. What is codified in the law, arising from our human experience and needs, forms the tools and guidance that governments and citizens need in order to incorporate human rights in the formulation of policies, legislation and budgets, and to normalise the practice of freedom and justice.

The human right to adequate housing is recognised in several international human rights treaties.⁷ The most important articulations of women's right to adequate housing are:

- ◆ International Covenant on Economic Social and Cultural Rights (ICESCR) - Article 11.1;
Art. 11.1 "States parties...recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing."
- ◆ Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) - Articles 14.2 (h) and 16.1(h);
Art. 14.2 (h) "States parties shall undertake all appropriate measures to eliminate discrimination against women in rural areas...and, in particular, shall ensure to such women the right...to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications."

The focus on rural women in this article reflects the strong concern with extreme poverty among rural women that existed at the time CEDAW was drafted. However, Articles 2 and 3, which

⁷ See Annex F for additional sources of the right to adequate housing in international human rights treaties.

speak generally about women's right to enjoy all human rights, without discrimination, provide an opportunity for women's rights to adequate housing in other contexts to also be addressed under the convention. The Optional Protocol to CEDAW also provides an avenue for complaints by both urban and rural women to be addressed before the CEDAW Committee;

Art. 16.1 (h) "States parties shall undertake all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular ensure, on a basis of equality of men and women...the same rights for both spouses in respect of the ownership, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."

- ◆ Committee on Economic Social and Cultural Rights (CESCR) General Comments 4 and 7; GC No. 4 (Right to Adequate Housing) The definition of "adequacy" of housing was held to include the seven elements of: legal security of tenure, availability of services, affordability, habitability, accessibility, location and cultural adequacy.

GC No. 7 (Forced Evictions) Defined forced evictions as "*the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.*" It also stipulates conditions States must fulfil when evictions do take place.

In addition to the human rights treaties, the human right to adequate housing has been recognised internationally in many of the recent UN World Conferences including, the Vienna World Conference on Human Rights, the Fourth World Conference on Women, the World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance, and the World Summit on Sustainable Development. The most critical world conference for the right to adequate housing was the HABITAT II Conference in Istanbul, during which States adopted the Habitat Agenda, reaffirmed their commitment to the human right to adequate housing, outlined government actions for the realisation of the right to adequate housing and recognised the role of civil society.

Para. 39 "We recognize an obligation by Governments to enable people to obtain shelter and to protect and improve dwellings and neighbourhoods. ... We shall implement and promote this objective in a manner fully consistent with human rights standards." (Habitat Agenda, Habitat II, 1996)

The common over-riding principles that cut across all these instruments, that are essential to the implementation of the right to adequate housing are⁸:

- ◆ Indivisibility of human rights
- ◆ Self-determination
- ◆ Non-discrimination principle
- ◆ Gender equality
- ◆ Minimum core obligations
- ◆ State obligations (respect, protect and fulfil)
- ◆ Progressive realisation
- ◆ International cooperation.

⁸ See Annex C for details about these over-riding principles.

2.4 The Elements of the Human Right to Adequate Housing as a Monitoring Framework⁹

A case developed in response to a violation of the right to adequate housing must be based on the three pillars of morals, laws and statistical data.

a. The moral argument

Human rights provide a common language for moral issues based on identifying the basic human needs of people affected. For example, peoples' movements have articulated what 'home' means to them in statements such as the *Indian National Housing Rights Bill, 1988*, the *Jerusalem Declaration, 1994* (identifies Palestinian housing rights under military occupation), the *Bangkok Declaration, 1995* (identifies the common priority of land rights, particularly for indigenous and tribal peoples) and the *Draft World Charter on Rights to the City*, due to be completed in 2005, (identifies urban land and housing issues - transportation, energy, forced evictions etc.).

b. The legal argument

Human rights also provide a common legal framework, which is articulated through treaties, world conference documents and other international agreements, as well as through national constitutions and laws. These form the sources of the legal right to adequate housing.

Within international law there are 'hard law' and 'soft law' sources for the right to adequate housing.

Hard law sources consist of human rights treaties (such as CEDAW), which are agreed upon, signed and ratified by States. Once ratified, the treaties become obligatory and come into force domestically through national laws. Once ratified, governments have binding obligations to their citizens and to other States to implement the treaty standards, which form hard law sources for rights. In addition, there are certain mechanisms for enforcement that operate in accompaniment to such treaties, e.g. the obligation to report regularly to treaty committees as well as complaints procedures under the optional protocols.

Soft law refers to the interpretation of treaties (e.g. general comments or concluding observations made by treaty committees) and non-binding international agreements (e.g. declarations, world conference outcome documents etc.), which reflect the general political will of States to implement principles, but are not in themselves binding mechanisms. For example, while still constituting an important international agreement, the Millennium Declaration of 2000 (which contains the Millennium Development Goals) is not binding. Similarly, while Security Council resolutions are enforceable, General Assembly resolutions are not, the latter forming part of soft law.

Although soft law is not binding, it can still be useful in addressing human rights violations. For instance, where the treaty text does not provide specific guidance on what is required to achieve the rights recognised, soft law interpretations can be looked to as a guide. It is strategically important to be able to identify those sources that have an obligatory power from those that do not, and understand how each one could be relatively invoked and applied.

c. The statistical argument

Numbers provide a clear means of identifying the real dimensions of the problem (i.e. the numbers of victims; the extent of the damage). Numbers assist to quantify the material and non-material costs of a violation (e.g. in cases of inheritance, land confiscation, forced evictions etc.). It is important to

⁹ This session was presented by Joseph Schechla.

quantify non-material losses as costs that the State can understand as a public cost, in order to demonstrate the line of State accountability. In these ways statistics can provide effective supporting evidence for the claims being made.

2.4.1 The "Tool Kit"

One of the main problems faced in raising of awareness about conditions of housing, land rights and living conditions is the lack of systems available for assessment of these rights, including a lack of indicators and benchmarks which could be used to determine the extent of violations of housing and land rights, or the extent to which these rights have been realized.

The Tool Kit (in conjunction with the Loss Matrix - see Annex F) provides the legal tools to prevent and remedy housing and land rights violations. It also provides a systematic means of monitoring and assessing housing rights violations and their impact, within a human rights-based approach that allows for the synthesis of local and global analysis.

This tool kit was developed by HIC-HLRN, in conjunction with housing rights groups in countries all over the world, to provide a monitoring and reporting framework on housing rights. The tool kit has been tested and used in fact-finding missions, reports to the UN, and in evaluations of housing rights programmes in different countries. With each application the tool kit continues to evolve, constantly improved upon through the experiences of local groups.

The Special Rapporteur on Adequate Housing has also used the tool kit as a basis for the questionnaires he has developed for collating information from government and non-government sources. HIC-HLRN and the Special Rapporteur have also provided trainings on the tool kit to non-government groups around the world.

The tool kit was intended for use by community groups, NGOs and individuals, research institutes, human rights monitors, and others. It can be used for:

- Gathering information
- Monitoring – both violations as well as housing policies and programmes
- Reporting
- Evaluation
- Litigation
- Media work
- Social mobilisation
- Advocacy – both nationally and internationally
- Standard setting

The tool kit provides a comprehensive as well as flexible framework for assessing housing rights violations, and can be easily adapted to the issue and situation being addressed. When using the tool kit, care should be taken to select components that are most appropriate for the issue.

The tool kit can also be used to monitor and report on other human rights, such as the right to education or right to health.

There are ten steps to the tool kit methodology. (See Annex F for a summary of the tool kit table)

1. Entitlements (elements of the right to adequate housing and congruent rights);

The tool kit grounds itself within a human rights approach. Consequently, the identification of such ‘entitlements’ requires the identification of the relevant human right being addressed. In the human right to adequate housing there are two parts to such entitlements:

i. Elements of the right to adequate housing - the tool kit identifies 13 elements that are a combination of the seven elements identified by the Committee on Economic, Social and Cultural Rights (General Comment 4) and other elements identified by peoples’ movements (see Annex F for detailed explanations of the elements):

- Security of tenure and freedom from dispossession
- Public goods and services
- Environmental goods and services (land & water)/ safe environment.
- Affordability
- Habitability
- Accessibility (physical)
- Location
- Cultural appropriateness
- Information, capacity and capacity-building
- Participation and self-expression
- Resettlement
- Security and privacy
- Violence against women.

ii. Congruent rights – other human rights, which if not met, will effectively preclude the realisation of the right to adequate housing (e.g. right to life, health, culture, land, property, inheritance, livelihood, information, development, freedom of movement, freedom from violence against women, freedom from torture etc.).

2. Sources – international human rights treaties, declarations, agreements, world conference outcomes, national constitutions, national laws, popular sources (e.g. statements by people’s movements);

3. Overriding principles – cut across all human rights instruments and are essential to the implementation of all rights¹⁰ (e.g. indivisibility of human rights, self-determination, non-discrimination, gender equality);

4. Guarantees – sources that give legal recognition to human rights standards (e.g. ratification of treaties, national constitutions, government policies, programmes and budgets, NGO projects, private sector projects etc.);

5. Causes, threats, barriers, obstacles, contributing factors - identifying disparities between the protections afforded by human rights in theory and in practice, as well as the reasons for the lack

¹⁰See Annex C for details about these over-riding principles.

of protection - for example, legal limitations (absence of laws, conflicts in laws, discriminatory laws, lack of recognition in the constitution, biased judiciary), gaps in policies, absence of policies and budgets. In addition, there may be institutions at the community level or customary and traditional practices, which serve to discriminate against women, or prevent them from accessing their right to adequate housing. It is critical to identify not just the symptoms but also the root sources of such problems, and to identify the structural origins of the obstacles;

6. Victimisation, vulnerability – The victim is the person who experiences the violation (e.g. a widow who has been denied her inheritance) and vulnerable persons are those who are likely to be affected as a result of the violation (e.g. children in the widow’s care, or possibly other women who might face the same fate). Identifying the victims is more reactive, while identifying the vulnerable is more proactive, which in turn further impacts the decision of whether to take remedial or proactive measures. The aim is to be as explicit as possible, specifying the number of victims or numbers of vulnerable people. To ensure an understanding of the gender dimensions, it is important to identify the women and girls involved as victims or vulnerable people;
7. Impacts, consequences - The identification of the impacts of violations and their quantification in terms of costs is necessary in order to seek compensation or to influence public opinion, as well as imparting a sense of how violations can affect a wider group;

The ‘Loss Matrix’ provides a methodology for categorising a victim’s material losses (e.g. cost of house, cost of property, cost of personal possessions) and non-material losses (e.g. lost education opportunities, lost social opportunities, social marginalisation). It also calculates the material and non-material losses (e.g. pain and suffering, social and public costs such as services paid for by the public) of those other than the victim (e.g. children, military, lawyers, public etc.). The Loss Matrix Table (see Annex F) is a guide for collecting the information necessary for quantifying costs;
8. Duty holder, violators – The State (government), as the body that ratifies human rights treaties is the primary duty holder. Violators may be the State or private actors that have committed the violation (e.g. customary leaders and institutions, members of the community, private sector etc.). Even where private actors are the violators, the State is still the duty holder responsible for ensuring that violations are prevented or adequately redressed;
9. Actions, interventions – The previous steps in the tool kit of identifying problems, consequences and responsible actors serve as the prerequisites for deciding upon an appropriate course of action. At this point, a strategic analysis assessing legal and non-legal assets as well as opportunities (e.g. appearing before a treaty body) and threats (e.g. backlash), should be undertaken prior to any decision on what constitutes an appropriate response;¹¹
10. Evaluation - Any action taken must be subsequently evaluated. For example, the European Human Rights Court ruled in favour of a Cyprian woman who had lost her property under the Turkish occupation 30 years ago. To this date, however, the government is yet to deliver her any remedy. Therefore, the implementation of court decisions requires continual monitoring.

¹¹One important strategy to consider is budget analysis. For example, on the specific subject of providing ramps in public buildings it can be useful to advocate for budget allocations to provide for access structures. Legal requirements (e.g. anti-discrimination laws) can be used to reinforce demands for budget allocations. Budget analysis can also be used to question decisions on the allocation of resources. In addition to demanding budget allocations for adequate housing, it is also important to call for the accountability of budget expenditures as budgets may be allocated but not spent accordingly because of corruption.

Participants used the tool kit methodology to develop testimonies presented to the Special Rapporteur during the Consultation. (See Annex G for cases developed by participants using the Tool Kit methodology and Annex H for the testimonies, in full)

2.5 “Unpacking” and Applying the Tool Kit to the Right to Adequate Housing and Gender¹²

It is critical to situate the elements of the right to adequate housing and the tool kit methodology within the context of the Pacific region. It is important to understand how the forms of discrimination experienced by women in the Pacific are mapped in relation to the elements, how the discriminations manifest themselves, and what possible redress measures and remedies exist.

2.5.1 Non-discrimination and gender equality in the right to adequate housing

Non-discrimination and gender equality are two of the overriding principles that apply to all human rights, including the human right to adequate housing. Having a detailed understanding of these principles and their relationship to the human right to adequate housing provides the tools to challenge the justifications offered for the persistence of official and social practices that serve to discriminate against women in land and housing.

a. Gender differences: Common heritage of humans

Some gender differences are biological while some are culturally constructed. As culturally constructed, gender differences tend to vary across cultures and time. This would also seem to imply that they are dynamic and capable of evolving over time, and therefore have the potential of contributing to the advancement women’s equality. Most notions of gender in our cultures help to perpetuate the myth that gender differences are ‘natural,’ and therefore cannot be changed. What is therefore needed is the rigorous examination of the gendered ideologies that inform these stereotyped and artificial notions of gender. The changing of gender ideology, therefore, lies at the heart of CEDAW, and serves as an overriding principle of gender equality.

Gender differences per se are not a problem. The problem arises when such differences are used to justify discrimination, and result in the unequal treatment of women (i.e. unequal power, unequal opportunities, unequal resources, unequal responsibilities and unequal rights). Gender differences have been historically used to justify discrimination against women, resulting in gender inequality.

b. Models of Equality: Common language of human rights

In the history of women’s movements, different models of equality have been used, some being of greater service than others.

- Formal/Sameness model – characterized by women’s pursuit of the same rights as men (e.g. laws that appear as if they are sex/gender neutral).

The limitation of this model is that it uses male standards, determined by men’s experiences, which ignore women’s different experiences and needs. Women are thus prevented from exercising their formal rights because to do so may expose them to violence/hostility, prevent them from accessing opportunities, or conflict with their existing responsibilities. When, due to such reasons, women

¹²See Annex C for the full power point presentation delivered by Dianne Otto.

do not take up formal equality rights, their inaction may be interpreted as a conscious choice not to exercise their rights or an inability of doing so, rather than an acknowledgement that such inaction results from a lack of enabling conditions (for example, lack of education, lack of child care, burden of household responsibilities). Under this model, there is no consideration of historical gender inequities, and what may be required in order to overcome them (for example, women might need to ensure they can borrow money from banks; women might need an information campaign to learn about their legal rights). While essential, formal equality is not sufficient as it does not recognise the unique nature of women's concerns and experiences. It provides equality on paper but not in reality;

- Protectionist model – in order to protect women from harm, women's rights are restricted or formulated differently from men's rights on the assumption that women are more vulnerable, and therefore not capable of securing their rights for themselves. For example, in the Solomon Islands, a Chairman decided that women should not be allowed to wear shorts and trousers to protect them from being raped.

Article 11.1 of ICESCR, which "recognises the right of everyone to an adequate standard of living for himself and his family, including...adequate...housing" represents a protectionist approach in that it assumes men to be the heads of household, and consequently, the right to adequate housing ascribes to the man. It seems to imply that women enjoy that right through the protection afforded to them by the male head of the family. Fortunately, the Committee on Economic Social and Cultural Rights has specifically addressed this phenomenon in General Comment 4, affirming that references to "himself and his family...cannot be read as implying any limitations ...of the right to individuals or to female headed households..."

The limitations of the protectionist model are that it perpetuates stereotypes of women as vulnerable and dependent, it denies women their choice, autonomy, and opportunities to develop. The justification for this approach is that it is in the best interests of women. Although this model recognises women's differences, the paternalistic stereotypes of women further perpetuate women's inequality and do not lead to social change;

- Substantive/corrective model - In contrast to the above two models, CEDAW applies this third model, focusing on producing women's equality in result. That is:
 - Framing rights so they are inclusive of women (e.g. framing the human right to adequate housing to include women's experiences);
 - Recognising rights that are specific to women (e.g. reproductive rights; expanding the list of elements of the human right to adequate housing to include freedom from violence against women);
 - Taking affirmative action measures (Article 4) that specifically target women in ways that allow them to overcome historical disadvantages. For example, the creation of a government programme to lease available land plots to women because in the past women were not allowed to lease land;
 - Create the enabling conditions (Articles 2 and 3) that would overcome factors that may prevent women from exercising their rights otherwise; and

- ensuring the “practical realisation” of (substantive) equality between men and women, i.e., *de jure* and *de facto* equality (Articles 2 and 3).

Under this model, the equality standards are inclusive of women’s experiences. It also introduces measures necessary for addressing women’s historical disadvantage and structural impediments to equality. Though this model has few limitations, it has been found to provoke, on occasion, a negative response in the form of backlash, for instance, men’s groups have argued that it gives women unfair advantages, or that the measures are too costly. It is therefore important, when employing this model, to devise ways to prevent it from appearing as a competitive model between men and women, but rather as a means for addressing past disadvantages. In this way, women’s differences can be taken into account in a manner that is at once both positive and consistent with principles of equality.

c. CEDAW’s definition of discrimination against women

The definition of “discrimination against women” provided in CEDAW (Article 1) is:

“...the term ‘discrimination against women’ shall mean any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural civil or any other field.”

Some important elements of this definition to understand are:

- Discrimination can take different **forms** (i.e. distinction, exclusion or restriction);
- The **grounds** for discrimination can include sex and marital status. This has also been interpreted by the CEDAW Committee to include other grounds such as pregnancy, breast-feeding and widowhood;
- It prohibits discrimination in either **purpose** (direct discrimination) or **effect** (indirect discrimination);

An example of an indirect discrimination case from Australia involved a company that had recently revised its policy to begin employing women. Subsequently, it introduced a ‘last hired first fired’ policy. Although seemingly a gender-neutral policy, the subsequent firing policy had a disproportionately adverse effect on women employees who, having been hired more recently, were the first to be fired.

- Discrimination in all spheres is addressed, including the private sphere (i.e. homes, private organisations).

The CEDAW Committee has also recognised violence as a form of discrimination against women (General Comment 19)

d. Intersectional discrimination

Discrimination against women can be compounded by discrimination on other grounds such as race, disability, age, ethnicity, caste, sexual orientation and so on. Rather than considering each as an independent ground criteria for discrimination, the concept of intersectional discrimination recognises that two or more forms of discrimination may combine to create new forms of discrimination against women, e.g. sexual violence directed at women of a particular ethnic group; forced sterilisation of indigenous women or women with disabilities; and forced eviction of widows.

While it is important to address the diversity of women and women's experiences in housing rights violations, it is also important to understand the common gender-based discrimination faced by women. Therefore, it is important to talk about gender issues in a way that is inclusive of the tremendous breadth of women's experiences.

e. Cultural change is necessary for women's equality

Culture, like domestic law, does not provide an excuse for avoiding international legal obligations arising from human rights treaties (i.e. Article 27 Vienna Convention on the Law of Treaties). In order to challenge cultural arguments against gender equality we must first question the ideology of gender that portrays culture as both natural and immutable.

f. Strategies

The achievement of women's equality and non-discrimination in the enjoyment of housing and land rights requires:

- Adopting laws and policies aimed at realising women's substantive equality, including affirmative action measures;
- Adopting measures that create an enabling environment for women's substantive equality;
- Changing social and cultural beliefs that justify the secondary status of women; and
- Tackling intersectional forms of discrimination.

2.6 Using UN Human Rights Mechanisms¹³

Human rights are both a means to defend oneself as well as a means to build a better world, i.e. they are both remedial and preventive mechanisms. Working within the UN system, a central goal for NGOs could be to ensure that all States respect, protect, promote and fulfil women's equal rights to adequate housing and land.

The UN human rights system is comprised of four types of bodies that could be engaged on human rights issues:

- Political bodies (e.g. the UN Commission on Human Rights is made up of 53 government delegations). They often operate as a microcosm of geo-politics in the world, and tend to respond to political interests in their decision-making. NGOs can lobby these bodies for a political outcome. ECOSOC, the General Assembly and the Security Council are some of the other political bodies on whose agendas human rights issues may be featured;
- Reporting mechanisms (e.g. Special Rapporteur on Adequate Housing and the Sub Commission on the Promotion and Protection of Human Rights – both report to the UNCHR). These bodies are designed to provide factual and neutral reporting back to their host body;
- Legal bodies (e.g. treaty committees; International Court of Justice). These bodies focus on setting standards and overseeing the implementation of State obligations. Their members are often people with expertise in the relevant area. NGOs have no standing under the International Court of Justice, but the new International Criminal Court allows NGOs to have standing;

¹³ See Annex C for the full power point presentation delivered by Miloon Kothari.

- Implementation bodies (e.g. UNDP, UNIFEM). These are mostly UN agencies, many of which are not always conscious of their human rights role, but at a practical level their activities contribute to the advancement and protection of human rights.

Engaging with the UN system also requires interacting with actors other than the UN itself. (e.g. international NGOs, other international bodies etc.) As a result, in addition to primary or central goals, several related goals can also be pursued, such as:

- Contributing to international standards that can be beneficial for everyone (e.g. concluding observations can then be a tool for advocacy in other areas at international and national levels);
- Capacity-building amongst NGOs for the incorporation of human rights approaches in their work (i.e. making international law relevant to local contexts);
- Supporting local community work;
- Establishing solidarity and mutual support at both national and international levels, and between the national and international levels.

The three main elements that support any legal system are: standard setting, implementation and monitoring. While the State has a primary role in these areas, NGOs can contribute significantly to all three areas, particularly to monitoring. For example, since treaty committees report to ECOSOC and to the General Assembly, NGOs focusing on the reporting process can at once both be engaged in the monitoring process and use findings of the treaty body to influence these larger political bodies.

a. State Reports to Treaty Bodies

States report to treaty bodies because it is in their interest to be able to explain their policies and report on the advances they are making.¹⁴ The report is also useful as a process of review and scrutiny.

The purpose of reporting is to solve problems and the special UN committees are in a position to assist States in rectifying existing problems. They also engage in comparative analysis and provide technical advice to States through **constructive (interactive) dialogues** with the government with an eye toward advancing the implementation of the provisions of the relevant treaty instrument. The reporting process differs slightly for each treaty body, but all bear similarities to the process employed by the Committee on Economic, Social and Cultural Rights, which involves the following steps:

- State submits report - if the Government doesn't meet the reporting deadline, NGOs can question the department/ministry of foreign affairs and notify other groups, media etc.;
- The Committee reviews the report and other materials (this often takes 6 months);
- The best time to submit a parallel report is 3 months after the government report has been submitted;
- The Committee then submits to the government for consideration a list of questions to which the government must respond formally in writing in advance of the interactive dialogue. The kinds of questions typically posed by the Committee during its proceedings include: what additional measures has the State implemented since its last periodic report? Has the government consulted with NGOs (in drafting the report)?;
- NGOs can make oral presentations or submit updated parallel reports prior to the constructive (interactive) dialogue;

¹⁴Committee on Economic Social and Cultural Rights, General Comment 1.

- The State meets with the Committee - NGOs cannot attend discussions between the treaty body and the delegation;
- The committee issues its concluding observations and recommendations, which represent the most salient of the Committee's findings, and may also reflect the recommendations and input of NGOs;
- The concluding observations/recommendations can subsequently be used by NGOs for lobbying their government.

It is also important to consider the *Vienna Convention on Treaties*, which serves as a guide for the application of international treaties. Article 27 of the Vienna Convention provides that "a (State) party may not invoke the provisions of its internal law as a justification for its failure to perform a treaty". On this basis, international covenants and conventions can be used to override contradictory domestic laws.

b. NGO Parallel Reporting to Treaty Bodies

Key tips to follow when preparing a parallel report:

- Adhere to the treaty body's instructions in preparing a parallel report (check for the relevant requirements on the UN website);
- Propose practical suggestions and solutions to the problems of implementing the covenant obligations;
- Ensure the report does not exceed 20 pages and includes an executive summary;
- If possible, give your report in one of the four treaty body languages (English, French, Spanish, Russian);
- Submit the parallel report once the government report has already been submitted;
- Provide at least one copy of the report per Committee member, plus two additional copies for security;
- Include a letter introducing the report and request an opportunity to present it during the NGO meeting prior to the sessions devoted to the interactive dialogues with States Parties.

NGOs can play a role in informing the substantive content of human rights, through engaging with the treaty committees. NGOs' input can also increase the relevance of standards on the ground, as the following examples show:

Santa Domingo - Local community based-organisations worked with Habitat International Coalition to produce a parallel report highlighting cases of forced eviction for the Committee on Economic, Social and Cultural Rights. The forced evictions had been carried out in preparation for the 500-year commemoration of Columbus' invasion. In response to the NGO report, the Committee issued the equivalent of a restraining order, and two Committee members visited the country both as fact-finders and to provide technical advice to the government on how to conduct the evictions appropriately. The media also played a strong role in publicising the process. As a result, the homes of thousands of people were spared and a moratorium on evictions was put in place for several years. However, since the government has changed, evictions have started again in preparation for tourism-related development projects.

Palestine – Habitat International Coalition prepared a parallel report for the Committee on Economic, Social and Cultural Rights on the rights of the indigenous population residing within the green line. The main issue highlighted by the report concerned the unequal enjoyment of citizenship rights, which served to limit the rights of Palestinians to use land and enjoy security of tenure as home-owners. There are several hundred villages in remote areas that were not depopulated by Israel, and the government intends to transform them into surplus labour camps. Historically, the UN has only addressed issues in the occupied territories, and not within the green line. The Committee on Economic, Social and Cultural Rights was the first UN body to examine systematic discrimination within the State of Israel, and recognized the right to land of the indigenous residents of those villages. As a result, villagers were able to negotiate for the recognition of their status as citizens and secure the provision of certain services.

Philippines – In 1993, several evictions took place in Manila following a presidential decree authorizing local authorities to evict people. Affected parties worked with Habitat International Coalition to prepare a parallel report for the Committee on Economic, Social and Cultural Rights. The Committee responded in turn by calling for the submission of additional reports by the government regarding practices of forced eviction. Because the Filipino government complied, the Committee was able to issue strong concluding observations with regard to the evictions, declaring the decree, which was subsequently abolished, to be in violation of the Covenant.

In 2005 the following Pacific countries are due to meet with treaty bodies:

- Papua New Guinea – meeting the CERD Committee (21 February - 11 March 2005);
- Samoa – meeting the CEDAW Committee (10 - 28 January 2005);
- Australia – meeting the CAT and CERD Committees in 2005.

c. Intercessional Treaty Body Mechanisms

Some of the intercessional mechanisms that could be used between the treaty body reporting cycles include:

- CERD – Early warning and urgent procedure (e.g. Australian groups working on indigenous land rights used this mechanism to lobby against the Native Title Amendment legislation being passed, and again to voice criticism after the legislation was passed. This mechanism can be effective when used in conjunction with the media;
- Human Rights Committee, Committee on the Rights of the Child (CRC), CEDAW – relevant optional protocols;
- UNCHR 1503 Procedure – individual complaints can be made requesting the Commission to intervene on behalf of victims. In order to use this mechanism, domestic remedies must be exhausted. Since it is a State-to-State procedure, it is confidential. The complainant will not be informed about the process, only the outcome;
- Provisions are made for each State that has ratified a convention to receive training and technical assistance for the implementation of the treaty.

3

Critical Issues: Women, Land, Housing and Inheritance in the Pacific

“There is a direct relationship between the vulnerable status of women arising from the violence or discrimination they face, and their inability to enjoy all the elements of the right to adequate housing and congruent rights.” (Dianne Otto, Australia)

Some of the critical housing and lands rights issues for women in the Pacific that were identified by participants included:

- Violence against women;
- Lack of housing materials (particularly in post conflict situations);
- Widows’ lack of access to land;
- Women losing access to leases;
- Urbanisation and squatter settlements;
- Migration from rural to urban areas/from outer islands to main islands;
- Problems faced by women returning to traditional lands;
- Feminisation of poverty – women living in poor conditions;
- Lack of sanitation;
- Discriminatory laws – lack of legal recognition of women’s rights;
- Lack of women’s participation in decision-making bodies addressing land issues and in government;
- Lack of inheritance rights;
- The difference between ‘power to hold land’ and ‘power over land and the usage of? land’ - the latter is still largely in men’s hands, even in matrilineal systems;
- Women’s access to credit is limited because it is conditional upon having a tangible asset - so commonly women without land cannot access credit;
- Traditional and customary practices that discriminate against women;
- Lack of affordable housing.

From the above range of issues, four general themes were identified: violence against women; intersectional discrimination; urbanisation; and customary laws. Within these thematic areas, participants presented testimonies to the Special Rapporteur detailing their experiences of violations

of the right to adequate housing and land. Excerpts of the testimonies, the key issues and obstacles identified in the testimonies, and the corresponding recommendations to Pacific Island States are outlined below.

3.1 Violence Against Women

3.1.1 Domestic violence

“I am a victim of domestic violence, my mother was a victim of domestic violence, and I was raised in a family other than my own because of the domestic violence. This is a personal story of my mother, who was beaten up by my father during his alcohol rages, for not cleaning the house as he expected.

When we were growing up we always knew what mood my father was in and when to leave the house. When he was violent my mother would take us and run to an Auntie’s house. Due to the violence she left my father and returned to her home on the outer island. She lost her job and couldn’t take all three children. So she left me behind with another family, who were also struggling on one income. Her brother allocated her some land but it was far away and had no access to electricity. She had to build the house, clear the land (working by kerosene light) and buy the kerosene. My sisters say I had the easier life because I lived in the city with tap water.

Now I work on making sure that this doesn’t continue to happen with my daughters and my sister’s daughters.” (Cook Islands)

Domestic violence can be physical, verbal, emotional and even economical (e.g. controlling household finances). Research undertaken by Fiji Women’s Crisis Centre (FWCC) in 2001 shows that at least 66% of women reported being beaten up by their husbands, and 3 out of 10 on a repeated basis. FWCC deals with 1000-1500 clients per year, who are mostly women with a history of violence in their lives. For many women experiencing domestic violence, the only option is to leave their home. Even if women are joint owners/tenants or even sole owners/tenants, and have secure tenure, many women still feel the only available option is to leave their home to escape violence. This leaves many women and their children vulnerable to homelessness or to living in inadequate housing. The violence against a woman and her children can lead to violations of a range of other rights as well (i.e., restricting the right to work and opportunities for finance), which may in turn prevent women from being able to afford adequate housing when they leave a home that is violent. Only 39% of Fijian women aged over fifteen years are in the labour force; 80% of women have no jobs or income.¹⁵ The Governor of New Zealand’s Reserve Bank (using base figures from a study on family violence conducted in New Zealand) found that \$97 million was the direct cost of domestic violence borne by victims and their families and that the New Zealand government spends \$200 million on welfare, law enforcement and health care for victims of domestic violence.

Customary, religious and cultural laws and practices that discriminate against women can reinforce women’s vulnerability to violence and associated violations of the right to adequate housing. For example, in Tonga women are not allowed to own land; in Fiji, women can own land but cannot access land for their use.

¹⁵Statistics provided by Fiji Women’s Crisis Centre.

“I want to share my personal story, however, there are many women in Vanuatu who fall into this situation. My husband was a member of parliament, but when he lost his seat in parliament he returned to his island. He died in 1997 while I was in Fiji attending a workshop. I could not return before the burial. When I got home my in-laws were angry with me for not being there for him. But I felt cheated because I found out he had been seeing another woman in the village, who the family had approved.

I was thrown out from my matrimonial home and all my things were thrown out of my matrimonial house. I encouraged my son to go regularly and clean the matrimonial house and care for it. I told my son, he is the only son so he still has full rights to the land.

I can no longer go freely to the village. I cannot sleep in my matrimonial house. I cannot harvest crops from the land my husband and I jointly cultivated or benefit from the cattle we had. I cannot go and make garden freely for my son and his wife. I lost the land and the house. I am now unwelcome in the place I called home for 26 years, which is emotionally very hard. Being landless is a strange and strong feeling. Finally, I purchased my own land, which relieved that feeling.” (Meryl Tah, Vanuatu)

Policies and practices of the judiciary, police and service agencies fail to adequately accommodate those women who have escaped situations of domestic violence. Government agencies, the police, and law implementing agencies often discriminate against women because they do not understand their particular circumstances. Service agencies also fail to accommodate women experiencing domestic violence. There are few homes for adult women with disabilities, and thus, in the event that a woman with disability needs to be relocated because of exposure to violence, it is difficult to find her accommodation. Judicial processes also tend to be very slow (e.g. court orders can take a long time to obtain), and this increases women’s hardship and restricts their access to affordable housing.

“Sally is 19 years old and is physically disabled. Sally’s mother called FWCC and reported that Sally was being sexually abused by her father. Both the mother and the daughter were very scared. The mother had suffered years of emotional, physical and psychological abuse from her husband. FWCC contacted the Social Welfare Department but no action was taken. In the end FWCC counsellors removed Sally, her mother and younger sister from the house and arranged temporary accommodation at the Salvation Army Family Care Centre. However, after sometime Sally’s mother returned to her husband. Sally had to be moved to various places because there were no adequate facilities to meet her needs; she was especially vulnerable due to her disabilities. She is currently in the care of an institution that provides education for children with disabilities; however this place is temporary and is not appropriate for her because she is an adult.” (Case Study ‘Sally’, Fiji Women’s Crisis Centre, Fiji)

If women had the right to security of tenure, to ownership of land and housing, and to adequate housing and living conditions, would it reduce the incidence of domestic violence against women? If women had ownership rights, or enjoyed joint ownership and other conditions of truly adequate housing, would that contribute to the reduction of violence?

“In the Cook Islands, women hold the land rights over swampy areas, which is an important source of food, so women are seen as the providers. I have lived in the village of Pue on the main island for twenty years. The village is split into two, with the Pukapukans living on one side (the swampy side) and the Rarotongans living on the other side. There has been little to no domestic violence on the Pukapukan side, while there is a high level of domestic violence on the Rarotongoan side. One reason for this difference may be that women hold rights to valuable land on the Pukapukan side (i.e. swampy land). Therefore, security levels are high among women.” (Cook Islands)

In the Pacific, if women had the option to leave a violent situation, they would. But many are prevented from doing so because of their need for secure and adequate housing. Many women do not want to have to move with their children and belongings, and rebuild their lives from scratch. The question is not, therefore, about whether housing could be improved to prevent violence, but rather, how violence could be stopped or prevented. If women were not experiencing violence in the first place, they would not need to leave their homes.

None of the Pacific Island nations provide secure joint ownership for married women, which impacts their ability to leave situations of domestic violence. The one exception is Fiji’s proposed Family Law Bill (2005), which automatically recognises women’s non-financial contributions to the household. The change brought about by this new legislation will initially be limited to urban areas, mainly in freehold lease agreements. But it will still be more difficult for women living in their husbands’ villages to access their right to housing and land because these lands are legally inalienable, and therefore incapable of being divided. However, if husbands could be made to compensate their wives, such an arrangement could represent the beginnings of a potential solution to the problem. The proposed Family Law Bill of Fiji also gives the court the power to make an occupation order for a victim of violence, even if her name is not on the title. These kinds of changes could enable women facing situations of domestic violence to escape the violence, while maintaining their human right to adequate housing. There has been interest among other Pacific Island nations in adopting similar family laws.

The key obstacles that women in situations of domestic violence face in realising their human right to adequate housing in the Pacific include:

- Religion, culture and tradition, which place conditions and restrictions on women’s roles (e.g. the assumption that when a woman marries a man she becomes his property);
- Family and financial constraints;
- Lack of awareness among women on their rights;
- Community blindness – “it is not our problem”;
- The shift to nuclear families resulting in less family support available for women escaping domestic violence;
- The failure of Tonga to ratify CEDAW (though it has ratified ICESCR and CERD);
- Donor intervention in the area of violence against women has not always been successful because of an insufficient sensitivity to human rights and gender issues. Similarly, the United Nations has been criticised for being reactive (and slow in responding) rather than proactive.

Recommendations to States:

- Reform laws (e.g. matrimonial property laws, domestic violence legislation) to allow for the removal of perpetrators of violence from the matrimonial home, and to provide harsher sentences for perpetrators (including criminal and remedial sentences);
- Change policies and service delivery practices to accommodate specific situations of women in domestic violence situations;
- Train personnel and policy-makers on gender issues and the circumstances of women in situations of domestic violence;
- Encourage courts to operate in a more gender-sensitive manner (e.g. an order for domestic violence can take up to two months to obtain - the delay leads many women to withdraw their charges);¹⁶
- Gender-sensitive training to be included in school curricula;
- Provide adequate housing (including shelters) and security for women experiencing domestic violence;
- Establish professional units in the police force, as they do in Fiji,¹⁷ where women can make complaints about police not fulfilling their duty;
- Provide halfway houses for men as a place where perpetrators can be sent for a couple of days, affording women secure space and time, in the comfort of her own home, to reflect and make significant decisions.

3.1.2 Women in conflict and post-conflict situations

Women in Bougainville have only recently emerged from a decade of armed conflict, which has raised some interesting issues for women's rights to adequate housing and land. Traditionally, in Bougainville, matrilineal systems (i.e. women own land and land passes hereditarily through the woman's line of descent) have been an important factor contributing to women's security of tenure. This indigenous cultural system is still practised today. But for women who were evicted from their lands during the conflict and relocated to care centres, returning home to their lands has proved difficult and problematic.

In Bougainville, people say "land is life." For women, this adage holds particular meaning because no matter where they live, it is important for them to have a garden close by for food. Women always carried seeds with them, even under military occupation. Land therefore, is life, and customary land is the land where one's ancestors lived. The war and conflict in the country has turned women's lands into battlegrounds. It has forced people off their traditional lands and onto other peoples' traditional land, thereby resulting in insecurities and an unsettled cultural climate.

¹⁶In Fiji, women in situations of domestic violence who lay charges against the perpetrator are often pressured to subsequently drop charges against their spouses or family members. The no-drop policy prevents police from withdrawing charges once they are made. But despite the no-drop policy, women still have the opportunity to withdraw their charge in court.

¹⁷FWCC and Fiji Women's Rights Movement have worked with the police and military to address violence against women. They lobbied for a sexual offences unit, which has identified officers that work on domestic violence matters. The police are also recruiting more women officers to deal with these issues. In addition to strengthening institutional responses to domestic violence, this engagement with police and the military has also assisted to promote discussions with them.

The peace talks focused primarily on negotiations between the Papua New Guinea government and the armed groups. Women and their issues (e.g. dispossession, freedom of movement and land tenure) were largely neglected. While women play significant roles in Bougainville society, the reality is that they are still coping with the trauma, stress and medical ailments from the conflict. Their exclusion from the peace negotiations has meant that many of their land and tenure issues have not been adequately resolved.

Recommendation to States:

- Government of Papua New Guinea to mandate the establishment of human rights projects and offices in Bougainville.

3.2 Intersectional Discrimination

3.2.1 Discrimination against indigenous and rural women

Indigenous women in the Pacific are discriminated against in custom and law because of the low status and value attributed to women, especially to those who are poor and illiterate.

“The Motu-Koita women have strict limitations on their rights and access to land. A Motu-Koita woman marrying outside the clan relinquishes her membership of the clan, unless she decides to live with her family in her original clan where she retains membership of the clan on terms and conditions determined by custom. A woman who has married an outsider but is living in the clan may plant useful trees (such as coconuts, betel nuts, mangoes, breadfruit etc.) on land allocated for her use but her descendents cannot use it as evidence of ownership. The trees are planted on the basis of permissive occupancy and descendents of the woman have access until the trees reach the end of their useful lives.

My only daughter is married to an outsider and has had to apply for a piece of land and build her house to become part of the clan. She is in the position where she cannot access the land unless she gets approval from the clan chiefs. Only the chiefs and community leaders can participate in such decision-making. But because she has married an outsider, and he is unemployed, her family has a lower status and is discriminated against.” (Sose Tamarua, Papua New Guinea)

Elements of the Human Right to Adequate Housing	Discrimination experienced by indigenous and rural women
Security of tenure and freedom from dispossession	<ul style="list-style-type: none"> • Customs discriminate against women’s rights to inheritance and access to land (Vanuatu); • Women are internally/externally alienated from their cultural right to land and housing (matrilineal systems); • Women are treated unequally in patrilineal and matrilineal systems.
Public goods and services	<ul style="list-style-type: none"> • Privatisation is leading to increased costs and reduced access to public goods and services; • Lack of access to banks and financial services (for instance, there is only one bank in Bougainville). People, particularly women, have to depend on those who do have access, which creates social problems;

	<ul style="list-style-type: none"> • Women lack basic sanitation, health and counselling services; (In inland Bougainville there are no aid posts and as a result, it costs 50 kina to get to the hospital. People, therefore, do not go to hospital unless they are dying. Many indigenous women are prevented from accessing healthcare and are either living with health problems that they are not aware of or cannot address (e.g. liver problems) or are dying of preventable diseases. Women bear the brunt of the burden of stress, anxiety and fear of finding the financial means to cover the costs for their family's medical care; • Women who have to go to hospital in towns face the problem of lack of accommodation in the town and lack of finances for transport to and from town; • For women who manage to go to town to access hospital services, there is a lack of adequate follow-up care when they return to their homes in rural areas; • Lack of crisis centres and women's shelters; • People are dependent on the wantok (clanship) system to access services and financial assistance; • Lack of education; • Public service officials are poorly paid and corrupt; • In Bougainville, there is only one airport, located on indigenous land. The government continued to make money from the land without acknowledging or negotiating any benefits for the landowners. In retaliation, the landowners blocked the airstrip, preventing access to essential transport services.
Environmental goods and services (land and water)	<ul style="list-style-type: none"> • Economic impacts of mining; • Lack of water makes people dependent on others.
Affordability	<ul style="list-style-type: none"> • In Port Moresby, under the wantok system, having no money presupposes either homelessness or dependence on others; • Many thousands of kina are lost to 'pyramid schemes' (Papua New Guinea); • Some micro-credit schemes are being introduced, but their benefit is not properly explained and thus they are not widely used.
Accessibility (physical)	<ul style="list-style-type: none"> • Overall, services are insufficient, but more so for people with disabilities. There are no wheelchairs, and thus people have to be carried around increasing their dependency on others. (Bougainville); • Poor infrastructure.
Information, capacity and capacity-building	<ul style="list-style-type: none"> • In Bougainville, due to the absence of media services, people do not receive information about sexually transmitted

	diseases (STDs), HIV/AIDS etc; there is also limited knowledge about prevention and treatment.
Participation and self-expression	<ul style="list-style-type: none"> • Women are excluded from decision-making regarding land, leases, tenure systems etc.; • Even in matrilineal systems, women are excluded from decision-making processes. For example, during Bougainville's peace process, negotiations were conducted primarily between ex-combatants and the government, with women predominantly excluded. According to the terms of the new constitution, only three seats have been allocated for women representatives for the whole of Bougainville.
Resettlement	<ul style="list-style-type: none"> • There is substantial movement/migration of women from outer islands to the main island, in search of employment, education, markets and health services; • This is leading to increasing homelessness and inadequate housing on the main island (e.g. there is no accommodation provided for women and their families coming to town for medical treatment in the hospital; women coming to sell vegetables have nowhere to sleep. In many cases women may not be able to afford the cost of transport to return to the outer island, and so remain there until they have accumulated sufficient funds).
Violence against women	<ul style="list-style-type: none"> • Insecure housing means women are vulnerable to rape and violence.

a. Obstacles faced by rural women

- **Papua New Guinea** - People have become dependent on a development economy, which has led to the introduction of industries in rural areas (e.g. forestry, mining). Many people believed this form of development would turn rural areas into healthy places to live. Instead, it has made communities dependent on cash economies, as such industries are not sustainable in the long-term. Royalties received by local communities are generally consumed in the short-term, after which people are forced to move to urban areas for employment. The sense of self-reliance and being able to care for oneself is disappearing, with people no longer relying on natural resources, but believing that money is the most important factor in life. Lack of employment, education and health services in rural areas is causing people to move to urban areas.

“The Papua New Guinea constitution talks about integral human development, which requires the government to provide social services in the community. If women are not provided with adequate social services in rural areas then that means the constitution does not mean what it talks about; if women in rural areas are not educated or do not have spaces in schools, the constitution does not help. The means of implementing the constitution is not working for remote communities in terms of services and equal participation and benefit from resources. There should be proper mechanisms in place which can be used to make sure that the Government is implementing the constitution in ways that benefits everyone in the country and not just a few people.” (Elizabeth Tongne, Papua New Guinea)

- Pacific governments are trying to increase trade and investment in developing countries. However, there is a need for the UN to regulate international corporations and promote corporate responsibility in order to ensure that a human rights approach is incorporated in trade, investment and development, and other related activities and enterprises. The Sub-Commission on Human Rights has drafted human rights-based norms for transnational corporations, which are useful for governments as a mechanism for regulating international corporations. States who are signatories to human rights treaties are duty holders, with contingent responsibilities for regulating private companies operating within their jurisdictions.
- Donors can sometimes limit States from fulfilling their human rights obligations by imposing contrary conditionalities. In some cases, donor policies are also not implemented. For example, in Papua New Guinea there has been no consultation with local communities, neither has information been given to them about the Bank's loan and associated project. This, despite the existence of the Asian Development Bank's involuntary resettlement policy. If properly implemented, this policy could be a useful tool to hold both the Government and the Bank accountable for ensuring that evictions in Papua New Guinea are conducted in a manner that is consistent with human rights standards and legal obligations.

Poem (a reflection on the aid problem in Bougainville):

"Flavour of the month/decade"

*Here they come with their backpacks
Full of papers and for one month
There might be an agenda or two
Hidden down under.*

They smile at us...woo us into love and friendship

They look at us...

Getting a feel for what we feel like...

Am I the right flavour???

Are we the right flavour???

Is it HIV-AIDS?

What is it then?

'Peace Making' and 'Conflict resolution'

Is it with a tag that reads;

'Good Governance' and 'civil society',

What will it be next? What was it in the 1990's?

Was it 'Literacy'? Or 'violence against women?'

Was it 'capacity building' for NGOs and CBOs?

Did I hear something about linking, networking, and skill development?

Of course it was about mining, logging, and advocacy

Did they say something about nuclear testing at some stage?

Or did I not hear it right?

Women and Children's health was what they were targeting.

No you are mistaken; it is micro – finance,

For that is the way to go mate, the way to alleviating poverty.

*I look at myself, at us and wonder...
Have they reached their goal yet?
Did their aid money do us any good?
How sustainable was the cause?
What about the community partners?
Have they grown? Are they still there? Are they in a coma?
Has sustainable development been achieved?*

– Sr. Lorraine Garasu

b. Obstacles faced by indigenous women

Australia (Northern Territory) - Lack of employment, education, housing, health, sports and social events in rural areas is leading indigenous people to move to town areas. Remote indigenous communities live within a system of operation and control where power has never been transferred to the people. This makes them feel like they live in a regime where they can't change anything. It is also creating divisions between traditional landowners and those who cooperate with white people. The "sit down money" (i.e. welfare system) means people have stopped sourcing their own food from the bush, but instead buy food from shops with their welfare money. The shift from rural to urban areas also signifies a shift from a traditional culture to a western culture. Indigenous people migrating from rural to urban areas find themselves living in two different cultures and with two different legal systems.

"I have been in Darwin since I was 17. I had all my kids in Darwin. Even my brother, he is blind...we've been staying in Darwin all our lives. Anyway, we had a Housing Commission house for nearly 19 years. I had an injured neck and injured leg and went to hospital. My kids were staying in the house, but nobody was looking after them. So some of my people come along. I told my people not to make noise because that wasn't my house. But they made a lot of noise, so I got kicked out. I was in the hospital when my kids got kicked out. When I came out they weren't there. And that's my big problem. I didn't want to go back in the Housing Commission. I'm happy staying outside so I can sing, dance, cry, whatever I like. So I'm free enough to stay here. The Housing Commission, it's really hard. You can't even take your family. It's really hard for us to go back in a Housing Commission, because I tried that a lot of times. That's my story." (Dulcie Malimara, Uinawinga Project, provided by Stella Simmering, Australia)

Public housing in urban areas has made it harder for indigenous families to maintain housing. Many have moved into longgrass communities (i.e. living in open public spaces) but are harassed by local authorities for doing so (e.g. racist laws and practices and policies make it illegal to sleep between dusk and dawn in public areas, or to light a fire in a public space (\$50 fine)).

Immediately before the last Territory elections, there was a large media and fear campaign focusing on people living in public spaces, which resulted in a series of violent events where people living in longgrass areas were beaten. During every election, similar campaigns are employed to remove longgrass people.

The introduction of laws that facilitate discrimination against longgrass communities contributes to a retrogression of commitments to uphold international human rights standards. While local council members play an important role as duty holders, many of these bodies feel that they are immune from accountability for violations of recognised human rights standards.

Evictions of indigenous people in urban areas, particularly longgrass people, take place without notice, and often involve the random destruction of property.

“Police and Crown Land representatives gave notice to the camp members to move, or face a \$2000 fine or jail. Signs were erected at the time saying “Crown Land – no trespassing”. They told them to move to 15 Mile camp, but there had been a lot of fighting there and it wasn’t safe to go there. The camp members burnt the no trespassing sign in front of them. Then when the members returned to collect their belongings, it was all gone. They had removed tarpaulins, tent, mattresses and a bunk.

One member told the police “we like to stay in bush, longgrass, cause we born in bush. It’s alright you balanda, you born in house. But us mob, we born in bush and that’s our country and that’s our bush camp.” (Yarrowonga Camp Incident, from Longgrass Magazine, Issue 4, July 2004, provided by Stella Simmering, Australia)

National policies identify appropriate protocols for processes of eviction and resettlement that enable people, even if they are forced from their homes, to secure adequate resettlement. These national policies could be invoked to more effectively protect people’s rights in the event of eviction and resettlement under the auspices of the State. The HIC-HLRN Loss Matrix can also be used to document the extent of material and non-material loss.

Recommendations to States:

- Re-orient government policies to focus on the sustainable development of rural areas (e.g. providing adequate services, access to markets, employment in rural areas) and to highlight women’s development;
- Ensure that women’s participation is substantially included in the development of urbanisation policies;
- Ground urbanisation policies and processes in the human rights approach.

3.2.2 Discrimination against lesbians

Poem:

She/Fiji/Me

*My love is a colonized country.
Near and then distantly does she hear a freedom song.
I crash clumsily through hills and forests
But only at night. A freedom fighter.
The sisters are angry with me today.
So many complaints from the troops.
Your cap is such bright purple girl.
So shiny. Is it new?*

*That rainbow shirt you wear hurts my eyes!
Your skin. so brown, so white, so 'not me'.
Well, you all just hurt my head.
My love has no Constitution.
There are no rules of engagement here.
Just a blue passport where
My name and yours are written in invisible ink.
So for now I will walk freely but uneasily
In this undeclared, independent land.
For I feel that any time they will see me.
And behind me, you.
Then tell me, my loves,
What kind of country will we be?*

– Noelene Nabulivou, Fiji

Lesbians in the Pacific face discrimination across a range of housing situations. In nearly 100% of cases, lesbians seeking to access rental properties find themselves discriminated against. Due to the provincial nature and small-town mentality of communities in the Pacific, it is often difficult to secure and maintain rental properties because once a woman is identified as a lesbian she is forced to move. This makes tenure very insecure and creates a very transient community. For many young lesbian, gay, bisexual and transsexual individuals (LGBT), eviction from the family home and subsequent homelessness can be a source of tremendous trauma, negatively impacting personal security and privacy.

“This is my story of finding a safe space for my partner and myself. My partner and I have moved three times in the past year. I was living with my extended family, but was forced to move as certain members of the family were verbally abusive (drinking outside my living area and shouting insults). They even broke into my home regularly, to add to my insecurity. We then moved in with my partner’s family, as being the main money-earner, she had financial commitments there. But the male members of the household became increasingly silent, uncooperative, and then hostile to both her and myself. Meanwhile, we tried to get rental accommodation in Suva. I inspected a property and they agreed, but when my partner arrived to inspect, they suddenly declined. When I questioned them, they said that the property was no longer for rental or they had decided to live in it themselves (I then saw it advertised a month later). The last time I rang up and gave my name and place of work and references. When I received no reply I rang over and over but they would not take my call. When I finally got through the landlord said he would not rent to us, but no reason was ever given. My partner is quite well-known in Fiji, and it seemed likely that he had heard that we were partners. This has been the experience of other lesbians in Suva where so many of us are known widely for our sexual orientation.” (Case Study 1, Fiji)

Due to the widespread discrimination against LGBTs in custom, law and community, there is a high drop out rate of young LGBTs from schools, resulting in illiteracy and low self-esteem. LGBTs also face discrimination in the work place. The difficulties faced in accessing education and employment means that many LGBTs earn low incomes, operate within the informal economy, and engage in sex

work. This lamentable situation has resulted in the denial of affordable secure and adequate housing to countless individuals. The Sexual Minorities Project (an NGO) undertook a needs analysis and found that due to the difficulties they face in accessing accommodation, LGBT people are often forced to live in overcrowded, unsafe spaces, and are continually moving around in search of safe accommodation spaces. The problem of homelessness among LGBTs is particularly acute in urban areas.

LGBTs are discriminated against through indigenous customs whereby the status of unmarried adults is not formally recognised, and consequently, serves as a basis for social exclusion. For example, if you are unmarried, you are prohibited from accessing land rights available to married persons. The Vanua (custom) excludes, restricts, and distinguishes in this manner.

Legally, while the Fijian constitution provides some protections against discrimination, the penal code still classifies gay male sex as an unnatural act. In the forthcoming review of the Fijian penal code, there is a risk that lesbian acts may also be criminalised. The present lack of clarity in the law and its possible criminalisation, makes lesbians very vulnerable at the moment. This is impeding lesbians' freedom for self-expression and participation.

Homophobia is still widely prevalent in society. LGBTs are confronted with a tremendous amount of hostility and violence. In the family, Vanua, churches or wider community, LGBTs may also face verbal, physical or emotional abuse, exclusion and restriction. Such violations can include beatings, homophobic jokes (even in the media), verbal abuse, forced evictions, homelessness, work place discrimination and/or family breakdown. Where LGBTs face violence within their own relationships, they are unable to access resources or redress mechanisms available to people in heterosexual relationships.

“Eta and her partner were living in separate family homes to avoid the community stigma and to meet their low incomes and family obligations. Eta was continually looking for unskilled and skilled work during those five years, facing continual rejection with no explanation. She was depressed and her health suffered greatly. Added to the violence against her own mother in the family home, after two years the violence in her own relationship was almost too much to bear. The worst incident of violence was Eta being stabbed in the back with a kitchen knife while her partner was drunk. Eta’s mother and sisters helped her as Eta refused to go to the police or hospital, who would not be sympathetic. But it was difficult for them to help when they could not deal with the underlying causes of the violence, as the relationship itself was not recognised by the family. Also, her family was already under considerable trauma from the male violence in the home. Eta is finally out of the relationship, but the emotional and physical effects of the trauma are still felt by her today. This is the reality for many lesbian couples, and the silences are even more profound in this area, even within the community itself.” (Fiji)

To understand homelessness and inadequate housing, as well as the inadequate protection afforded to LGBTs' human rights, we have to recognise the multiple levels of discrimination that are operating. The exclusion that LGBTs experience can be so broad that the violation of the human right to adequate housing becomes part of a much wider experience of discrimination. Without a safe space, people's capacity to participate in economic activity and other areas of life is limited.

The key obstacles that lesbians face in realising their human right to adequate housing in the Pacific include:

- Discriminatory laws (e.g. penal code and constitution);
- Discriminatory traditions, customs, and religious norms, and their compounded impact;
- Lack of baseline data on sexual minority women together with a lack of disaggregated data;
- Lack of support in the community and within NGOs for sexual minorities' issues;
- Media insensitivity;
- Lack of political support.

Gradually, however, the visibility of LGBTs in local communities is growing.

Recommendations to States:

- Legally recognise de facto relationships, including same sex de facto relationships;
- Prohibit discrimination on the grounds of sexuality, in relation to vilification, housing, employment, access and ownership of property;
- Include provisions prohibiting discrimination on the grounds of sex and sexuality in law;
- Allow for human rights instruments to be referred to in the decisions of public agencies (as they do under the Fijian Constitution).

3.2.3 Discrimination against ethnic women

“She sees a single ethnic mother, who cannot inherit her father’s house, as it is for the sons of the family. She sees two children, born to this mother and an indigenous father who has an entitlement to land. She sees a weak system and a cowardly father who does not want to register the half-indigenous/ethnic child in the Vola Ni Kaubula (record of land entitlements for all children born to an indigenous father). She sees a lost entitlement for the children.

She sees the struggle of the single ethnic mother who comes from a farming settlement. Her father’s farm lease has been extended for another 25 years. She sees the struggle of the mother searching for adequate housing, where she and her children can be safe and protected, with a yard they can play in. She sees rejection after rejection for bank loans, credit schemes, housing grants - because she is not married, because she cannot produce collateral, because she does not own land.

Who is she? She is the past, present and future of ethnic women in Fiji, and there are many.” (Seema Shaleshni Naidu, Fiji)

In several Pacific countries, there are constitutional and legal provisions on ownership and access to land that recognise the rights of traditional indigenous landowners. However, this may have the concomitant result of preventing members of other ethnic groups from accessing and securing their land and housing rights. For example, in Kiribati, under the Native Lands Ordinance, (section 11) only native persons can lease land (i.e. ethnic persons cannot). In Fiji, 80% of the land is designated as native land, and the limited supply of state-owned/freehold land makes for a situation in which access to land by ethnic women becomes even more limited. The ownership and use of land is regulated by the Fiji Constitution, Native Title and Board, Agriculture Landlords Tenant Act (ALTA), and customary provisions for land ownership. Ethnic women play no part in decision-making concerning issues of

access to land, ownership, or leases of land. For ethnic women, security of tenure and freedom from dispossession is one of the most critical elements of the human right to adequate housing. It is critical, because it determines the extent to which they are able to access services, enjoy a good location or environment and access a means to livelihood.

The constitution of Fiji allows for compensation in cases where land and housing have been repossessed. But compensation is calculated only according to value of the land and fails to include other costs such as the efforts and contributions of ethnic women towards improving the land and house.

After the coup in Fiji, most land leases expired, and many ethnic people were dispossessed of their houses, in some cases violently. In such situations, women fleeing burnt homes with their children and indigenous women, are the most vulnerable to violence and assault, and need to be protected.

In addition to a history of discrimination, the dispossession of many ethnic women after the coup was a result of their being excluded from decision-making on housing, land and inheritance issues. Ethnic women who are evicted from their homes do not have the same family and community support systems as indigenous Fijians, which places them in positions of even greater vulnerability.

35% of the population in Fiji lives in poverty and two-thirds of them are women.¹⁸ Ethnic women form a significant proportion of this group. Many of these women are forced to live in housing settlements that have poor living conditions, including poor water and poor sanitation.

The key obstacles that ethnic women face in realising their right to adequate housing in the Pacific include:

- Discriminatory laws and policies (for example, Tonga's constitution has no clause prohibiting sex discrimination);
- Lack of implementation of policies (for example, Tonga passed the Gender and Development Policy in 2001, but it has still not been implemented);
- Conflicts in communities and villages;
- Customary, traditional and cultural limitations on women's right to own land and housing;
- Denial of access to land for minority women.

Recommendations to States:

- Negotiate with chiefs and land owners for access to land and extension of leases (where the landowner wants to lease the land);
- Develop and implement policies to specifically address the discrimination faced by ethnic women;
- Provide gender and human rights training to service providers, legislators, policy-makers and those working in the Native Title Land Board;
- Adopt a human rights-based non-discrimination approach to land and adequate housing.

¹⁸ These statistics were provided in Seema Shaleshni Naidu's testimony (see Annex H).

“In the Solomon Islands there was a case of a man with a polio-related disability who applied for a job. The other applicant wrote a letter to him in which he claimed that because he was disabled he could not do the job. This is totally inaccurate and fails to recognise the abilities of people with disability. Just because he has one leg doesn’t mean he has lost his brain.” (John Collins, Kiribati)

3.2.4 Discrimination against women with disabilities

Negative stereotypes and discrimination against women with disabilities by the family, the community and the State, underlie many of the violations of the right to adequate housing of women with disabilities.

Chapter 3 of the Constitution of the Solomon Islands prohibits discrimination on the grounds of race, sex and religion, but does not include disability. So women with disability can only claim discrimination on the ground of sex. An intersectional approach to dealing with discrimination could assist in understanding and addressing the discrimination faced by women with disabilities.

The attitudes towards women with disabilities tend to be negative. Normally in the Pacific, when the State and law doesn’t take account of people, local cultural practices require the family and community to look after them. But some families and communities are not following this with respect to women with disabilities. Even within women’s groups, disability issues are commonly dismissed as health issues.

Location is a critical element of the right to adequate housing for women with disabilities. This includes a woman with a physical disability being able to access entrances into the house and within the house (e.g. wheelchair access; access to water and sanitation facilities within the home). It also includes access to transport, services, information and justice. For example, in the Cook Islands, a new courthouse was built, but in order to cut costs all ramps were removed from the design, leaving women with disability no means of entering the courthouse.

“In my client’s home the stairs are not properly built and several services are missing. There is no safe access to the building. The electricity is exposed in the walls. Only one light works in the house. There is no protection from the natural elements. The windows are broken. Australia has services such as home-care, aboriginal nursing homes, meals for elders in the day and night – but none of these are accessible to my client because the structure of her home is so unsafe, service providers will not enter. Even her children cannot visit because of the safety issues. Her house is in such a state because the construction was never completed and her housing has not been modified as she has got older to accommodate her needs. She has no money to do any renovations or pay the rates. She has a hearing disability and is now suffering diabetes, arthritis and asthma.” (Case from Kim Cutis, Newton, Australia)

Many people with disabilities are unemployed or underpaid, and are unable to afford private housing and land. Many women with disabilities therefore live in public housing. In Australia, some indigenous women with disabilities are provided housing by the Indigenous Land Councils.

Due to discrimination and exclusion, denial of self-expression and participation, women with disabilities may suffer from depression, or even mental illness (often induced by anti-depressants).

“An indigenous elder living in a Department of Housing home has asked for her house to be made accessible (i.e. ramps, modifies taps etc.) because she has arthritis. She lobbied the Department for three years, not supported by any organisation, with no result. They argued that the house would need to be demolished and rebuilt, which would cost about \$80-100,000. She ended up having to move into a nursing home at the age of 54 years. She is very depressed at having to live in an old age home at such a relatively young age. She tried to return to a Department of Housing unit, with the help of a case worker from People with Disability (an NGO), but the house allocated was not culturally appropriate.” (Case from Kim Curtis, Newton, Australia)

The disadvantaged position of aboriginal communities is heightened for aboriginal women with disabilities, because they face multiple discrimination as a result of their indigenous background, gender and disability. For example, in an extended aboriginal family different expectations are placed on women in terms of providing adequate housing for the family. This raises specific housing needs for aboriginal women, which aboriginal women with disabilities may be prevented from accessing.

The key obstacles women with disabilities face in realising their right to adequate housing in the Pacific include:

- Lack of affordability and access to private housing (rental or ownership);
- Lack of access to finance for land and housing;
- Lack of access to public housing (inability to pay rent).

Recommendations to States:

- Revise building and town planning policies to make sure that homes, buildings and services are accessible for women with disabilities;
- Provide anti-disability discrimination training and awareness for government officials, service delivery organisations, human rights organisations and the general public, to change community attitudes to look beyond the disability;
- Enact laws and policies to protect and realise the rights of women with disabilities.

3.3 Urbanisation¹⁹

Urbanisation is growing in the Pacific, as it is elsewhere in the world. People are moving to urban areas (i.e. rural townships, peri-urban and other settlements, capital cities) to access economic and social opportunities that are not available in rural areas. Many of the people migrating to urban areas do not have adequate housing in the city, with many living in poverty in urban slums, where they are under a constant threat of eviction.

¹⁹Based on presentation made by Sue Le Mesurier - see Annex C for the full power point presentation.

“A woman and child left home to come and seek health services from a big hospital in town. This woman left her remote community because she was transferred from local authorities to the hospital because the disease could not be attended to in the rural health centres. She stayed in hospital and then had to return home by boat. She had no money to return so asked to live with her relatives, who were an hour away from hospital. She was raped by people of her own tribe.” (Case provided by Elizabeth Tongne, Papua New Guinea)

In June 2003, it was estimated that there were nearly 200 squatter settlement areas in Fiji, with a population of 90,000 people. The estimated growth rate of urban populations ranges from -1.0% in the Cook Islands to over 4% in Papua New Guinea and Vanuatu and 5% in Kiribati. Many Pacific towns and cities have not addressed the related issues of urban poverty, social aspects of urban growth or related planning, housing, land and financial demands. Insecure land arrangements also contribute to the inability of the poor to construct adequate housing and meet their food and other basic needs.

Criminalisation of homelessness adds another dimension and a greater degree of discrimination. Criminalisation can take the form of making activities related to homelessness into illegal offences (e.g. begging, sleeping, storing possessions or lighting fires in public spaces). Imposition of fines on people who cannot afford to pay them becomes a de facto form of criminalisation.

“If you’re homeless you can be abused, and you can’t defend yourself, or claim your rights. But sometimes people do – how does this happen? Is it sheer survival? What keeps people going and how can we help that?’ (Stella Simmering, Australia)

UN Habitat is working with other organisations to implement a Pacific Island Urban Agenda Action Plan to address the issues of access to adequately serviced shelter, the urban environment and urban security, including security of tenure. The rights-based strategies that the campaign for secure tenure will focus on include: negotiation (not eviction); community-based consensus building and peer exchange with women’s involvement; promotion of locally owned tenure systems for the urban poor; and development of tools and frameworks for slum/unplanned settlement upgrading. To achieve much of this it will be important to develop pro-poor strategies for improving poverty levels for women and raising awareness of rights-based urban and gender issues which contribute to poverty.

For example, the *Fiji National Housing Corporation Act* allows for the purchase, sale, lease or management of moveable property. This would include making available local, low-cost land and housing settlements. This has, however, only occurred for urban developments.

In addressing problems of urbanisation, it is important to address all the elements of the right to adequate housing, including security of tenure. Urban slum issues are very important, and urban agendas are needed to address these problems. In order to address the root causes of urbanisation and to prevent further urban migration, it is equally important to address the problems of land security, poverty, and unemployment in rural areas.

Recommendations to States:

- Develop urban and rural development policies to address the specific needs of indigenous and rural women;
- Ensure laws, policies, programmes and national institutions such as human rights commissions address economic, social and cultural rights as well as civil and political rights (for example, Australia has not passed legislation to fully recognise economic social and cultural rights in domestic law).

3.4 Land, Inheritance, Property Rights and Customary Law

“The sense of ‘home’ in the Pacific is so strongly related to our sense of land, so to focus on housing we have to focus on land.” (Susie Saitala Kofe, Tuvalu)

Discriminatory cultural customs in the Pacific (often reinforced by discriminatory laws and policies) prevent women from accessing their rights to land, inheritance and property, which directly restrict women’s right to adequate housing.

“A married couple contributed equally to the financial building of their house. The husband divorced her and re-married (there are seven grounds for divorce in Tonga: adultery, separation for over two years, imprisonment for life, terminal disease etc.). The husband later died. After the divorce, the first wife was left with nothing. If she had a son she would have secure access to property and could have claimed some maintenance, but she didn’t have a son. On the death of the husband, the second wife can only live on the husband’s land if she does not remarry or commit adultery (even after her husband is dead). If the second wife had a son her interests would be secured by her son. The son would protect the land and property until she died and then he can take over. As she has no son, when the second wife dies she cannot take anything and the land will revert to the husband’s brother or his uncle and nephews. So both women are very vulnerable to being denied the right to land and housing.” (Case Study provided by Betty Blake, Tonga)

The existence of discriminatory cultural practices in the Pacific arise from the fact that land that is clan-owned cannot be divided and given to spouses. As a result, marital homes on clan land cannot be registered in joint names; and women’s monetary and non-monetary contributions to homes on clan land are not necessarily taken into consideration in any claims.

Another factor is that women’s participation in customary forums is very limited, particularly in relation to decisions on land and housing. Customary leaders have not always demonstrated a will to take into consideration the rights of women. Neither have they considered actions that could be taken to redress the situation.

There is also a tendency common to many of the island nations to give preference to members of the island in land allocations. As a result, when spouses are from different places, there is a lot of politicking over land, and those who are not from the island (often wives) are treated differently. Historically, inter-marriage did not exist; people only married within the clan. It is only recently, since marriages outside the clan have started to take place, that issues such as those identified in the testimony below have begun to emerge.

“Aloha from my father on my matrilineal side and from my mother on my patrilineal side. As a Solomon Islander I have rights to access land but not to own land. This is because my father is the wrong sex for a matrilineal system and my mother is the wrong sex for a patrilineal system, for me to inherit outright ownership to land. As a result of this situation, in addition to myself, my brothers and their wives are also vulnerable. My siblings and I all have secondary rights, through our relatives. But my brother’s wife can only access her rights through our secondary rights, and this connection will be even further removed for her children.

The only option for me to obtain ownership rights to land was for me to marry back into a patrilineal system, and for my brother to marry back into a matrilineal system. But we are human and we didn’t follow culture and got married into the wrong systems.

Even though I am an indigenous Solomon Islander, I am a settler in my own country. I have had to grow up with people fighting over land all my life and I am sick and tired of people fighting over land. Having experienced this has made me determined that the only way for my future is to get a good education, get some land and build my house.”
(Solomon Islands)

Since land tenure systems are entrenched in customary practices, which are also reflected in legislation and policies, the issue of land rights is very sensitive in the Pacific. People in the Pacific have close spiritual ties with land; land is revered as mother; and land is the principal source of livelihood. It might take a long time for people to accept and use the human rights framework to remove gender discrimination from traditional land rights systems.

“In Vanuatu, when a woman marries, she goes to her husband’s place. Any orders for land or housing against the husband (even in situations of domestic violence) are met with very aggressive behaviour because it is his land and she is living on his land, and there is no shared ownership.” (Merilyn Tahi, Vanuatu)

“In Kiribati, the origin of the land tenure system, is based on a system where land was acquired by means of war, and those who fought bravely got bigger proportions. This historical legacy forms the ideological reference for male land tenure and still informs land distribution today, and is the source of discrimination against women.” (John Collins, Kiribati)

Conflict between custom and laws

Over the years different land laws have been introduced. This has created some confusion between customary law and formal law, and between constitutional laws that recognise customary law and land laws to be applied without discrimination.

At the local level, customary law is given precedence over formal law. For example, in the Solomon Islands, judges of the local court are usually local chiefs and they decide on cases related to land and housing. They are, however, only experts in custom and are not legally trained; thus they tend to decide land matters according to custom. A chief’s authority is extensive; even in elections, the candidate supported by the Chief generally wins. A related problem is that the decision-makers in customary forums are also often the landowners whose interests are affected.

Contradictions between formal laws and the State's obligations under international human rights instruments such as CEDAW and the Convention on the Rights of the Child, also abound. Efforts should be made to challenge laws that are inconsistent with international human rights treaties. For example, Article 42 of the Fiji Constitution allows for international human rights standards identified in ratified treaties (i.e. International Covenant on Economic Social and Cultural Rights, Convention on the Rights of the Child and CEDAW) to be used to challenge Fijian laws that deny women their right to adequate housing and land. In contrast to the Fijian approach, the Constitution of Kiribati has no mention of international conventions. Instead, the Constitution is recognised as the supreme law and every ordinance, act, customary law, common law and norm must be in accordance with it. As a result when the Convention on the Rights of the Child was used in support of a case, the local judge said that because the Convention was not incorporated into domestic law it could not be relied upon.

Predominance of cultural beliefs and attitudes

Poem:

"A WIDOW"

*A bad one,
Not mourning over him,
A chief, statesman, husband
Till 100 days are over;*

*A bad one
Not pleasing his relatives
Nor the required custom ceremonies
To Acquire his land*

*A bad one
Not caring for his sick mother
Nor his house, pigs, land*

*A bad one
She is rejecting his families*

*A bad one
She's gone to live away from his people
Not cleaning every leaves and weeds
That falls on his grave*

*A bad one
Suppose to go to his brother's house
Be his wife/slave
Bride price has been paid!
She is a bad widow.*

– Meri Tahī, March 1999

Even where formal laws exist, people tend to abide by traditional and customary beliefs. There is still a persisting mentality that discriminates against women. For example, when men are approached about child maintenance, in relation to their sons they will often say, “he is a boy he has got my land”; but for a girl they will not say that.

“I gave birth to a beautiful baby girl in July 2003. But as you have all heard, this was not good enough according to our law governing rights to land. Even the naming of my daughter is connected to land. To show our appreciation to land gained through the adopted family, I had to give them the privilege of naming my eldest child. When we first arrived at our house, it was in a state to be demolished because it had been abandoned when they left for New Zealand. I wanted to live in a nice and adequate house, so I put in a lot of money, stress and hard work to renovating the house. When my mother visited and I showed her what I had done, she said “Stop, don’t renovate any further”. The reason was because I did not have a son. She explained if my husband were to drop dead today, I would have no rights to the house or land, and all the hard work would be wasted. As harsh as it sounded – it was actually the law that my mother was spelling out. I had to take into account what my mother said – it is in the law and the cultural ideology.” (‘Ofa–Ki–Levuka Guttenbeil–Likiliki, Tonga)

The customary notion that men are the head of the household poses a problem for women in the Pacific, and cannot be accepted any longer under the principles of gender equality. Article 15 of CEDAW guarantees equal rights of women and men in the family. The Beijing Platform for Action recognised diverse forms of family, thereby extending the benefits of rights beyond traditional notions of family. However, this issue has not been sufficiently tackled by treaty committees or by human rights NGOs. In relation to women’s rights to adequate housing, it is critical to keep in mind a broad definition of family when developing housing rights indicators.

Customary decision-making

Traditionally, chiefs and traditional leaders in the Pacific have had a major role in resolving disputes on land, inheritance, property and housing. While applying traditional norms and standards, the decisions often do not respect women’s rights.

“Sera got married to Joe and moved to his village. Sera’s family got her a job in Sydney, Australia. A few months later they also found a job for the husband in Sydney. The couple worked and sent money back home to his village and built the matrimonial house for them in Joe’s village. Sera returned to the village and the matrimonial house. Joe remained in Sydney but started having an affair. Joe asked her to move out of the matrimonial house and harassed her. She approached the Turaga-ni-koro, but they told her to move out of the house because it was the husband’s village.” (Case Study ‘Sera’, Fiji Women’s Crisis Centre, Fiji)

Informal systems of governance, such as the Great Council of Chiefs in Fiji, govern on the basis of traditional ideals. They consist mostly of men with conservative views that often discriminate against women and sometimes pose obstacles to women’s development. For example, in Vanuatu the National Council of Chiefs is a constitutional body with a formal budget allocation. It has a strong influence on the government and due to its patriarchal leanings, could impede the realisation of women’s human rights.

In the Pacific, there are a number of such informal institutions which have constitutional status (as in Vanuatu, Solomon, Fiji, Kiribati, Cook Islands (Solomon Islands is in the process of trying to adopt the Fiji customary law system). They do not have de jure lawmaking authority, but enjoy de facto lawmaking authority. When they make pronouncements, their word is often taken as law in the community and their authority can precede the authority of legislators, especially in the eyes of the community. Chiefs are also often members of land courts and village courts (the latter are very strong in Samoa). Sometimes they also get elected to parliament, which creates direct cross-overs between informal and formal systems of governance, giving chiefs authority in both jurisdictions. Boards established to administer customary land distribution are also problematic for women, as conservative male leaders tend to dominate them. Women generally do not have access to these decision-making forums. Where women challenge custom, they are penalised.

“In describing the penalties placed on women who don’t conform to cultural practices and beliefs, we have to understand that the institution of the family is at the front of discrimination against women. The cultural response is to penalise women for not acting in conformity with custom, even if it is discriminatory, through harassment, victimisation, humiliation and exclusion, which results in the denial of equal housing and land rights, denial of dignity and a violation of women’s rights to privacy.” (Susanna Naivaga, Fiji)

In some isolated cases, women have been strong enough to challenge customary laws.

“After my husband died, I went back to my village to ask for a piece of land. My sons are all working, and they know that in time they will come to me in my village. I requested my father for land for my sons and me, i.e. asking for my inheritance for being a female child in my clan. I was able to do this because I am a human rights advocate and I know my customary rights, together this made me strong so I could ask. I called my father and four brothers. The land they gave me was stony, out in the outskirts, in the mountains. I said no, I want land down in the valley. When it comes to land, men expect women to be content with what is given to us and not have a say. That is where men draw the line – what is given to you, you have to take it. When the beloved female child speaks out they tell her to shut up. But I explained, ‘I am a widow, do you expect me to take my basket and knife and go to the mountain?’ They said, ‘You have four sons, they can do the planting for you’. I responded, my sons will go to their father’s village where they get more rights. My father is the head of my clan (consisting of approximately 10-15 families). He had to get approval for my request for land from all the clan members. I told my father I shall return from Suva and ask him to tell the clans to give me this other land. I have always fulfilled all my social obligations to the village.” (Susanna Naivaga, Fiji)

“When I returned to the Cook Islands I knew I had land, but I didn’t know my genealogy, or the name of the land, how much land was mine, or who was on it, how to file a succession order, court and land meeting procedures, or how to get surveys and maps of my land, all of which I needed to obtain the right to land. Family land meetings are held 1-3 times a year. Only elders and registered land owners can speak at the meeting. When I spoke they considered me greedy, cheeky, bringing New Zealand ideas and values to the meeting and disrespecting the culture.

The title holder to my land was a traditional leader. His job was to hold the family together, but we all had equal rights to the land. In my case I asked for my land but was denied that by my title holder. I couldn’t accept that so he took me to court.

Going to court can be difficult if you don’t know how the court works. The other landowner could afford a lawyer, whereas I could not. The title holder was also the Prime Minister

at the time. I challenged the extended family – which is a large land owning family in the Cook Islands with several branches.

The land court only sits once or twice a year, which creates delays, making it difficult to plan for development. Also the case kept having to be adjourned, which is why it took four years. The first judge adjourned the case in order to get the consent of the family either through signature or by attending court. In the interim, that judge died. The second judge commented that my submissions were so thorough, I had made a clear case for myself and two other families. However, the case was adjourned again to obtain the family's consensus. Then that judge also died. The problem with when a judge dies is that you have to re-prepare all your submissions. Finally, I put together the submissions and sent them to all the landowners. By mistake the submission contained two errors in how I had allocated the shares, which would disadvantage three of the main objecting parties, so all the family members turned up in court. I was able to correct the mistakes and obtain consensus, so it was passed. The judge (not a Cook Islander)²⁰ said that my proposal was an equitable and fair distribution of land and I was making the job of my traditional leaders easier.

After 15 years of family meetings and 4 years in court, I was successful in court in March 2004. My case set a precedent. As a result of my case all the land owners can see now that it is possible to challenge the system. The outcome is now a precedent set for all land owners in the Cook Islands.

But in the process I had experienced a lot of emotional trauma – I was ostracized from the community, stigmatised. At social functions I was being ignored because I was a trouble-maker – which can be very hard when living in a small community. I had to take a year off work because it was emotionally so difficult. It also cost me a lot of investment, time, and money (including lost income). Getting a loan, while you have a case is difficult, because of the delays caused by the land court's infrequent schedule." (Lynssay Francis, Cook Islands)

The above testimony shows the importance of the justiciability of rights, but also shows the incredible stress and strain placed on women in trying to claim their rights in a patriarchal context, where the options are very limited.

Engaging the church

The Church has had a significant impact on the way people think in the Pacific. In the Fijian setting, pastors and reverends play an important role in modelling the village. But the Church often promotes views that discriminate against women. In the Solomon Islands there have been instances where a woman approaches the Church for counselling for domestic violence, and she is told that the Bible says the wife must submit to her husband. It is therefore important that education on women's human rights is also provided to religious leaders of all denominations. Human rights education should incorporate voices and messages in the Bible that speak of human rights. Such an approach generates greater acceptance of human rights within the religious arena.

Gender discrimination in new land tenure systems

The introduction of new land lease systems often results in women losing their traditional rights to land. For example, the World Bank is pushing for individual registration of land, which is going to

²⁰ A Land Commission Report found that it may not be appropriate to have a local judge sit in on such cases because where the community is relatively small a conflict of interests can arise.

discriminate against people who have secondary and tertiary rights under customary law (many of whom are women). This is a growing category due to the increase in inter-clan marriages. Only those under whose name the land is registered will benefit from such a system. Such a system of land registration will wipe out other forms of customary ownership and access to land. Other countries in the Pacific are attempting to model the Native Land Title Board and Fiji system of land tenure, but there are concerns about whether this system adequately protects women's rights. Women need access to international human rights information to counter not only patterns of traditional discrimination, but also the loss of rights under new systems of land and home ownership.

While on the one hand cultural attitudes perpetuate discrimination against women, women are also working against the breakdown of cultural values in the Pacific, in particular holistic values that promote respect and unity between men and women with regard to living on the land and using resources. In Papua New Guinea, while the constitution gives people the right to own land, many are selling their land to make short-term financial gains.

A human rights approach

"If women knew that they had rights we would have a different situation" (Betty Blake, Tonga)

Even though there are strong cultural beliefs that favour the ownership of land by men, sensitive law-makers and magistrates could make necessary changes in practice. For instance, individual judges (particularly if they are foreign judges such as those that operate in the Cook Islands) may be able to give positive interpretations for women's rights to land, particularly in cases where widows have been accused of adultery. This has been seen in the community paralegal programme where community paralegals have been lobbying and convincing the police and chief magistrate to uphold people's human rights. Training programmes for law enforcers on women's rights have met with success and should be expanded to legislators, judges, and lawyers.

"Solomon Islands has signed CEDAW and CRC. But our community leaders are not aware of the Conventions' obligations. I spoke with 60 chiefs about human rights, only five of whom were women. This was the first awareness raising for chiefs done in an effort to engage their support for introducing changes to culture. After talking about human rights the male chiefs were very angry. They said, "It is our god given right to be leaders – men have the right to decide anything and women should follow". As a result, men have made decisions about the land including using it for mining, logging and development projects. The women chiefs responded "it is our god given right to own the land and you cannot decide on our right." This illustrates that when women learn about their rights, they can start claiming their rights. We are now working with women on how to use a rights-based approach to ensure women can decide about their lands. We need more action on awareness raising and lobbying about discriminatory cultural and religious practices and later we can change the laws." (Solomon Islands)

Advocacy and awareness amongst lawyers, the judiciary and police could lead to an improvement in the situation for women's land rights. In Fiji, even though traditionally only men take part in village meetings, as a result of human rights training with chiefs, they have started to include women in their meetings. In some areas women now attend the provincial board meetings, are members of district boards, village committees and school committees, and are also becoming more vocal. Overall, there is less resistance to women's human rights.

Case study

In the Obed Toto Case (Vanuatu, has ratified CEDAW and CRC), women claimed a share of lease money from the lease of “Champagne Beach”, to cruise liners. Tradition/custom does not allow women (including mothers, sisters, aunts, daughter etc.) to claim a share of lease money. Only males in the family can receive shares of lease money. Women argued that this principle violated Article 5 of CEDAW and was unconstitutional. The Court in Vanuatu held that women should be allowed to receive lease money and that the customary practice did violate CEDAW and the Vanuatu Constitution.

In places like Tonga, however, discrimination seems to be entrenched in the constitution. The constitution cannot be changed until the structure of parliament is changed, so women’s participation in democracy is also an important area to focus on.

Many women in the Pacific cannot access credit and cannot claim their inheritance rights. They also do not have the necessary collateral for accessing credit. For example, in Tonga, the Tonga Constitution and Land Act (Section 111) excludes women from inheriting land. Widows can only inherit land if they are not sexually active. Therefore credit schemes, which require women to show they are married, in order to access loans for housing, directly discriminate against single mothers and female-headed households. Along similar lines, an NGO in Fiji called HART discriminates against unmarried women by providing housing assistance only to married women.

The key obstacles women face in realising their rights to housing, land, inheritance and property include:

- Discriminatory policies in lending and financial institutions – women who do not own land cannot get loans;
- Lack of information among women on women’s rights - women cannot claim their rights without knowing their rights;
- Traditional land ownership systems (both matrilineal and patrilineal) that favour men – where men negotiate on behalf of men and women, they promote their own interests rather than the interests of women;
- Negative gender stereotypes based on tradition and customary practices — for example, initiation processes for young men may involve having sex with women;
- Traditional hierarchical systems of governance that discriminate against women;
- Religious practices that promote negative stereotypes of women;
- Donors (including UNDP) that observe traditional discriminatory systems. For example, UNDP undertaking training with local courts of justice in the Solomon Islands, is providing training to all men, and in deference to their culture, reinforces the gender discriminatory traditions in the training.

Recommendations to States:

- Include women in land committees and all other decision-making committees in the community;
- Select women judges at all levels;
- Provide human rights training for the police, judiciary, legislators, government officials, religious leaders and women.

Regional Trends and Patterns in Pacific Women's Rights to Land and Housing

Based on the testimonies and related discussions on the methodology, key concepts relevant to realising women's right to adequate housing were identified and related to women's experiences in the Pacific in order to develop a common regional picture of women's housing and land issues in the region.

Lack of women's participation in decision-making at all levels

Women are not included in all levels of decision-making processes related to adequate housing and land. This is reinforced by traditional and religious practices and norms that give supremacy to male power and therefore omit women from decision-making forums. As a result, women are absent from the processes where government policies on land and housing are developed. Decision-making in the clan is dominated by men folk. At the family level as well women are not involved in decisions pertaining to land and housing, particularly if they do not have a son who has a right to inheritance. The exclusion of women from decision-making processes is largely due to a lack of understanding as well as an underestimation of a woman's capacity. The family unit is an important arena for women to participate in because such decisions have a direct impact on them; this is therefore an important level at which to encourage women's participation in decision-making.

Patriarchal cultures

Patriarchal systems of discrimination against women are reflected in customary practices and religious beliefs. These are reinforced in the family and community, and often use violence against women to reinforce gendered systems of power. Inheritance laws are one manifestation of patriarchy that particularly affects women's rights to housing and land. The lack of awareness among women of their rights to equality and non-discrimination limits the possibilities for challenging patriarchal cultures.

Intersectional discrimination

An intersectional approach is necessary to address violations of women's rights where women are experiencing compounding discrimination, including on the grounds of sexual orientation, disability, ethnicity/race (including the persistence of racism from colonialism times) and the multiple discrimination faced by indigenous women.

It is also important to note that violence against women itself is also a form of discrimination that must be addressed when dealing with gender discrimination.

Clash of laws and traditions

In the Pacific conflicts exist between:

- Customary law, constitutional law and local land legislation;
- Various constitutions;
- Domestic customs and laws and international human rights law;
- Donor policies and domestic and international laws.

Politicians, judges and others often interpret laws to be consistent with cultural norms and beliefs, even when they are discriminatory against women. This is often in direct confrontation with national equality/anti-discrimination laws, constitutional provisions, and international human rights treaties.

Retrogression in women's enjoyment of housing and land rights

Some of the factors contributing to the retrogression in the realisation of women's rights to adequate housing and land in the Pacific region include armed conflict, violence against women, feminisation of poverty²¹ and urbanisation, migration, and increasing population growth resulting in overcrowding and reduced availability of land. This is exacerbated by the lack of accountability of local government authorities.

Some communities in the Pacific are concerned that the actions of international actors in the Pacific, including the UN and donors have been unsustainable and not responsive to local concerns, at times to the extent of implementing projects that impede the realisation of women's rights to adequate housing and land.

Certain new and emerging trends have created gaps in the realisation of women's rights to adequate housing and land. These include inter-marriage between matrilineal and patrilineal cultures, erosion of landowners' rights by settler communities, and use of land for trade and investment purposes by government and multinational companies.

²¹When people are forced to consistently live in poor conditions that can also form of violence.

5

Strategies

In relation to the range of housing and land issues identified during the Consultation, the following strategies to advocate for women's rights to adequate housing and land at different levels were identified.

5.1 Local Level

- Empower women to be vocal and to challenge the barriers raised by custom and tradition;
- Promote women's right to land as a specific theme;

"Telekia is a widow and is Melialofa's niece. Telekia's father is Melialofa's only brother and they are the only children of their father Tanei from the island of Funafuti. Telekia's father married Mili from the island of Nanumea and they have lived there ever since. Several years after her father and husband died, Telekia and her children together with her sisters migrated to the capital island of their father. On arrival, Telekia and her sisters consulted their aunt Melialofa who is the caretaker of their family lands, and were given a small portion of land in their village to build a home for themselves. Years passed and Telekia and her sisters realised that they needed to build more houses for their children as Telekia's house had become too small for them. Again Telekia and her sisters approached their aunt and requested for some of the family lands to be given to them to build their houses, but their aunt refused.

Telekia continued to fight for her father's share of family lands. She filed a complaint in the Land Court that her family land be equally divided between her father and her aunt. The Land Court did not approve as there was not enough land to be divided, and also because Telekia and her sisters did not contribute to community functions of Funafuti people. Telekia was not happy so she appealed to the Appeals Panel. The Appeals Panel agreed that the family lands be divided equally between Telekia's father and his sister Melialofa. Telekia's father received 50% of their family lands that were situated at the far northern part of the island where one would be required to travel by bus or taxi to the main settlement.

Telekia is unemployed and is 64 years old and is living with her mentally retarded son of 16 years. The eviction, change of location and resettlement has created hardship. Telekia was evicted from her house, which she had built from scratch. She was moved to other lands and told to build a new house, but she had no money to buy the materials and no one to help her build a new house. The other land is in the far north of the island, where there are no nearby services for her mentally disabled son. She is unemployed and accessing services elsewhere is too costly. Telekia believes she has been unfairly treated and she has appealed to the High Court of Tuvalu for their family lands to be redistributed so she can have some lands in the main settlement." (Susie Saitala Kofe, Tuvalu)

- Change men’s attitudes towards women to allow women to participate in decision-making on housing and land issues in the family, the community, and in the government;
- Raise awareness on women’s issues, the need for harmonious living, the need for women’s participation in decision-making, and on human rights among community leaders, chiefs, religious leaders, national leaders and parliamentarians;
- Develop community-based solutions to overcome some of the customary obstacles and change some of the negative cultural practices;
- Use theatre and comedy to raise awareness on social justice issues;
- Organise travelling festivals on women and land issues by emphasising localized participation in different places;
- Enable consultation and participation of women with disabilities;
- Encourage women activists to work together to advocate for issues that require changes in attitudes. For example, members of the Sexual Minorities Project have difficulty entering decision-making forums to speak about lesbian, gay, bisexual and transgender (LGBT) issues without the support of a woman’s group. Yet, local women’s groups often don’t support same-sex relationships. Attitudes within women’s groups therefore also need to be changed so that there can be solidarity on common issues;

“Listening to all these comments you can tell that, as NGOs, we tend to focus on our own agenda so much that we miss out on our sister NGOs that also need support. There is a need for human rights NGOs to help each other to push for equality across these divisions.” (Solomon Islands)

- Develop united efforts among groups to promote human rights, and to overcome the resistance to human rights in other groups. Such partnerships will assist information and research sharing, and reduce duplication of efforts;
- Consult and negotiate with the family, chief and other customary decision-makers;
- Provide more support for NGOs working on human rights;
- Increase access to information for women’s groups and assist them in using the media, government processes and parallel reporting processes;
- Train women on lobbying and advocacy skills, and provide them with basic legal literacy, in order to enable them to identify and reject discriminatory laws and practices in communities;
- Replicate and expand the community paralegal training and advocacy programme, which has been very successful in enabling women to lobby decision-makers on human rights and to raise awareness of human rights within the community;
- Replicate good examples of women’s organising, such as Tuvalu’s National Council of Women.²²

²²The National Council of Women is an NGO umbrella for all women’s organisations on the 8 islands of Tuvalu. The members include two women representatives from every island’s women’s organisation. The President’s wife of the Tuvalu Christian Church is a sitting member because 90% of the population is Christian. The Council spearheaded the lobbying for ratification of CEDAW, which included consultations with government, national members of council in government, and boards of directors. The Council has also worked on advancing women’s participation in political processes and protecting the environment (i.e. replanting tress, producing pandanus, handicrafts).

5.2 National Level

- Establish national human rights institutions in Pacific Island countries as forums for complaints and as institutions that can inform government's efforts to promote human rights;
- Develop a national plan of action for women, housing and land that includes the input of NGOs and community-based organisations (CBOs);
- Ensure that government budgets meet women's needs by specifying items of expenditure (e.g. electricity, water, housing etc.), and conduct gender audits to ensure transparency of allocations and budgetary expenditures;
- Ratify all international human rights instruments, including their Optional Protocols;
- Review national land laws in order to ensure women's equality while eliminating conflicts with customary laws;
- Integrate a gender analysis in programme design, to ensure that an intersectional analysis informs the programme;
- Ensure recognition of international human rights laws in constitutions of all Pacific Island countries;
- Undertake test cases and develop a database of test cases;
- Conduct more national research on LGBT issues;
- Collect national data that is disaggregated by sexuality;
- Raise awareness on issues of women's human rights to adequate housing and land through the media (i.e. radio and television discussions). Harnessing media focus on such issues has been a successful means in the past of placing government institutions in the public limelight and evoking a quicker response from them. (e.g. invite governments to public hearings to present their positions);
- Lobby for legal and policy reform – particularly in areas where there has been minimum progress due to the lack of political will and controversial nature of matters;
- Explore and document the ways in which politicians and judges apply human rights in the law;
- Train members of the judiciary and parliament, as well as traditional leaders, policy-makers and landowners on women's human rights;
- Replicate consultations like this on women's rights to adequate housing and land at the national level with an aim of reaching out to more women and CBOs;
- Urge governments to complete the questionnaire on women and adequate housing developed by the UN Special Rapporteur on adequate housing, and to share their responses with civil society.

5.3 Regional Level

- Strengthen the "Women in Politics" programme at the regional level;
- Support the regional initiative to establish national human rights institutions in the Pacific;
- Document and film stories of violations of women's rights to adequate housing and land as well as the best practices of addressing these violations. The film could be presented to a panel of

decision-makers to raise their awareness, change their attitudes, and inform their decisions. A mobile video could be prepared by a collective of NGOs (documenting testimonies from different countries/ documenting different national and local level consultations on women's rights to land and housing) and shown at International Women's Day in the future;

- Establish a film fund for women activists in the Pacific;
- Advocate for donors to more proactively promote human rights;
- Develop a Pacific plan of action for women's rights to adequate housing and land that would ensure that the issues are addressed on a regional level.

5.4 International Level

- Ensure donor agencies' policies reflect an intersectional analysis and diversity approach while focusing on those in greatest need;
- Use international human rights standards to influence national and international policies;
- Submit parallel reports on status of women's rights to UN human rights treaty bodies;
- Increase dialogue and information sharing between the UN and donor agencies on promoting women's rights to adequate housing and land;
- Develop the UN Habitat Secure Tenure/Housing Rights programme for the Pacific;
- Implement parallel programmes, reflecting the joint Habitat/OHCHR programme on housing rights, in the Pacific;
- Work with donor agencies more to address the "flavour of the month" approach of donors (i.e. constant shifting of priorities), to ensure that donor programmes are more targeted and effective for women;
- Support the establishment of a women's network on the right to adequate housing and land through the development of a website that would share strategies and lessons learnt internationally;
- Apart from the Special Rapporteur on adequate housing (SRAH), also report to other special rapporteurs on violence against women, food, health, and indigenous peoples;
- Invite the Special Rapporteur on violence against women to the Pacific for further consultations;
- Persuade NGOs to develop a simplified version of the SRAH's questionnaire on women and adequate housing and encourage local women's groups to complete it – and particularly include examples of successful strategies of how customs and traditions have been supported in a rights based approach, while promoting women's equality;
- Produce NGO parallel reports for treaty bodies using Art 3 and 11 of ICESCR; Art 25 (i) of UDHR and Art 2, 5 and 14 of CEDAW. Art 5 of CEDAW speaks directly to modifying custom and practice that discriminates against women.

6

Recommendations for the Special Rapporteur on Adequate Housing

- Meet with donors and government representatives in the Pacific and share findings of these consultations with them;
- Monitor States on their inclusion of women's participation in decision-making processes relevant to housing and land;
- Monitor States' implementation of their international legal obligations;
- Work with States to establish projects to promote women's rights to adequate housing and land;
- Recommend to States to review national and customary laws and practices that deny women equal rights to adequate housing, land and inheritance, and to resolve any conflicts that arise between different legal systems;
- Address women's equal rights to inheritance as a critical element of women's rights to adequate housing and land;
- Recommend that donors implement gender policies that will ensure the protection of women's rights to adequate housing and land;
- Recommend that donor agencies review policies and guidelines to ensure that they do not have a negative impact on indigenous women and their rights to adequate housing and land;
- Recommend that States ratify all international human rights treaties and their Optional Protocols;
- Urge States to comply with international human rights law;
- Highlight in reports the specific ways in which governments violate international law as far as housing and land rights are concerned;
- Undertake advocacy with international multilateral corporations on issues of women's rights to adequate housing and land;
- Recommend to treaty bodies that women's groups are specifically invited to participate when treaty bodies discuss/review government reports.

7

Conclusion

The consultations began with participants' sharing their definitions of 'home.' This only highlighted the immediate need in the Pacific to approach housing with a holistic perspective that incorporates the cultural understandings of the intimate and often inherent connections between land, housing and inheritance.

The tool kit to monitor housing and land rights developed by the Habitat International Coalition – Housing and Land Rights Network (HIC-HLRN) and based on concepts of substantive equality and intersectional discrimination, proved to be an effective methodology for analysing land and housing rights cases in the Pacific, as well as in developing appropriate strategies.

Within the different issues, different elements of the right to adequate housing were emphasised, depending on the particular vulnerabilities of each group arising from different types of intersectional discrimination they faced. For instance, ethnic groups emphasised security of tenure, while rural, indigenous and lesbian women identified access (i.e. finding suitable housing).

At the same time, inter-relatedness of the various elements of the right to adequate housing were obvious. Addressing the right to adequate housing by examining its different elements, assisted in breaking down the problem into identifiable components and helped in better understanding the nature of the violations and the remedies required to address them.

The discussions brought out the following key cross-cutting concerns that are significant to the realisation of women's rights to adequate housing and land in the Pacific:

- Women's participation in decision-making at all levels, and in the development of housing laws and policies, is fundamental to making accessible housing a possibility for women;
- The impact of violence against women, particularly domestic violence, hampers women's security and privacy; yet, many women are unable to leave situations of domestic violence because of the lack of alternative housing;
- Women most vulnerable to most housing rights violations are those who face multiple discriminations and include lesbians, homeless women, women with disabilities, rural women, indigenous women, women living in poverty, and ethnic women. These groups of women consequently also have very little access to remedies because of their vulnerabilities; and

- Discriminatory customary laws and norms persist in spite of being contrary to legal and international human rights standards. Their predominance also makes it difficult for women to access avenues for redress.

The corresponding key recommendation was for States to remove all conflicts within laws and between laws and customary practices, and also to modify cultural practices²³ that perpetuate discrimination and violations of women's rights to adequate housing and land.

²³ Article 5 (a) of CEDAW articulates this obligation as: "States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."

ANNEX A:
LIST OF PARTICIPANTS

ANNEX A:

LIST OF PARTICIPANTS

	NAME	ORGANISATION/ CITY/COUNTRY
1.	Sose Tamarua	Motu-Koita Women's Council Port Moresby Papua New Guinea
2.	Susie Saitala Kofe	Vaiaku, Funafuti Tuvalu
3.	Reginald Kipe	Vanuatu Rural Development and Training Centres Association Port Vila Vanuatu
4.	Seema Shaleshni Naidu	Fiji Women's Rights Movement Suva Fiji
5.	Noelene Nabulivou	Women's Action for Change and Sexual Minorities Project Suva Fiji
6.	Kim Curtis Newton	NSW Aboriginal Disability Network Tamworth Australia
7.	John Collins	AMAK National Council of Women Tarawa Kiribati
8.	Kairangi Samuela (Nani)	Punanga Tauturu Inc. Rarotonga Cook Islands
9.	'Ofa-Ki-Levuka Guttenbeil-Likiliki	UNV/Catholic Women's League Nuku'alofa Tonga
10.	Merilyn Tahī	Port Vila Vanuatu
11.	Elizabeth Tongne	Wide Bay Program East New Britain Papua New Guinea.
12.	Taloi Havini	Representing Bougainville Inter-Church Women's Forum Eastwood, New South Wales Australia
13.	Stella Simmering (Donna Smith)	Longgrass Association Darwin, Northern Territory Australia
14.	Eta Tuitoga	Women's Action for Change and Sexual Minorities Project Suva Fiji

15.	Filipo Masaurua	Regional Rights Resource Team Suva Fiji
16.	Naemah Khan	Fiji Women's Crisis Centre Suva Fiji
17.	Participant (name withheld)	Honiara Solomon Islands
18.	Lynnsay Francis	Group for Political Change Rarotonga Cook Islands
19.	Susanna Naivaga	Fiji Women's Rights Movement Suva Fiji
20.	Imrana Jalal	Regional Rights Resource Team Suva Fiji
21.	Betty Blake	Nuku'alofa Tonga

LIST OF RESOURCE PERSONS

	NAME	ORGANISATION/ CITY/COUNTRY
1.	Miloon Kothari	Special Rapporteur on Adequate Housing New Delhi India
2.	Joseph Schechla	Coordinator HIC – HLRN Cairo Egypt
3.	Dianne Otto	Associate Professor, University of Melbourne/ IWRAW-AP Parkville, Victoria Australia
4.	Gina Houng Lee	Chief Resource Trainer (Community Development) Regional Rights Resource Team (RRRT) United Nations Development Program (UNDP) Suva Fiji
5.	Sue Le Mesurier	UN Habitat Programme Manager (Pacific) United Nations Development Program (UNDP) Suva Fiji
6.	Alison Aggarwal	APWLD/Documenter Coogee, New South Wales Australia
7.	Kelera Finau-Elder	Admin Assistant Regional Rights Resource Team Suva Fiji

LIST OF OBSERVERS

	NAME	ORGANISATION/ CITY/COUNTRY
1.	Henrik Lindroth	GOLD/UNDP Fiji, Suva, Fiji
2.	Maree Hutchison	Interpreter for Kim Curtis-Newton People With Disability Australia Incorporated/Tamworth, New South Wales Australia
3.	Kathy Solomon	Vanuatu Rural Development and Training Association (VRDTA) Port Villa Vanuatu
4.	Joseph Camillo	Fiji Human Rights Commission
5.	Joshika Samujh	Fiji Human Rights Commission
6.	Naomi Fakaukka	Health Promotion Unit, Ministry of Health Tonga

ANNEX B:
AGENDA

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AGENDA



Regional Consultation on the
"Women's Right to Adequate Housing and Land"
in cooperation with UN Special Rapporteur on
Right to Adequate Housing Fiji, 12 to 15 October 2004

Working Agenda:

Part I : Preconsultation Workshop, 12-13 October 2004

Part II : The Consultation, 14-15 October 2004

Preconsultation Workshop

The training curriculum follows a logical track that applies the four basic messages of the human rights as:

1. a common heritage of humankind (based on human needs)
2. a common language among peoples and states (the law)
3. (remedial) means to defend ourselves and other from harm, and
4. (preventive) tools to build a better community, society and world.

The first two of these four are the theoretical part of human rights, and the latter two are the applied aspects of human rights. As in any complex task, the theoretical basis is required in order effective to execute it. So is the case here also, even though many of the participants may have a human rights grounding, it must be understood that we are building together a common framework that allows us to use all available tools, including and especially the law, and order their use in a strategic manner.

DAY ONE, 12 October 2004

08:30–09:00 Registration

Session I: Introduction to the Legal Concepts and Framework of the Human Right to Adequate Housing

This introductory session will allow the participants to get to know each other within the context of the right to housing. It will also follow the logical process of introducing the right from the popular concept of human needs as the common language of human rights, before we get into the legal sources. Rights have been claimed long before their codification in law, as we will demonstrate also by the order of the curriculum. The participants each will symbolise graphically what the women's human right to adequate housing means to them. They will have colored pens and a single sheet of paper to depict

the meaning in no more than three symbols. In other courses, this has revealed some very interesting and creative results, including depiction of all the elements of the right to adequate housing that are now enshrined in international law and jurisprudence. We will post all of the artwork on a wall or bulletin board in the training room for the duration! of the course.

- 09:00–09:20 Overview of program, materials, goals and objectives (Joseph Schechla)**
- 09:20–09:30 Presentation of self-introduction exercise**
- 09:30–09:45 Participants prepare their concepts of “adequate housing”**
- 09:45–10:30 Participants introduce themselves and their concepts**
- 10:30–10:45 Tea break**
- 10:45–11:30 From human needs to human rights: the legal sources of the human right to adequate housing (Miloon Kothari)**

This first substantive session will link the popular concepts to the legal right as it has been developed in human rights treaty law and further developed in the General Comments and jurisprudence of the treaty-monitoring bodies. The time will not require—nor allow for—spending a lot of time on the details of each of the elements in GC 4, but simply presenting them and the prohibitions against forced eviction as the legal guidance for implementing state obligations: introduce questionnaire. It will also require identifying the “congruent” human rights that also relate directly or indirectly to the HRAH (right to property [in UDHR], information, participation, etc.). It will end with the over-riding principles of self-determination, nondiscrimination, rule of law, gender equality and non-regressivity, as they apply to all rights (especially ESCR). There will be a brief overview of the linkages between VAW and RAH and an introduction to the SRAH’s questionnaire.

- 11:30–13:00 How and what to monitor? The elements of the human right to adequate housing as a monitoring framework (Joseph Schechla)**

The session will begin with a set of logical steps for making the women’s HRAH case, similar to all human rights advocacy. It will present the moral, legal and factual aspects of argumentation, but focus on the legal authority. Here, we will take each of the GC 4 elements of the right to housing and the congruent rights and explore them with both their popular and their legal bases. This will follow the methodology of the HLRN “Tool Kit” and the materials provided in the participants’ packet.

- 13:00–14:00 Lunch**
- 14.00–15.00 The “Tool Kit” (Joseph Schechla)**

Following the completion of the HRAH elements presentation, the final session of the day will reveal all of the logical monitoring steps in the “Tool Kit” methodology. It will introduce the categories and sample questions to answer when presenting a case. It will emphasise the factual/statistical aspects of professional human rights monitoring with a presentation of the “Loss Matrix” for determining the costs arising from a violation.

As per Di’s suggestions please note that this presentation of the Tool Kit, should already incorporate a gendered approach to the right to adequate housing, incorporating the amendments identified at the Delhi and subsequent consultations.

**Session II : “Unpacking” and Applying the Right to Adequate Housing and Gender:
The Elements and Monitoring Framework**

**15:00–15:30 Nondiscrimination and gender equality in the right to adequate housing
(Dianne Otto)**

The idea behind this session is to elaborate *further on* the legal provisions of the over-riding principle of nondiscrimination and gender equality in the legal sources. This will take the general issue of the HRAH to bring more specificity, as is required in law. It will explore the legal contradictions between cultural-relativity concepts and some states’ “reservations” to the human rights treaties and the international public law order (e.g., Vienna Convention Article 27 on domestic law as no excuse for non-implementation of a treaty). It is intended that this session will provide forensic tools for the participants to argue against the typical excuses for official and social practices that discriminate against women in land and housing.

15:30-15:45 Tea Break

**15.45–16.30 (Continue....) Nondiscrimination and gender equality in the right to adequate
housing (Dianne Otto)**

**16:30–17:20 Contextualising the Tool Kit and Loss Matrix in a Gender Perspective
(Dianne Otto/ Joseph Schechla)**

Participants will be asked to contextualise the essential elements presented in the Tool Kit and Loss Matrix from a gender perspective.

17:20–17:30 Overview of Day 2 (Miloon Kothari)

DAY TWO, 13 October 2004

09:00- 09:15 Overview Day 2 (Gina Hounq Lee)

**09:15–10:00 Housing and Land Rights in the Pacific: An Overview
(Gina Hounq Lee and Sue Lemersier)**

**10:00 – 11.15 (Continue....) Nondiscrimination and gender equality in the right to adequate
housing (Dianne Otto)**

Presentation of Group’s work

11:15–11:30 Tea Break

Session III: Applying the Framework

11:30–12:30 Addressing Obstacles to women’s rights to adequate housing (RRRT)

Facilitator: RRRT (group discussion)

Stimulate a group discussion on participants identifying obstacles (e.g. impacts of cultural practices, violence against women) and how these obstacles can be addressed using a rights-based approach (CEDAW and ICESCR framework).

**12:30–1:30 Using the HRAH Framework in Problem-solving Strategies
(Joseph Schechla & Miloon Kothari)**

Participants will return to the general framework for monitoring and presenting their cases. The present session will advise the participants on how to select appropriate elements to monitor. The resource person also will guide the participants in selecting and posing solutions as the necessary compliment to the violations approach to human rights monitoring and advocacy. The multiple uses of this monitoring approach will also be discussed as an aspect of strategic planning.

13:30–14:00 Preparing and Selecting Participant Cases for Presentation (Joseph Schechla)

The course now turns to a training-of-trainers approach, whereby participants will be asked to work in five thematic groups and prepare a presentation on aspects of their theme within the monitoring framework, to identify legal elements of the HRAH have been violated and to be thorough in their identification of violations committed.

Possible Themes:

- Indigenous Land Rights and Rights to Natural Resources
- Violence against Women and the Right to Housing
- Discrimination and segregation in eviction and housing
- Legal and cultural obstacles to land, inheritance and property rights of women
- Migration

Participants will learn about the need to focus on the essential elements and prioritise information. For this, participants will receive copies of the HLRN Urgent Actions methodology as a further tool. Participants will also be introduced to the SRAH's questionnaire in more detail looking at it as a tool for both monitoring and advocacy. However, the objective in this session will be to ask for each group to prepare and select one person to present a report, which can contribute to the SR's study before their colleagues.

14:00–15:30 Lunch (slightly longer to allow for presenters and their groups to prepare and consult with resources persons)

Session IV: Exchanging Cases and Strategies

15:30–16:30 Presentation of participant cases, followed by discussion (Joseph Schechla)

The first three of the groups will present their cases within 15 minutes, and the fellow participants will have the chance to ask questions and propose refinements to the presentations, using their "Tool Kit." (Time will allow for 10–15 responses and discussion from the audience.)

16:30–16:45 Tea Break

16:45–17:30 Presentation of participant cases, followed by discussion

The last two groups will present their cases within 15 minutes, and the fellow participants will have the chance to ask questions and propose refinements to the presentations, using their "Tool Kit."

17:30–18:00 Concluding remarks and discussion (Miloon Kothari)

Regional Consultation on the
"Women's Right to Adequate Housing and Land"
in cooperation with UN Special Rapporteur on
Right to Adequate Housing Fiji, 12 to 15 October 2004



The Consultation

DAY THREE, 14 October 2004

9:00–9:15 Overview of Day 3 (Gina Houg Lee)

The testimonies will be in the form of a group of speakers where each presenter has 15–minutes to present the elements of their case. Presenters will be grouped according to five themes.

9:15–10:45 Testimonies on Violence against Women and the Right to Housing
Presenters: Marilyn Tahī, Taloi Havini, Kairangi Samuela (Nani), Naemah Khan
Panel: Miloon Kothari, Lynssay Francis, Gina Houg Lee

10:45–11:00 Tea break

11:00–12:30 Testimonies on Indigenous Land Rights and Rights to Natural Resources
Presenters: Sose Tamarua, Florrie Alalo, Susie Saitala Kofe, Betty Blake
Panel: Miloon Kothari, Elizabeth Tongne, Taloi Havini,

12:30–13:30 Lunch

13:30–14:30 Using the UN Human Rights Mechanisms

The Special Rapporteur will review the questionnaire on women and adequate housing and how it can be used to contribute to the rapporteur's reports. He will review special rapporteur mechanisms, treaty body mechanisms, UN agencies and other human rights mechanisms that can be used to enforce women's rights in the UN. There will be time for discussion and participation throughout the session.

14:30 – 14:45 Tea break

14:45–16:15 Testimonies on discrimination and segregation in eviction and housing
Presenters: Eta Tuitoga, Noelene Nabulivou, Kim Curtis Newton, Susanna Naivaga
Panel: Miloon Kothari, Diane Otto, Florrie Alalo

16:15–16:30 Wrap-up

Consultation Dinner

DAY FOUR, 15 October 2004

09:00–10:30 Testimonies on legal, customary and religious practices as obstacles to land inheritance and property rights of women
Presenters: Seema Shaleshni Naidu, John Collins, Lynssay Francis, Filipino Masaurua
Panel: Miloon Kothari, Imrana Jalal, Joseph Schechla

10:30–10:45 Tea break

10:45–12:30 Testimonies on housing, land and property rights of women (migration, shift to urban areas, urban settlements)
Presenters: Stella Simmering, Elizabeth Tongne, Reginald Kipe, Ofa-Ki-Levuka Guttenbeil,
Panel: Miloon Kothari, Sue Le Mesurier, Noelene Nabulivou

12:30–13:30 Lunch

13:30-14:30 Identifying trends and patterns in Pacific women's rights to land and housing

Based on the testimonies and related discussions of the methodology, participants will brainstorm and develop an inventory of what concepts participants found were new and useful in understanding women's right to adequate housing.

Participants will then be asked to link the concepts in the right to adequate housing with women's experiences in the Pacific and develop a common regional picture of women's housing and land issues in the region.

14:30-15:30 Strategies for advancing women's housing and land rights in the Pacific

Participants will brainstorm an inventory of possible future strategies and follow-up actions for advancing women's housing and land rights a) nationally, b) regionally in the Pacific, and c) by the Special Rapporteur.

15:30-15:45 Tea Break

15:45-16:45 Evaluation of the consultation

Participants will be asked to respond verbally to questions for evaluating the consultations (e.g. Is it effective to take a human rights approach to women's housing issues? Was the consultation an effective forum? What would improve them? How is the consultation useful for their ongoing and future work?).

16:45 – 17:30 Session IV: Concluding Session

ANNEX C:

POWER POINT
PRESENTATIONS



**Special Rapporteur on
adequate housing**
“Women and Housing”

Website – <http://www.unhcr.ch/housing>



**Legal Sources of the Right
to Adequate Housing**

Right to adequate housing is recognized in:

- ◆ UDHR art. 25.1
- ◆ ICESCR art. 11.1
- ◆ CEDAW arts. 14.2 (h) and 16.1(h)
- ◆ CRC arts. 16.1 and 27.3
- ◆ ICERD art. 5 (e) (iii)

Website – <http://www.unhcr.ch/housing>



**Legal Sources of the Right
to Adequate Housing**

**Universal Declaration on
Human Rights (1948)**

Art. 25.1 “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing...”

Website – <http://www.unhcr.ch/housing>



**Legal Sources of the Right
to Adequate Housing**

**International Covenant on Economic,
Social and Cultural Rights (1966)**

Art. 11.1 “States parties...recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing.”

Website – <http://www.unhcr.ch/housing>



**Legal Sources of the Right
to Adequate Housing**

**Convention on the Elimination of All Forms
of Discrimination against Women (1979)**

Art. 14.2 (h) “States parties shall undertake all appropriate measures to eliminate discrimination against women in rural areas... and, in particular, shall ensure to such women the right...to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”

Website – <http://www.unhcr.ch/housing>



**Legal Sources of the Right
to Adequate Housing**

**Convention on the Elimination of All Forms
of Discrimination against Women (1979)**

Art. 16.1 (h) “States parties shall undertake all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular ensure, on a basis of equality of men and women...the same rights for both spouses in respect of the ownership, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.”

Website – <http://www.unhcr.ch/housing>



**Legal Sources of the Right
to Adequate Housing**

**Convention on the Rights of
the Child (1989)**

Art. 16.1 “No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.”

Website – <http://www.unhcr.ch/housing>



**Legal Sources of the Right
to Adequate Housing**

Convention on the Rights of the Child (1989)

Art. 27.3 “States parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”

Website – <http://www.unhcr.ch/housing>



Legal Sources of the Right to Adequate Housing

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

Art. 3 “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practice of this nature in territories under jurisdiction.”

Website – <http://www.unhchr.ch/housing>



Legal Sources of the Right to Adequate Housing

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

Art. 5 (e) (iii) obliges States “to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... the right to housing.”

Website – <http://www.unhchr.ch/housing>



Legal Sources of the Right to Adequate Housing

International Covenant on Civil and Political Rights (1966)

Art. 9.1 “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.”

Website – <http://www.unhchr.ch/housing>



Legal Sources of the Right to Adequate Housing

Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1987)

Art. 16.1 “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.”

Website – <http://www.unhchr.ch/housing>



Legal Sources of the Right to Adequate Housing

Committee on Economic, Social and Cultural Rights (CESCR)

◆ **General Comment No. 4** (Right to Adequate Housing)
Definition of “adequacy” (legal security of tenure, availability of services, affordability, habitability, accessibility, location and cultural adequacy)

◆ **General Comment No. 7** (Forced Evictions)
Defined forced eviction as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”; and stipulated conditions to fulfill when evictions do take place.

Website – <http://www.unhchr.ch/housing>



Habitat II Conference (1996, Istanbul)

- ◆ Reaffirmed the commitment to the right to adequate housing
- ◆ Outlined government actions for the realization of the right to adequate housing
- ◆ Recognized the role of civil society
- ◆ Adopted the Habitat Agenda

Website – <http://www.unhchr.ch/housing>



The Habitat Agenda: Commitments to Housing Rights

Para. 26 “We reaffirm our commitment to ensuring the full realization of the human rights set out in international instruments and in particular, in this context, the right to adequate housing.”

Website – <http://www.unhchr.ch/housing>



The Habitat Agenda: Commitments to Housing Rights

Para. 39 “We recognize an obligation by Governments to enable people to obtain shelter and to protect and improve dwellings and neighbourhoods. ... We shall implement and promote this objectives in a manner fully consistent with human rights standards.”

Website – <http://www.unhchr.ch/housing>



The Habitat Agenda: Commitments to Housing Rights

Para. 61 “Governments should take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing.”

Website – <http://www.unhchr.ch/housing>



Over-riding Principles

- ♦ Indivisibility
- ♦ Self-determination
- ♦ Non-discrimination principle
- ♦ Gender Equality
- ♦ Minimum core obligations
- ♦ State obligations (respect, protect and fulfil)
- ♦ Progressive realization
- ♦ International cooperation

Website – <http://www.unhchr.ch/housing>



Over-riding Principles

Indivisibility of all human rights

“All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights;

“The full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible; the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development.”

— Vienna Declaration and Programme of Action (1993)

Website – <http://www.unhchr.ch/housing>



Over-riding Principles

Non-discrimination

- ♦ Fundamental principle of human rights
- ♦ Immediate obligation of the States
- ♦ General Comments and Recommendations by treaty bodies
- ♦ Guidelines for action
- ♦ Discrimination can be:
 - direct discrimination
 - indirect discrimination
 - historical discrimination
 - cross cutting discrimination
 - intersectional discrimination

Website – <http://www.unhchr.ch/housing>



Over-riding Principles

Gender Equality

- ♦ Women and men are guaranteed equal human rights under international law.
- ♦ The substantive equality model applied in CEDAW (Art. 2) requires both equality of opportunity (*de jure*) and equality of results (*de facto*) for the practical realization of rights.
- ♦ Therefore there needs to be:
 - Equality of opportunity (law, policy, programmes and affirmative action measures)
 - Equality of access
 - Equality of benefit

Website – <http://www.unhchr.ch/housing>



Over-riding Principles

Minimum core obligation

- ♦ To immediately address the basic housing needs of the population
- ♦ To refrain from carrying out any deliberately retrogressive measures and the practice of forced eviction

Website – <http://www.unhchr.ch/housing>



Over-riding Principles

Three levels of State obligations

- ♦ Respect – to abstain from violations
- ♦ Protect – to prevent the violations
- ♦ Fulfil – to facilitate and provide through legal and policy measures

Website – <http://www.unhchr.ch/housing>



Over-riding Principles

Progressive realization

The concept of “progressive realization” imposes the States a clear obligation to move as expeditiously and effectively as possible towards the full realization of the right to adequate housing.

Website – <http://www.unhchr.ch/housing>



Over-riding Principles

International cooperation

- ♦ “Solidarity and fraternity” dimension of State obligation
- ♦ No action or policy may be adopted which could inhibit State’s ability to implement its human rights commitments towards the citizens
- ♦ International community has obligation to remove such constraints on developing countries in pursuing their obligations towards their citizens

Website – <http://www.unhcr.ch/housing>



Congruent Rights

Congruent rights are other human rights that may be closely connected and impacted by the right to adequate housing. For example:

- Right to health
- Right to education
- Other rights within the right to livelihood (e.g. water, food)
- Freedom from violence etc.

Website – <http://www.unhcr.ch/housing>



Introduction to the Special Rapporteur on Adequate Housing

- ♦ Who is he?
- ♦ What does he do?
- ♦ Special Rapporteur’s Approach to Housing Rights
- ♦ Women and Housing Report, 2003
- ♦ Women and Housing Questionnaire, 2005

Website – <http://www.unhcr.ch/housing>



The Mandate

- ♦ In 2000, Commission on Human Rights resolution 2000/9 decided to appoint a special rapporteur “whose mandate will focus on adequate housing as a component of the right to an adequate standard of living” as reflected in international instruments.
- ♦ Mr Miloon Kothari (India) was appointed the SRAH in 2000. His term renewed in 1993, for a further 3 years.

Website – <http://www.unhcr.ch/housing>



Special Rapporteur – Areas of Work

- ♦ Reporting to the Commission annually (April)
- ♦ Global advocacy (Istanbul +5, WCAR, WSSD, WSF etc.)
- ♦ Country missions
- ♦ Working with treaty bodies
- ♦ Working with UN agencies
- ♦ Working with civil society (regional consultations)
- ♦ Developing research agendas
- ♦ Urgent actions

Website – <http://www.unhcr.ch/housing>



Special Rapporteur’s Approach to Housing Rights

- ♦ Human rights approach to housing
- ♦ Indivisibility of all human rights (rights to housing, water, safe environment, security of home, etc)
- ♦ Broad interpretation of housing to include a wide range of related issues such as land, property, inheritance, water, essential civic services and forced eviction
- ♦ Special Rapporteur’s definition of right to adequate housing “*The human right to adequate housing is the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity.*”

(E/CN.4/2001/51, para. 8)

Website – <http://www.unhcr.ch/housing>



Various forms of distressed housing

- ♦ Slums and squatter settlements
- ♦ Old buses, shipping containers
- ♦ Pavements, railway platforms, streets and roadside embankments
- ♦ Cellars, staircases, rooftops, elevator enclosures, cages
- ♦ Cardboard boxes, plastic sheets, aluminium and tin shelters
- ♦ Refugee camps, detention centres
- ♦ Other forms of shelters, detention centres
- ♦ Sub-standard accommodation provided to workers (e.g. line houses)

Website – <http://www.unhcr.ch/housing>



Preliminary study on women and adequate housing (E/CN.4/2003/55)

Main findings: Gap between the law and the reality

- ♦ Gender-neutral law does not always recognize the special circumstances of women
- ♦ Predominance of customs and traditions
- ♦ Bias in judiciary and public administration
- ♦ Women cannot afford legal remedies
- ♦ Lack of access to credit
- ♦ Lack of awareness of legal rights
- ♦ Male-dependent legal security of tenure
- ♦ Impact of globalization

Website – <http://www.unhcr.ch/housing>



Particular groups requiring attention

- ♦ Women-headed households
- ♦ Widows
- ♦ Women from Indigenous, minority or descent-based communities
- ♦ Women living under occupation
- ♦ Women who have been forcibly evicted
- ♦ Women who have faced domestic violence
- ♦ Women who have faced ethnic, armed conflict
- ♦ Children (girl-child, street children, orphans)
- ♦ Elderly women
- ♦ Women living in extreme poverty
- ♦ Women with disabilities
- ♦ Women with HIV/AIDS

Website – <http://www.unhchr.ch/housing>



Commission on Human Rights resolution 2003/22

Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing

- ♦ Affirms discrimination against women in land, property and housing as a violation of human rights
- ♦ Encourages Governments to support transformation of customs and traditions
- ♦ Addresses the role of IFIs in provision of credits
- ♦ Encourages human rights education concerning women's rights to land, property and housing
- ♦ Invites all States to respond to the questionnaire
- ♦ **Requests the Special Rapporteur to prepare a study in 2005**

Website – <http://www.unhchr.ch/housing>



2005 Report: Two-year strategy

- ♦ Questionnaire
- ♦ Regional consultations
- ♦ Work of UN agencies
- ♦ Cooperation with treaty bodies (CEDAW, CESC, CRC, CERD)
- ♦ Working with civil society

Website – <http://www.unhchr.ch/housing>



The questionnaire on women and adequate housing

Purpose

- ♦ To get information from States, local authorities, civil society, UN agencies;
- ♦ To contribute to the report on women and adequate housing to be submitted by the SRAH to the Commission on human rights in 2005, pursuant to resolution 2003/22;
- ♦ As a human rights education and learning tool to explain the comprehensive nature of RAH to promote women's equal rights to housing, land, property and inheritance.

Website – <http://www.unhchr.ch/housing>



The Questionnaire Structure

The questionnaire has two main parts:

- ♦ Part I: General legal and policy framework
- ♦ Part II: Essential elements of the right to adequate housing (RAH)

Website – <http://www.unhchr.ch/housing>



The questionnaire on women and adequate housing

- ♦ General legal and policy framework
- ♦ Specific elements of the right to adequate housing
 - ♦ Legal security of tenure
 - ♦ Access to public goods and services
 - ♦ Access to land, water and natural resources
 - ♦ Affordability
 - ♦ Habitability
 - ♦ Physical accessibility
 - ♦ Location
 - ♦ Cultural adequacy
 - ♦ Freedom from dispossession
 - ♦ Access to information
 - ♦ Participation
 - ♦ Resettlement and compensation
 - ♦ Privacy and security
 - ♦ Access to remedies
 - ♦ Education and empowerment

Website – <http://www.unhchr.ch/housing>



Questionnaire responses should be sent to:

Office of the High Commissioner for Human Rights (Attn: Ms. Cecilia Möller, Focal point on housing rights) Palais des Nations, CH-1211 Geneva, Switzerland

Fax: + 41 22 917 9010
E-mail: cmoller@ohchr.org
Deadline: 15 November 2004

Electronic copies of the questionnaire are available at: <http://www.unhchr.ch/housing>

Website – <http://www.unhchr.ch/housing>



HLRN Tool Kit - Entitlements

- ♦ Legal security of tenure
- ♦ Access to public goods and services
- ♦ Access to land, water and natural resources
- ♦ Affordability
- ♦ Habitability
- ♦ Physical accessibility
- ♦ Location
- ♦ Cultural adequacy
- ♦ Freedom from dispossession
- ♦ Access to information
- ♦ Participation
- ♦ Resettlement and compensation
- ♦ Privacy and security
- ♦ Access to remedies
- ♦ Education and empowerment

Website – <http://www.unhchr.ch/housing>

Gender Non-Discrimination and Equality in the Right to Adequate Housing

Gender Differences: Common heritage humankind

- What gender differences are 'natural'?
- What gender differences are 'culturally constructed'?
- Which group of differences is the larger?
- Socially constructed differences are dynamic
 - They can vary across cultures and time
 - They can change
- The ideology of gender makes socially constructed differences seem 'natural' and therefore unchangeable
- The ideology of gender manifests in gender roles; gender relations; and gender identity

Are differences between women and men a problem?

- Difference is not itself a problem
- Difference only becomes a problem when it justifies discrimination that results in:
 - Unequal power
 - Unequal opportunities
 - Unequal resources
 - Unequal responsibilities
 - Unequal rights
- Gender differences have historically provided the justification (gender ideology) for discrimination against women and women's inequality

Common language of human rights: What models of equality are there?

- **Formal/sameness model:**
 - Women enjoy the same rights as men – laws appear neutral as to sex/gender
- **Protectionist model:**
 - Women's rights are restricted or formulated differently from men's to protect women from harm because they are vulnerable
- **Substantive/Corrective model:**
 - Concerned with producing women's equality in result
- Framing rights so they are inclusive of women
- Recognizing rights that are specific to women
- Taking affirmative action measures
- Providing enabling conditions – creating a level playing field

What are the limitations of these different models?

- Formal/sameness model – neutral laws:**
- Draws from male standards/experience
 - Women's different experience/needs are ignored
 - Women may not be able to exercise their rights because
 - It may expose them to violence/hostility
 - They cannot access the opportunities
 - The opportunities conflict with their other responsibilities
 - The failure of women to exercise their formal equality is often interpreted as women making a choice, or as women being incapable – how could you respond?
 - While essential, formal equality is not enough because it does not recognize women's difference

What are the limitations of these different models?

- Protectionist model:**
- Women are denied choice and autonomy
 - Women are denied opportunities to develop
 - Stereotypes about women's vulnerability and dependence are perpetuated
 - The justification for adopting a protectionist approach is often that it is in the best interests of women – how could you respond?
 - While this approach recognises women's difference, it reinforces stereotypes that perpetuate women's inequality, therefore does not lead to social change

What are the limitations of these different models?

- Substantive/corrective model:**
- Few, if any, any limitations
 - What are the positive features of this model?
 - The standard of equality is inclusive of women's experience
 - Measures necessary to make up for women's historical disadvantage are introduced
 - Background impediments are addressed
 - One type of negative response to this model is that it gives women unfair advantages; another is that it involves extra costs—how could you respond?
 - This approach takes account of women's differences in an empowering way that is consistent with equality

The right to adequate housing in the ICESCR

- What model of equality is adopted in this article?**
- Article 11(1): The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

What has the Committee on ESCR said about article 11(1)?

General Comment No. 4 paragraph 6:

- The right to adequate housing applies to everyone. While references to “himself and his family” reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups...

Intersectional discrimination

- Discrimination against women can be compounded by discrimination on other grounds such as race, disability, age, ethnicity, caste, sexual orientation and so on
- These discriminations may combine to create new forms of discrimination against women eg
 - Sexual violence directed at women of a particular ethnic group
 - Forced sterilisations of indigenous women or women with disabilities
 - Forced evictions of widows

Towards remedies: Small group discussion

- Forms of discrimination against women the Pacific that prevent women's enjoyment of housing rights (from this morning's sharing): Rural women in urban settings; Sexuality; Race/Ethnicity; Indigenous; Disability; VAW.
- Which elements of the right to adequate housing are violated?
- What are the sources of this discrimination (e.g. law, custom, policy)?
- What measures need to be adopted to achieve women's substantive equality?

Non-discrimination and equality provisions in ICESCR:

What model of equality is adopted?

- Article 2(2): The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- Article 3: The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Discrimination against women defined in CEDAW

- Article 1: For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Discrimination against women defined in CEDAW (article 1)

Note:

- Acts of discrimination can take a number of forms: “distinction, exclusion or restriction”
- It refers to discrimination against women on the ground of “sex” or “marital status” – sex discrimination has also been interpreted to include the grounds of “pregnancy”, “breast feeding”, “widowhood” etc
- It prohibits discrimination in “effect or purpose” – whether indirect (unintentional) or direct (intentional)
- The act of discrimination must “nullify the recognition, enjoyment or exercise by women ... of [their] human rights and fundamental freedoms”

Discrimination against women defined in CEDAW (article 1)

Note further:

- CEDAW prohibits discrimination against women in the private field – including discrimination by “any person, organization or enterprise” (article 2(e))
- The CEDAW Committee has defined violence against women as a form of sex discrimination (General Comment 19)

Further references to substantive equality in CEDAW

- Article 2 (a) requires states parties to ensure the “practical realization” of equality between men and women
- Article 3 requires the state to provide enabling conditions that guarantee women are able to exercise and enjoy human rights on a basis of equality with men
- Article 4 promotes affirmative action that accelerates “de facto equality” between men and women

Preventative measures: Goals of substantive equality

CEDAW

- Article 5: States Parties shall take all appropriate measures:
 - (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women

The goal is to promote social change – to change the gender ideology that supports women's inequality

Cultural change is necessary for women's equality

- How would you respond to someone who defends discrimination against women because it is culturally acceptable?
 - Culture, like domestic laws, does not provide an excuse for avoiding international legal obligations
- "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty" (Vienna Convention on the Law of Treaties article 27)
 - Look at the real implications for women – rights are interdependent
 - Question the gender ideology that makes culture look natural and immutable

Summary

- To achieve women's equality and non-discrimination in the enjoyment of housing and land rights, we need to:
 - Adopt laws and policies aimed at realizing women's substantive equality, including affirmative action measures
 - Adopt measures that create an enabling environment for women's substantive equality
 - Change social and cultural beliefs that justify the secondary status of women
 - Tackle intersectional forms of discrimination against women

PACIFIC CONSULTATIONS ON “WOMEN’S RIGHTS TO LAND AND ADEQUATE HOUSING”

In cooperation with the UN Special Rapporteur on Right to Adequate Housing, Fiji 12-15 October 2004



UN-HABITAT The City Agency

Mandate

Promote socially/environmentally sustainable towns/cities with goal of providing adequate shelter for all.

HABITAT 1: Vancouver (1976)

HABITAT 2: Istanbul City Summit “HABITAT AGENDA” (1996)

Millennium Declaration – MDGs (2000) Improving the lives of 100 million slum dwellers by 2020.

Urban Growth

- The world is urbanizing and so is the Pacific region
- Urban areas offer more opportunities for economic and social mobility
- Parents know that even if rural-urban migration does not directly benefit them, it will benefit their children



Outer Island village . . . Or ...

By 2001 the number of slum dwellers reached 837 million worldwide.



The Fiji situation

- In June 2003 it was estimated that there were nearly 200 squatter settlement areas and a squatter population of 90,000 in Fiji.
- Of these 14,000 squatter households, 63% were in the Greater Suva Area and this figure is increasing.
- By 2006 it is estimated that 15,000 households or 90,000 individuals will be living in squatter areas in the Greater Suva Area.
- The current growth rate of squatter populations in Fiji urban and peri urban areas is 10% per annum.

Selected Pacific national and urban populations

Pacific Island Country	Last census	Population as counted at last census	Urban population (%)	Annual intercensal urban growth rate (%)	Annual intercensal national growth rate (%)
Cook Islands	2001	14,990	63	-1.0	-2.2
Fiji Islands	1996	775,077	46	2.6	1.6
Kiribati	2000	84879	43	5.0	2.5
Marshall Islands	1999	50,840	65	1.8	2.0
Niue	1997	2,088	35	1.2	-3.1
Palau	1995	17,225	71	2.9	2.2
Papua New Guinea	2000	5,190,786	15	4.1	4.4
Samoa	2001	176,848	35	2.0	1.0
Solomon Islands	1999	409,042	12	3.4	...
Tonga	1996	97,784	32	0.8	0.6
Tuvalu	2002	9,526	47	1.7	0.5
Vanuatu	1999	193,219	21	4.3	3.0

Why is urban population growth and resultant poverty a challenge?

- urban areas often exclude areas of “peri-urban” development that are growing at higher rates;
- Pacific towns and cities have not addressed the urbanisation of poverty, social aspects of urban growth and have been slow to respond to growth of squatter settlements due to lack of planning for housing, land and finance;
- Insecure land tenure arrangements also contribute to the inability of squatters to construct adequate shelter and meet food and other basic needs.

The UN Habitat Global Campaign for Secure Tenure

- Adopts a rights-based approach to the Implementation of the Habitat Agenda
- Forms An Entry Point for Slum Upgrading
- About Strengthening Women’s Participation in Development

What is Secure Tenure?

- Life without fear of violent forced eviction
- Stability of urban land markets
- Investment brought about by relative certainty of residential tenure
- Women's equal right to inherit, own and transfer land

Entry Point to Squatter Settlement Upgrading

- Basic services
- Urban citizenship and basic rights
- Productive capacity of women in formal and informal sectors
- Investment and credit options
- Force for social mobilization

What is a squatter?

- Squatters include tenants leasing housing in poorly serviced/ unplanned settlement areas, those that have built on legally acquired land which is then sublet with resultant overcrowding and illegal occupation of private, customary and govt land. Squatters are found within local authority boundaries, peri-urban areas, townships and traditional villages.

Advancing Housing Rights

- Monitor violent forced evictions which do not follow the legal process
- Promote security of tenure as an essential element of housing rights
- Understand how to translate rights into reality through raising awareness
- Identify and translate the reality into rights and undertake advocacy

Women's role in Localizing Secure Tenure

- Debate and consensus among women
- Identification of key elements of secure tenure
- Formation of women's planning committees
- Analysis of context and history in your communities

Emerging Messages

- Women's Empowerment and Leadership
- Organizational Capacity of Urban Poor
- Partnerships Between People and State
- Re-Thinking external International Cooperation
- Importance of action plans

When the Village Comes to Town – conclusions from UN-EPOC community studies:

- Over 2002 and 2003 UN-EPOC conducted community studies in Vanuatu, Fiji and Tuvalu.
- The objectives of the studies were to develop profiles of vulnerable urban communities and identify needs and urban management policy options.



... conclusions from squatter community studies ...



- Squatter communities are well established and have neighbourhood support networks;

- Many urban dwellers do not have adequate shelter and other necessities of life;
- Large proportions of urban people live in sub-standard, unhealthy conditions;



Conclusions cont'd: We need to recognise that ...

- Most households are contributing to the formal economy;
- Many are able to earn an adequate income, but ...
- some are very poor and are not able to provide sufficient food for the whole household.



... Conclusions cont'd ...

- Insecure tenure underlies the poor living standards as this restricts people from investing in better housing;
- Some traditional landowners also fear they may thereby lose control over their land;



Conclusions cont'd:

- People migrate from rural areas for a variety of reasons and there is little evidence to suggest that they will return;
- Rural-urban migration in the Pacific is higher than natural population growth in most countries;
- This contributes to higher levels of poverty – the urbanisation of poverty - and security concerns but provides a ready labour force for economic development;

Conclusions cont'd:

- Addressing basic needs such as shelter, water and sanitation is critical;
- In recognising poverty and the security concerns arising from densely populated squatter communities, strategies must be developed that focus on women's empowerment, rights to adequate housing, secure tenure, and governance issues;
- This approach mobilises and empowers women in squatter communities to take the initiative to form effective working partnerships with central and local government authorities;

Conclusions cont'd:

- Communities must have a stake in their own development;
- Experience suggests organised communities of the poor can afford housing, develop and access credit schemes, and negotiate with governments, custom landowners and other actors effectively;
- Community-based organisations may take the form of women's groups, church based and welfare associations, credit unions, slum dweller federations or coalitions.

Rights Based Urban Management: Pacific Experience

- The squatter community studies identify many similarities with international urban management issues.
- The Pacific studies suggest that:
- Without enabling rights based conditions and policies, migration creates not only urbanisation - but also feminisation- of poverty in urban areas;
- Good management of urban resources in partnership with women and their communities can prevent an "urbanization/ feminisation of poverty;"
- Rural-urban migration with sound rights based urban management will lead to poverty reduction.

Pacific Urban Agenda

- In December 2003, UN-EPOC, UN-Habitat, UNDP and the Pacific Islands Forum Secretariat convened a workshop to consider *Urban Management* issues in the Pacific.
- A *Pacific Island Urban Agenda* or Action Plan was agreed at the workshop ...

The Pacific Urban Agenda – Priority Themes identified are:

- Access to Adequately Serviced Shelter
- Urban Environment
- Urban Security including security of tenure

Access to Adequate Serviced Shelter

Develop a Housing policy which:

- Involves community representatives in partnership
- Participatory assessment of needs and options
- Squatter or community councils/planning boards
- Clarify roles of stakeholders – govt; civil society, communities, private sector, international donors;
- Strategies to address: access to affordable land, zoning, integrated rural and urban housing, self help and services schemes, housing finance.

... Access to Adequate Serviced Shelter ...

- Land tenure and land management:
- Consultations for review of land tenure options and management;
- Raise awareness of land tenure issues;
- Identify ways land owners can have greater recognition and involvement in land management and urban planning;
- Involve urban land owners and tenants in the process of service identification and provision;

... Access to Adequate Serviced Shelter ...

Land tenure and land management:

- Streamline the urban planning and development processes including 'fast tracking' affordable pro-poor land leases and development proposals;
- Make information on land available to squatters;
- Make land markets more transparent, coordinated, efficient and affordable;
- Encourage native land registration, leases and titling where appropriate to ensure security of tenure.

... Access to Adequate Serviced Shelter

- Housing markets
- Recognise the range of housing suppliers (private, NGO, public, Govt, squatters etc);
- Review and rationalise institutional policy and legal frameworks and arrangements;
- Identify more flexible and appropriate pro poor/ gender sensitive building codes.

... In conclusion there is a need to:

- Define and understand rights based dimensions of secure tenure and adequate housing and implications for urbanisation of poverty/hardship;
- Develop pro-poor strategies to deal with improving poverty levels for women such as access to social services, adequate housing and security of tenure;
- Improve base-line information on urban poor with a focus on women and the more vulnerable and reversing the feminisation of poverty;
- Welfare and housing assistance to the needy;
- Raise awareness and education on rights based urban and gender issues which impact on poverty and identify measures to improve quality of life.

UN Habitat Campaign for Secure Tenure highlights the following rights based strategies

- Negotiation, not Eviction
- Community based Consensus building and peer exchange with women's involvement.
- Promotion of Innovative - and locally owned- Tenure Systems for the urban poor
- Development of tools and frameworks for slum / unplanned settlement upgrading based on experience of local organizations of urban poor

... Finally ...

- People have a right to freedom of movement;
- People have a right to adequate shelter and security as a basic human need and as enshrined in the various UN conventions and treaties;
- People have the right to security of tenure and that forced evictions are a gross violation of human rights and the right to adequate housing.

THANK YOU



UN-HABITAT: South Pacific – Suva, Fiji
E-mail: sue.lemesurier@undp.org
Web Site: <http://www.unhabitat.org>



OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS

**Special Rapporteur on
adequate housing
Regional Consultation on
Women's Right to
Adequate Housing and Land**

*Fiji, Pacific
12-15 October 2004*

Website – <http://www.unhcr.ch/housing>



Objectives

- To examine the main obstacles against the realization of women's right to adequate housing in order to promote substantive equality for women and thereby inform the normative content of the right to housing.
- To exchange approaches, methodologies and strategies for mutually strengthening the monitoring and advocacy, for the advancement of women's human rights.
- To contribute preliminary findings and recommendations for the report of the UN Special Rapporteur on adequate housing for his 2005 report on women and housing
- To examine issues of state and non-state actors' accountability with respect to women's right to adequate housing and identify actions for ensuring accountability within the human rights framework.

Website – <http://www.unhcr.ch/housing>



Structure of the consultations

PART I - Pre-consultation Training

- Introduction to the legal concepts and framework of the right to adequate housing, and other interlinked issues such as violence against women and inheritance rights.
- Application of the HIC-HLRN Tool Kit and Loss Matrix to violations of housing rights
- Unpacking and applying a gender perspective within the monitoring framework.

Website – <http://www.unhcr.ch/housing>



Structure of the consultations

PART II - Consultation

Testimonies on different aspects of violations of the right to adequate housing, as experienced by women in the areas of:

- Violence against women - domestic violence
- Armed/ethnic conflict
- Discrimination and segregation in evictions and housing
- Legal and cultural obstacles to land inheritance and property rights of women
- Indigenous land rights
- Inadequate housing and living conditions

Fiji, Vanuatu, Cook Islands, Tonga, Tuvalu, Papua New Guinea, Kiribati, Bougainville, Australia, Solomon Islands

Website – <http://www.unhcr.ch/housing>



**Definition of the right to
adequate housing**

- Right to adequate housing:

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

(E/CN.4/2001/51, para. 8)

Website – <http://www.unhcr.ch/housing>



**Structural causes/obstacles
(Findings in the 2003 report of the
Special Rapporteur on adequate
housing on women and housing)**

- Gap between legal /policy recognition and implementation
- Conflicting legal regimes (formal law, religious law, customary law)
- Gender neutral law does not always recognise the special circumstances of women
- Predominance of customs and traditions
- Bias in judiciary and public administration
- Women cannot afford legal remedies
- Lack of access to credit
- Lack of awareness of legal rights
- Male-dependent legal security of tenure
- Impact of globalisation

Website – <http://www.unhcr.ch/housing>



Particular groups requiring attention

- Women-headed households
- Widows
- Women from Indigenous, minority or descent-based communities
- Women living under occupation
- Women who have been forcibly evicted
- Women who have faced domestic violence
- Women who have faced ethnic, armed conflict
- Children (girl-child, street children, orphans)
- Elderly women
- Women living in extreme poverty
- Women with disabilities
- Women with HIV/AIDS
- Women facing discrimination on the ground of sexual orientation
- Women facing homelessness

Website – <http://www.unhcr.ch/housing>



**Themes emerging from the
Pacific consultation**

- LACK OF WOMEN'S PARTICIPATION IN DECISION-MAKING AT ALL LEVELS
- PATRIARCHAL CULTURES
- customary arrangements supported by religious beliefs
- family and community enforcement of patriarchal cultures
- inheritance systems repeating the patriarchal arrangements
- lack of knowledge by women of their rights to equality and non-discrimination
- violence against women
- INTERSECTIONAL DISCRIMINATIONS
- sexuality
- disability
- being indigenous
- ethnic/race
- persistent racism from colonial times

Website – <http://www.unhcr.ch/housing>



Themes emerging from the Pacific consultation

- CLASH OF LAWS AND TRADITIONS
- conflicts custom and land legislation and constitutions
- clashes within constitutions
- conflicts domestic customs and laws with international human rights
- politicians, judges and others interpreting laws to be consistent with culture
- conflicts policies ADB with domestic and international laws
- WOMEN'S ENJOYMENT OF HOUSING AND LAND RIGHTS MOVING BACKWARDS (RETROGRESSIONS)
- combination matrilineal and patrilineal systems resulting in new gaps
- armed conflict
- violence against women
- rights erosions by settler communities and MNCs
- unchecked local government authorities actions
- UN/donor/aid interventions "flavour of the month" - not sustainable, not responsive local issues
- Increased population/migration/overcrowding reducing available land
- Feminisation of poverty

Website – <http://www.unhchr.ch/housing>



Delhi Consultations - Benefits of identifying the interlinkages between VAW and RAH

- Contributing to stronger standard setting at the national and international level
- Strengthening the tool kit/loss matrix and its application to monitor the interlinkages
- Using international treaties (CEDAW, CESC, CERD, CAT) and mechanisms (e.g. Special Rapporteurs) more strategically to ensure accountability.
- Raising important questions like – with more housing space would there be less domestic violence? What are the factors in housing, land, property and inheritance that could stem the cycles of violence women face?
- Identifying areas data collection than has not been done to date, particularly in terms of documenting the different impacts on different vulnerable groups.

Website – <http://www.unhchr.ch/housing>



Delhi Consultations - Benefits of identifying the interlinkages between VAW and RAH

- Increasing cooperation and solidarity between women's groups working on VAW and RAH;
- Sharing of positive strategies for addressing violations of women's human rights.
- Applying the normative framework of housing rights allows for preventive approaches to preempt violations linked to VAW and RAH.
- Identifying the rights and corresponding obligations of States for RAH and VAW also enables interventions toward accountability of violators, which gives additional tools for addressing impunity of violators.

Website – <http://www.unhchr.ch/housing>



Delhi Consultations - Findings/ Recommendations

- The nature of violence commonly experienced by women, particularly in situations where their RAH is violated, creates an urgent need for the interlinkages to be addressed.
- The concept of housing goes beyond the private home and necessarily includes different forms of accommodation including shelters, detention centres, refugee camps, factory dormitories, where all elements of the RAH must equally apply, including ensuring security of the person from the different types of harassment and violence women suffer.
- The international human rights standards and State's corresponding obligations can be strengthened by integrating the different models of non-discrimination and equality used in the conventions.

Website – <http://www.unhchr.ch/housing>



Delhi Consultations - Findings/ Recommendations

- Examining the interlinkages leads to a more rigorous analysis of accountability. Leading to more comprehensive solutions.
- The emerging research agendas include:
 - rigorously to collect more empirical data demonstrating the interlinkages between RAH and VAW;
 - to assess the impact of State's reservations on CEDAW on the RAH
- The work on both RAH and VAW, by different sectors of civil society, can be strengthened conceptually and methodologically through collective strategising.
- Uniting the efforts of NGOs, international NGOs and UN agencies can create a stronger network for initiating structural changes.

Website – <http://www.unhchr.ch/housing>



Actions to be taken

- **Legal – international**
 - Complete the SRAH questionnaire; report to special rapporteurs;
 - Ratification/ reporting to different treaty monitoring bodies e.g. ICESCR, CEDAW, CERD, CRC;
- **Legal- national**
 - Enforcement of laws
 - Public interest litigation/ test cases
 - Public campaigns
 - Training of judiciary, lawyers and police on gender awareness, women's rights,
 - Affordable and accessible legal services for women

Website – <http://www.unhchr.ch/housing>



Actions to be taken

- **State regulation**
 - religious institutions/laws; customary law;
- **National Institutions**
 - Reporting to Human Rights Commission/ Women's Commission
 - Training of judiciary, police, health, social workers, housing authority on gender awareness, women's rights, right to adequate housing, and issues related to violence against women.

Website – <http://www.unhchr.ch/housing>



Actions to be taken

- **Social mobilisation/Awareness Raising**
 - by State/by civil society
 - strong people's movements
 - raise awareness of urban forced evictions
 - recognition of women as participating members of the community in decision-making
 - women's rights groups to work more with housing groups and vice versa
 - international campaigns of support/networking with national, regional and international organisations
 - media campaign – nationally and internationally
 - human rights education
 - seek innovative ways to interact with the United Nations

Website – <http://www.unhchr.ch/housing>



2005 Report: Two-year strategy

- Questionnaire
- Regional consultations
- Work of UN agencies
- Cooperation with treaty bodies (CEDAW, CESC, CRC, CERD)
- Working with civil society

Website – <http://www.unhcr.ch/housing>



Special Rapporteur – Areas of Work

- Reporting to the Commission annually (April)
- Global advocacy (Istanbul +5, WCAR, WSSD, WSF etc.)
- Country missions
- Working with treaty bodies
- Working with UN agencies
- Working with civil society (regional consultations)
- Developing research agendas
- Urgent actions

Website – <http://www.unhcr.ch/housing>



Ways of working with the SRAH

- Submit a report responding to the SRAH's Questionnaire
- Use the HIC-HLRN Tool Kit and Loss Matrix in preparation of reports.
- Encourage your government to respond to the SRAH's Questionnaire
- Encourage your government to invite the SRAH to do a country mission
- For specific situations submit urgent action requests to the SRAH.
- Copy information on housing submitted to treaty bodies (e.g. CEDAW, CESC) to the SRAH
- Disseminate information about the SRAH and his reports with housing and women's groups,

Website – <http://www.unhcr.ch/housing>



The questionnaire on women and adequate housing

Purpose

- To get information from States, local authorities, civil society, UN agencies;
- To contribute to the report on women and adequate housing to be submitted by the SRAH to the Commission on human rights in 2005, pursuant to resolution 2003/22;
- As a human rights education and learning tool to explain the comprehensive nature of RAH to promote women's equal rights to housing, land, property and inheritance.

Website – <http://www.unhcr.ch/housing>



The Questionnaire Structure

The questionnaire has two main parts:

- Part I: General legal and policy framework
- Part II: Essential elements of the right to adequate housing (RAH)

Website – <http://www.unhcr.ch/housing>



The questionnaire on women and adequate housing

- General legal and policy framework
- Specific elements of the right to adequate housing
- Legal security of tenure
- Access to public goods and services
- Access to land, water and natural resources
- Affordability
- Habitability
- Physical accessibility
- Location
- Cultural adequacy
- Freedom from dispossession
- Access to information
- Participation
- Resettlement and compensation
- Privacy and security
- Access to remedies
- Education and empowerment

Website – <http://www.unhcr.ch/housing>



Questionnaire responses should be sent to:

Office of the High Commissioner for Human Rights
(Attn: Ms. Cecilia Möller, Focal point on housing rights)
Palais des Nations, CH-1211 Geneva, Switzerland

Fax: + 41 22 917 9010
E-mail: cmoller@ohchr.org
Deadline: 15 November 2004

Electronic copies of the questionnaire are available at: <http://www.unhcr.ch/housing>

Website – <http://www.unhcr.ch/housing>

ANNEX D:

METHODOLOGIES OF THE
SPECIAL RAPPORTEUR ON
ADEQUATE HOUSING

ANNEX D:

Methodologies of the Special Rapporteur on Adequate Housing

The Special Rapporteur employs several methodologies in the fulfilment of his mandate, as outlined below.

◆ **Reporting to the UNCHR**

The SRAH submits an annual report to the UNCHR on the RAH, identifying the main obstacles to its realisation encountered globally, as well as potential areas for further involvement by the international community. Upon request, the SRAH will also submit separate reports to the UNCHR that contain both analysis of specific situations and as well as recommendations. For example, the UNCHR has requested him to submit a separate report on women and adequate housing in 2005

◆ **Global advocacy**

The SRAH has participated and made statements in inter-governmental forums such as Istanbul +5, WCAR, WSSD and in civil society forums such as the World Social Forum.

◆ **Country missions**

These are investigative missions conducted within countries upon invitation by host governments. The SRAH has conducted country missions to Palestine (January 2002), Romania (January 2002), Mexico (March 2002) Peru (March 2003), Afghanistan (2003) and Kenya (February, 2004). In the aftermath of a mission, the SRAH produces a report and recommendations based upon observations made during his visit.

◆ **Working with treaty bodies**

The SRAH collaborates with treaty bodies to ensure that standard setting is consistent across the different UN treaties and mechanisms.

◆ **Working with UN agencies**

The SRAH collaborates with UN agencies such as UNIFEM, UNICEF and UN-HABITAT on a variety of projects both within the UN system and during official country missions. The SRAH has worked in especially close contact with UN agencies in order to assess the impact of the privatisation of civic services (housing, water, sanitation, etc.) on women.

◆ **Developing research agendas**

Ideas for further research are gathered from consultations such as these. Reports on research undertaken are included in reports to the Commission.

- ◆ **Working with civil society**

Mobilising civil society groups to address the RAH has been an important means of raising awareness of the RAH and accessing information on RAH violations. Where feasible, the SRAH has also tried to incorporate training on the tool kit.

- ◆ **Urgent actions**

In response to requests for urgent action, the SRAH has written communications to individual governments in relation to specific cases (e.g. letter to the prime minister/president on forced evictions). The SRAH focuses on identifying the policy- oriented steps that States... must take in order to remain in compliance with their human rights obligations. Civil society groups seeking the urgent assistance of the Special Rapporteur can submit a request via the Geneva officer, Cecilia Moller < Fax: + 41 22 917 9010; E-mail: cmoller@ohchr.org>.

For further information about the SRAH and his work, as well as copies of his reports and statements, please visit the website: <http://www.unhcr.ch/housing>.

ANNEX E:
SPECIAL RAPPOREUR'S
QUESTIONNAIRE ON
WOMEN AND ADEQUATE
HOUSING

ANNEX E:

Amended Questionnaire on Women and Housing (including VAW)¹

Questions on general legal and policy framework

Q1. Please provide information on relevant national legislation with regard to housing and related services. Please also specify whether the right to adequate housing is recognized in the Constitution or guaranteed in specific legislation.

In addition, please specify whether women's equality is recognised in the constitution or guaranteed in specific legislation.

Q2. Does the Constitution provide that the International Covenant on Economic, Social and Cultural Rights, Convention on the All Forms of Discrimination against Women or other international human rights treaties which guarantee the right to housing, form a part of national law and have domestic applicability? Is there an effective judicial review process to ensure consistency of legislation with relevant provisions of the international human rights treaties, particularly those which specifically protect women's right to adequate housing?

Q3. How do laws, policies and practices, through existing institutions (both formal and customary and traditional norms and practices), budgets and programs, ensure substantive gender equality in the various entitlements of the right to adequate housing, including land, access to finance, civic services and information and freedom from VAW?

Q 3.b. Do other laws (e.g. Personal laws, family laws, domestic violence legislation, inheritance laws) ensure equal right to adequate housing for women?

Q4. What is your assessment of the housing situation of women belonging to particularly vulnerable groups, such as female-headed households, indigenous and tribal women, women with HIV/AIDS, women with disability, rural women living on subsistent farming, women victims of forced evictions, women victims of violence including domestic violence, refugees, migrants, migrant workers, domestic workers, internally displaced women and women of different sexual orientation? Do they have access to justice and legal remedies? Please share case studies and testimonies where available.

Q5. What are historical, traditional, cultural, religious and other factors affecting the equal access of women to housing, land and related services?

Q6. How have the policies and processes of globalisation such as trade, finance, investment and debt affected women's right to adequate housing and access to related services? How do these make women more vulnerable to VAW?

¹ Recognising freedom from violence as an element of the RAH is consistent with CEDAW's General Recommendation number 19 which recognises that VAW is not only a form of discrimination against women but is also an element within other rights such as the right to life; right to liberty and security of person; right to the highest standard attainable of physical and mental health etc.; and this should be extended to recognise freedom from VAW as an element of the RAH.

- Q7. How have the women's right to adequate housing and access to related services been addressed in poverty reduction strategy and programmes in your country?
- Q7.a. How have the women's right to adequate housing and access to related services been addressed in violence against women legislation and programmes in your country?
- Q8. Please share positive examples or "best practices" whereby Governments and civil society have endeavoured, separately or jointly, to protect and promote women's equal right to adequate housing.
- Q9. Please provide gender-disaggregated statistics on housing (urban/rural, forms of ownership, female-headed households, homelessness, access to basic services etc).

Questions on specific elements of the right to adequate housing

- (a) **Legal security of tenure** The legal right to secure tenure, whether freehold, leasehold, or other form of individual and collective rights to housing, involves protection from forced eviction, harassment and other threats. It also effectively guarantees access to, use of and control over land, property and housing resources.
- Q10. Do women and men enjoy equal tenure and property rights regardless of their civil or other status? Has lack of secure tenure contributed to situations of VAW? How does the Government guarantee such security of tenure to women? What measures have been adopted to give full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups?
- (b) **Access to public goods and services** The right to adequate housing cannot be effectively realized without access to public goods and services, including, water, health-care, transport, fuel, sanitation, lighting and electricity, sewerage and waste disposal, child care and communications.
- Q11. What policies and measures have been adopted by the Government to provide or regulate such services to meet the needs of the community? Do women and female-headed households enjoy equal access to such services? Are the basic services privatized? If so, are there subsidies and/or different pricing mechanisms designed to ensure affordable access by the poor?
- (c) **Access to land, water and other natural resources** Every community must have access to natural resources necessary for its survival and livelihood, including, inter alia, fuel, fodder, water and building materials.
- Q12. What are the laws, policies and measures adopted to ensure equitable distribution of land with emphasis on the gender equality and provision of necessary resources for poor households and other marginalized and vulnerable groups? Have land reforms, both urban and rural, been implemented to ensure its fair distribution as a public good? What steps have been taken to respect the housing rights of land-based indigenous and tribal peoples in general and women within these groups in particular?
- Q13. Do women and female-headed households have equal access to natural resources sufficient to their needs, including necessary for its survival and livelihood, including,

inter alia, land, water, building materials, fuel and fodder? What measures have been adopted by the State to effectively regulate distribution and ensure the accessibility and affordability of such resources for women and female-headed households, including through subsidies?

- Q14. What measures have been adopted to ensure that clean and safe water is reliably accessible and provided in adequate supply for individual, family and community use? Do women enjoy equal access to safe drinking water and to water for agricultural or other domestic use?
- (d) **Affordability** Individuals and communities should have access to affordable housing and must have the corresponding right to livelihood so as to be able to afford decent housing.
- Q15. Do women enjoy equal access to housing finance? What policies and measures have been adopted by the State, including through subsidies, tax incentives or market regulation, to ensure affordability of housing particularly for women and female-headed households? Is there a national definition of “affordability” of housing (e.g. a maximum of one-third of any household income be required to obtain adequate housing)? How does un-affordability of housing contribute to women’s vulnerability to VAW e.g., preventing women from leaving situations of domestic violence?
- (e) **Habitability** Adequate housing must provide needed space to live in dignity and peace. It must also provide protection from natural elements, structural hazards and disease vectors that are threats to physical well-being. The physical conditions of the home can affect the realisation of other rights, including the highest attainable standard of mental and physical health, as well as education, whereas the lack of conditions are not conducive to learning (especially for children).
- Q16. How do laws and policies that regulate the habitability of housing or define the habitability aspect of adequate housing, take into consideration special needs of women?
- Q17. What laws and policies have been adopted to regulate environmental degradation and to guarantee the right to a safe environment?
- (f) **Physical accessibility** Disadvantaged communities and groups which often include women and female-headed households, must be allowed full and sustainable access to adequate housing and resources, including land, infrastructure and sources of livelihood and the state must take account of special housing needs.
- Q18. What measures and policies have been adopted to guarantee equality of access to adequate housing for women and female-headed households and other disadvantaged groups within communities (e.g. battered women, women with HIV/AIDS, women with disability, indigenous women, refugees and internally displaced)?
- (g) **Location** Adequate housing must be in a place that enables access to employment, primary health-care, education and other social services and civic amenities. The financial and temporal cost of transport must not place excessive financial and other demands on the household. In addition, both rural and urban housing must be in a location that is safe, particularly from environmental hazards and pollutants.

- Q19. Do women face any particular constraints in accessing services and resources necessary for livelihood because of where they live? What are policies and measures adopted to alleviate them?
- (h) Cultural adequacy Housing configuration, spatial design and site/community organization should be determined locally and in harmony with a community's cultural preferences and attributes.
- Q20. Are women from all cultural, ethnic, religious or other background enabled to express cultural diversity, to participate in planning process (also see questions 23 and 24 below) and have the right to self determination in relation to housing? Please share such cases and examples.
- (i) Freedom from dispossession, damage and destruction Each individual and community has a right to a place to live without threat of dispossession from land, all forms of their property, their homes and resources, as well as all individual and collective holdings required to sustain livelihood.
- Q21. Does the State effectively safeguard the right not to be subjected to arbitrary interference with home, person and privacy, including dispossession? What are policies and measures adopted to protect women including female-headed households and compensate, resettle or provide for restitution where dispossession takes place?
- (j) Access to information Individuals and communities must have access to appropriate data, documents and intellectual resources that impact upon their right to obtain adequate housing. Having access to appropriate data means being informed about potential industrial and natural hazards, infrastructure, planning design, availability of services and natural resources and other factors that affect the right.
- Q22. What laws and policies exist to facilitate access to information that impact upon the right to adequate housing, including information about potential industrial and natural hazards, infrastructure, planning design, availability of services and natural resources? Are women regularly accessing such information and benefiting from them?
- (k) Participation Effective participation in decision-making is essential to the fulfilment of all other rights, as well as the elements of the right to housing. At all levels of the decision-making process in respect of the provision of and right to adequate housing, individuals and communities must be able to express and share their views, they must be consulted and be able to contribute substantively to such processes that affect housing, including, inter alia, location, spatial dimensions, links to community, social capital and livelihood, housing configuration and other practical features. The state must ensure that building and housing laws and policies to not preclude free expression, including cultural and religious diversity.
- Q23. What policies and measures adopted to ensure/encourage popular participation in decision-making process with regard to housing policies and planning? Are women sufficiently represented in the process?

- Q24. Do the housing laws and policies expressly protect, promote and fulfil the right to freedom of expression to ensure harmonious and effective design, implementation and maintenance of the community?
- (l) Resettlement, restitution, compensation, nonrefoulement and return Resettlement may be essential to survival in the case of natural or human-made disasters, including in conflict and post conflict situations. Therefore, the congruent right to freedom of movement can be essential to the fulfilment of all other rights. Any resettlement arrangement, whatever the cause, must be consensual, fair and adequate to meet individual and collective needs.
- Q25. Are there special measures adopted in resettlement process that recognizes the need of women and female-headed households to sufficient access to the sources of livelihood, productive land, infrastructure, social services and civic amenities, as well as fair and adequate restitution and/or compensation for losses?
- (m) Privacy and security Every woman, man, youth and child has the right to live and conduct her/his private life in a secure place and be protected from threats or acts that compromise their mental and/or physical well-being or integrity inside or outside the home.
- Q26. What measures have been adopted to ensure physical and mental security and personal privacy of women, including preventing domestic violence?
- (n) Access to remedies Provision of domestic legal and other remedies is an important part of protecting the right to adequate housing. Individuals and groups must be protected from abuse by landlords, property developers, landowners or any other third party capable of abusing their rights. Where such infringements do occur, public authorities should act to preclude further deprivations as well as guaranteeing access to judicial redress including legal and equitable remedies for any infringement caused.
- Q27. Are there remedies and legal aid available for women? What are measures adopted to ensure equal access of women to judicial process and remedies? What are other innovative mechanisms such as self-help groups and women's collectives that can facilitate women's access to housing and livelihood?
- (o) Education and empowerment Individuals and communities should have access to technical assistance and other means to enable them to improve their living standards and fully realise their economic, cultural and social rights and development potential. The State, for its part, should endeavour to promote and provide for catalysts and mechanisms for the same, including efforts to ensure that all citizens are aware of procedural measures available toward defending and realizing her/his right to adequate housing. Human rights education is a key part of such empowerment strategy.
- Q28. What have been achieved in terms of building capacities and awareness on the right to adequate housing among women in your country? What is your assessment of remaining needs and challenges?
- (p) Freedom from violence against women - The state must prevent all forms of violence against women committed by either state or non-state actors to ensure women's RAH. The definition

of VAW as per the UN Declaration on the Elimination of Violence against Women (1993) is “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”. Further, the State is responsible for addressing both individual and structural forms of violence, in the family, the community and by the State and ensure that there is legal redress for any acts or threats of VAW.

- Q29. What forms of VAW and what threats of VAW occur as a result of housing violations such as, rape, domestic violence, assault, trafficking, family abuse, forced marriage, dowry deaths and others. How to housing violations make women more vulnerable to VAW?
- Q30. Who are the perpetrators? What kinds of housing violations do victims of VAW face e.g., battered women, rape survivors? Show information where realisation of the RAH has lead to less VAW?
- Q31. What strategies/best practices have been used to address VAW related to housing rights violations e.g., are there adequate shelters for domestic violence victims?

ANNEX F:

HIC-HLRN TOOL KIT
AND LOSS MATRIX

ANNEX F:

HIC-HLRN Tool kit and loss Matrix¹

i. Elements of the Right to Adequate Housing

Element of RAH	Description
i. Security of tenure and freedom from dispossession	Whether freehold, leasehold or other form of individual or collective possession of housing, must be protected from forced eviction harassment and other threats. This includes guaranteeing access to, use of, and control over, land, property and housing resources. Each individual and community has a right to a place to live without threat of dispossession from land, all forms of property, homes and resources and individual and collective holdings required to sustain livelihood. Where dispossession takes place, the State must compensate, resettle or provide restitution.
ii. Public goods & services	For example: safe drinking water, sanitation, sewage and waste disposal, washing facilities, energy for cooking, heating, lighting, transport, fuel, communication. These must be accessible, adequate, and based on the needs of the community. The government must regulate distribution and service provision by private industry, as well as combat corruption. The government must also ensure access to, and adequacy of, infrastructure.
iii. Environmental goods & services (land & water)/safe environment.	Every community must have access to natural resources necessary for survival and livelihood (i.e. fuel, fodder, water, land, building materials). Access to natural resources must be sufficient to meet community's needs and the State must regulate distribution and guarantee efficient delivery. States must ensure access to land, equitable distribution of land (particularly for poor households and other marginalised and vulnerable groups), implement land reforms, and protect the property rights of land-based and indigenous peoples from encroachment. States must ensure that clean and safe water is reliably accessible in adequate quantities for individual, family and community use, as well as for agricultural needs. Adequate infrastructure must be in place to ensure sufficient, affordable and easy access. The State must actively combat pollution and protect against environmental degradation of water sources.

¹ Source: Summarised from Habitat International Coalition-Housing and Land Rights Network (HIC-HLRN) Tool Kit.

	<p>The living place must be free from harm or threat of harm from natural or human made disasters, environmental pollution, disease vectors, and other avoidable hazards. Individuals and communities must enjoy access to an environment that can provide access to natural resources and reasonable recreational areas.</p>
iv. Affordability	<p>States must regulate the market and provide access to financial resources (i.e. wages, loans, grants, cooperative schemes, subsidies etc.) so in order that decent housing is available within 30% of any household income. Housing should not compromise other basic needs (i.e. food, clothing etc.). Finance should be provided on an equitable basis, with particular attention to vulnerable and marginal groups, as well as victims of injustices stemming from historic discrimination.</p>
v. Habitability	<p>Adequate space and protection from the elements. Conditions conducive to disease and structural hazards should be removed. This can also have an impact on fulfilling other rights such as the rights to health and education.</p>
vi. Accessibility (physical)	<p>Obligation of government to make sure everyone has equal access to secure place to live in peace and dignity. This includes access to adequate housing and resources, including land, infrastructure and sources of livelihood, as well as accommodating the specialized housing needs of disadvantaged communities.</p>
vii. Location	<p>Housing must be situated in a location in which employment options, health care, schools and other social services are readily accessible. Transportation must be both accessible and reasonable in time and cost. The local environment must be safe and free of environmental hazards and pollutants.</p>
viii. Cultural appropriateness	<p>The housing style (spatial design, site/community organisation) should be determined locally and in harmony with a community's cultural preferences. States must actively consult with, and ensure participation of, all cultural/religious groups during the planning stage.</p>
ix. Information, capacity and capacity-building	<p>Individuals and communities must have access to data, documents and intellectual resources that impact on their right to housing. (i.e. information of potential industrial and natural hazards, infrastructure, planning design, etc.). There must be space for public debate on the administration and finance procedures, market mechanisms and activities of the private sector.</p>

	<p>People must have access to technical assistance for improving living standards, the realisation of economic, social and cultural rights, and realisation of development potential.</p> <p>States must ensure that all citizens are aware of mechanisms at their disposal for defending and realising the right to adequate housing (i.e. 'empowerment' – enhancing the ability of disadvantaged individuals or groups to challenge existing power relationships that place them in subordinate economic social and political positions).</p>
x. Participation & self-expression	<p>Participation of individuals and groups at all levels of the decision-making process related to building and housing laws and policies; need to provide for self-expression (including religious and cultural diversity), consultation, access to decision-making centres. States must also take measures to actively combat corruption.</p>
xi. Resettlement	<p>Resettlement may be essential in cases of natural or human-made disasters. Resettlement must be consensual, fair and adequate in order to meet individual and collective needs. It must provide sufficient access to sources of livelihood, productive land, infrastructure, social services and civic amenities, and respect freedom of movement. Losses must be compensated for in a fair and adequate manner, especially in cases arising from human-made disasters.</p>
xii. Security and privacy	<p>Adequate housing must provide ed for freedom from acts or threats of physical, sexual or psychological violence, with special attention to the particular concerns of women, the elderly, children and other vulnerable individuals and groups. While not infringing on the sphere of privacy of the home, the State must address crimes of violence within the home such as domestic violence. All members of the household must enjoy sufficient privacy within the home.</p>
xiii. Violence against women	<p>The state must take measures to prevent all forms of violence against women, whether committed by state or non-state actors, in order to ensure women's RAH. The definition of VAW as per the UN Declaration on the Elimination of Violence against Women (1993) is: "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life". Further, the State is responsible for addressing both individual and structural forms of violence perpetrated within the family, the community and by the State, and ensure the availability of avenues for legal redress in response to any acts or threats of VAW.</p>

ii. Sources of the Right to Adequate Housing in International Human Rights Treaties

- ◆ Universal Declaration of Human Rights (UDHR) - Article 25.1;
Art. 25.1 “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing...”
- ◆ Convention on the Rights of the Child (CRC) - Articles. 16.1 and 27.3;
Art. 16.1 “No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.”
Art. 27.3 “States parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”
- ◆ International Convention on the Elimination of all forms of Racial Discrimination (ICERD) Articles 3 and 5 (e) (iii);
Art. 3 “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”
Art. 5 (e) (iii) States “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... The right to housing.”
- ◆ International Covenant on Civil and Political Rights (ICCPR) - Article 9.1;
Art. 9.1 “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”
- ◆ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) - Article 16.1;
Art. 16.1 “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.”

Habitat Agenda (Habitat II, 1996) – Paragraph 39

Para. 39 “We recognize an obligation by Governments to enable people to obtain shelter and to protect and improve dwellings and neighbourhoods. ... We shall implement and promote this objective in a manner fully consistent with human rights standards.”

iii. Over-riding Principles

Indivisibility of Human Rights

“All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights;

The full realisation of civil and political rights without the enjoyment of economic, social and cultural rights is impossible; the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development.”

— Vienna Declaration and Programme of Action (1993)

Self-determination

The extent to which concerned individuals and communities are able to exercise an effective role in determining the terms by which all elements of their right to adequate housing are realized.

Non-discrimination²

Article 1 of Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) states that any distinction, exclusion or restriction made on the basis of sex which has “the **intention** or **effect**” of “nullifying or impairing” the “recognition, enjoyment and exercise” by women of all rights in the social, cultural, political and economic spheres constitutes discrimination. This can manifest as:

- Differential treatment leading to non-recognition of human rights of women both in the private and public sphere (direct discrimination);
- Differential treatment preventing women from exercising their human rights both in the private and public spheres, (direct discrimination); and
- Equal or gender-neutral/gender-insensitive treatment preventing women from exercising their human rights in the private and public spheres (indirect discrimination).

Other kinds of discrimination women can face include:

- Cross-cutting discrimination – discrimination in one area may lead to discrimination in other areas (e.g. denying girl children access to health may also prevent them from going to school);
- Historic discrimination – women may be suffering from the effect of past discrimination;
- Intersectional discrimination – women experience the compounded effect of simultaneous discrimination on the basis of gender and other factors such as race, ethnicity, class, age, disability, sexual orientation etc.

SRAH’s 2002 Report (E/CN.4/2002/5X) – contains guidelines for States for ensuring freedom from discrimination with regard to the human right to adequate housing.

² Materials for this section are based on the work and materials of IWRAW-AP.

Gender Equality³

Women and men are guaranteed the enjoyment of equal human rights under international law. The substantive equality model applied in CEDAW (Art. 2) emphasises the need for both equality of opportunity (*de jure*) and equality of results (*de facto*), the goal being the practical realisation of women's rights.

This approach recognises that in order to redistribute benefits equally between women and men, approaches to promoting women's rights must transform the unequal power relations between women and men in the process. For this to happen, policies, laws and programmes must aim to provide:

- Enabling conditions (i.e. the social, economic and cultural contexts within which women may be able to lead their lives with dignity);
- Affirmative action (i.e. temporary special measures that recognise and accommodate women's needs in the context of employment, education, financial services, politics and all other spheres of life, in order to enable women to overcome both historical barriers as well as those that arise from male domination of the system. (Art 4.1, CEDAW)

Therefore, the prerequisites of gender equality are:

- Equality of opportunity (law, policy and programmes);
- Equality of access;
- Equality of benefit;

State obligations⁴

Three levels of State obligation:

- Respect – to abstain from violations;
- Protect – to prevent violations from occurring;
- Fulfil – to facilitate and provide for the realisation and free exercise of rights through legal and policy measures.

Core minimum obligations

- To immediately address the basic housing needs of the population.

Non-regression

- To refrain from undertaking any measure deliberately or flagrantly in retrogression of legal obligations under international and human rights treaties, especially the practice of forced eviction.

Progressive Realisation

- The concept of "progressive realisation" imposes upon States a clear obligation to take measures as expeditiously and effectively as possible to provide for the full realisation of the human right to adequate housing.

³ Materials for this section are based on the work and materials of IWRAW-AP.

⁴ For further details on State obligations see the Maastricht Guidelines on Violations of Economic Social and Cultural Rights, as well as General Comments and findings of Treaty Committees.

International Cooperation

- “Solidarity and fraternity” dimension of State obligation;
- No action or policy may be adopted that may inhibit the ability of States to comply with their human rights commitments vis-à-vis their citizens;
- The international community has an obligation to remove any impediments to the achievement of compliance with their human rights obligations among developing nations.

iv. Guarantees

Guarantees include international treaties that have been ratified by governments, constitutional provisions, and national, State and local laws, policies, programmes and budgets.

Please refer to the Draft PEAC Fact Sheet on the right to adequate housing which contains an initial listing of Australian laws and policies related to housing.

v. Causes Obstacles and Threats

It is important to identify all legal, economic, political, cultural and historical barriers to the realisation of all human rights, including the human right to adequate housing.

vi. Victimisation/Vulnerability

It is important to identify different vulnerable groups that may be affected, as well as identify clearly the potential causes for their heightened vulnerability.

vii. Impacts and Consequences

It is important to identify short-term, long-term, economic, psychological and other impacts on direct victims and secondary persons affected.

See the Loss Matrix which contains guidelines for quantifying costs and impacts.

viii. Violator/Duty Holder

Of particular importance, with regard to violations of women’s rights, is the need to distinguish between violator and duty holder as family members, community members and/or other private actors often violate women’s rights.

According to the doctrine of ‘due diligence,’ States assume the obligation of being the ultimate duty holders, and are particularly responsible for preventing, punishing and providing access to redress for acts/threats of violations committed by private actors.

ix. Action/Intervention

Copies of the Strategic Action and Solution Menu are available on request.

HLRN Housing Rights Monitoring Tool Kit¹

Entitlement	Source	Overriding principles	Guarantee intervention ²	Causes/Threats/obstacles/contributing factors	Victimization vulnerability	Impact, consequences	Violator/Duty holder ¹	Action, intervention ²
<p>General Comment</p> <p>1. Security of tenure & freedom from dispossession</p> <p>2. Public goods & services</p> <p>3. Environ. goods & services (land & water)</p> <p>4. Affordability</p> <p>5. Habitability</p> <p>6. Accessibility (physical)</p> <p>7. Location</p> <p>8. Cultural appropriateness</p> <p>9. Information, capacity & capacity building</p> <p>10. Participation & self-expression</p> <p>11. Resettlement</p> <p>12. Security³ and privacy</p> <p>13. Violence against women</p>	<p>International customary law</p> <p>Human rights & other treaty law</p> <p>Regional human rights instruments</p> <p>Emerging norms</p>	<p>Self-determination:</p> <p>Nondiscrimination</p> <p>Gender equality</p> <p>Rule of law</p> <p>Nonretrogression</p> <p>International Cooperation</p>	<p>Ratification of international and regional human rights instruments</p> <p>Constitution, national legislation, regulations, municipal ordinance.</p> <p>Policies</p> <p>Programs</p> <p>Institutions⁴</p> <p>Budgets</p>	<p>No law</p> <p>Bad law</p> <p>Inadequate enforcement</p> <p>Globalization pressures</p> <p>Privatization of services</p> <p>Armed conflict</p> <p>Natural disaster</p> <p>Discrimination</p>	<p>Who?</p> <p>Vulnerable and affected groups</p> <p>What type?</p> <p>Why?</p>	<p>(See subtool: Loss Matrix for method of quantifying costs)</p> <p>Material (victims):</p> <p>Nonmaterial (victims):</p> <p>Material (others):</p> <p>Nonmaterial (others):</p>	<p>Violator</p> <p>Duty Holder: Primary:</p> <p>State authorities</p> <p>To avoid depriving</p> <p>To protect from deprivation</p> <p>To aid the deprived</p> <p>Secondary:</p> <p>IFIs</p> <p>MNCs</p> <p>Local authorities</p> <p>Private agents</p> <p>Community</p>	<p>(See Strategic Action & Solution Menu of > 100 options with 'subtools')</p> <p>Human rights education:</p> <p>Gender training:</p> <p>Legal education:</p> <p>Social mobilization</p> <p>Legal action</p> <p>Cooperation with UN bodies</p> <p>Media work Etc.</p>
<p>Congruent Rights</p>								

¹ Specify the relevant actors where the violator and duty holder are different.

² What, by whom & when. See "Task Chart."

³ Security can include physical, sexual and psychological security.

⁴ Bonding and bridging institutions. "Institutions," in this sense, involve the rules of the game under which formal and informal activity is conducted, and include public institutions, private institutions, collective practices and norms, as well as changing norms (e.g., brought about through the youth, technology, economic or demographic shifts, and other emerging behaviours). According to Douglas North, Nobel laureate, institutions are "humanly devised constraints that shape human interaction."



LOSS MATRIX⁵

Quantifying Violations to the Right to Adequate Housing A Tool for Evaluating the Effects of Demolitions, Confiscations and Forced Evictions

Introduction:

The purpose of this matrix is to help determine the value of losses incurred by victims of housing rights violations. Using this tool will aid in the various necessary stages of proper monitoring of specific violations of the right to housing, including:

1. Documentation and recording
2. Monitoring and reporting
3. Quantifying/evaluating
4. Identifying and solving problems
5. Follow-up assessments
6. Fact-finding missions
7. Public information and campaigns
8. Social mobilisation
9. Media work
10. Compensation efforts
11. Legal defence and prosecution
12. Monitoring international obligations.

It is intended to aid human rights workers responsible for each stage in the process. The matrix can also serve as a tool for organizing tasks so as to aid coordination when more than one individual or organisation is involved in the process.

The loss matrix helps to identify the material and non-material losses that arise from violations of housing rights. It can be used as a tool for bolstering legal defence, policy analysis, securing compensation or public information and the mobilisation of support for the movement to ultimately end the violation of women's rights and provide redress and compensation / restitution for victims of violations.

⁵ This summarises HIC-HLRN's Loss Matrix.

The material and otherwise calculable costs resulting from violations are determined for each affected unit (household) and then totalled. Alternatively, in the case of multiple units affected, a representative sample should be obtained in order to determine average values, which then must be multiplied by the actual number of units affected. Other incalculable losses still have to be recorded and reported in narrative terms. Such narrative explanation and analysis will be useful as an accompaniment to this quantification table.

Both short-term and long-term values are to be assessed. [Follow examples of insurance law in various countries for a composite methodology for determining losses for compensation purposes.] In order to obtain a truly representative sample of values, monitoring over time is required. It is therefore recommended that such monitoring be undertaken or coordinated by those who maintain a programme and commitment to the affected community over the long-term.

This tool seeks to quantify the costs incurred by victims as well as public or social costs. For our purposes, the principal victim(s) would be those persons whose property and lives have been directly impacted by some act, be it a demolition, confiscation and/or eviction. Ancillary or indirect victims would consist of those who incur costs or suffer other harms as a result of an act intended or directed toward others. The indirect victims' losses and damages ought to be included in the comprehensive assessment of the effects of the violating act.

The middle column of the table, entitled "Methodology," is intended for commentary on calculated costs. It is here that one would enter the types of items or values totalled under the particular type of cost/loss. There too, one would cite whether the values represent losses/costs that are limited to the principal victims only, or include those of indirect victims as well, such as those exposed to collateral damage during housing demolitions. The "Methodology" description should be as thorough but concise as possible.

It is possible to modify this tool according to the user's discretion. For example, on occasion the direct and indirect victims' losses may need to be calculated separately/individually. In the event of such an exigency, for example, an additional column can be added. In any case, however, it is important to arrive at a global cost figure for the violations under review. The column at the far right under each category of cost should be totalled using the imbedded Excel formula.

Contents and Methodology for Determining Each Category of Loss/Costs

Victims' Material Losses
<p>The Structure : The fair market value of the house, shelter or other structure(s). Suitable references for determining market value include reliable real estate agents, banks, or other parties involved in the sale and exchange of such properties. Standard methodology would involve obtaining three quotes/estimates and selecting the average, or taking the middle quote (median value) as the fair market value. In the event that there is no such property market actively issuing quotes on the value of the affected property, an alternative method can be to use the estimated cost of replacing the property at current market values. Note that the victim incurring the loss in this case would be the owner(s) and or title holder(s), including those owning the property individually, or collectively, under formal title, or by traditional tenure systems.</p> <p>Plot : The plot and the structure are considered separately so that within a cooperative arrangement the title to the structure, and the "share" of the land area under it, can be assessed separately.</p>

It is only necessary to enter a value under this category if there is an eviction or demolition according to local laws and regulations. For example, in Israel, the land plot beneath a demolished structure may, per force, be reclaimed by, or “revert to,” the state as “state land” or “national land.” In the event of a housing plot being confiscated by the state, determining the value of that plot may prove difficult if, again, no market value can be determined for the affected area. In that case, the suitable methodology would involve determining the cost at current market value of a comparable site in another location.]

Contents : The value of contents (furniture, clothing, foodstuffs, electronics, house wares items, etc.) is measured as the *cost of replacing* the items (the actual cost of repurchasing items comparable in quality to those lost or damaged by the demolition), not the market value. For heirlooms and other items of sentimental value, the non-material loss or irreplaceability should be expressed in the “Victims’ Non-material Losses” section of the matrix, with a narrative either included in the matrix or attached in addendum.

Collateral damage : This section of the matrix allows for inclusion of the material losses to indirect victims in particular, including neighbouring and public property that is affected by the act. In cases of violent eviction or demolition, incorporating the use of heavy machinery or explosives, for example, nearby property can easily be damaged in various degrees, if not completely destroyed.

Infrastructure : This section refers to services and other infrastructure lost during demolition/eviction/confiscation, and that would have to be replaced after the event. For example, electricity provided at the original site may have to be replaced by a generator or by purchasing energy from an alternate source. Water, previously available from installed or nearby facilities, may have to be replaced by purchasing water or hauling it from another source. The ensuing supplementary cost—including the relative cost of labour at the going rate for work of this nature—is the value to be calculated here.

Business losses : If the demolition/eviction/confiscation results in the loss of a business, or a portion of business, that cost is to be included here. Those losses are the subject of subcategories to be detailed below.

Equipment/inventory : This includes the value of machinery and equipment, other installations, such as furnishings and built-ins, as well as all stock and supplies. This should also include the property belonging to others that was lost or damaged in the course of events. For example, a laundry or repair service would hold clients’ property for processing and return. The values of those items are also to be included in this figure.

Prospective income : The loss resulting from the inability to deliver goods and services, as well as the anticipated profit from existing stores, orders, contracts, etc. that would be lost or forsaken due to the event. The short-term and long-term effects are to be calculated by different methods. This category of loss follows the method developed locally for determining “goodwill” as an asset, which would include the projected income from a pattern of business developed through the lifetime of the enterprise.

Mortgage, other debts and penalties : Repayment for items on credit, including any penalties and increased interest resulting from the event, are to be included here for both the short and long-term. If a situation prevails, as it does under many legal systems, in which a debtor relinquishes claims (as in a natural disaster, for example), then that cost should nonetheless be calculated and listed under the category of “Other than Victim’s Losses.”

Livestock : The value of livestock lost and the treatment of those injured by the event is calculated here. This would include the labour costs for time spent in rounding up dispersed livestock at the rate of pay for such work or hire. It includes the loss of anticipated returns from normal sale of, and/or produce from the animals, including their normally anticipated progeny over the short-term and long-term. With regard to the animals’ value as beasts of burden, the returns on their labour are to be included in the figures provided under lost revenue, increased transportation costs, returns from crop loss, or other appropriate categories.

Land: The landed property not associated with the affected structure itself is to be calculated on the basis of fair market value, as with the structure and its plot entered above. This could be land adjacent to the dwelling or other affected structures, or land confiscated separately. This land could be lost entirely through confiscation, or its value could be reduced as a result of eviction or demolition. In the event of an eviction, though land title may not be lost outright, the conditions created by the eviction may prevent the owner(s) from returning to or reclaiming their land. In that case, the land in question would be calculated as an outright loss.

Trees/crops: The value of a lost or damaged non-fruit-bearing or otherwise unharvestable tree is based on the cost of purchasing and replanting a comparable replacement. The non-material, aesthetic, or sentimental value of the tree or other vegetation would be conveyed by narrative in the Victim's Non-material Losses item under Environment or Heritage, as appropriate. The value of harvestable trees and crops would encompass both the value of the replacement itself for fruit-bearing trees, crops and timber, as well as the anticipated (short-term and long-term) value of the harvest. Ecological damage is calculated on the basis of ensuing restoration costs. Collateral damage to wildlife and other natural assets, owing to the damage itself and the time required for their restoration, may represent both a calculable and incalculable loss. Whenever possible, such calculable values should be included here. Otherwise, those losses are to be recorded in the narrative section of both the victim's and non-victim's non-material losses, for those losses would be of a more public nature.

Lost/decreased wages/income: The loss of a home, and the subsequent short and long-term processes of resettlement, may involve the loss of livelihood, whether that livelihood is linked to the dwelling and/or land lost. In any event, wages would inevitably be lost (to victim or her/his employer) as non-productive time devoted to coping with the event and its aftermath. To calculate that value, one would subtract the short-term and long-term wages and other income of affected persons from the normal, anticipated wages and other income prior to the event. With regard to the loss of certain benefits, such as accumulated vacation leave, seniority and other benefits, the relative loss of those values should be included here if calculable. If occupational seniority would arguably have led to promotion with material benefit in the short or long-terms, that value is to be factored here as well.

Health care: The event itself or its aftermath may have negative physical and mental health consequences. The findings of social science offer clear testimony to the adverse effects of eviction and resettlement on rates of mortality and morbidity among affected communities. While in one sense the impact of such events may be capable of being viewed as falling within the realm of Victims' Non-material Losses, the remedial medical measures that can be taken in their aftermath and that may help ease victims' suffering, clearly have calculable values. The loss of life or limb, together with other negative health effects arising from violations of the human right to adequate housing, are the subject of state law whose purpose is the calculation of victim compensation for insurance claims and other cases involving compensatory litigation. A sample of methodologies taken from such statutes could inform the development of a comprehensive methodology for calculating victims' health losses here. The overcrowding in interim or alternative housing arrangements, often leads to negative health consequences for those evicted, as well as for those providing alternative shelter in their own quarters. The care and treatment of these health consequences (such as influenza, scabies, malnutrition, etc.) are an additional value to be added to these health care costs.

Interim housing: Interim alternative housing with relatives or friends, either within the community or elsewhere, has a value that is to be calculated on the basis of fair rental rates for such shelter, whether rent is paid or not. It can also lead to the recognition/acknowledgment of persons and groups offering assistance as secondary victims, incurring their own losses as a result of servicing the persons directly affected by act of eviction, confiscation or demolition.

Bureaucratic and legal fees: Both time and monetary costs related to bureaucratic processes and legal aid and defence work should be quantified. Even if legal advice is offered on a *pro bono* basis to affected parties, those rendering the services should assign a value to them for the purposes of this costing exercise. (The cost of bureaucratic efforts by public personnel is determined below under

“Other than Victims’ Non-material Costs.”) The costs incurred while obtaining licenses to rebuild or otherwise restore a dwelling during this process, including fees for legal services tendered, bribes and other out-of-pocket expenses, should be incorporated as a separate and independent category.

Alternative/replacement housing : The cost of securing comparable housing on a permanent basis is represented here. (Temporary lodging costs are treated above, under “Interim housing.”) This section refers to the expenditure related to constructing a replacement structure that is comparable in appearance and features to the original (e.g. rebuilding similar features, meeting extra costs if the new house is in a higher priced neighbourhood; providing for replacement services or infrastructure; increased transportation costs due to change in location). Since this category of cost is of a more-or-less permanent in nature, it should be cited in the “Long-term” cost column of the matrix.

Resettlement : The expenses of travel and transport of goods to both interim and replacement housing sites form part of the resettlement cost. This, too, is an exercise that would likely involve the efforts and time of several actors—with equivalent values—in order to locate and secure short-term and long-term housing alternatives. All related costs should be calculated as accurately as possible.

Transportation costs : This category represents the difference between the amount spent on transportation as a result of the eviction, demolition or confiscation, and the amount spent (if any) on transportation during the normal conduct of life at the original place of residence. Such values include both expenses *and* time spent commuting to and from the source of livelihood, visiting family and community members, shopping for provisions, carrying out cultural and religious activities, visiting grave sites, conducting other official or private business, etc.

<p>Victims' Non-material Losses</p> <p>Health</p> <p>Living space</p> <p>Reconstruction licensing</p> <p>Psychological harm</p> <p>Disintegration of family</p> <p>Loss of community (including support systems, child-care arrangements, domestic division of labour, etc.)</p> <p>Investment in infrastructure (e.g., electricity, water, transport, roads)</p> <p>Investment in sanitation and waste-management systems</p> <p>Investment in security protection systems</p> <p>Investment in educational infrastructure</p> <p>Heritage: With regard to heirlooms and other items of sentimental value, replacement costs should be included in this category; however, non-material loss or irreplaceability should be expressed in the "Victims' Nonmaterial Losses" section of the matrix, with a narrative either included in the matrix or attached in addendum.</p> <p>Environment/Ecology:</p> <p>Standing/Seniority</p> <p>Political marginalisation</p> <p>Social marginalisation</p> <p>Further vulnerabilities</p>
<p>Other-than-Victims' Material Costs</p> <p>Police</p> <p>Bulldozers</p> <p>Lawyers</p> <p>Army</p> <p>Other forces</p> <p>Bureaucratic and personnel costs</p>
<p>Other-than-Victims' Non-material Costs</p> <p>Political legitimacy</p> <p>Social costs</p> <p>Rebellion</p>

House Demolition Evaluation Matrix				
Type of cost/loss	Methodology	Short-term	Long-term	
Victims' Material Losses				
Structure				
Plot				
Contents				
Collateral damage				
Infrastructure				
Business losses				
Equipment/inventory				
Prospective income				
Mortgage, other debt penalties				
Livestock				
Land				
Trees/crops				
Lost/decreased wages/income				
Health care				
Interim housing				
Bureaucratic and legal fees				
Alternative housing				
Resettlement				
Transportation costs				
Subtotal				
Victims' Nonmaterial Losses				
Health				
Living space				
Reconstruction licensing				
Psychological harm				
Disintegration of family				
Loss of community				
Inheritance				
Environment/ecology				
Standing/seniority				
Political marginalisation				
Social marginalisation				
Further vulnerabilities				
Other than Victims Material Costs				
Police				
Bulldozers				
Lawyers				
Army				
Other forces				
Bureaucratic and personnel				
Subtotal				
Other than Victims Nonmaterial Costs				
Political legitimacy				
Social costs				
Rebellion				
Subtotal				

Forced Eviction Evaluation Matrix				
Type of cost/loss	Methodology	Short-term	Long-term	
Victims' Material Losses				
Structure				
Plot				
Contents				
Infrastructure				
Business losses				
Equipment/inventory				
Prospective income				
Mortgage, other debt penalties				
Livestock				
Land				
Trees/crops				
Lost/decreased wages/income				
Health care				
Interim housing				
Bureaucratic and legal fees				
Alternative housing				
Resettlement				
Transportation costs				
Subtotal				
Victims' Non-material Losses				
Health				
Living space				
Reconstruction licensing				
Psychological harm				
Disintegration of family				
Loss of community				
Inheritance				
Environment/ecology				
Standing/seniority				
Political marginalisation				
Social marginalisation				
Further vulnerabilities				
Subtotal				
Other than Victims Material Costs				
Police				
Bulldozers				
Lawyers				
Army				
Other forces				
Bureaucratic and personnel				
Other than Victims Non-material Costs				
Political legitimacy				
Social costs				
Rebellion				
Subtotal				

Confiscation Evaluation Matrix				
Type of cost/loss	Methodology	Short-term	Long-term	
Victims' Material Losses				
Structure				
Plot				
Contents				
Infrastructure				
Business losses				
Equipment/inventory				
Prospective income				
Mortgage, other debt penalties				
Livestock				
Land				
Trees/crops				
Lost/decreased wages/income				
Health care				
Interim housing				
Bureaucratic and legal fees				
Alternative housing				
Resettlement				
Transportation costs				
Subtotal				
Victims' Non-material Losses				
Health				
Living space				
Reconstruction licensing				
Psychological harm				
Disintegration of family				
Loss of community				
Inheritance				
Environment/ecology				
Standing/seniority				
Political marginalisation				
Social marginalisation				
Further vulnerabilities				
Subtotal				
Other than Victims Material Costs				
Police				
Bulldozers				
Lawyers				
Army				
Other forces				
Bureaucratic and personnel				
Subtotal				
Other than Victims Nonmaterial Costs				
Political legitimacy				
Social costs				
Rebellion				
Subtotal				

ANNEX G:

CASES PRESENTED
USING THE TOOL KIT
METHODOLOGY

ANNEX G:

Analysis of cases of land and housing rights violations
in the Pacific using the HIC-HLRN Tool Kit Framework

Group 1 – Women with disabilities

Case - A 17 year old girl with a physical disability (that rendered her wheelchair bound) contacted FWRM and reported being sexually abused by her father who, at the same time, was also subjecting her mother to domestic violence. FWRM contacted the department of social welfare because the girl and her mother wanted to be removed from their home. They were living in a remote area and both the mother and daughter were unemployed. The department of social welfare said they could not relocate her due to the unavailability of transport and a lack of jurisdiction since she was not of age.

FWCC decided to relocate the mother and girl and their belongings. It was, however, very difficult to find a place for them. Eventually, they were placed in a Salvation Army family care centre. Since then, the mother has returned to live with her husband. Without the mother, the family care centre could no longer care for the girl because they did not have the capacity to accommodate the specific needs of women with disabilities. The girl was therefore returned to the care of FWCC. There are no homes to which she can go for the specialised care she needs, nor are there any relatives to whom she can turn for assistance.

The police were notified of the abuse in 2002. The DPP, however, has claimed they don't have sufficient evidence to prosecute. The mother, having returned to live with the father, has become a hostile witness, alleging that the girl is lying about the abuse. The police were unsupportive because the father has friends among their ranks.

A school providing education to children with special needs agreed to house the girl, despite her now being 18-19 years old. She receives social welfare benefits (\$30/month), but this is not enough to cover her expenses. She now finds herself in a vulnerable position. The current head of the school is quite old, and if he passes away, it is likely she will be told to leave because the other staff is not as welcoming of her presence.

Entitlements	<ul style="list-style-type: none">- Security of tenure and freedom from dispossession- Security and privacy- Freedom from violence- Accessibility; this is a concern because she is disabled- Affordability; because she hasn't secured a source of income, a situation rendered even more difficult due to her disability, this is a concern
Sources	CEDAW, CRC, Fiji Constitution, <i>Human Rights Commission Act</i> , DVAW, penal code (sexual offences)
Over-riding Principles	<ul style="list-style-type: none">- Rule of law- Gender equality- Non-discrimination

Guarantees	<ul style="list-style-type: none"> - CEDAW and CRC (ratified), Fiji Constitution - National legislation - National budget (special allocations for VAW) - Funding programmes under the Department for Social Welfare
Causes	<ul style="list-style-type: none"> - Policies of police and judiciary. Social welfare department response is limited because they don't take into account the special circumstances of the victim - Delays in arbitration of court case (2 years and continuing) - Inadequate laws (e.g. the penal code is inadequate because it does not recognize domestic violence)
Victims	<ul style="list-style-type: none"> - Girl with disability - Has no income, no where to live and has lost the support of her family - Mother - The overcrowded conditions in the Salvation Army home, together with the harassment of the father once he discovered where they were staying, placed a lot of stress on the mother, under which she finally yielded and returned to the violent relationship
Vulnerability	<ul style="list-style-type: none"> - There is a younger sister who is still in the care of the father - The girl with the disability continues to be vulnerable because it is not clear how long she can continue to enjoy the current care she is receiving - The mother continues to be subjected to domestic violence - Women survivors of domestic violence, women with physical and mental disabilities
Impacts	<ul style="list-style-type: none"> - Loss of dignity and self-esteem, physical and mental harm
Material cost	<ul style="list-style-type: none"> - Loss of opportunity in terms of future earnings, education and career (because of the violence and inadequate housing) - Loss of belongings - Cost of re-integration - Cost of eviction and relocation
Non-material costs	<ul style="list-style-type: none"> - Emotional cost of leaving home - Trauma and the social stigma of sexual abuse
Material cost to the State	<p>The Governor of Fiji calculated that in Fiji, domestic violence cases cost, cumulatively, roughly 300 million dollars per year (including costs of the judiciary, health system, police, social welfare, lost opportunity costs e.g. hours at work lost; drop in productivity; if perpetrator is jailed, loss of his earnings, and the cost of maintaining prisons). This figure is equivalent to the country's aggregated budget deficit. These cost estimates were based on a New Zealand format, using estimated statistics. The Fiji police estimate that it costs the police force \$6.1 million over five years to deal with cases of domestic violence (e.g. costs of police hours, transport,</p>

	detection etc.) If States were to provide housing alternatives, costs could be significantly reduced, particularly in recurrent violent situations. For example, the cost to house a prisoner is \$30,000, but it only costs \$5000 to build a low-cost habitable home
Violator	Father
Duty Holder	State, having ratified conventions; Constitutional provisions imparting responsibility to the State; Social Welfare Department, Ministry of Housing (do not take women's rights and DV into consideration), Public Rental Board, Housing Authority
Action	<ul style="list-style-type: none"> - State to provide emergency shelters for survivors (recognising survivors' specific circumstances and needs) as well as accommodations on a "medium-term" basis for survivors to remain with children, until they find adequate housing, employment etc. - - Human rights education for service providers and institutions (e.g. police, social welfare, churches, religious institutions, and organizations) - Human rights approach incorporated into all policies - Reporting on these issues in parallel reports to the Committee on the Elimination of All Forms of Discrimination Against Women - Fiji's next periodic report is due in 2006 - Reporting to the SR on VAW and to the Committee on the Rights of the Child

Group 2 – Discrimination

Case – a lesbian couple, with one son, was renting a house in Fiji. Three months before their lease was due to end, they received an eviction notice from the landlord saying that he was making renovations. They are a low-income couple, and sell food for an income (i.e. informal work). Prior to leaving, the neighbours told them that the landlord had removed them because they had been identified as a lesbian couple. The couple were physically split up, each having to go back to live with her respective family. It has taken a considerable amount of time to locate a replacement home.

Element	Security of tenure and freedom from dispossession
Sources	CEDAW, ICESCR, and the Fiji Constitution. More research needs to be done to see if BPFA, ICCPR, and CERD would also serve as relevant sources
Overriding Principles	<ul style="list-style-type: none"> – Right to self-determination – Non-discrimination – Gender equality – Rule of law (i.e. the law operates equitably for everyone - is this occurring for all women in practice?) – Non-retrogression (if, as part of reforms of the penal code, lesbian rights were to be removed or abridged, such a step would constitute a clear retrogression)
Guarantee	Fiji Constitution, Fiji has ratified CEDAW
Causes	<ul style="list-style-type: none"> – The penal code is not consistent with the Fiji Constitution to the extent that it discriminates against LGBT – The Vanua have traditional ideas about “adulthood” and unmarried couples, because of which they do not recognise same sex relationships or the adult status of unmarried individuals. – Discrimination/homophobia in institutions and the community – Self-censure - If there is a problem with eviction or social welfare, LGBT are unlikely to object out of fear of threats, verbal abuse, and/or the targeting of their families for harassment. As a result LGBT start to censure and silence themselves – Difficult to obtain evidence to support court cases
Victims and vulnerability	<ul style="list-style-type: none"> – The two women are the victims. Their vulnerability tends to be compounded as a result of intersecting sources of discrimination brought on by their being at once women, indigenous and lesbian. In addition, they are of meagre financial means and therefore lack resources for overcoming their adversities – Their son is also vulnerable
Impact and consequences	<ul style="list-style-type: none"> – Material cost to victims - no home of their own; no shared residence with partner of choice; relocation costs; time spent looking for accommodation detracts from earning potential/time that would be spend earning income

	<ul style="list-style-type: none"> - Non-material cost to victim - lack of privacy as a result of having to live with the family; can't continue relationship in the way they would choose; increased discrimination within the family - Material cost to others - partner/child; education costs of relocating child's schooling; resources of extended family are stretched - Non-material cost to others – partner/child/family; stress, relationship compromised, privacy
Violator	Landlord
Duty holder	<ul style="list-style-type: none"> - Primary – State – State could provide for rental bonds, bond regulators, or rental dispute bodies to make it harder for landlords to discriminate against tenants - Secondary - Human Rights Commission (hears and arbitrates complaints); other NGOs, women's organisations (protect, assist, re-educate on human rights)
Action	<ul style="list-style-type: none"> - Human rights education and gender training for lesbians (important for lesbians to be aware of what CEDAW is, how it operates and how it can be used) – but, particularly for lesbians on a low income, whose time and energy is expended in putting food on the table, and who therefore find it difficult to access information - Sexual orientation training conducted for government, NGOs, human rights educators - Legal education for lesbians, LGBT peer educators (currently working on reproductive rights, though this could be expanded), sexual minority workers, vulnerable groups - Social mobilisation – workshops on adequate housing from a human rights perspective (appropriate and directed to the needs of LGBT) - Legal action – such as test cases - UN Cooperation – parallel reports/Rapporteur input/issues-based consultations such as this - Media – building relationships with media, providing media education, raising awareness among the media with the aim of having a balanced view

Group 3 – Legal and cultural obstacles to inheritance and property rights of women

Case – A man divorced his first wife (invoking one of the seven grounds enumerated in the law). Even though they had both contributed to the building and maintenance of their home, when the divorce was granted, the first wife was left without any share in the matrimonial home. The husband remarried, but died a couple of years after. His widow now is expected to be faithful to her dead husband. If she resumes sexual relations or re-marries she will have to leave the matrimonial home and effectively forfeits her rights to land and housing.

Elements	<ul style="list-style-type: none"> – Security of tenure and freedom from dispossession – Affordability – Cultural appropriateness – Participation and self-expression – Information and capacity building
Sources	The Constitution; the <i>Land Act</i> ; National policy on women and gender; CRC; CERD; MDGs; global conferences (Vienna, Istanbul and Beijing)
Overriding principles	Gender discrimination
Guarantees	<ul style="list-style-type: none"> – CRC and CERD (both have been ratified) – Policy on women – NGO Projects – Centre for Women and Children
Causes	Tongan law does not explicitly recognize women’s equal rights to land and housing in its Constitution. As a result, women can only access their rights secondarily, through their husbands. This serves as a significant impediment to women’s enjoyment of their land and housing rights. In addition to the existing lack of legal provisions, there are also laws that directly impair women’s ability to realize their rights – i.e. family law doesn’t contain any provision protective of women, especially in terms of rights to matrimonial properties. Inadequate enforcement of laws and policies (e.g. even though there is a no-drop policy, when women approach the police to register their complaints, the police often refuse to take up the cases). Women have little legal recourse and are often confronted by obstacles in their pursuit of justice. Corruption and nepotism also serve as barriers (e.g. if the relatives of the dead husband have friends in the police force, they can use the police to reclaim the land by falsely accusing her of illicit sexual activity following the death of her husband)
Victims	<ul style="list-style-type: none"> – First wife – innocent victim, could not access matrimonial property; – Second wife – there are no systems in place protective of either her property rights or her rights as a woman and a widow
Impact	Violence and loss of property
Material cost	Loss of property, house, money, investment and labour

Non-material cost	Trauma, stigmatisation (i.e. loss of status in the community may prove problematic should she wish to re-marry – according to existing social norms women risk condemnation by the community should they engage in sexual relations following the death of a husband); insecurity, loss of personal freedom; loss of livelihood, visible disability (i.e. violence)
Violator	<ul style="list-style-type: none"> - Husband (in relation to the first wife) - Relatives (in relation to both wives; encouraged the husband to leave the first wife because she didn't produce children) - State (against both wives) - Nobles - Police and courts
Duty holder	<ul style="list-style-type: none"> - Primary - State (with regard to both the first and second wife); king; judiciary; - Secondary - nobles (though charged with providing for the general welfare of people in the community, these nobles routinely shirk such responsibilities); husband (in relation to the first wife); district officers and town officers should be playing an important role in protecting rights of families and people in their community
Actions	<ul style="list-style-type: none"> - Change the laws - Amend the constitution to recognise women's rights - Implement policies - Petition the king - Social mobilisation with other NGOs; legal action - Media advocacy – use the media as a mechanism for lobbying for legislative and policy change - Submit parallel reports (for consideration by CRC and CERD) - Solicit intervention of UN agencies (UNICEF, UNDP) in the best interests of women of Pacific communities – though there are no UN offices in Tonga, one can still access UN agencies through the offices located in Suva - Report to the Special Rapporteur on Adequate Housing and request that he stage an intervention

Group 4 – Urbanisation (Tuvalu – rural to urban/outer island to mainland migration)

Case - Women migrating from outer islands to the mainland in Tuvalu. As the living conditions of families on the outer islands become overcrowded, it is not uncommon for the host family to suggest that their extended family move out from under their roof. When they move they go to illegal squatter areas on the main island. As a result of the migration, people on the main island are complaining of over-crowdedness and the landowners are complaining of squatter settlements.

Elements	Security of tenure - There is currently no housing policy or building code in place on the main island, which detrimentally impacts women's access to secure housing. Women in the host family and the migrating family are constrained by limited budgets and suffer acutely because of having to look after their families, with limited resources
Sources	CEDAW (ratified), CRC, Bill of Rights (doesn't contain ESC rights), Tuvalu has agreed to the MDGs
Overriding Principles	Tuvalu is a member of the UN family and is therefore obligated to respect international human rights and incorporate them into its laws, despite not having ratified the ICESCR
Guarantees	Tuvalu has some policies, programmes and projects in place (e.g. UNDP has a programme, in cooperation with Tuvalu, on building the capacity of local government as part of the ongoing process of decentralization. This, it is hoped, will enable local governments to formulate their own development plans in the outer islands; NZ credit scheme, to provide women with access to credit; ADB has undertaken a poverty-related study that provides some statistics). There are also obligations emanating from customary practices and beliefs that call for social solidarity within extended families
Obstacles	<ul style="list-style-type: none"> - There is no housing policy or building code. These are in the process of being developed by the Social Welfare Department, in collaboration with the Public Works Department and the Office of the PM - There are no constitutional provisions specifically addressing women's rights to adequate housing and land - There is no budgetary support from the State for homeless/squatter families. Although there is a social welfare policy, the benefits are not available to migrants/squatters - Accommodation of additional members over-stretches the salaries and land of host families. Salary is the only means of survival for the migrant family because they have no land - Stress and other pressures can cause a deterioration of solidarity within the extended family
Victims	<ul style="list-style-type: none"> - The host family (under pressure of having so many people in the family) - The migrant family (the pressure of having to move and live in a squatter settlement)

	<ul style="list-style-type: none"> - Overcrowding, both in the host family and in the squatter settlement, creates tense situations for women of both the host family and migrant family as they are the key “providers” and nurturers in the household - Children (living in stressful conditions, relocating schools)
Impacts	<ul style="list-style-type: none"> - Stress on family, financial problems, emotional problems - Children are most vulnerable - Lack of adequate food, water - Arguments between host and migrant family due to stressful nature of life in close-quarters - Decreased access to water in squatter settlements, problems with health, hygiene and sanitation
Violator	State
Duty Holders	<ul style="list-style-type: none"> - Government (central and local), Department of Public Works, Office of PM - UNDP, NZ AID - Island communities responsible for not accommodating families that were forced to migrate - Churches
Action	<ul style="list-style-type: none"> - Ratification of ICESCR - Formulation of new legislation/by-laws and provisions protective of right to security of tenure to be included in constitution (i.e. currently, ESC rights are not mentioned in the constitution) - Human rights education, awareness-raising on gender and human rights - Social help for poor, budgetary support - Conflict-resolution counselling - some counselling has been made available by the church. Each community residing on a main island has its own church, which can play an important role in helping migrant families - Convince squatter families to move to outer islands where more land is available

Other elements affected:

Habitability – problem of overcrowding among squatter settlements

Security and privacy – the more people that come into the host family, the less privacy there is. This can result in problems of tension or friction between husbands and wives, as well as between the families.

Public goods and services – when families relocate to squatter settlements, lack of water and sanitation becomes an issue for them – they have to use the lagoon that everyone uses for fishing. Lack of water is a significant problem confronting squatter families, and engenders further concomitant health-risks (i.e. a video tape on development issues shows a squatter settlement situated near rubbish areas and at high tide rubbish areas fill with water in which children bathe and swim.

Group 5 – Indigenous (PNG Case)

Case – A daughter married into a different tribe from that of her father’s. Because she married a man from a different tribe, she has to make an application to the tribe if she wants to access land from her mother’s tribe. This rule only applies to daughters - sons automatically get land on which to build their houses. She must submit her application to the chiefs (all male). If her application is approved, she has to pay 50 kina. Approval is awarded on the basis of, in part, the status of her family (i.e. the character of the family is considered, the character of the daughter is irrelevant).

Elements	<ul style="list-style-type: none"> - Security of tenure - Affordability - Participation (men chiefs only), status of family
Sources	<ul style="list-style-type: none"> - CEDAW, UDHR - Beijing 1995 – para 58 (m) affordability and accessibility of housing and land - Constitution (not sure of what the relevant laws and policies are)
Overriding Principles	<ul style="list-style-type: none"> - Gender equality - Non-discrimination - because she is a woman and because of the use of family status as a basis for decision-making
Guarantees	<ul style="list-style-type: none"> - Equality provisions in constitution; - UDHR; CEDAW; BPFA
Obstacles	<ul style="list-style-type: none"> - Customary law - Lack of access to courts (may not be familiar with her national laws and rights) - Type of husband (i.e. character; not involved in community/family activities) - Depletion of natural resources – since the majority of land in PNG has been taken over by government, access to fishing grounds has been reduced. Consequently, with clan resources now depleted, the likelihood of women acquiring tribe land, relative to the men, is even less. Once such resources have been exhausted, the land will not be made available for women who are only secondarily accorded their rights after men
Vulnerable	<p>Being a woman, and due to the scarcity of clan resources, she will be the last one to gain access to land. This situation is exacerbated by the fact that all chiefs (who are primary decision-makers) are men, and because her ability to access her rights to adequate housing and land is dependent on clan members’ appraisal of her husband’s character. Even if her application is approved, she cannot build a suitable permanent house because they can reclaim the land for other clan purposes, or simply because the clan looks unfavourably on her husband’s character</p>
Impact	<ul style="list-style-type: none"> - Insecurity of tenure - Reluctance to invest (e.g. build permanent house)

	<ul style="list-style-type: none"> - Financial pressure - Emotional pressure on her marriage, her family, herself, the chiefs and the community as a whole
Duty Holder	<ul style="list-style-type: none"> - State is primary duty holder
Violator	<ul style="list-style-type: none"> - Chiefs (making gender biased decisions); community (which determines culture and practice)
Actions	<ul style="list-style-type: none"> - States to recognise indigenous land rights (underdeveloped land re-distributed to indigenous owners) - Lobby urbanisation committee to return undeveloped lands to indigenous owners to enable women to also access clan land - Engage with chiefs on women's rights - State to include equality provisions in decision-making and in land rights - Highlight issues through CEDAW Committee and SR so they can lobby/pressure government to get rid of discriminatory practices/laws - Gender sensitisation among chiefs and community (includes equality in decision-making and equal land rights)

ANNEX H:
TESTIMONIES (IN FULL)

ANNEX H:

Testimonies

Testimonies on Violence against Women and the Right to Housing

Presenters: Merylyn Tahy, Taloi Havini, Cook Islands, Naemah Khan

Merylyn Tahy, Vanuatu

“I want to share my personal story; however, there are many women in Vanuatu who fall into this situation. I was forced to marry a boy. I had one son and forced to care for three children adopted by my husband, and 1 son from another woman. I was married to him for 26 years. He was a member of parliament for 18 years, including holding the positions of cabinet minister and speaker of the house. When he lost his seat in parliament in 1995, he lost face and wanted to return to his island. He wanted me to leave my job and return with him to his island. He was a chief and community leader and his family encouraged me to return and fulfil my wifely roles. I refused. I continued working and earning for the family and sent money home to him. He died in 1997 while I was in Fiji attending a workshop. I could not return before the burial. His family had buried him without me. I returned a week after his death. When I got home and went to our village, only my family greeted me. I did all the traditional customs. I stayed 10 days, as required under custom and returned after 50 days and again after 100 days, as required by custom. But my in-laws were angry with me for not being there for him. They wanted me to stay and mourn him for 100 days or 1000 days, to contribute food and meat for those mourning days, mourn him in dirty clothes and do all that needed to be done in order to guarantee my son’s rights to the land and to guarantee my right to stay in the house. But I felt cheated by the family because I found out he had another woman in the village, who was approved of by his family, while I had been working in Vila and sending him money. He had been on his way to see the other woman when his car went off the road. He broke his backbone in the accident and died. I felt like when I returned I shouldn’t cry because I felt cheated by him. The traditional practice of mourning requires a lot of money, mats, food and time. I did not have such resources and decided not to do it all but I exchanged the pigs, the mats, and food with relatives and my family were there.

Afterwards I felt I had to continue my life so I continued to live and work in Vila. But my son and I were punished by being thrown out from my matrimonial home. All my things were thrown out of my matrimonial house. My son had to take everything into his house. I encouraged my son to go regularly and clean the matrimonial house and care for it. The uncle, who lives in Vila and only visits one month a year, got angry and refused to allow him to touch anything or take anything from the house and told him to return anything he had borrowed (e.g. lawnmower, light generator etc.). But I told my son, he is the only son so he has full rights to the land. He can work on the plantation, go to the matrimonial home, use anything in the house and visit his father’s people. The uncle is using the other woman’s son to counter my son’s claim, by encouraging him to go to the island and visit the family regularly. I have since found another partner. But according to custom, because of the bride price, I should have remarried my husband’s brother, uncle or nephews. So the uncle has vowed revenge if I re-marry someone else, by asking my new partner to give a lot of pigs as compensation for the bride price that I was paid at my wedding. I still go to the island regularly with my son, but I do not go to my matrimonial home or my husband’s family. My husband’s sisters no longer speak to me. I have lost everything there.”

Entitlements – All the entitlements are applicable, but the key ones are: security of tenure and freedom from dispossession, habitability, accessibility, cultural appropriateness and violence against women.

Sources – Customary law and beliefs recognised by the community; national constitution (Chapter 12, Article 73 “All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants”; Article 74 “The rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu.”); CEDAW (Articles 1, 2f, 5, 14 and 16). Vanuatu has not ratified any other conventions.

Overriding principles – Self determination, non discrimination, gender equality and rule of law.

Guarantees – National constitution Articles 5(1) and 5 (1) (j); ratification of international human rights instruments (e.g. CEDAW, CRC); National Housing Corporation Act cap 188 (1985), other acts and customary law.

Causes/Threats/Obstacles/Contributing Factors – Lack of knowledge of the Constitution, other national laws and human rights instruments among rural people; lack of government commitment to women’s development and human rights education; commitment to traditional practices, behaviour, beliefs etc. which prioritise male ownership of properties – almost universal male support for customary beliefs; lack of policies or laws on land and housing that are women specific; lack of ratified human rights instruments.

Victimisation/Vulnerability – The first wife was a victim, my son is vulnerable, the adopted children who were taken in when they were five years old are vulnerable, my husband’s son from the other woman is vulnerable - the uncle only takes him to the matrimonial home as a tool to attack me, my family members are vulnerable.

Impacts/Consequences – “I cannot go freely to the village. I cannot sleep in my matrimonial house. I cannot go and make garden freely for my son and his wife. I lost ownership of land and housing. I cannot harvest crops from the land my husband and I jointly cultivated or benefit from the cattle we had. I am now unwelcome in the place I called home for 26 years, which is emotionally very hard. There is also the feeling of landless – you feel the impact once you are landless. Finally I purchased my own land, which relieved that feeling.

There is also a feeling in custom that men shouldn’t marry a woman from another island because her children will come and claim the land for inheritance. My son feels threatened. When he talked back to his uncle he was threatened to be sent home to my family and island. His wife fears going there. They go there when the uncle is not there. Even though my husband was a big man, there is now a possibility that our son will not have that recognition. The loss of status cannot be useful or helpful. There is no family support for my son; he is not allowed to contribute to his father’s family. There is no-one he can fall back on. What else is there for him? Even though according to customary law the land and house should be his, there is a risk he may lose it.”

Costs – “I lost all my things because I was in Fiji when he died. Some of the things we had bought together. I was locked out of my home, with zero belongings, except what I had with me in Vila. I lost my dignity in his clan, on the island, and even with some political friends - even though I used to have friendly relations with them, because I refused to return to the island. I have to work hard to justify my status in that island for my son’s sake, for his inheritance sake.

My son lost the things we had bought for him. His inheritance is shaky, the future is unclear. He may face an emotional situation from his father's family & friends because land is identity, security and the right to lineage. He has to work extra hard to maintain the land and house."

Violator – Husband's brother.

Duty Holders – Island council of chiefs (customary chiefs); Area and National Council of Chiefs; The Provincial Government. While the State should be the primary duty holder, it takes a silent stand when it is an issue of customary land.

Actions/Interventions –

- Implement CEDAW and CRC at all levels, especially at the rural level
- Legislation or policies to implement CEDAW Article 5 and 14
- State to ratify other human rights conventions, e.g., CERD, ICESCR
- Establishment of a Human Rights Institution to deal with complaints
- Awareness raising on women's rights to land and housing
- Commitment by all women towards land and housing rights
- Provision of gender training/awareness to all Government and community leaders
- Include rural women and youth in the Provincial REDI program
- Legal education on land legislation
- Social mobilisation
- Cooperation with UN bodies
- Media campaigns on land and housing rights
- Special Rapporteur intervention with the Government of Vanuatu on women's rights to land & adequate housing.

Poem:

"A WIDOW"

*A bad one,
Not mourning over him,
A chief, statesman, husband
Till 100 days are over;*

*A bad one
Not pleasing his relatives
Nor the required custom ceremonies
To Acquire his land*

*A bad one
Not caring for his sick mother
Nor his house, pigs, land*

*A bad one
She is rejecting his families*

*A bad one
She's gone to live away from his people
Not cleaning every leaves and weeds
That falls on his grave*

*A bad one
Suppose to go to his brother's house
Be his wife/slave
Bride price has been paid!
She is a bad widow.*

– Meri Tahī, March 1999

Taloi Havini (on behalf of Sister Lorraine Garasu, Bougainville Women for Peace and Freedom, Bougainville Inter-Church Forum), Bougainville

"Land and housing issues women have experienced in the conflict and post-conflict situation: forced eviction, displacement and violence against women"

Introduction

Firstly, I wish to thank the Office of the High Commissioner for Human Rights, Habitat International Coalition – Housing and Land Rights Network (South Asia Regional Programme) (HIC-HLRN), Regional Rights Resource Team (RRRT), Asia Pacific Forum on Women's Law and Development (APWLD) and International Women's Rights and Action Watch – Asia Pacific (IWRAW-AP) for inviting the women of Bougainville to participate in this consultation.

Secondly, I wish to convey to you Sr. Lorraine Garasu's apology as the representative from Bougainville. Although she would love to have been here, she unfortunately had only one week of her Australian visa left, and it proved impractical to also include a trip to Fiji from Australia. Due to the shortness of time to actually have a woman representative from the ground, I am therefore here today, on Sr. Lorraine Garasu's behalf and on behalf of the women of Bougainville. I do not know whether I will be able to adequately articulate all our women's issues, but I will certainly do my best.

I will thus be presenting some of Sr. Lorraine's experiences during the conflict and in post-conflict Bougainville; and including some of my own experiences as a 9 year old during the beginning of the Bougainville conflict, and from 1990 onwards, as an exile and displaced person living in Australia. In my life in Australia I have been a part of my father and mother's international campaign for human rights in Bougainville.

I have divided this presentation as follows:

- Personal testimony as an *externally displaced person*;
 - Indigenous land rights and rights to natural resources
- Testimony of Sister Lorraine Garasu as an *internally displaced person*.
 - Case studies and reflection

The following key entitlements of adequate housing are discussed within the testimonies:

- (1) Security of tenure and freedom from dispossession
- (2) Public goods and services
- (3) Environment goods and services (land and water)
- (12) Security and privacy
- (13) Violence against women

Background

Bougainville is in a special situation as people today live among the ruins of war and conflict that lasted for ten years. In the peace and demilitarisation processes women's housing and other rights

have not been a priority. "Land is life" is a common motto used in Bougainville. Today land is being fought over more than ever before. The landowners mistrust all foreign interests as they are still striving for self-determination over their own land and resources.

The primary duty-holder for human rights in Bougainville is still the Papua New Guinea Government, as the State. The main violator has been the private company Rio Tinto and the PNG government. The Australian government is also seen as a violator and duty holder. This is a timely consultation as we have drafted a second constitution for the Bougainville People of Congress and now Bougainville is about to have its' own elections for an autonomous government (2004 – 2005). As we move towards an autonomous government, we also need to see the autonomous government as a duty holder. The elections for an autonomous government is a process in which we as women can lobby our own leaders and the PNG government, as well as seek international support. 3 positions will be set aside for women representatives in the elections.

The blockade imposed on Bougainvillean citizens by the PNG government during the conflict denied them their basic human rights. Customary practice became the 'pillar' for common survival, as this is all they could turn to in the time of conflict. They returned to traditional medicines, re-learned about the land, fermented coconuts for fuel, re-integrated the chief's roles and regained a sense of identity, among other things. Custom remains a sensitive part of forming the new autonomous Bougainville Government. 'Post-conflict' Bougainville today recognises and practices the customary reconciliation ceremonies. It is important for customs to be integrated with human rights to achieve equality in the community.

In the conflict, people's property was burnt - you can still see blood and the graffiti on the walls. 32% of the land used to be cultivated as cocoa/copra plantations, all of which was lost. People lost thousands of dollars and many still owe the Banking Corporation on their outstanding loans. How can the survivors of war be expected to pay back these loans?

The over-riding principles of self-determination and gender equality were violated including many of the rights in UDHR, CEDAW, CRC and ICCPR. Australian aid money funded the war – the PNG government used Australian aid for helicopters, mortar shells and other equipment. Recently I was walking near my home in Bougainville and saw an Australian mortar shell still lying on the ground. As a result, there is a lot of mistrust among Bougainvilleans towards Australians.

Victimisation – the elderly were the first to die. Many of the youth today are children that were born into the war (1985-1997) – they are called the 'black generation'. Many of them were born under a tree or on the side of a road and all they know is fear and being on the run from the police and army. This generation is vulnerable to having problems in the coming 10-15 years. The psychological loss has in many ways been the biggest loss.

There is no office in PBNG or in Bougainville; there is no budget allocation for restoration and reconciliation.

Testimonies:

Taloi Havini

(1) Security of tenure and Freedom from dispossession

In this testimony I would like share with you my experience in becoming an *exile* and as an *externally displaced* person from Bougainville my home; due to the Bougainville Conflict (1989-1997) the total PNG

military blockade (land, air, sea and communication) and for being part of a family who stood for the right for self- determination and humanitarian aid.

My name is Taloi Rengetsi Havini and I am from Buka, which is the northern Island of Bougainville. I was born in Bougainville on the mainland and remember growing up in a place of beauty and warmth from my clan. My brother says that my “feet never touched the ground”; because all the mothers of the Clan (my aunties) had loved us young ones so much we were always being held high.

But it seems I only enjoyed that love and warmth for the first eight years of my life (thank God, as they are my most cherished memories). However, when I became a nine year old in Bougainville, I can recall that change of feeling free as a child, to suddenly witnessing the horrific expressions on my mothers’, aunties, and all the adults’ faces, as these were the first signs of war emerging. I could no longer play about the back yard, as we were being watched; or play with my neighbours, because they were all fleeing the country. I grew confused, quiet and responsive to the tension in the town and among all the people.

In 1989 the State sent in soldiers to enforce a law passed by the State claiming that all the land belonged to the crown – and was to be used for the mine. People were forcedly evicted from the land. Women chained themselves with their babies to the trucks. Riot police were sent in. I remember the fear because men accused of being members of the Bougainville Revolutionary Army (BRA) were beaten.

Even for a young girl it was clear that my freedom to run and play was halted by the PNG Police check points and their curfews. I did not know what was happening, or going to happen, but I remember watching the explosions above the water towers in Arawa and the results of war around at the Panguna mine; flares up in the sky, people leaving everyday, my relatives and friends were always crying and saying their goodbyes. It was clear that the adults could forecast a bloody war, and slowly people were either leaving the town to go in the Bougainville Mountains, or go to PNG, even go to the Solomon Islands. Arawa town was not safe. Uncles’ and brothers suddenly ‘went missing’; our neighbour’s brother went missing and was killed. Crimes, thefts, vandalism were happening more and more. Fear was everywhere; people were packing everyday. Our house was burnt down in the main town.

Among the families to leave, we were on those last flights out of Bougainville, as the extended family in Australia pleaded with my father to bring us out of Bougainville. I was told to pack my things, and, and to also leave behind some of my things for my cousins to have. We travelled north to Buka, to say good bye to my fathers Clan saying we were only going for “three years”. I wished we never went to say good bye that day. It seemed my world was crashing, but I was too young to be let in on the story. I never knew why my Aunties sprawled all over us; they lay in front of the family car, refusing to let us go. One of them was screaming, “I’ll never see you again”, which happened to be true. She died during the blockade.

It has not been easy for survivors who stayed to care for people like me and refugees from Solomon Islands, coming back to Bougainville.

Matrilineal systems in Bougainville are an important aspect of women’s security of tenure, women own the land and land passes through the women’s line. This is the indigenous culture and it is still practised today. But for women who were evicted from their lands during the conflict and relocated to care centres, returning home to their lands has been a problem. The peace talks focused primarily on negotiations

between the PNG government and male leaders, women and their issues (e.g. dispossession, freedom of movement and land tenure) were largely neglected. While women play significant roles Bougainville society, the reality is that women are still coping with the trauma, stress and medical ailments from the conflict. Due to the conflict women have lived as marginalized peoples not knowing how the outcomes of negotiations between men on land and tenure would be resolved.

(2) Public goods and services - PNG military blockade

The next year in 1990, the Blockade was imposed all around the Island. A total communication blockade cut us off from our families for the next nine years while we lived in Australia. The blockade violated a wide range of human rights by denying people access to communication, media, health, culture, development, families outside of Bougainville. A recent publication, "Mothers of the Land", has captured many women's personal testimonies from during the blockade.

It was a strange and frightening experience to be living in a foreign country, different people, and have those thoughts still going around in your mind as a nine-year old child. It took many months for my brothers and me to stop looking for cover, when a helicopter flew over us here in Sydney. Our family home in Sydney immediately became a point of contact for humanitarian aid, media, and lobbying for Bougainville's right to self-determination. Even though we lived in Australia throughout the war, Bougainville was talked about every morning and every night; I think this is what it means to be a political exile. We have since found that our home in Arawa was burnt down and our village home taken over to be used as the church.

When I was in high school I received smuggled letters from my closest cousin sister who survived in Buka behind the blockade. The letters were not addressed to me, but sent as to my Australian aunty, hidden inside the package was the letter for me. They could not address things directly to us, because they actually became targets of the PNGDF, because of what my father was doing. Saying things like "Australian aid money was going into PNGDF bullets, helicopters, and so on". So my cousin sister was still very brave to send those letters.

We were the same age at 14 or so. Here I was getting an education, and living an Australian life, I had a home to live in, with my grandmother and the rest of my family: while at the same time I read about her hiding in the jungles, always moving, she never seemed to write from the same place. She told me about witnessing shootings, and killings, and then the news came about her, that she got raped by four rascal men.

Under the blockade women were victims of rape, forced marriages and many were widowed. The anxiety and trauma from the war continues for many today.

(3) Environment goods and services (land and water) – indigenous land rights and rights to natural resources

The people of Bougainville were the first indigenous in the Southwest Pacific to face globalisation in the sixties by way of a Trans-national Corporation (Conzinc RioTinto); when the first copper mine in the region was carved out of the mountains and valleys of Central Bougainville. Our people were totally unprepared for this new intrusion. Before long they soon witnessed the destruction of their environment, flora and fauna; but also the loss of their traditional and customary land, valleys and mountains - to create the biggest man-made hole in the Southwest Pacific.

Our people were inexperienced and powerless against the powers and might of the governments of Australia, Papua New Guinea, who were colluding with Conzinc RioTinto. They were disempowered and stripped off their natural and human rights, as enshrined in the United Nations Universal Declaration of Human Rights. One of the “fallacies” was that the “Crown” (which has unfortunately been inherited by the government – PNG) “owned all the minerals found on and under customary land in Bougainville” for that matter also anywhere in Papua New Guinea. But this was against the customary land tenure laws of the people where the people own their land and everything that is on it or under it, including the reefs and the sea.

A further 32% of Bougainville’s most fertile land was also cultivated by foreign interests and establishing some of the biggest coconut and cocoa plantations in the Pacific region – since the German colonial period.

A decision made in distant Port Moresby (capital of Papua New Guinea) without the knowledge of the landowners in Bougainville was based on the 1928–1966 Mining Ordinance. Under the terms of this Ordinance:

- *Access to native land could be granted by the Administration – without reference to the owners, that is the traditional landowners;*
- *A Prospecting Authority (PA) or such a license is granted for a specified area on traditional and customary land where the miners will prospect;*
- *A Prospecting Authority in turn directs the company to pay an annual fee to the Administration (i.e., the government) but not to the traditional landowners;*
- *In fact the said Ordinance did not even have any provisions whereby such a fee could be paid to the traditional and customary landowners whose land was occupied;*
- *The authority further permits, prospecting for gold or a specified mineral or minerals on any land not otherwise excluded by the Ordinance, subject to such conditions the Administrator thinks fit and specifies in the authority. A prospecting authority could not cover an area exceeding 10,000 square miles (25,899 square kilometres) and the terms of the authority was normally for up to two years (Mining Ordinance 1928 – 1966).*

The Panguna mine began commercial operations in April 1972. For the CRA mining company, its shareholders and the Papua New Guinea Government, the mine was a multi-million dollar earner. For the Bougainville landowners it was an environmental disaster. According to Paul Quodling, then managing Director from 1956 to 1987 stated quite clearly that the land on which the copper ore was dug out from would be lost for ever, and would be replaced, most likely, by a man-made Crater Lake. Some 50 percent of the solid waste was also systematically stacked in a nearby valley and these waste dumps added some 300 hectares of flat land for the extension of mine facilities.

Over a billion tonnes of poisonous tailings from the mine was dumped straight into the Kawerong and Jaba Rivers. Alternative methods of dumping the poisonous tailings such as tailings dams were considered by CRA mining company but ruled out because of the high seismic activity in the area. A pipeline transport was also considered by the company to dump the poisonous tailings into the sea but was rejected on technological and financial grounds. Either way would have not made any difference in the destruction and pollution of the environment.

The tailings contained heavy metals such as :

- copper
- zinc
- cadmium
- mercury
- molybdenum
- sulphur
- arsenic
- mercury

The systemic effects of cadmium include:

- fatal illness
- severe breathlessness
- lung and kidney damage
- anaemia and
- adverse reproductive effects

The early symptoms of mercury poisoning include:

- psychological and emotional disturbances
- tremors
- kidney disease
- nerve degeneration and they also have adverse reproductive effects
- Before the mine even started hundreds of hectares of forests were poisoned then chopped down and burnt
- Whole forests died
- Birds, flying foxes and possums disappeared
- The Panguna valley was turned into a huge crater.

By mid 1971 the naturally clear rivers were already silted, had increased in size and intensity and widened causing blocked stream flows in many places, flooding and new swampland. The toxic wastes were carried down the Jaba River to the coast, leaving a trail of death 35 kilometres long. The Banoni people lived on the coast near the mouth of the Jaba River before the river widened. The poisonous tailings sediment flowing from the Jaba River into the bay increased the size of the delta from 65 to 900 hectares and spread silted water far out from the shore, with some known or suspected lethal effects on marine life up and down the coast. The fish in the rivers developed ulceration and died.

In Bougainville forced eviction and displacement is a very big issue that has been completely overlooked by the Governments. It is in our Bougainvillean culture that land is passed through the women's line, being a matrilineal culture, different to the cultures of those who have come and evicted the true landowners, being the women of Bougainville.

Landowner Uprising - in 1988, a decade and a half later, the worst fears of the Bougainville people had been confirmed. Perpetua Serero, a leader of Bougainville's matrilineal landowners spoke to the media clearly stating that:

- They did not grow healthy crops any more;
- That their traditional customs and values have been disrupted and;
- That they had just become mere spectators as our earth were being dug up, taken away and sold for millions;
- That their land was taken away from them by force.

Our people had also experienced one of the worst human made environmental catastrophes of modern times. All aquatic life in the Jaba Valley was destroyed with the pollution from copper concentrator, the people losing their fishing ponds, creeks and, estuaries and rivers. Bougainvilleans living on the outer islands face rising sea levels, lack of wood for fires and homes and no local economy.

(12) Security and privacy - The Bougainville Conflict: Evictions, Internally and Externally Displaced Persons (1989 – 1997).

After 25 years (from 1964-1989) of environmental degradation, the landowners of Panguna in Central Bougainville, the site of the RTZ mine, could not take it any longer and started taking things into their own hands. The militant landowners began a campaign of sabotage to close the operation of the mine.

In response to this the Papua New Guinea Government dispatched its notorious "Police Riot Squad" into Bougainville in December of 1988. In their frustration from not apprehending the militants as they expected, they started turning onto the civilian population by harassing them. One of the strategies they used was to burn down their villages. From early 1989 to December, some 1,500 villages in Central Bougainville were raised to the ground by the PNG Riot Police Squad. More were to be set alight in including semi and permanent homes that had cost thousands of dollars.

In March 1989, the PNG Government quickly rushed into their parliament special legislation to formally deploy its army into Bougainville to assist the police. The deployment of the PNG Defence Force was to be formally under the command of the PNG Police Commissioner. This was not however the case as soon as the PNGDF landed on Bougainville; as in fact, they immediately took over from the Police Riot Squad in running operations all over Bougainville. They carried out early morning raids to capture civilians and bring them back into so-called "government care centres". The aim of this exercise was to clear these villages and then declare them as 'operational zones' against the militants who at this stage had now called themselves as the "Bougainville Revolutionary Army (BRA). More than 20,000 civilians were herded into these care centres all over Bougainville.

These forced evictions of the civilian population completely disoriented them. They had nothing to do in these camps, like gardening, tending to their animals and even working on their cocoa and copra plantations. Instead of living in their village houses, they were now living in make-shift houses. There was no privacy and no sanitation. They were just a place to put people in while the two factions fought.

In Arawa the capital, two playing fields were immediately turned into tent cities. These Australian supplied tents were hot and uncomfortable to sleep in. The close proximity in living space was also something the people were not used to, having been herded and captured from different villages with

different customs and tradition. There was also regular breakout of infectious diseases in these camps that actually made them quite unhealthy, as compared to living in their own villages with lots and lots of open space and fresh air.

The villagers that escaped and refused to be herded into these “government-controlled” areas actually ended up into the “BRA controlled areas, where unfortunately there were hardly any services such as health. Whereas the people there actually enjoyed a much more healthy living; thousands of them literally died from normal preventable diseases such as malaria, respiratory disease, neonatal deaths, etc. because of no drugs or services.

In view of this more than 5000 *Bougainville displaced persons* became refugees in the Solomon Islands, living there until the “peace” was signed in 1997. It has also been estimated that between 15,000 to 20,000 people perished during the period of the Bougainville Conflict, mainly through normal preventable diseases but also from fighting between the PNG DF and the Bougainville Revolutionary Army.

The Bougainville people’s right to self-determination and their rights to land were taken away from them by the PNG government when they nominated indigenous lands to be “crown land” without any compensation, options for leasing or future plans.

(4) Affordability / (6) Accessibility - Post-Conflict Experiences

More than ten years of conflict in Bougainville have made our people face many current hardships:

- Access to basic goods and services are only available in the town/urban areas (e.g. there is only one bank in Bougainville so people have to stand in line for two hours to do any banking; five villages only have two water tanks because the tanks are too expensive). The lack of access also makes it increasingly difficult for women to maintain a basic standard of human rights with regard to health, education, socio-economic opportunities, etc. PNG is leading the Pacific in HIV/AIDS rates – many people don’t know about STDs or how to deal with them. Women are denied basic sanitary needs. People are dying of preventable diseases (e.g. high blood pressure) because there is no affordable/accessible transport to the hospital, there is no access to affordable medicine and they cannot afford to stay in the town where treatment is available. Sister Ruby Marinka reported that from 1990-1994, in a village with a population of 2000 people, there were 80 maternal deaths, 140 deaths of children under 5 year olds and 130 still births - and these figures are expected to rise, given the ongoing inaccessibility and unaffordability of health care;
- Our women and children are like beggars on their own land, with lack of proper housing, sanitation, water supplies and transport – all the things we once enjoyed;
- As part of the reconstruction, people need building materials to rebuild their home, but they are very expensive. Currently people are living in makeshift traditional structures with thatched roofs. Many are waiting for reconciliation to occur before land and custom rights are returned;
- Safety continues to be a big issue as perpetrators from all factions continue to walk around freely. There has been no accountability for atrocities committed during the war. The customary practice of reconciliation has assisted somewhat in enabling people to continue to live with each other, in the absence of any legal accountability;

- It has been very difficult for them to try and re-establish themselves again, as there is no economy and more salaries for our public servants, very few opportunities to earn money. The economic opportunities that were so prevalent before the conflict are not so present today - and so it is not so easy to find money to rebuild their lives again;
- The clan plantations lack maintenance, and it is hard work clearing the bush, pruning and re-establishing them;
- It has not been so easy to re-build again entire villages that were razed the ground by both the PNGDF, The Resistance Forces (working for the PNGDF) and also by the Bougainville Revolutionary Army (BRA);
- New land disputes have become a serious phenomenon, due to the internal and displacement of thousands of people, who returned to find their home sites taken by others;
- Once the most prosperous region of Papua New Guinea, Bougainville is the poorest and least developed region, because of the destruction of its total economic structure, and the lack of all public works and social services infrastructure - hospitals, schools, houses, infrastructure, farming equipment, basic services, personal belongings, cultural property, and historical property was all destroyed;
- Banking services are not accessible to most people. Many loans incurred before the war have been escalating in Port Moresby, even though they are based on destroyed properties. No action has been taken by the courts to address this crippling burden on the people of Bougainville. In contrast, the PNG Government did address the outstanding loans that were owed by big businesses in Bougainville to the tune of between \$3 million to \$5 million dollars.

A motto exists in Bougainville, where people say "Land is life". For women it is "life" because no matter where you live, even if it is in the middle of a crisis, if you were removed from your traditional land and moved to a "care centre", or a valley, or the bush, or the caves, it was important to have a garden close by for food. Women were forced to always carry seeds with them to plant a garden even under military occupation. So land is life, and customary land is that land which is the home of your ancestors. The war and conflict has made the land of women battlegrounds. Because the war has shifted people off their traditional land and onto other peoples' traditional land, this has made our culture today very unsettling.

Sister Lorraine Garasu of Ieta Village

(12) Security + Privacy / (13) Violence against women.

Bougainville is a matriarchal society, as the land is passed through the women. Women hold the titles for the land.

All land in Bougainville is still customary land, except for small areas throughout the Island acquired by the government from the people, when payments was made by way of axes, tobacco, sugar, tinned meat, and so on. This is how the Elders remember such transactions with the European plantation settlers.

Today land in Bougainville is a major issue, since the beginning of the Bougainville conflict/war; people have had more problems and issues with land than ever before.

The following is a pressing example that began during the time of colonization and continues to this day. On Buka Island, across from the northern tip of Bougainville, Buka airport is the only airstrip currently used by commercial as well as government aircrafts.

The Buka airport and township lies on the land directly belonging to my fathers Clan; and the terminal, car park, the old civil aviation workshop and part of the run way belonged to my grandmother. She used to make her gardens in the days before the Japanese landed on Buka Island and forced the people to flee.

The Japanese occupied that land belonging to my grandmother, and they made the airfield that was used throughout world war two. At the end of world war two the Australian Administration Government took over the airfield and turned it into an airport as we know it today.

Just September this year, the Ieta people have closed down the airport, and wharf twice in protest that they have not been properly paid by the government for their land. This is the only access 200,000 Bougainvillean have to the outside world. So our rights to freedom of movement are now in conflict within our people's rights to their own land that is so necessary for subsistence living and residential needs.

The Ieta people live in town or near town and face the costs of urbanisation (noise, traffic, businesses) on their land. They need to be respected and honoured as helping the rest of Bougainville with communication and transport for goods and services. The government has to respect their claim and negotiate with them.

Case study 1 – Destruction of a village developed through personal initiative

Ieta village is surrounded by the Buka Township situated on the east coast of Buka Island, and lies along the coast facing the northern tip of Bougainville. When I was growing up in the early 1960's, the village had an organized system where they established a savings and loan Society, with the aim of raising the money to build better housing including access to fresh water.

By the late 1960's and early 1970's with money from their interest and other personal sources, families were already building permanent houses. By the late 1980's most houses in the Ieta village had access to town electricity and a few people were beginning to install telephones in their homes.

By May – June in 1990, on a Sunday early evening some members of the Bougainville Revolution Army (mostly from the rascal element) came and looted what ever was in the homes and torched down the houses, not a single house was left. People did not have time to pick up valuables, clothes, and all their belongings. They just picked up their babies and children and ran away into the neighbouring villages which were miles away. Families were displaced; they were dependent on their neighbours who were their relatives.

In October 1990 the PNG Defence Force landed on Buka Island, they set up camp at Ieta village, using heavy equipments to clear the land, changing the whole features of the village, cutting down fruit, nut, and coconut trees to build army bunkers as barricades against the enemy. The PNGDF occupied the village from 1990 to 2002.

By mid 1990's some of the families at their own initiative moved back into some part of the village that were not occupied by the PNGDF. With no outside assistance it has been really difficult for the people to rebuild what they have been able to build to a certain standard over a period of 30 years.

Case Study 2 –

Kokopo village in south Bougainville is made up of small hamlets. During the period of armed conflict when the BRA and PNG used their land as a battle field, half of the villagers fled inland to set up shelter and hide, while the other half fled and moved into the areas that was controlled by the PNG and set up care centres at the Piano Mission Station.

I visited the care centre in November/December of 1994 and lived in the care centre for a week. While people had enough from their food gardens to eat and they slept in traditional saksak houses as the proper built care centre was overcrowded with no sense of privacy. Most of the women were in the care centre, as the men had to hide in the bush from the PNG Defence Force.

While the Chiefs and Elders had the responsibility of managing the centre, the women had to keep the gardens tended so there was enough food for the people in the centre. People still lack basic essentials today like clothes, cooking pots, soap, medicine, and it is too expensive for those villagers living inland.

The PNGDF had their camp at the edge of the Mission Station behind the care centre; they made a curfew from 6.00PM to 6.00AM. Women were also banned from going to the gardens when the PNG and BRA operations were going on at the time. All those families who lived like this for throughout the years of the blockade, still have this trauma of living under constant rule and felt that they have lost their freedom, not just their land, homes, and villages to the warring factions who evicted them.

Poem (a reflection on the aid problem in Bougainville) :

“Flavour of the month/decade”

*Here they come with their back packs
Full of papers and for one month
There might be an agenda or two
Hidden down under.*

*They smile at us...woo us into love and friendship
They look at us...*

Getting a feel for what we feel like...

Am I the right flavour???

Are we the right flavour???

Is it HIV-AIDS?

What is it then?

‘Peace Making’ and ‘Conflict resolution’

Is it with a tag that reads;

‘Good Governance’ and ‘civil society’,

What will it be next? What was it in the 1990’s?

Was it ‘Literacy’? Or ‘violence against women?’

Was it ‘capacity building’ for NGO’s and CBO’s?

Did I hear something about linking, networking, and skill development?

Of course it was about mining, logging, and advocacy

Did they say something about nuclear testing at some stage?

*Or did I not hear it right?
Women and Children's health was what they were targeting.
No you are mistaken; it is micro – finance,
For that is the way to go mate, the way to alleviating poverty.
I look at myself, at us and wonder...
Have they reached their goal yet?
Did their aid money do us any good?
How sustainable was the cause?
What about the community partners?
Have they grown? Are they still there? Are they in a coma?
Has sustainable development been achieved?*

– Sr. Lorraine Garasu

Conclusion

Let me conclude by saying that the women of Bougainville are no different from the majority of our women in the Asia-Pacific Region. Who daily face issues of social and economic discrimination, injustice, poverty, lack of proper housing, basic sanitation and opportunities to improve their lives.

Yet, women as in our matrilineal society are the “key pillars” to the survival of and the continuance of human development mankind.

The Bougainville Region was once the most developed and most advanced in Papua New Guinea. It is now the least developed, having badly affected by the Bougainville conflict/war, where we lost between 15,000 to 20,000 civilians mostly women and children; and also its entire social and economic infrastructure.

The women of Bougainville were also the first in the sixties, with the first mining company to lose their land, from unfair legislation that favoured the then government of Papua New Guinea and the Conzinc RioTinto - and not the landowners. In its place they left one of the biggest man-made holes in the Southwest Pacific with the TOTAL LOSS of Land to the landowners.

Having just come out from a ten-year war/conflict the women and children of Bougainville are still struggling to put their lives together in the midst of a great lack of social and economic opportunities, where they could be assisted to improve their lives.

We also humbly now request the assistance of the various United Nation Agencies on Women and Children; our sisters in our Asia-Pacific Region to help your sisters in Bougainville combat all these kinds of injustices. As I once heard a leading woman leader from Africa say in a radio interview, “*you educate a man, and you only educate him; but educate a woman and you educate the whole world*”.

Actions/Interventions –

- Some positive initiatives already being implemented are – AFT police training, micro-finance training; women's participation, HIV/AIDS awareness;
- Outstanding loans to the PNG Banking Corporation incurred before the conflict be waived;
- PNG government to allocate budgets for rebuilding Bougainville;

- Access to affordable materials to construct housing;
- Holding accountable those who committed violations during the conflict;
- PNG government to negotiate a resolution with landowners;
- Autonomous government to ratify international human rights conventions;
- Conduct human rights awareness;
- Establish a human rights and reconciliation office to run campaigns on these issues;
- Education for women;
- Gender training for local NGOs and government officials;
- Cooperation with UN bodies and international NGOs to promote women's rights;
- Media accessible to all, not just the privileged who can access TV, radio or newspaper;
- Land reform;
- An initiative that should be supported: The combatants, PNGDF, BRA, BLF, should have been made responsible in a re-building exercise, reconciling and building back those villages that they burned down. There are still outstanding cases of reconciliation where families are now living in temporary homes, living off other peoples water tanks, cannot afford to build with permanent materials. We are waiting for reconciliation over our land, and wanting our custom rights to be restored.

Cook Islands

I am a victim of domestic violence, my mother was a victim of domestic violence, and I was raised in a family other than my own because of the domestic violence. This is a personal story of my mother, who was beaten up by my father during his alcohol rages, for not cleaning the house properly, according to his expectations.

When we were growing up we always knew what mood my father was in and when to leave the house, so that she could take us and run to an Aunty's house. My mother was a teacher so contributed a lot more to the family. But due to the domestic violence she left her husband and returned to her home on the outer island. But she lost her job and couldn't take all three children. So she left one child (myself) behind with another family, who were also struggling on one income (FJD30/week). Watching my sister's relationship today is like watching my mother's life 30 years before.

Now I work on proposing actions to make sure that this doesn't continue to happen with my daughters and my sister's daughters.

Elements –

- Security of tenure – she lost her matrimonial home; she had limited rights in her family home in the outer island because it belonged to her brother who was also the chief. She could add to the house (e.g. maintenance on louvers/roof) but because it was the Chief's house she could not take anything with her and she would have to move at some point;
- Accessibility/Habitability - Her brother allocated her some land but it was far away and had no access to electricity. She had to build the house, clear the land (working by kerosene light) and buy the kerosene. My sisters say I had the easier life because I lived in the city with tap water;

- Cultural impacts – my mother was blamed for leaving the relationship;
- Freedom from violence against women – domestic violence;
- Security and privacy;
- Safe environment.

Sources - Constitution (human rights clause); Cook Islands Land Act 1915; Crimes Act - recognises assault but doesn't specify vulnerable groups of women; Code of civil procedure; As New Zealand ratified CEDAW, Cook Islands is also deemed to have ratified; Ratified CRC in its own right.

Overriding principles - Non-discrimination, gender equality and rule of law.

Guarantees - Constitution – but it is not implemented; CRC, CEDAW; PTI; budget for social services - but this is minimal; in the 1997 economic crisis social services allocations was cut, even though at that time they were the most important for vulnerable groups.

Obstacles - Bad law, inadequate enforcement of law; no access to justice; lack of resource allocation for social services; breakdown of extended family; lack of confidentiality – women will not seek help because the 'coconut wireless' is very effective in Cook Islands; cash economy - rental housing costs are very high (i.e. difficult to get for a house for less than \$150/week), which is difficult to afford on low wages; some low income public housing is available, but commonly the public officials live in them.

Victims - Wife; children

Losses - Loss of job; rental; loss of status – not seen as just a woman but as a battered woman; insecurity – don't know when the husband might return; which creates stress; loss of freedom of movement – my mother didn't want to return to the outer island but she had no choice. She wasn't able to live on the main island because of the threat posed by him being there Violator; husband; extended family who told her to find her own place; state – judiciary, police, social services – don't recognise rights of women to adequate housing.

Actions/Interventions –

- Change and improve laws to recognize women's vulnerability – women should be given access to housing in crisis situations;
- Media advocacy, education and awareness;
- Enforcement - legal literacy of the police – because police are also likely to be perpetrators of violence too;
- Parallel reporting to CEDAW (Cook Islands has not yet reported to CEDAW);
- A gender sensitive women's minister. The Cook Islands has had four coalition governments in the last five years. The first minister was a woman and tried to push CEDAW but she has been replaced

by a male minister who would rather spend \$2000 on a cocktail function than advance the CEDAW convention;

- Support services for women experiencing domestic violence;
- Micro loans (without security) available for women in crisis situations;
- Provision of low cost housing;
- Provision of low cost day care system for children – usually women have children with them when escaping domestic violence, which prevents them from finding a job, or having to limit it to evening jobs; the equivalent of a formal day care system is school (children as young as 3 years old are sent) or it costs \$150 /week/child. An unregistered baby sitter can be hired for \$100 week, who will also provide food and wash up;
- Provision of counselling for women and men on the psychological effects of living in violence.

Naemah Khan (FWCC), Fiji

Fiji Women's Crisis Centre (FWCC) is an NGO, established in 1984, to work towards eliminating violence against women (VAW). It has three branches in Ba, Nandi and Labasa. The core function is to provide counselling and support for women and children who are victims/survivors of violence. We also do lobbying and advocacy for legislative and policy changes, community education, training of other agencies and institutions (e.g. military, police), and information and research on VAW and human rights. Our work is based in Fiji and across the Pacific. We are also the Secretariat for the Pacific Network for VAW.

A major part of FWCC work is the counselling and support of victims/survivors. But in addition to providing counselling for the victims, counsellors follow-up on behalf of clients with police, social welfare, domestic court and other legal services, and finding accommodation for women and children that come to the centre. Most of the information in this presentation is based on the research and anecdotal evidence from this work done over the last 20 years.

Research undertaken in 2001 shows that at least 66% of women reported being beaten up by their husbands, and 3 out of 10 on a repeated basis. FWCC deal with 1000-1500 clients per year, who are mostly women with a history of violence in their lives. Women are generally poorer than men. Only 39% of women aged over fifteen years are in the labour force. 80% of women have no jobs or income.

Obstacles - When we talk about housing generally men are the home owners (or are seen to be), or if it is rented accommodation it is leased under the husband's name. Traditionally, indigenous Fijian women can have access and use of land but not ownership of their husband's or father's lands. The land is passed through the patrilineal line.

Putting VAW into this situation changes the picture completely. Violence or the threat of violence makes women leave their homes, their husbands home, homes they jointly own, even homes they own in their own right. Women normally leave with their children.

Impacts - Part of the violence and control the perpetrator enforces on the woman makes her feel she cannot make the perpetrator leave, but that she herself has to leave. The effects of the violence also limit women's abilities to access finances (often the perpetrator will control the finances) or seek

employment or further education, which in turn also limits a woman's ability to acquire independent housing. The inability of women to leave because of the above factors, in addition to the lack of shelters or half-way homes for women, make women more vulnerable to remaining in violent situations.

Causes - Fiji is a very patriarchal culture - in its beliefs, attitudes and policies. For example, the banks require the husband to guarantee loans taken by a woman; the housing authority gives first preference to married couples.

Due to custom, if a daughter runs away from her husband and returns to her family, her family is pressured to leave their home, to evict themselves, or evict their daughter. The family has to leave if their daughter has a relationship with a man, other than her husband. Many women cannot leave the house after 6pm.

Obstacles - In this system, where do divorced women or women escaping VAW go? Women have few options – relatives, HART or the Family Care Centre. Housing Assistance Relief Trust (HART) provides housing for single mothers, but requires women to produce documents such as birth and marriage certificates and a maintenance case number. It is difficult for women to get these documents at times where they are escaping violent situations. HART also has very controlling policies (e.g. women are not allowed to leave the house after 6pm; women are not allowed to have male visitors at the home; women can only move around if they have filed a case against their husband and are receiving maintenance; when a woman moves in she has to pay the previous tenant's bills). The judicial system is also an obstacle because it is slow and costly.

Further, the judiciary discriminate against women (i.e. magistrates and judges make gender biased decisions against women – ordering the woman to return everything of hers she had removed from the matrimonial home). Most judges are male, even the few female judges are gender biased.

Case studies (real names not used)

Case Study 1: Sally

Sally is 19 years old and is physically disabled. About two years ago Sally and her mother called FWCC and reported that Sally was being sexually abused by her father. Both the mother and the daughter were very scared, the mother had suffered years of emotional, physical and psychological abuse by her husband. FWCC contacted the Social Welfare Department but no action was taken. In the end FWCC counsellors removed Sally, her mother and younger sister from the house. FWCC arranged for accommodation at the Salvation Army Family Care Centre. Sally laid charges against her father. However, after sometime Sally's mother returned to her husband.

Sally had to be moved to various places because there were no adequate facilities to meet her needs; she was especially vulnerable due to her disabilities. She is currently in the care of an institution that provides education for children with disabilities; however this place is temporary and is not appropriate for her because she is an adult.

Case Study 2: Sera

Sera got married Joe and moved to her husband's village. Sera's family got her a job in Sydney, Australia. A few months later they also found a job for the husband in Sydney. The couple worked

and sent money back home to his village and built the matrimonial house for them in Joe's village. Sera returned to the village and matrimonial house. Joe remained in Sydney but started having an affair. Joe asked her to move out of the matrimonial house and harassed her. She approached the Turaga-ni-koro, but they told her to move out of the house because it was the husband's village.

Case Study 3: Nisha

Nisha has three children from her marriage. Her husband does not work, takes drugs and is very violent physically, emotionally and verbally. Nisha has stayed with her abusive husband for 16 years. She has left her husband many times but has always returned because she has no support, no means of survival (she doesn't work either). Her children's behaviour has changed over the years due to her husband's violent nature. Her children are now aggressive, showing signs of abusive behaviour towards each other and also toward their mother.

The day she left her home and husband with her three children, Nisha came to FWCC seeking help. FWCC helped her to get temporary shelter at the Salvation Army Family Care Centre. There she learnt to do things on her own, to survive without her husband. Family Care has a maximum stay period of 2-3 months. She is now living with her mother and has applied to HART (Housing Assistance Relief Trust) for a permanent place.

Nisha has no money of her own and no source of income. Due to her abusive relationship Nisha is now also showing signs of aggressive behaviour.

Elements – security of tenure and freedom from dispossession; public goods and services; affordability; accessibility; security and privacy; freedom from VAW.

Guarantees – CEDAW, CERD, CRC, Bill of Rights.

Overriding principles – gender equality; self-determination.

Victims – the women; the children are vulnerable.

Costs – Nisha: The costs associated with applying for housing at HART: \$20 non-refundable deposit, \$1/week rent, \$15/month for HART community hall electricity and rubbish collection. When she applies for maintenance the maintenance application fee is \$5.50, birth certificate \$2.25, marriage certificate \$5.63. She also has to pay travel costs for going to the court (for about 1 month). She also pays travel costs to go to social welfare to collect her allowances and purchase food (\$2-3 each way on bus). But the family assistance she receives is only \$30/month.

Costs incurred by FWCC include transport costs of taking client to service agencies, clothes for the client, (because she had left her home in a hurry, so her husband would not know).

General costs – A paper prepared by the Governor of the Reserve Bank (using base figures from a study on family violence conducted in New Zealand) found that \$97 million was the direct cost borne by victims and their families. The government spends \$200 million on welfare, law enforcement and health care of victims. FWCC's statistics show that victims incur dentist costs, x rays, treatment of bruises, cuts, pregnant care (a lot of women are beaten up when pregnant – 40% of victims).

Actions/Recommendations –

- Government is responsible for providing adequate shelter and homes for women victims of VAW;
- Shelters and half way homes should take into consideration the different cultural needs and needs of people with disabilities;
- Fiji government to recognise that there are people with disabilities in Fiji and to meet their responsibility to provide adequate housing and independent living programmes for people with disabilities;
- Government to address the root causes of women's poverty (i.e. women remain in violent relationships because women do not have anywhere to go; only 30% of the paid labour force is women) e.g. provide education opportunities, create viable income generation schemes (not just making handicrafts), help women become economically independent;
- Human rights education training for service providers;
- NGOs need to lobby for legislative reform (e.g. in the new domestic violence bill NGOs are lobbying for women to be able to remain in the matrimonial home, until the children are of age, after which there is a distribution of property and the house is sold);
- Through this exercise we identified the need for data and research on: what percentage of FWCC clients are looking for housing; what percentage of our work is spent on looking for women's housing; how many resources are spent by government on housing women survivors of violence.

A new Family Law Bill will come into effect in June 2005, which we foresee creating some problems because the Bill doesn't recognise de facto relationships. Where a man and a woman have been living together over a period of time and have contributed equally to the property, if they separate she is unable to claim for the property unless they are legally married. 10% of FWCC clients are women in de facto relationships. This Bill does not protect these women. What happens to women in de facto relationships? This could impact on a lot of Muslim women who perform danika and are married in the community's eyes but under the law they are not married.

Testimonies on Indigenous Land Rights and Rights to Natural Resources

Presenters: Sose Tamarua, Solomon Islands participant, Susie Saitala Kofe, Betty Blake

Sose Tamarua, Papua New Guinea

It is indeed an honour and privilege for me to be given this opportunity to share a few words about the kinds of issues and challenges faced by women who belong to original customary landowning groups in urban areas of Papua New Guinea (PNG). I will focus my testimony on the plight of women from the villages of Motu and Koita tribes, who are the original inhabitants of PNG's national capital city, Port Moresby. I am happy to speak here as a mother and as the current President of the Motu-Koita Women's Association.

Allow me to begin with a brief outline of the environment in which our Motu-Koita women perform their role in traditional and modern contexts. PNG has a population of 5.3 million. Port Moresby has 215,000 people (as of the last census), which grew to 300,000 in 2004 - 5% increase per year. There are 11 Motu-Koita villages in Port Moresby, with another 15 located outside the city.

According to our oral history and recent archaeological findings, the Koita tribe migrated from the mountains down to the coast, while the Motu tribe migrated from the sea. Both tribes developed and integrated their cultures, developing similar customs in many areas of traditional life over generations of inter-marriages and other social interactions.

The villages are divided into "iduhu", or clans, where members live in their respective section, in close proximity to each other and near the clan chief. The clans have a mixture of Motu and Kita names with some found in more than one village, which is reflective of the process of assimilation over the years. There are now 32 Koita clans and 18 Motu clans, with a total population of over 40,000 people living in Port Moresby.

Just as in other parts of the Pacific, land ownership and rights are central to the existence and sustainability of our traditional societies in PNG. It should be noted that 97% of the land in PNG is still customary owned land and 3% was alienated during the colonial days. The idea of selling land is completely foreign to Motu-Koita tradition and custom. But vast areas of land in Port Moresby were acquired during the colonial days. The first compulsory acquisition of land was made in 1886 for a European cemetery. Legislative provision for such compulsory acquisition of land for public purposes was introduced in 1906.

Even now there are strong feelings among our people that the land negotiations and dealings in the past were unfair and improper due to the clash of the two different cultures and value systems, compounded by our people's obvious disadvantage in understanding English and the alien paper work. For example, deals were made where pieces of cloth and axes were exchanged for land, but in our traditional context that permitted only temporary use and occupancy of land, which always belongs to the clan. In one such case, eight acres of prime land was sold for two tomahawks and half a pound of tobacco. In the 1950s and 1960s, land for military barracks was bought for \$2 per acre, land for a technical college at \$25 per acre, and land for a huge residential area was bought for \$320 per acre. The possibility of leasing land was not raised with the traditional owners at the time.

The current rapidly growing and overpopulated city, with a continuing trend of urban migration (compared to other island nations in the Pacific) has marginalised indigenous people in Port Moresby, whose land and resources have been overtaken because of the expanding population i.e. marine and hunting places have been removed for development. We have become spectators in our own land – unwanted because we are a minority in a population where migrating communities have become the majority. The reducing clan lands have impacted on women who have married outsiders, because although they have potential for bringing benefits into family, they pose a threat to taking away already scarce clan land. Unless there is scope for returning available unused alienated land, our women will continue to compete with their clansmen for access to customary land where the demand is much higher than the land available.

Under customary land ownership, land is communally owned by an “iduhu” or clan and not by any individual. Membership of a clan in principle is automatic by birthright. All clan members have rights to use the land and are expected to respect the rights of other clan members. The clan chief and the elders consult in making decisions about the use of land.

In the Motu-Koita tradition, there are two types of leaders and these are:

- Leadership earned through deeds of bravery, power or success, such as in hunting, gardening, fishing, witchcraft and sorcery;
- Leadership inherited through the patrilineal system which makes the eldest living son the land leader (i.e. “mato omoto” or “tano kwarana”). This role is only to control use of the land, but not to own the land, as all land is communally owned by the clan.

Unlike certain parts of PNG where land is controlled through matrilineal inheritance, the Motu-Koita women have strict limitations on their rights and access to land. A Motu-Koita woman marrying outside the clan relinquishes her membership of the clan, unless she decides to live with her family in her original clan where she retains membership of the clan on terms and conditions determined by custom. A woman who has married an outsider but is living in the clan may plant useful trees (such as coconuts, betel nuts, mangoes, breadfruit etc.) on land allocated for her use but her descendents cannot use it as evidence of ownership. The trees are planted on the basis of permissive occupancy and descendents of the woman have access until the trees reach the end of their useful lives.

My only daughter is married to an outsider and has had to apply for a piece of land and build her house to become part of the clan. She is in the position where she cannot access the land unless she gets approval from the clan chiefs. Only the chiefs and community leaders can participate in such decision-making. But because she has married an outsider, and he is unemployed, her family has a lower status and is discriminated against.

Sources - International human rights. Equal rights for women have been a goal for PNG but many women are not aware of the rights that are available to them from the international level. CEDAW – Art 1 non-discrimination, gender equality; Art 14 (2) – rural women.

Obstacles - Customary laws preventing her from accessing land; lack of access to court because she does not know her rights; the character of the husband may be an obstacle if it means the chief does not accept their application; land not being available for women; land being held by the crown since colonial times.

Victim - The woman who has no privilege of land rights.

Impact - Insecurity of tenure; reluctance to invest because she doesn't know if she can stay; emotional and financial pressure on her, her family and on the community as a whole.

Duty holder/violators - The State is the primary duty holder. The chief and the extended family are the main violators.

Actions/Recommendations –

- Land alienated during the colonial administration, but currently under-developed, should be returned to the traditional landowners – this will enable more clan land to be available to share with women such as my daughter;
- Necessary institutional structures be established with user-friendly procedures to ensure traditional landowners' participation in and benefit from development on their land in a meaningful and sustainable way;
- An ongoing 'economic and benefits package' be established in recognition of the fact that the Motu-Koita people lost their land to the city and the nation during colonial times, for the price of cloth and tobacco. A taskforce be established to determine the elements of the package;
- The government assist in identifying, surveying, valuing and registering customary land at full or subsidized costs;
- Appropriate legislation be enacted to facilitate the registration of customary land;
- Government authorities assist customary landowners to protect their marine and land resources through appropriate legislation or regulations and policing (e.g. prevent destruction of marine resources through dynamiting and uncontrolled harvesting of marine resources);
- Government authorities to assist in addressing all forms of pollution that are effecting the environment.

Solomon Islands

Aloha from my father on my matrilineal side and from my mother on my patrilineal side. As a Solomon Islander I have rights to access land but not to own land. This is because my father is the wrong sex for a matrilineal system and my mother is the wrong sex for a patrilineal system, for me to inherit outright ownership to land.

As a result of this situation, in addition to myself, my brothers and their wives are also vulnerable. My siblings and I all have secondary rights, through our relatives. But my brother's wife can only access her rights through our secondary rights, and this connection will be even further removed for her children.

The only option for me to obtain ownership rights to land was for me to marry back into a patrilineal system, and for my brother to marry back into a matrilineal system. But we are human and we didn't follow culture and got married into the wrong systems.

The other way I could have owned land was by having a good education and job, which would enable me to buy land and build a house. However, both the patrilineal and matrilineal systems in my two Islands tend to let girls only go to school up to class 3-4. This is so they can read the Bible. Fortunately,

my parents were supportive of me getting a good education, and I was one of the rare one's from my two Islands to reach University.

However, women also face discrimination in the education system. While there is no law on this, most of the scholarships are given to men and only 1-2% of scholarships are given to women in our time. Very few women get scholarships. As a woman I had to fight for my scholarship – initially I wasn't given a scholarship even though I passed in the high category of marks over some of the boys who got scholarships. My father and I had to fight the system in order to get a scholarship for me because this was what I would need to buy land and build a home for myself.

Even though I am an indigenous Solomon Islander, I am a settler in my own country. I have had to grow up with people fighting over land all my life and I am sick and tired of people fighting over land. Having experienced this has made me determined that the only way for my future is to get a good education, get some land and build my house.

Sources - Human rights are recognised in theory in the Solomon Islands, but not in practice. Article 5 of CEDAW requires discriminatory customs to be modified. How can children who are excluded by the customary system access land and build their houses? The Convention on the Rights of the Child (CRC) talks of participation, protection and development of a child. But we are known as the 'floating boats' (as we move between our father's and mothers' islands). Under the CRC children need to be protected to achieve their full development, without the fear of being thrown out of their house. The over-riding principles of gender equality are relevant for me and my brother's wives, who will be the first to go once the culture or family decides who has the primary right to land.

Guarantees - Constitution and legislation for perpetual estates. My daughter has a right to perpetual estates but she will have to buy the estate. So she will also have problems as a girl child and later as a woman if she does not have the resources to buy land.

Parental support has also been an important guarantee for me. In our culture women are supposed to be softly spoken and quiet. When my grandparents tried to stop me from going to school my parents supported me to continue on. My parents always treated us equally with our brothers and gave us (sisters) the same opportunity to compete in education, which is quite contradictory to our culture where only men are encouraged to go further in education.

Obstacles - Culture and religion are the key obstacles to us realising our rights to land, because religion helps to enforce the idea that the man is the family provider and therefore the land owner. When approached, some religious leaders cannot even understand why women want to own land. Religion is also an obstacle to women realising their right to adequate housing.

The education system is also an obstacle. For example, many government schools have five dormitories for boys and two dormitories for girls. So how can more girls go to school when there are not even sufficient dormitories for more girls? I was lucky to be on an AusAID scholarship because AusAID gives priority to scholarships for girls. Nowadays most of the girls who are lucky enough to have scholarships, is possible through donor funding.

Losses - I was homeless as I had to go to town, away from my family, and look for work. Also, due to the overcrowded conditions I am obliged to look after those family members with primary rights coming into family, in order to maintain my secondary rights. I have to do this even though I have

no guarantee I will be able to access the land. Some relatives have already told me I am not getting a piece of land.

Another loss has been stress. Since the age of 7 I have been fighting over land. When I was young and my parents were working, our neighbour (my mother's uncle) would come and start screaming at us children. I used to yell back at him. It was verbally a violent situation. Our other neighbour was also my mother's relative – they cut the fruit trees that we had planted. These are examples of the kind of stress and violence we experienced while growing up because our two cultures didn't match.

Duty holders - The State, Chiefs, and the church. The church needs to be gender sensitised and needs to modify some of its teachings. We moved from one church to another church because the previous church taught women to submit to their husbands and not to speak of equality. At the new church we are allowed talk of equal rights between men and women. A former minister of parliament from our island, warned us not to return to our island because we changed our Church and they do not want any different church doctrine to be introduced into our Island.

Action/Recommendations – Changing the laws, culture, practices and religion.

Solomon Islands has signed CEDAW and CRC. But our community leaders are not aware of the conventions' obligations. I spoke with 60 chiefs about human rights, only five of whom were women. This was the first awareness raising for chiefs done in an effort to engage their support for introducing changes to culture. After talking about human rights the male chiefs were very angry. They said, "It is our god given right to be leaders – men have the right to decide anything and women should follow". As a result men have made decisions about the land including using it for mining, logging and development projects. The women chiefs responded, "it is our god given right to own the land and you cannot decide on our right". This illustrates that when women learn about their rights, they can start claiming their rights. We are now working with women on how to use a rights-based approach to ensure women can decide about their lands. We need more action on awareness raising and lobbying about discriminatory cultural and religious practices and later we can change the laws.

As long as inter marriages occur between different cultures (matrilineal & patrilineal), we will continue to have children who will be secondary right holders to land only. And as long as men do not understand women's rights, women will be left out of decision making even in the matrilineal systems where women own land.

Susie Saitala Kofe, Tuvalu

Telekia Motufoua's Story

Telekia is a widow and is Melialofa's niece. Telekia's father is Melialofa's only brother and they are the only children of their father Tanei from the island of Funafuti. Telekia's father married Mili from the island of Nanumea and they have lived there ever since. Several years after her father and husband died, Telekia with her children together with her sisters migrated to the capital island of their father. On arrival, Telekia and her sisters consulted their aunty Melialofa who is the caretaker of their family lands, were given a small portion of a piece of land in their village to build a home for themselves. Years passed and Telekia and her sisters realised that they need to build more houses for their children as Telekia's house had become too small for them. Again Telekia and her sisters approached their aunty and requested for some of the family lands to be given to them to build their houses.

Naumea is an outer island

Their aunty refused and as a result Telekia's sisters migrated to New Zealand. Telekia continued to fight for her father's share of family lands. She filed a complaint to the Land's court that her family lands be equally divided between her father and her aunty. The Land's court did not approve as there is not enough lands to be divided and also because Telekia and her sisters do not contribute to community functions of Funafuti people. Telekia was not happy so she appealed to the Appeals Panel. The Appeals Panel agreed that the family lands be divided equally between Telekia's father and his sister Melialofa. Telekia's father received 50% of their family lands that are situated at the far northern part of the island where one would be required to travel by bus or taxi to the main settlement. Telekia is unemployed and is 64 yrs old and is living with her mentally retarded son of 16 yrs old. Telekia believes she had been unfairly treated and she has appealed to the High Court of Tuvalu for their family lands to be redistributed so she can have some lands in the main settlement.

Elements –

1. Access to lands – although she got land access in the end the attitudes of the land court were indifferent to Telekia during the process which made life difficult for Telekia.
2. Cultural appropriateness- community expectations. The family expected Telekia to contribute to the family foundations, even though she had grown up on the other island and was going through a difficult time adapting and getting used to her community's way of doing things.
3. Resettlement- Telekia is trying to come to terms with whether she should contribute and become part of the community in order to access the land, or should she retain her own identity.
4. Location – The eviction, change of location and resettlement has created hardship. Telekia was evicted from her house which she had built from scratch. She was moved to other lands and told to build a new house, but she has no money to buy the materials and no one to help her build a new house. The other land is in the far north of the island, where there are no nearby services for her mentally disabled son. She is unemployed and accessing services elsewhere is too costly.
5. Redress – the only solution is to go back to the appeals panel.
6. Accessibility – her use of the land is limited because of the financial and other hardships because she has no income and her mentally ill son needs to have access to the hospital and police.
7. Habitability – she has to build a new house to live in?

8. Public goods & services - health / police / shops / transport/ water are all not easily accessible any more.
9. Affordability – can she afford to build a new house?
10. Security of tenure - Does she have a right to her own house in the village? Who has the right to evict her from her old house, when she has a share in the land?

As a result of her right to housing being violated, her other rights to health care, freedom of movement, water and land are also affected, clearly showing the indivisibility of rights.

Sources – International laws; CRC 1989 (Telekia son’s rights); CEDAW 1979 (Telekia’s rights and her unfair treatment); UNDHR 1948; Millennium Development Goals; UN Declarations – Vienna Conference 1993; UN Habitat Conference in Istanbul 1996.

Over-riding principles – Non discrimination, equal and fair treatment.

Guarantees – Ratified CEDAW and CRC (legal government officials argue that although the conventions have been ratified they don’t have much legal status because they have not been incorporated into national law); Bill of Rights on Equal Treatment; member of the UN Family; international programs (e.g. Gender Facility Project with UNDP/UNIFEM, emphasises gender equality and implementation of CEDAW; NZAID, AusAID, Canada Fund and UNESCO donor agencies have focused on CEDAW and CRC in promoting sustainable development); Regional Programs (e.g. RRRT / PACFAW (national council of women) / SPC).

Causes –

- Attitudinal behaviour of Lands Court and Appeals Panel - because Telekia came from an outer island she will always be regarded as an outer island person, and not a member of the main island community. This attitude was upheld in the Land Court, which has members from the main island community;
- Constitution legalises sex discrimination - the constitution doesn’t specify sex as a ground for discrimination. At a recent national summit on sustainable development women lobbied very hard for gender equality. I was asked by the judges, ‘how far do you want to go? Do you want to bring women up to the power of men? Is such discrimination (against men) allowed under the constitution?’ Fortunately the Attorney General was sitting in the summit and supported the need for sex discrimination to be recognised. Despite the in-principle agreement in the meeting, it was not included in the final document, so we have to work hard again with the new government;
- Native lands legislation in favour of men;
- Lack of a support system for evicted migrants in terms of relocation costs;
- Lack of respect for the right of the woman to gain and sustain a secure home and community in which to live in peace and dignity;
- Family solidarity breaks down.

Victims – Telekia and her family.

Consequences/Impacts – Stress; financially burdened; family solidarity breaks down; eviction problems; hardship triples - Telekia and her sick son deprived of health services, transport problem, nobody to look after her and her son; forced to become a squatter? (i.e. if Telekia doesn’t have the means to move

what other options does she have? Would she have go to the squatter house and build a cardboard house?)

Violator – Family on the main island; judicial system – Land Court and Appeals Panel; Government and Social Welfare Department for lack of support.

Duty holder – Government; churches - churches from both sides have been counselling the family members, translating Christian beliefs into reality; the irony is it is not Christian to reject Telekia as part of the family; Social Welfare Department – 2002 policy has been passed but not fully implemented; community – counselling both sides; women’s organisations; families.

Actions/Recommendations –

- Gender sensitising of the judicial system – they are very patriarchal in their thinking and no matter how many times the talk about women, they resort back to their patriarchal values;
- Human rights training of the judicial system;
- Budgetary support for women migrants;
- Awareness raising on women’s right to adequate housing and lands;
- Counselling – where counselling services are available in Church they have to be transparent so women know the services are available;
- Conflict resolution committee;
- Constitutional and legislation review and reform;
- Ratify ICESCR – fact that is not ratified gives the government very big excuse.

Betty Blake, Tonga

Tonga's population of 100,000 people is made of predominantly one race, with some people of other races coming in. I represent 50% of our population - 50,000 people - which is women. 98% of the population is literate and women have the highest rate of education qualifications (PhD) in the Pacific. However, there are no women in parliament. Only 3 women have been in parliament in the history of Tonga. While we have no women ministers, some women have been acting ministers – and have made a difference.

The Constitution only allows for male primogeniture i.e. only the male line can inherit land. A widow only has claims for a life estate i.e., a widow can live on her husband's property until her death. Recently, provisions have been introduced in the Land Act to allow land to be leased. So the only way women can access land is to lease land. In the *Marriage Act* the wife can only make a claim for one third of the matrimonial property.

Case 1 –

A married couple contributed equally to the financial building of their house. The husband divorced her and re-married (there are seven grounds for divorce in Tonga: adultery, separation for over two years, imprisonment for life, terminal disease etc.). The husband later died. After the divorce, the first wife was left with nothing. If she had a son she would have secure access to property and could have claimed some maintenance, but she didn't have a son. On the death of the husband, the second wife can only live on the husband's land if she does not remarry or commit adultery (even after husband is dead). If the second wife had a son her interests would be secured by her son. The son would protect the land and property until she died and then he can take over. As she has no son, when the second wife dies she cannot take anything and the land will revert to the husband's brother or his uncle and nephews. So both women are very vulnerable to being denied the right to land and housing.

Element – Security of tenure and freedom from dispossession:

Sources – Tonga has not ratified ICESCR or CEDAW, but Article 2 of ICESCR and CEDAW are both relevant sources of rights. The ICCPR talks about equality without distinction. There are no children in this case, but CRC could have been used to support any children's rights.

Guarantee – The Constitution of Tonga does not stipulate that sex discrimination is prohibited. It therefore allows for discriminatory laws such as the Land Act which only gives men land rights and women can only register the land if the male line is exhausted. Article 4 of the Constitution allows for equality for all and prohibits discrimination on the grounds of sex; Tonga has ratified CERD, and Article 5 talks of eliminating racial discrimination in all its forms i.e. right to freedom of movement and right to own property, inheritance and housing. The Beijing Platform for Action has been made part of Tonga's national policy, i.e. affordable housing and access to land for female heads of households, which could contribute to securing land and housing for women in Tonga.

Element – Affordability:

Women cannot afford to build or rent a house. Divorced women and widows may go back to their parent's home to live with her brother and his family. But they will be asked to find a new place to stay and they will not feel comfortable to stay there.

Element – Culture:

Women must fulfil all the functions of the community. When a woman marries she marries the whole family, not just the husband, and must fulfil her functions to all members of the family.

Element – Participation:

Women have no say in their family meetings, only obligations. I only do whatever they want me to do. Especially for issues about land, I never open my mouth. For example, once I planted some flowers and my husband's family said go to your uncle's home and plant there (i.e. because it is a matrilineal system, I am superior to my uncle).

Element – Information and capacity:

The first wife could have secured a share in the property if she knew her legal rights and had made a claim. So having local, regional and international information is very important.

Sources – The constitution gives women equal rights with men except in areas of land rights and inheritance thereof and citizenship rights of Tongan women's children and husbands. The National policy, Land Act - but the laws are not implemented. Beijing and Pacific platforms for action, which aim for equality between men and women in 2025 (but these are not implemented), MDGs, global conferences (e.g. Human Rights 1993, Habitat, 4th World Conference on Women).

Gender equality and non-discrimination – is identified in CRC, CERD, national policy. While Tonga has some NGOs it has only a few NGOs working on promoting human rights (i.e. one is providing legal literacy and another is really working on promoting women's rights). The Women's Center provides counselling for women.

There is inadequate enforcement of laws, corruption, and nepotism - particularly in women's cases in court – where everyone knows everyone. For example, a wife with 12 children claimed maintenance. The lawyer and client went to court twice but the summons was not served because the police came from the same village as the husband.

Victims – The first wife was an innocent victim. The second wife was also a victim.

Losses – The first wife lost her property, her financial security, her livelihood, her labour she had contributed to building the house, her beautiful garden, she lost the place she loved.

Non-materials losses – Trauma, lower social status as a divorcee, stigmatised, loss of personal freedom.

Violators/duty holders – The husband, the State, nobles, in-laws, police courts, relatives who won't help, king judiciary, district officers, town officers, church leaders.

Actions/Recommendations – reform the national policy; petition the king; constitutional reform; networking with church groups, women's groups, the Prime Minister's office; continue legal literacy project; legal action; media advocacy (this has been very powerful in Tonga); submit parallel reports to treaty committees.

Testimonies on Discrimination and Segregation in Eviction and Housing

Presenters: Eta Tuitoga and Noelene Nabulivou, Kim Curtis Newton, Susanna Naivaga

Eta Tuitoga and Noelene Nabulivou, Fiji¹

Testimony on intersectional discrimination against Indigenous Fijian lesbian women.

Poem:

“She/Fiji/Me”

*My love is a colonized country.
Near and then distantly does she hear a freedom song.
I crash clumsily through hills and forests
But only at night. A freedom fighter.
The sisters are angry with me today.
So many complaints from the troops.
Your cap is such bright purple girl.
So shiny. Is it new?
That rainbow shirt you wear hurts my eyes!
Your skin. so brown, so white, so ‘not me’.
Well, you all just hurt my head.
My love has no Constitution.
There are no rules of engagement here.
Just a blue passport where
My name and yours are written in invisible ink.
So for now I will walk freely but uneasily
In this undeclared, independent land.
For I feel that any time they will see me.
And behind me, you.
Then tell me, my loves,
What kind of country will we be?*

– Noelene Nabulivou

I wrote this poem as a personal response to my experiences in dealing daily with the difficult realities of double and triple discrimination of living in Fiji as woman, indigenous, lesbian and social justice worker. I am here with Eta Tuitoga, Lesbian Liaison Officer at the Sexual Minorities Project, Suva to present a community case study relating to women and adequate housing from the perspective of indigenous lesbians living in urban and peri-urban Suva. It is our personal stories we present today along with those of others who have given us permission. The discriminations we face are so wide and intersectional that we aim to provide depth in a smaller area rather than broad coverage. But sufficient to say, that the work is ongoing with all lesbians in Fiji, who have undergone much discrimination but show resilience and courage in ongoing work. At the Sexual Minorities Project we

¹ Input from Eta Tuitoga and Noelene Nabulivou and the Sexual Minorities Collective.

work very much from an inclusive, participatory framework and there is heightened awareness among our workers on the need for us to work across all real and imagined groupings of ethnicity, religion, geographical location, age and socio-economic status.

The gay, lesbian, bisexual and transgender community collective at the Sexual Minorities Project, Suva, Fiji is the inspiration and source of this presentation. In the general absence of any official national sexually oriented disaggregated data and a chronic lack of research, we are slowly building a profile of the gay, lesbian, bisexual and transgender community in Fiji – largely through the efforts of unpaid, highly committed individuals, whose work we would like to acknowledge.

This presentation does not try to raise all the relevant issues for lesbians in Fiji but focuses on the rights to adequate housing. It is part of ongoing and broadening work by lesbians in Fiji coming to grips with the layers of discrimination and prejudice that lead to homelessness, inadequate housing and the attendant symptoms of non-recognition, neglect and inadequate exercise of human rights.

There are three parts to this presentation. Firstly, summarizing the traditional, cultural, state-based, religious and other factors affecting the equal access of indigenous Fijian lesbian women to housing, land and related services, and highlighting some interlinkages between these powers. Secondly, introducing some core issues for Indigenous Fijian lesbian women with regards to adequate and safe housing by using case studies. I will then conclude with a few comments on continuing work in this area, and a call for engaged and holistic human rights work in this area.

Sources of discrimination –

In Fiji women have the right to a democratic vote under a Westminster based system and in theory therefore can participate fully with men in state matters. However, in practice there are layers of discrimination that prevent Indigenous Fijian women from exercising our full rights as equal members of society. The Constitution protects us, but the penal code still criminalizes the male homosexual act, which makes us feel vulnerable.

The issue of sexual orientation is one that is not openly considered at all in current government ministries. For example, in the current 'Family Life Manual' used in secondary schools, homosexuality is still listed in the final topic of 'Abnormal Behaviour' alongside 'drug taking' and bestiality and is considered to be 'unnatural sexual tendencies'.² One exception to this attitude was a result of a recent successful lobbying effort, where same-sex attracted young people were added to the categories of 'at risk' young people in the final draft of the National Youth Policy final draft. We wait to see if it will remain.

The reality is that presently Fiji is a patriarchal and hierarchical society. While numbers are not the only indicator of participation levels in society, it cannot be ignored that the majority of parliamentarians are men; that the justice system, corporate and educational boards are primarily made up of men; and that while inroads have been made by individual women in some areas and at certain times, the primary official decision-making processes still place men at the forefront.

² The current 'Family Life Manual' also lists acceptable behaviour for girls as: "should not fight; keep themselves clean; should help their mother around the house (cooking and cleaning); work hard at school"; and for boys: "should not cry (suppress emotions, should be strong, not sissy); should help their father (cut wood, gardening) and work hard at school". The Manual is currently under review.

As far as the Indigenous Fijian *vanua* gender ideology constructs, women are seen as the helpmate to a male household leader. Power is constructed openly, and often aggressively, by chiefs and then by the Indigenous community at large, as being perpetually and unchangeably in terms of the male as owner, protector, defender and perpetuator of culture.

While, there are individual woman of chiefly background or wealth who have high profiles and access to power, yet in their own homes the construction reverts to male as household head/leader and protector. Gender roles are less rigidly bound today with many women working in the cash economy, but it is arguable that for most this has meant that such income is then integrated into the overall household income where there is a male head. There are also single female-headed households but even these are constructed as coming within the male centred and headed '*mataqali*' or greater family group.

Young people in the Indigenous Fijian culture are socialized in an ideology or framework where the extended family as collective is idealized. Roles are rigidly prescribed, regardless of the realities of economic and social existence, in rural and urban communities. Women are born and socialized into a household unit, where they are a '*youth*' until they are married, and then they become part of another male-headed household.

Those seen as outside that norm are most often ridiculed, excluded or censured to varying degrees - verbally, emotionally and/or physically. Where the non-compliance with social norms is sexual, as with lesbians, the exclusion and oppression is even worse.

Here we must consider the role of religion in Indigenous Fijian life. The majority of Fijians still identify as being Christian, and with the rise of fundamentalist religions in Fiji along with the established Methodist Church in Fiji, the idea of '*vanua*' is firmly tied in with Christian values. Therefore, lesbians are considered by many as deviant and seen as committing the worst type of sins – those of abusing the body, which is a temple of God.

When many of my indigenous extended family look at me they see a deviant, someone who brings shame to the family, someone who is not '*womanly*' and someone who is a sinner. This is the overarching experience for most indigenous Fijian lesbians and is experienced in greater or lesser degrees depending on individual families, location and socio-economic status. This must first be understood before we move to specific discriminations and inadequate access to housing because it impacts directly on the levels at which our individual human rights are not recognised, how they are not enjoyed and how they are not exercised. These are our some of our stories....

Case Studies:

Case Study 1 – Insecurity and freedom from dispossession

This is my story of finding a safe space for my partner and myself. On my father's side I am from Southern Fiji and we retain strong linkages to our village. My mother is an Australian. I live in Fiji. Since coming out as lesbian many extended family members have excluded me, but my immediate family still supports me, which is a huge guarantee. In Fiji, many women face multiple discrimination, in my case for being indigenous, for being born to a non-indigenous mother, for being a lesbian, a woman, and also a feminist and human rights activist. I am seen as violating many unwritten, unspoken but socially and often legally enforced social, cultural and economic roles, all at once.

My partner and I have moved three times in the past year. I was living with extended family, but was forced to move as certain members of the family were verbally abusive (drinking outside my living area and shouting insults). People broke into my home regularly, adding to my insecurity. We then moved in with my partner's family as she had commitments to her family, and her mother and sister were very supportive. But some male family members were withdrawn and our relationship never openly acknowledged or spoken of. This is very hard when you are trying to live open, honest lives and have good relationships with people you care most about. The patriarchal nature of the family structure made it hard for women members of the household to intercede.

Meanwhile, we tried to get rental accommodation in Suva, but despite our high combined salaries, we were not able to do so in a six-month period. On the first two occasions I inspected the property and they agreed, then when my partner arrived to inspect, they suddenly declined. When questioned, they said that the property was no longer for rental, the next time they had decided to live in it themselves (I then saw it advertised a month later). The last time I rang up and gave my name and place of work and references. When I received no reply I rang over and over but they would not take my call. When I finally got through the landlord said he would not rent to us, but no reason was given. My partner is quite well known, and maybe he had heard that we were partners. This has been the experience of other lesbians in Suva, sexual orientation and partnership of 'out' lesbians is a source of gossip. Refusal of access to housing may not be due to sexual orientation in each case, but the fear and anger is still there, especially when there appears to be no logical reason for changes in attitude. This is the reality of living in a situation where your full rights are not respected, and where you are always aware of that fact.

That is not the end of my search for adequate and appropriate housing. My partner and I now live in our own home. For most lesbians in Fiji this is not an option. But when we arrived in this 'safer space', almost daily we still had verbal abuse and comments shouted at us by young people passing our house. The nights at weekends are still sometimes a problem as stones are thrown on the roof or young men in particular shout out abuse in Fijian, or make joking, loud comments as they pass.

The reaction of some of our families and friends was to say, 'it is because you are living in sin' or 'you need a man in that house', or 'just forget it and come home'. This is despite the fact that we are in our mid-thirties, she is in a managerial position and we both have adequate incomes to sustain us, and still contribute to the extended family economic needs.

Case Study 2 – Low income compounds the problem (names are not real)

Salote and Lela are Indigenous Fijian women who lived as partners in suburban Suva. Salote is the mother of a teenage boy. They were living and renting a small wooden house for 3 years. They sell takeaway food when they can. The landlord gave them the required one month notice under Fijian law to move out of the premises, giving the reason that he would renovate the property. When they moved out they had to separate, Lela went to live with her parents and extended family in an already cramped housing and Salote and her son lived with their extended family. Later they were told by past neighbours that the landlord had told people he had removed them because they were in a lesbian partnership.

The effects on Salote and Lela are both material and nonmaterial. They are unable to live in their own home with their partner of choice and have no privacy. The son has to deal with a domestic move while studying at high school. The extended families experience greater strain on already stretched resources. It puts pressure on both to end the already stretched relationship. Also, for women who already are on tenuous and insufficient income, otherwise productive time is spent trying to find accommodation, so they continue to be trapped in poverty.

Case Study 3 – Domestic Violence

Eta is sharing her personal testimony on violence inflicted against her by her past partner of five years. Eta and her partner were living in separate family homes to avoid the community stigma and due to their low incomes and family obligations. This put constant pressure on them, and the only time they could be together was at weekends at friend's homes.

Eta was continually looking for unskilled and skilled work during that five years, facing continual rejection with no explanation. She was depressed and her health suffered greatly. Added to the violence against her own mother in the family home, after two years the violence in her own relationship was almost too much to bear. The worst incident of violence was Eta being stabbed in the back with a kitchen knife while her partner was drunk. Eta's mother and sisters helped her as Eta refused to go to the police or hospital, who would not be sympathetic. But it was difficult for them to help when they could not deal with the underlying causes of the violence, as the relationship itself was not recognised by the family. Also, her family was already under considerable trauma from the male violence in the home.

Eta is finally out of the relationship and now works at the Sexual Minorities Project. But the emotional and physical effects of the trauma are still felt by her today. This is the reality for many lesbian couples, and the silences are even more profound in this area, even within the community itself.

Case Study 4 – Sex Work

Mele left home because of the physical and verbal abuse she received from family members due to her sexual orientation. By the time she was 17 years old she was living with her partner in a very unsafe, low-cost, inner city motel, and had been engaged in heterosexual sex work since the time she was living on the streets. She was in sex work for 5 years, trying time and again to get out, but not able to because she had to send money to the village for her child and other family obligations. She is now 24 years old and trying to make a life for herself working in retail for a minimum wage. For the moment she is off the streets. Today she has settled down and hopes to someday live with her partner in a home of their own. Her partner who was also a street worker has settled down and is self-employed. Networking with SMP has today empowered her and also with her experience has made it possible for her to be on the SMP core collective.

Her reality is repeated over and over by other lesbians. From the first needs analysis done in 2003 with the help of Family Planning Sydney, we have a better idea of the extent of homelessness, depression, violence and alcohol and marijuana abuse experienced by the most vulnerable part of our GLBT community. We also found that while people might say there was no physical abuse in same sex relationships, the evidence was often there on people's bodies, and anecdotally we know there is a lot.

Actions/Interventions –

The Sexual Minorities Project has been running within Women's Action for Change (WAC) since 1998 and Eta and I are part of a group of GLBT people and human rights supporters who are trying to improve our own conditions and those of other gay, lesbian, bisexual and transgender people in Fiji.

The lack of adequate housing is just one of the symptoms of underlying human rights violations in many areas for lesbians in Fiji. We are protected under our Constitution and by international conventions such as CEDAW and UNHRC, but until the state, vanua and wider community in Fiji in partnership with international organisations recognises and acts on the violations that are at the source of our disempowerment, we will not truly gain and sustain secure homes and communities in which to live in peace and dignity.

In Fiji the vanua and the state must be examined in their joint roles as perpetrator of gender stereotypes that suppress women. They must be held to account for their refusal to engage with diversity of gender roles, including that of lesbians. If we don't get into a dialogue about what we keep and what we change, if we are not allowed to get into dialogue with the custom or the State, we will continue to suffer.

For indigenous Fijian lesbian women, some of us are already working for our own empowerment, but we need to frame our work in that of universal human rights to safety, to security, to adequate housing, to our rights of equality as women. We can only do that if we call on other partners at international, regional and local level to examine their own silences in assisting us in our campaign.

As Diane Otto pointed out, we need to adopt laws and practices that realize substantive equality, including affirmative action where required. We need to create an enabling environment for those of us who are in same sex relationships. We need to change the social and cultural beliefs that justify our secondary status and that perpetuate exclusion.

We need to work with other women's NGOs because sometimes we can't even get into rooms that others can. We need other organisations to assist us. Unless we work on violations that are at the source of the problem, such as VAW and gender and sexual discrimination, we cannot address adequate housing.

We need most of all to recognise and tackle the intersections and layers of discrimination that suppress us, and that stop us from exercising our rights. We need to work along real and imagined boundaries of religion age, ethnicity, sexuality, gender etc. If human rights are indivisible, then your human rights as women and as men are bound up also in ours as Indigenous lesbian women in Fiji - so the call is for you all to partner with us.

Testimonies of Indigenous Women with Disabilities

Kim Curtis Newton, Australia

I wish to acknowledge the indigenous land we are standing on and bring greetings from the Wabbinga tribe in Tamworth, Australia. Our organisation received grants from Rio Tinto and Westpac to hold community consultations - 95% of whom were Indigenous women in rural areas. This was the first such consultation in the area. The shocking conditions of Aboriginal housing in NSW and the response were overwhelming. From the one consultation we identified 70 legal cases. I will be drawing on these consultations for this testimony, but no real names are used.

Case Study 1 – The picture (see Annex A) of my client’s home shows the stairs are not properly built and several services are missing. There is no safe access to the building. The electricity is exposed in the walls. Only one light works in the house. There is no protection from the natural elements. The windows are broken. Australia has services such as home-care, Aboriginal nursing in homes, meals for elders in the day and night – but none of these are accessible to my client because the structure of her home is so unsafe service providers will not go in. Even her children can not visit because of the safety issues. Her house is in such a state because the construction was never completed and her housing has not been modified as she has got older to accommodate her needs. She has no money to do any renovations or pay the rates. She has a hearing disability and is now suffering diabetes, arthritis and asthma.

She is a victim of corruption. The house had initially been purchased by the Aboriginal Corporation Department in 1976 for \$1. She began renting the house from the Corporation 30 years ago. In 1975, the Corporation was declared bankrupt and ATSIC allowed her to purchase the structures for 38,000 dollars. She thought she was renting it, not purchasing it. Being unable to hear properly, she must have misunderstood. She had assumed all repairs on the house would be done by the Corporation. In good faith she has paid \$80/fortnight for 30 years, but is now informed she has only paid off \$5-6000 off her loan. ATSIC has refused to give her any information about her payments. Now the authorities cannot determine who has jurisdictional responsibility to repair the home.

Case Study 2 – Indigenous elder living in a Department of Housing home. She asked for her house to be made accessible (i.e. ramps, modifies taps etc.) because she has arthritis. She lobbied the Department for three years, not supported by any organisation with no result. They argued that the house would need to be demolished and rebuilt, which would cost about \$80-100,000. She ended up having to move into a nursing home at the age 54 years. She is very depressed a having to live in an old age home at such a relatively young age. She tried to return to a Department of Housing unit, with the help of a case worker from People with Disability (NGO), but the house allocated was not culturally appropriate.

Case Study 3 – In 1988 the Australian Human Rights Commission reported that the housing conditions in Boggabilla was worse than in third world countries. Since then nothing has changed. Everything is falling down, but now we can add other towns in New South Wales in similar conditions – Tamulum, Dubbo etc. Many of these places used to be missions. One of the community nurses, working as an outreach worker, went with us to the mission and wretched when she saw the conditions. The missions were placed about one hour outside of the town, so until today there is no public transport. If someone has a heart attack they can expect to wait an hour before any medical assistance arrives. To go shopping,

you hope for a lift with a passing car. That is the reality for Aboriginal people living on missions in rural NSW.

Elements – Security of tenure and freedom from dispossession.

Sources – UDHR Art 25.1; ICESCR Art 11.1; CEDAW Art 14.2 & 16; Declaration on Rights of Disabled Person (1975).

Over-riding principle – Self-determination.

Causes/threats/obstacles – Occupational Health and Safety risk; service providers unable to support client; family unable to visit the home; not appropriately constructed - walls inside are not completed; no water and sanitation; no safe access to electricity; windows are broken, structure is rotting; home requires modification to cater for her onset ageing.

Victimisation – Elderly women; Vulnerable because indigenous, hearing impaired, or have high blood pressure, arthritis or asthma.

Action/Intervention -

- Legal education on housing rights;
- Education on applying for finance;
- Input to UN parallel reports and Special Rapporteur reports;
- Media to raise awareness of the living conditions of Aboriginal people with disabilities;
- Need a cultural women housing support service;
- Department of Housing homes to be modified to cater for elderly and disability needs;
- Clearer information on financial arrangements;
- Women need case managers to assist them to lobby for adequate housing;
- More appropriate and accessible legal services for Aboriginal women with disabilities;
- Culturally appropriate housing for Aboriginal people with disabilities.

Duty holder/Responsibility – State Government, local government – lack of modified housing options; jurisdictional conflicts between the State Department of Housing and Aboriginal housing providers.

Testimony on Inheritance and Property Rights of Women

Susanna Naivaga, Fiji

I am a widow, a mother of six children - five boys and a daughter, and I have three grandchildren. An Indigenous Fijian woman knowing her roots, her land makes her strong. If I know I have my inheritance, even if I marry a man from another province, what makes me strong, is knowing I have my own land, in my village. So if I get battered or become widowed I can go back to my land where I can plant and survive. In Fijian families, when a girl is born there is great joy, care and love. If the girl elopes to another village, this can create war.

After my husband died, I went back to my village to ask for a piece of land. My sons are all working, and they know that in time they will come to me in my village. I requested my father for land for me and my sons, i.e. asking for my inheritance for being a female child in my clan. I was able to do this because I am a human rights advocate and I know my customary rights, together this made me strong so I can ask. I called my father and four brothers. The land they gave me was stony, out in the outskirts, in the mountains. I said no, I want land down in the valley. When it comes to land, men expect women to be content with what is given to us and not have a say. That is where men draw the line – what is given to you, you have to take it. When the beloved female child speaks out they tell her to shut up. But I explained, 'I am a widow, do you expect me to take my basket and knife and go to the mountain?' They said, 'You have four sons, they can do the planting for you'. I responded my sons will go to their father's village where they get more rights. My father is the head of my clan (approximately 10-15 families). He had to get approval for my request for land from all the clan members. I told my father I shall return from Suva and ask him to tell the clans to give me this other land. I have always fulfilled all my social obligations to the village.

This is one of the problems many indigenous women are faced with and many provinces have very little land. Widows and single mums, do not have secure inheritances in the village, and without knowledge of their rights, they will not be able to take such positions as I have. Custom gives special protection for women, but not when it comes to land. We are trying to break this silence and advocate for our rights in custom – and this is very hard because it is very very close to men's hearts. The cause of the coup in 2000 was the government's plans for land leases on Fijian land, which is what Fijians regard as something that is very close to their heart and they don't want other race to talk about it. Likewise, in the village women have no say.

When I go out in rural communities and advocate for women's rights, they respond that rights are a western concept. So I bring all kinds of case studies and issues and place it in front of them. I get all the men leaders up and ask them what rights they don't like – then they say this is all OK. Then we ask them if they have daughters – so do you want this for your daughters – they agree it will benefit their families. Using such strategies, clan leaders, chiefs and women's heads come to understand why we are fighting for women's rights and to involve women in decision-making on issues that will concern women's development. Women are also gradually becoming more vocal.

Elements – Security of tenure (I need to apply for a lease even though I inherited rights to use the land by birth)/cultural appropriateness; participation and self expression.

Sources – Equality provision in the Constitution; Beijing Platform for Action, CEDAW, Land Act; Fijian Affairs Act (has many provisions that discriminate against women; in 2002 some sections were amended

e.g. when mothers give birth they cannot go fishing until the child is 1 years old – but this was changed because it was not practiced); customary law (even though it is inconsistent with the constitution; also if it suits us, we can change custom, it is not something like in the Bible that we have to be in line with the word of God).

Over-riding principles – Gender discrimination, self-determination, equal and fair treatment.

Guarantees – CERD, CEDAW, Constitution, Fijian Affairs Act.

Impacts/Consequences –

- Material – financial, property, labour, investment, livelihood;
- Non-material – violence, trauma, loss of status, insecurity, stress, stigmatised, loss of personal freedom.

Legal obstacles – There is a gap in the Native Land Trust Act, because it does not clearly state that women should be included in decision-making regarding land issues. We also have a Fijian Affairs Act which looks at the interests of Indigenous Fijians and sets up the body that looks after our native land. Under this system, if it is clan land, it is communally owned, but women can apply for a lease. If someone wants to develop the land for agricultural purposes, they have to apply for a lease within their clan, and the money goes to the Native Trust Board, who gives the land leases in return. But recently people have found that the Board is not giving leases for the full amount paid. People are not happy about this, as they are already leasing the land they already entitled to under this system. One of the common problems Indigenous women face is that even where they know their rights, they are not able to get them in reality.

Cultural obstacles – Women are not encouraged to speak about land issues. It takes a strong and vocal woman to speak of such issues.

Causes and threats – Bad laws; absence of laws; culture and religion (Christian in words but not in deeds).

Victimisation – Me, my family, some of my cousins and my father's eldest brother's children.

Duty holder – State (Fijian Affairs Department, Provincial Office), Chief, relatives, the Church.

Action/Intervention –

- Amendment and implementation of the Fijian Affairs Act;
- Amend Native Land Trust Act;
- Create awareness of legal literacy and human rights to counter customary law;
- Continue RRRT training programme on legal literacy and human rights (best practice).

Testimonies on Legal, Customary and Religious Practices as Obstacles to Land Inheritance and Property Rights of Women

Presenters: Seema Shaleshni Naidu, John Collins, Lynssay Francis, Ofa-Ki-Levuka Guttenbeil-Likiliki

Seema Shaleshni Naidu, Fiji

Daughters of the colonial legacy

She was brought to this promised land “Fiji” under the Girit Agreement, to labour as equally as men in the cane fields from morning to dawn, to shelter in a one-room barrack with poor sanitation and water, with four other families, was subjected to abuse, violence, by both the colonial and ethnic men (Indians), all for a handful of 11 shillings in a week.

After Girit she stayed, she wonders why? A 99 year lease, they told her after being agreed by her men, colonial men, Indigenous male chiefs. She still toiled the soils of this land.

She saw an increase in the ethnic population as the Chinese, Japanese, Solomon Islanders and other ethnic races landed on our shores.

She saw the establishment of the British Administration, rules, laws pertaining to men, was she consulted? Did she know about the new law? She saw the emergence of land laws, “NLT Act”, Crown Land Act, Agricultural Landlord Tenancy Act. For economic development/advancement, they said. A white man’s system, an indigenous man’s entitlement, an Indo-Fiji Islander man’s interest.

She saw hostility and ethnic divide caused by the military ‘coup-de-tat’. She felt sorry, scared, dispossessed, insecure, she wanted to go home. But where was home?

She saw the establishment of land resettlement policies and with them came the expiry of land leases, compensation, sugar restructure, globalisation and competition. She saw a house, she called home, which she lost as she could not produce a legal title for the property as she had made no financial contribution – she didn’t understand why this white man’s law did not place economic value on her daily work or credit her non-financial contribution in the form of child care, her daily work in the farm and her maintenance of the property.

What she sees now!

She sees a single ethnic mother, who cannot inherit her father’s house, as it is for the sons of the family. She sees two children, born to this mother and an indigenous father who has an entitlement to land. She sees a weak system and a coward father who does not want to register the half-indigenous/ethnic child in the Vola Ni Kaubula, a book for land entitlements for all children born to an indigenous father. She sees a lost entitlement for the children.

She sees the struggle of the single ethnic mother, who comes from a farming settlement. Her father’s farm lease has been extended for another 25 years. She sees the struggle of the mother searching for adequate housing, where she and her children can be safe and protected, with a yard they can play in. She sees rejection after rejection for bank loans, credit schemes, housing grants - because she is not married, because she cannot produce collateral, because she does not own land.

Who is she? She is the past present and future of ethnic women in Fiji and there are many.

Element – Security of tenure and freedom of dispossession:

Throughout history ethnic women have lacked access and ownership of land and housing.

The 2002 statistics show that 87.9% of land in Fiji is native land; 3.91% is State land; 7.94% is private freehold land; and 0.25% is Rotuma land. Access to native land (leased), ALTA, State, freehold and crown land is limited as leases are expiring and lands are being reverted to their rightful owners. Ethnic women cannot access loans and schemes to secure a lease/ownership over decent housing because it is difficult for them to access collateral. 35% of people in Fiji are living in poverty; two thirds of them are women.

The expiry of land leases shows that women's security to land tenure is very limited. A paper by Michelle Brouchu forecasted that a total of 13,140 farm leases will expire between 1999 -2028. The farmers will have nowhere to go and no option but to squat.

Security of tenure of children with indigenous fathers also rests largely on the father's consent to register them in the Vola Ni Kaubula.

Element – Affordability:

She cannot afford to buy a house, State freehold land, private freehold land or a farming lease on agricultural land. She cannot access credit schemes and loans. She has no collateral.

Element – Cultural appropriateness:

Throughout history she has experienced reinforcement of male patriarchy.

Ethnic male – Hindu community of Fiji inherits its traditions from the patriarchal, patrilineal, patrilocal North Indian Hindu pattern. Old mores in gender relations are still entrenched (e.g. property entitlements always go to the sons, not the daughter). She always loses her rights to her father's legacy and estate.

British cultural, male dominance is reinforced in the laws. The family law legislation did not recognize women's non-economic contributions to property in assessing property settlement.

Fijian culture (patrilineal) entrenches patriarchy. A child born out of wedlock to an ethnic woman is given less recognition by culture. The husband has the title to the land so he is in the position to decide whether he wants to register the child. He has to be accountable to the Matagol. However, if the father refuses, an indigenous woman can still enlist the child on the Vola Ni Kaubula, but an ethnic woman cannot. If the couple is not married, the father will often not register the child, and an ethnic woman cannot force the father to register the child because the child cannot be registered without the father or family's consent.

Stigmatisation of single women, of ethnic women, of single ethnic mothers with children. She is outcast from the Indian and Fijian community. The impact falls most on the children, their identity and their access to land.

Element – Habitability:

The average home of an ethnic, low income earner, woman today is "inadequate for herself and her children". It is inadequate for her children's nourishment, movement and development. Often 2 adults and 3 children are living in the one room. The worst cases are women living in squatter areas. The

conditions are so harsh that it affects the person psychologically, physically, emotionally and socially. There is also a high level of violence, which prevents women from enjoying their rights to peace and human dignity.

Element – Accessibility:

She lacks access to credit. She also lacks access to justice (i.e. does not have information or resources to use the land laws, NLTA, family laws, customary laws for children born to indigenous Fijian fathers). Family law is critical for obtaining equal shares in matrimonial property.

Element – Participation and self-expression:

An ethnic woman's access to property is totally dependent on her relationship to her father, brother, or children and whatever entitlements they have. Therefore, her right to participation and self-expression is paramount for her independence.

Sources –

- Constitution - Section 38 (equality on the basis of sex and gender), Section 42(1) (public law basis of interpretation);
- Family Law Act 2003 – if a woman has been contributing to property non-financially, it should be recognized for the property settlement; can claim maintenance if child is over 18 years old;
- Social Justice Act;
- CRC (Article 16 (1), 27 (3)), CERD (Article 5 (e) (iii)) CEDAW (Article 16(1) (h)), ICESCR (Article 11), UDHR (Article 25 (1)), CAT (Article 16(1)), ICCPR (Article 9(1));
- Habitat II Conference (1996, Istanbul), Beijing Platform for Action, Vienna Declaration, SRAH.

Over-riding principles – Gender equality, rule of law, and self-determination.

Guarantee – Constitution, Family Law Act and ratified international conventions (CRC, CERD, CEDAW, CAT), Beijing Platform for Action. CEDAW ratified in 1995 and NGOs have submitted the first parallel report for CEDAW.

Causes/Threats – Colonial history, left ethnic women the most vulnerable. No adequate laws for guaranteeing women's right to adequate housing and land at the national level. No affirmative policies for single women who are without collateral to access loans/credit. Lack of redress for children born to indigenous fathers, where indigenous father is unwilling to register them under customary law. Laws are biased against women (e.g. do not take into consideration women's role and contributions) and poorly enforced. The bias in the laws is reinforced by patriarchal biases and gender stereotypes within the cultures (patrilineal) and religions (male dominated).

Victimisation – Women, ethnic women and their children.

Violators – Men, State, banks, customary forums, religious institutions, law making bodies – where do ethnic women fit into these institutions and structures.

Duty holders – State, colonial rulers, and service providers.

Impacts – No sense of belonging because you have lost your country, identity and roots- cultural outcast; children lose their entitlements to land (quantified by costing price of land and rental costs incurred because of absence of land, loss of access to loans); loss of security, privacy; children's development inhibited. Under the Family Law Act women can now claim maintenance and matrimonial property to cover some of these costs.

Action/Intervention –

- Lobby for the right to housing and congruent rights including right to employment, right to privacy and right to education;
- Legislative reform – Employment Relations Bill, Equal Employment Opportunities legislation, introduce and implement gender sensitised laws and policies;
- Change community attitudes – awareness raising; until we change the attitudes we will not be able to change anything at all;
- Hold the colonial rulers accountable for losses and damages sustained by ethnic women;
- Media advocacy;
- Gender analysis of government budget;
- Credit schemes and loans for poor women;
- Implement the Family Law Act;
- Ratification of the Optional Protocol to CEDAW;
- NGOs to submit parallel reports to treaty bodies and information to UN agencies and the Special Rapporteurs;
- Litigation;
- Partnerships are very important – between all NGOs, stakeholders, civil society, and international bodies.

John Collins, Kiribati

This testimony is based on legal customary and religious practices as obstacles to land inheritance and property rights of women. I will also touch on violence against women issues, to elaborate more on the legal and customary obstacles to women's land and property rights.

Kiribati is a patriarchal society and in our traditional set up women are prevented from participating in decision-making processes. The Maneoka (Meeting House) is the place where they decide matters concerning the village or the particular island. This is also the place where they develop laws concerning the land. In the past, land was acquired through war. The most skillful in fighting used to get the biggest share of land. Women do not participate in the war so when it came to land distribution women got the smaller shares. It is a cultural belief that when women get married she has to leave the family land and move to her husband's land. The eldest son inherits the best land. Land is regarded as important because it links to family history and identity. It is also a means of survival.

The location of where you sit in the Maneoka connects to your land. Your seat also determines your role in that village. The most skilful fighter is given a special position and role when the village meets in the Maneoka. He is the chair and he is regarded as a chief.

The island of Tabitenea, in the southern part, was named after the fighting for the land. There was a dispute as to who would be the Chief. In the end they agreed that no one should be Chief and everyone would be treated equally. That is how the island's name Tabitenea (which means 'the chiefly system is prohibited') came about.

Of the three islands, this island most strictly observes custom. The record number of murder cases comes from this island. From my personal observation and knowledge of custom women on this island have been discriminated against more than on other islands.

The latest census (2000) shows the population of Kiribati was approximately 90,000 people. More than 50% are women. Today the population has increased to an estimated 100,000 people. The total number of islands in Kiribati is 33. In most of them you can stand in the middle of the island and see the lagoon and ocean all around. Betio, a town at the northern tip of the capital city Tarawa, is well known for being over populated. The increasing population is one of the government's major problems. In years to come I can imagine an individual person being allocated a plot of land big enough to plant only one coconut tree. What will happen to the women, who are often given smaller shares of land? Possibly they will receive no share at all.

As a legal trainer I have several clients. I will present case studies of the issues the clients have brought:

Case Study 1 – A woman, widow, complained against her eldest brother for evicting her and her family from the land he had given to her to live on. She and her family had built a brick house on the land, but now she has to demolish it and vacate it.

Elements – Security of tenure and freedom from dispossession – the woman's tenure was not secure because her name was not yet registered and there is a possibility that she could be evicted at any time by the elder brother.

Affordability – She cannot afford to build another house or meet expense (e.g. transportation costs, power and electricity costs).

Cultural appropriateness – What is the community expectation of this action. Because it is a patriarchal society, community will support the decision for the woman to vacate the land because the eldest son should choose first which land you want to reside on (i.e. culturally appropriate to allow the eviction).

Sources – UDHR, ICCPR, ICESCR, CRC, CEDAW, Constitution, native land law and Millennium Development Goals.

Guarantees – Native land law, constitution, CEDAW and CRC ratified, policies, programmes, AMAK (institution).

Overriding principles – Non discrimination, gender equality.

Causes, threats, obstacles –

- Bad laws - Section 3 of the constitution provides for non discrimination, including on the grounds of sex, but section 15 (3), which defines ‘discriminatory’ as affording different treatment, does not include the ground of sex; the preamble of the Constitution contains four declarations including – upholding the principles of equality and justice; and cherishing and upholding the customs and traditions of Kiribati. But these principles of equality and custom are in conflict. What about bad customs such as beating your wife – are these going to be cherished and upheld? The Native Lands Ordinance (Part V Lands Code) states that if an owner has more than one spouse, the eldest son of the first spouse will be the administrator of the land. A woman can be the administrator if there are no sons. A female administrator may if she wishes allow the son of a subsequent wife to be the administrator. But according to customary practice, even where women have the authority to be the administrator, there can be pressure for her to relinquish it to the son of another wife; the share of the eldest son shall exceed that of the brothers and daughters; if there are no sons, the eldest sister’s share will exceed that of her sisters; thus the code discriminates against women;
- Inadequate enforcement – male magistrates decisions can be influenced by custom, with the result that equality provisions are not as enforced;
- Gender discrimination in the laws.

Victims – Woman (sister) and her family (husband and children).

Impacts – Financial burden, family ties break down, other physical and mental effects.

Violator – Eldest brother (administrator); Duty Holder- State.

Actions/Interventions –

- Human rights awareness should be continued through workshops, media, meetings, dramas etc.;
- Awareness of human rights conventions and the remedies (i.e. complaint procedures);
- Lobby for legal reform (constitution, Native Lands Code);
- Awareness of conflict in laws – and conflicts between law and custom – clarity is needed on the rule of the administrator.

Case Study 2 – A wife made a complaint against her husband for beating her seriously and removing her from their home. The reason the husband beat her was because he suspected her of having an affair with another man.

The criminal law does not recognise any right for a husband to beat his wife. Domestic violence is a crime; it is also a violation of women's human right. However traditional, customary belief recognises that beating of a woman is allowed on certain grounds such as: disobedience, adultery and not doing domestic duties.

The Criminal procedure code gives police powers to arrest without warrant, if that person is committing a cognisable offence (i.e. serious) in the officer's presence. However, often when the police arrive the husband stops the beating, and the police cannot arrest him. Also the police need more training and awareness on determining what are cognisable offences. According to the penal code offences such as assault, stabbing, wounding, etc. are misdemeanours, but acts where there is an intent to cause grievous bodily harm are cognisable offences. Misdemeanours are not cognisable.

The Police Ordinance (section 7) provides that it is the duty of police in Kiribati to: preserve the peace, protect life and property; and prevent crime from being committed. Section 22(3) also provides that it is the duty of every police officer to: prevent the commission of offences; and detect and bring offenders to justice.

Common reasons why police do not take action in cases of domestic violence :

- do not believe they have power to act in these cases;
- do not want to get involved in these cases;
- feel that domestic violence is a private matter and people should not interfere;
- dangerous;
- high rate of withdrawal of cases/return to husband;
- police officer may face problems from the husband.

Consequences – When police do not act in cases of domestic violence, the consequences can be serious, with women being seriously injured and even killed. So it is important that for police to realise that when they fail to take action in domestic violence cases, they are ignoring their duties they have sworn to undertake. They have a duty to uphold the law.

Lynssay Francis, Cook Islands

This is my personal story of returning to the Cook Islands from New Zealand and claiming my house by challenging my clan leader in court. It took me 15 years to win my rights and entitlement to land.

There are two main categories of land rights in the Cook Islands: customary land (customary law determines land rights) and freehold land (land rights acquired are subject to the rights held by others that claim title to land)³. One person can have several different rights to different pieces of land. Males and females have equal rights to land and tenure. However, some adopted and feeding children have problems succeeding to land. According to the 2001 census, only 30% of the resident population has established land rights, either by legal succession, sole occupation, and joint occupation or by lease. 70% of the resident population has no land rights, which includes people who will eventually succeed to land. There are 61 low cost houses allocated for government workers from outer islands, but these have been given to friends of government, which then becomes a governance issue, which is very difficult to change.

Sources – Constitution, Cook Islands Act 1915, Land Facilitations of Dealings Act, Code of Civil Procedure, CRC, New Zealand ratified a number of conventions which apply to the Cook Islands (e.g. CEDAW), National Policy on Women; customary law (particularly where there are no land courts).

Over-riding principles – Equity (i.e. equitable distribution of land as some families were being disadvantaged), rule of law, and discrimination (against returning New Zealand born Cook Islanders).

My story begins 20 years ago but the situation is no different today, because affordable housing is still a problem. I am a woman with five children and six grandchildren. I was originally fighting for these rights for my children and grandchildren, but it extended to my own interests.

My marriage ended which wasn't easy because I had to choose between having custody/access of my children and finance (maintenance/matrimonial property). When a relationship comes to an end, it can get pretty nasty. You can go to court, but it can be long and drawn out and financially expensive. Also I did not want to battle over the children, I just wanted them. So I chose to keep custody of my children and return to Rarotonga to live. I got a job with a company that promised me a house. When I got to the airport in Auckland to fly to the Cook Islands, I was told that there would be no house for me in the Cook Islands. I boarded the plane with \$100, praying that I would get a house when I arrived that. At the airport in Rarotonga my aunt met me at the airport and said don't worry we will find a house.

The first house we moved into had two small bedrooms, cold water, louvers, and holes in the roof. One night my daughters were woken up at 1pm in the morning, with water dripping on them. The rain was pouring into the house and we were soaked.

After a few months we moved into a second house. It was just a shell, with broken louvers, problems with the wiring, no plumbing, no septic tank, no shower, no kitchen sink. It was not habitable. I asked for a loan from the company to fix the home.

Later, once I secured my land I built a house on it, which was our third home. I got a loan from the bank, thanks to a sympathetic bank manager, but it had to be built bit by bit starting with the frame and then covering it.

³ Investigated land to which titles have been ascertained and the land vested in person named.

Obstacles –

- When I returned to the Cook Islands I knew I had land, but I didn't know my genealogy, or the name of the land, how much land was mine, or who was on it, how to file a succession order, court and land meeting procedures, or how to get surveys and maps of my land, all of which I needed to obtain the right to land.
- Family land meetings are held 1-3 times/year. Only elders, registered land owners can speak at the meeting. When I spoke they considered me greedy, cheeky, bringing New Zealand ideas and values to the meeting and disrespecting the culture. You can call a family meeting, but it can be difficult to get all the family and extended family members and landowners to attend. They also tend to allocate the land amongst themselves, over-utilising their shares.
- The title holder to my land was a traditional leader. His job was to hold the family together, but we all had equal rights to the land. In my case I asked for my land but was denied that by my title holder. I couldn't accept that so he took me to court.
- Access to justice – it can be difficult if you don't know how the court works. The other landowner could afford a lawyer, whereas I could not. The land court only sits once or twice a year, which creates delays, making it a difficult to plan for development. Also the case kept having to be adjourned, which is why it took four years. The first judge adjourned the case in order to get the consent of the family either through signature or by attending court. In the interim, that judge died. The second judge commented that my submissions were so thorough I had made a clear case for myself and two other families. However, the case was adjourned again to obtain the family's consensus. Then that judge also died. The problem with when a judge dies, is that you have to re-prepare all your submissions. Finally, I put together the submissions and sent them to all the landowners. By mistake the submission contained two errors in how I had allocated the shares, which would disadvantage three of the main objecting parties, so all the family members turned up to court. I was able to correct the mistakes and obtain consensus, so it was passed. The outcome is now a precedent set for all land owners in the Cook Islands.
- Access to finance - Getting a loan, while you have a case is difficult, because of the delays caused by the land court's infrequent schedule. If you put a proposal in you have to get the family to attend the court to get their approval, but it was difficult to get all the family members to come.

Impacts – Emotional trauma of challenging your family title holder – I was ostracized from the community, stigmatised. At social functions I was being ignored because I was a trouble maker – which can be very hard when living in a small community. I had to take a year off work because it was emotionally so difficult.

It also cost me a lot of investment, time, and money (including lost income).

Violators –

- Husband – did not give me the financial support I needed to re-establish myself – I should not have had to choose between my children and financial support;
- Family and traditional leaders – prevented me from accessing land and information and did not support me;

State – The government is trying to encourage Cook Islanders living overseas to return to Cook Islands, but they are not considering the needs for accessing land and housing;

Judiciary and courts – for delayed time frames and decisions made;

Business sector – relocating people without ensuring accommodation is available.

Duty holder – State

I had 15 years of family meetings and 4 years in court. I was successful in court in March 2004. The title holder was also the Prime Minister at the time. I challenged the extended family – which is a large land owning family in the Cook Islands with several branches. My case set a precedent. As a result of my case all the land owners can see now that it is possible to challenge the system. The judge (not a Cook Islander)⁴ said that my proposal was an equitable and fair distribution of land and I was making the job of my traditional leaders easier. The battle will still go on, because although I secured rights for my extended family, I now need to start the second battle of securing my own rights within that.

Actions/Interventions –

- Review/amend laws
- New laws
- Litigation in courts
- Information/awareness raising
- Low cost housing
- Parallel reporting to treaty bodies, UN agencies, UN Special Rapporteurs
- Family mobilisation/support.

⁴ Land Commission Report found that a local judge would not be a good idea because they may have a conflict of interests.

'Ofa-Ki-Levuka Guttenbeil-Likiliki, Tonga

Me and my mother's story.

Timeline

- 1898 Amelia Lolohea (great grandmother) sent from an outer island to marry a man from the main island.
- 1923 AnaMeki (grandmother) arranged/forced marriage to marry at the age of 15 years to the son of a big land owner in Vaini. The marriage was at an early age because her mother died.
- 1964-69 Amelia Lolohea (mother) forced to marry a man from Nuku'alofa. He was the eldest son and seen as a good catch. Amelia remarried in 1969.
- 2002 Ofa-Ki-Levuka – advised to marry the eldest son of land owning family if I wanted to marry a Tongan.

STOP!

By the time 'Alamita (my daughter) is a young woman and whatever path she chooses, by then cultural appropriateness would have changed!!

The timeline shows nothing has changed since 1898 to 2002.

My great grandmother – 'Amelia Lolohea, 1898

At the age of 17 my great grandmother was sent to the main island to marry the son of a landowner in Lapaha (Eastern District). At the time there was lots of excitement because my great grandmother's family had successfully arranged a marriage to the main island.

This was opening up the pathway for other family members to have easier access to the main island. Soon after the wedding, my great grandmother was encouraged to bear children by her mother – particularly a son – so that he could inherit the prized land on the main island.

Unfortunately my great grandmother was sickly. I'm not quite sure what kind of sickness she had – but it must have been pretty serious because she had (according to my grandmother's record of events) approximately 5 miscarriages before she successfully gave birth to her first born child, a daughter.

This was not good enough because their baby girl could not inherit the land so again she was pressured to keep trying. She eventually gave birth to a son! What a relief! But according to her mother she needed to have another son as a kind of backup if something was to happen to the eldest son.

My great grandmother had another miscarriage before giving birth to my grandmother 'Ana Meki. She died while giving birth to my nanna.

My grandmother – 'Ana Meki, 1923

Because my great grandmother passed away while giving birth to my nanna, my great grandfather thought that the best thing to do was to marry off my nanna as soon as possible so that he didn't have to have the burden of caring for her for too long.

At the age of 15 my grandfather found a possible candidate. My grandmother was arranged to marry one of the sons of a big land owner in the village of Vaini.

My grandmother in her stories to us grandchildren tells of how she was just a child when she was married off. She had absolutely no idea of how to be a wife and the thought of bearing children scared the living daylights out of her.

Nevertheless, although her mother had passed away, her older sister quickly encouraged her to start bearing children because the family that she had married into owned heaps and heaps of land and the more sons she had the higher her chances of getting the family land distributed amongst them.

My nanna, the incredible woman that she is, ended up having 13 children - 7 boys and 6 girls. She had more than enough sons to keep her happy knowing that her sons were secured.

BUT what about her daughters? Which one of them was my mother?

My mother – ‘Amelia Lolohea Junior, 1964

My mother, one of the most beautiful girls in her village, at the age of 19 had been arranged to marry a man from the Nuku‘alofa area in 1964. On the night of her wedding she was forced to prove her virginity by providing a blood stained sheet to a group of anticipated elderly women from her husband’s family.

Her husband was the eldest son and therefore rightful heir to the family land. In my grandparents eyes he was a goldmine. My mother’s wishes or feelings were not taken into account. He would provide security for my mother and future sons. My mother was therefore encouraged to bear children immediately.

She gave birth to my eldest brother a year after. My mother was not happy. She was very depressed and found it hard to fall in love with a man that she hardly knew. When my brother was three months old, my mother returned with her son to her family home back in the eastern villages.

Two years later she remarried. This time it was to my father, the superstar of his village. There was a problem. My father was the eldest son of 12 brothers and sisters. His family was not in approval of my mother because of the fact that she had been married before and especially because she already had a child. Because of the non-approval and stress caused by my father’s family, coupled with their search for better horizons and economic dreams, my parents decided to migrate to New Zealand in 1969.

Me – ‘Ofa-ki-Levuka Guttenbeil-Likiliki, 2002

25 years later I migrated back to Tonga voluntarily- I guess to find my roots. I married a talented local in 2002 (almost thirty years after what my mother had experienced in her first marriage). He too is the eldest son from the Nuku‘alofa area. The cultural ideology connected with land still applies – he was still regarded as a ‘prize possession’. According to my family members I had made the right choice.

Again I was encouraged to bear children as soon as possible to ensure my rights to my husband’s land.

I gave birth to a beautiful baby girl in July 2003. But as you have all heard, this was not good enough according to our law governing rights to land. Even the naming of my daughter is connected to land. To show our appreciation to land gained through the adopted family I had to give them the privilege

of naming my eldest child. When we first arrived at our house, it was in a state to be demolished because it had been abandoned when they left for New Zealand. I wanted to live in a nice and adequate house, so I put in a lot of money, stress and hard work to renovating the house. When my mother visited and I showed her what I had done, she said "Stop, don't renovate any further". The reason was because I did not have a son. She explained if my husband were to drop dead today I would have no rights to the house or land, and all the hard work would be wasted. As harsh as it sounded – it was actually the law that my mother was spelling out! I had to take into account what my mother said – it is in the law and the cultural ideology.

Elements – Cultural appropriateness – culture has placed male power or male patriarchy over every other entitlement in Tonga's society. Culture governs absolutely everything in society. It inserts patriarchal power into our constitution, national government, parliament, local government, our family structures and relations, our churches, our schools, the police, our health system, our work places our village communities...(our public and private sectors). So through such a patriarchal system of institutions, it is no wonder that:

- Women's right to own land is not recognized;
- Women's lived experiences are clearly irrelevant;
- The majority of women over generations have come to accept the cultural ideologies connected to land.

Cultural patriarchy is a bomb.

Sources –

- Tongan Constitution (1875) - Section 107 provides for 'Tofia' (hereditary estate) – scheduled hereditary estates are held by nobles and matapule; section 4 provides for equality before the law;
- Land Act – governs rights to 'api 'uta (tax allotment) and 'api kolo (town allotment). Every Tongan male is entitled to a tax and town allotment when he reaches 16. This clearly discriminates against women and is not consistent with section 4 of the constitution (equality before the law).

The Land Act states that inheritance of hereditary estates will take place according to section 107 of the Constitution. Legitimate male and female children are eligible, but primarily the eldest male and his heirs inherit the estate. If the eldest son has no heirs, the second male child will be given priority, and so on until the male line ends. If the male line dies out the eldest female line will succeed. If the female line dies out the land then reverts back to the male line. A woman who is widowed can remain on the land until she dies, remarries or fornicates. Cultural patriarchy is a nuclear bomb;

Constructive trusts for the house and property (but not the land) can be set up. But for a woman to claim a share she has to prove she directly contributed a certain amount of the finances to the marriage. The non-financial contributions are not taken into account. In the case of Etueni Aladini, the wife was unsuccessful in making her claim because she couldn't provide evidence of financial contributions to the consecutive trust and the non-financial contribution was not taken into account. Further, as a widow, only if she remains sexually inactive, is she entitled to a proportion of the economic value of the property, up to the amount of her financial contributions;

- National Policy on Gender and Development (2001) provides the vision to reach gender equity in all spheres of life by 2025. It addresses gender equality in culture, family and the economy. But although it has been three years since it was approved, nothing has been implemented;
- Millennium Development Goals – empowerment of women; reduce poverty.

Overriding principles – Gender equality and non-discrimination in all its forms.

Guarantees – CERD, CRC, Millennium Development Goals, National Policy on Gender and Development, Section 4 of the Constitution. But the culture of patriarchy, the attitudes and behaviour completely overrides these guarantees.

Causes – It is the substance, structure and culture of the way Tongan society is made up.

The law contributes to the problem by maintaining a patriarchal society, keeping women oppressed with regards to rights to land, in accordance with the dominant male standards evident in culture. Men are the caretakers of land and women's role is within the home, to bear and care for her husband and children.

Substance – not having laws or provisions in our constitution that recognise men and women are equal under the law. When it comes to land gender and development is not implemented.

Structure – Institutions in Tonga that re-enforce these patriarchal culturally appropriate ideologies; attitudes and accepted behaviours that land is a man's issue and that women should not get involved; and the majority of magistrates and judges who are ignorant, who are all male.

Victims – 4 generations of victims - I don't want my daughter to be a victim.

Great grandmother:

- The family made a collective decision for her to marry the son of a landowner on the main island. Despite the fact that she was in ill-health, her duty to bear sons in order to access the land was more important.

Grandmother:

- My nanna was forced to marry at the age of 15 because my great grand father didn't want the cultural responsibility of looking after her (i.e. that is mother's duty not a father's)

Mother:

- My mother was forced to marry her first husband because he was the eldest son and heir to the tax and town allotment, despite the fact that she did not know anything about this man. My mother's father made the decision for her to marry.
- My mother was forced to prove her virginity so that the family was in approval of marrying their son who was the grand prize.
- My mother was to bear children immediately so that she could have a son who could be the heir as her rights as a woman are not recognized and rights of widows are restricted.

- Despite the fact that my mother married someone she was in love with, her status of not being a virgin anymore and of already having a child, reflected in the way my father's family treated her – resulting in their migration overseas to New Zealand.

Me:

- Access to loans made difficult; psychological pressure to have a son.

My daughter:

- if the cultural system doesn't change, she too will be come a victim.

Violator – The law for treating women unequally and failing to address the issue of obvious discrimination against women's freedom to make choices such as choosing a partner, deciding to marry, how many children to have (taking health issues into account); culture for reinforcing gender-based inequalities and legitimising and strengthening women's oppression – women will always have to struggle.

Actions/Interventions –

- Get women to change their belief systems, which are based on a patriarchal cultural ideology. A bomb containing a psycho-feminist approach needs to be dropped from the sky so the women can move away from how the majority of men and our forefathers before us think and behave, as is evident in everything in society. The law needs to take into account women's lived experiences.

Testimonies on Housing, Land and Property Rights of Women (Migration, Shift to Urban Areas, Urban Settlements)

Presenters: Stella Simmering, Elizabeth Tongne, Reginald Kipe,

Stella Simmering, Australia

Longgrass Association Testimony on the right to adequate housing

My name is Stella Simmering. I represent the Longgrass Association from Darwin, Northern Territory, Australia. Longgrass is a local name used by people whose testimonies I will be presenting. The Longgrass Association is made up of people 'camping out' in Darwin and their family and friends. The Association provides practical support to them and is a human rights advocate network. The Longgrass Association is a voice for the hundreds of voiceless individuals and family groups that live in the longgrass either by choice or by circumstance.

I have been working with families living in the longgrass since 1997. Firstly with my adopted Aboriginal family from the remote community of Maningrida, in Arnhem Land, who were at the time living at Fish Camp, on the edge of the mangroves.

June Mills has been a key spokesperson for the Longgrass Association. She is a Larrakia lady, a traditional land owner of the Darwin area. She is also an artist and musician, a mother and grandmother, a community leader and an outspoken advocate of Indigenous and human rights. As we didn't have time to record an interview with June, I will share information from interviews done with her for the March, June and October editions of the Longgrass Association magazine in 2003. The magazine is used to give a voice to longgrass people – to give an indication of how people are living and their feelings of the situation.

Longgrass people are mainly family groups who come from remote and inter-State Indigenous communities and the islands. Whether by choice or by circumstance, longgrass people are living in the parks, the mangroves, the bush, the wastelands, on the beaches and streets – within and around the fringes of Darwin city and its satellite city, Palmerston. The Larrakia are the traditional land owners of this area. The Larrakia did lodge a land claim to land in this area, and the claim was resolved with the agreement that the land in Palmerston would be developed, but by the corporate arm of the Larrakia Nation. However, some Larrakia people have lost their lands and also struggle with the difficulties of the housing commission tenancies. Many of the public parks that longgrass people live on, are classified as crown lands, and are under the control of the Darwin City Council.

The longgrass people live in extremely difficult circumstances, including extreme poverty. They face extreme disadvantage in terms of their right to practice their culture. They have been labelled as being an itinerant problem (e.g. because they allegedly leave their rubbish in public spaces). The key issues for longgrass people are:

- criminalisation of homelessness through Darwin City Council by-laws;
- not being allowed to light a fire for sleeping between dusk and dawn;
- leaving possessions in a public space;

- daily harassment and a cycle of forced evictions from camps;
- access to water and toilet blocks;
- access to shelter in the wet season;
- access to services.

The Longgrass Association estimates there is a population of over 1000 people camping out in the dry season on any one night. However, this becomes much less during the wet season. There are as many women as men living in the longgrass, as well as elderly, sick and disabled people, children and youth. The longgrass population is always moving because of the high mobility of Indigenous people. Darwin City Council, police patrols and private security also make people in visible public areas move a couple of times a day.

Women's stories from the longgrass (some names have been changed).

Mirrium (interviewed mid-July 2004)

I remember it (Yarrowonga incident) was two and a half weeks ago. We were trying to cook some lunch for ourselves, and we had a little boy there, my little grandson. And they (the police) went there and busted all the grog (alcohol) for us. There were two coppers (police), one black police lady and one short policeman. I see them come around all the time, bust everything and burn all our stuff.

That day it happened in the bush camp, not a public area, in the bushes inside. It was 'Bunda camp' – a family camp with 10-13 people. We had carried water from a long way right down to the bush camp. They made us stand up and tip out all our grog. There were three full moselle flasks and we couldn't open it. We told them we going to move with this grog. But they just went in and got the three moselle flasks and just ripped them open with the knife. Then they just told us to move. We started to move, carry some stuff just to drop it and come back and get the rest. We told them we were going to pack up and we are going to come back and pick up the rest of the stuff. We only took a little bit of stuff with us, our clean clothes and blankets. When we looked back we saw a big fire burning. They were burning all our mattresses and all. Everything was burnt. We lost our mattresses, sheets, clothes, baby's clothes, bank key card, identification card, shoulder bag with personal things, tarpaulin we used for making a bed, and medication. For some days after, some people who had lost their clothes had to walk around dirty.

The reason the police gave was that the land used to be an army barracks and the government owned the land. They told us we can't stay there. The police woman, she is a black woman and she is a cheeky woman. She just tells us to move, 'just get your stuff and go'. We had two camps and I went to check on the other camp last week, but it was gone. Maybe the coppers came again. I have been fighting for longgrass people for many years now. Still the coppers never change.

Yarrowonga Camp Incident, (from Longgrass Magazine, Issue 4, July 2004)

Police and Crown Land representatives gave notice to the camp members to move, or face a \$2000 fine or jail. Signs were erected at the time saying "Crown Land – no trespassing". They told them to move to 15 Mile camp, but there had been a lot of fighting there and it wasn't safe to go there. The camp

members burnt the no trespassing sign in front of them. Then when the members returned to collect their belongings, it was all gone. They had removed tarpaulins, tent, mattresses and a bunk.

One member told the police “look, we like to stay in bush, longgrass, cause we born in bush. It’s alright you balanda, you born in house. But us mob, we born in bush and that’s our country and that’s our bush camp.”

Entitlements – Right to adequate housing, adequate standard of living, life, health culture, information, freedom of movement, right to privacy and family life, freedom from torture, cruel inhuman and degrading treatment.

Sources – CESCR, CESCR General Comment No 4, CERD, CERD, CEDAW, CAT, CRC.

Overriding principle – Racial discrimination.

Causes/obstacles/threats –

- The Northern Territory government continues to develop land in Darwin for the increasing population. Yet excluded from this development is land for culturally appropriate Aboriginal living areas, or ‘town camps’. In a meeting between the Fish Camp residents and the Land Department in 1998, the Land Department representatives indicated that there was an unwritten policy that there would be no more land allocated for Aboriginal living areas in Darwin;
- We need to understand dispossession and racism against Indigenous people in Australia from a historical context. The Australian constitution only recognized Aboriginals as Australian citizens after a referendum in 1969. Racism against Indigenous Australians is imprinted in the psyche of the Australian government and the Australian public. It is ever present in Indigenous people’s daily lives. Longgrass people feel they have no status in the community. You often hear longgrass people say, ‘we are treated like animals, we are rubbish people’;
- It is recognized world wide that the physical and mental health of Indigenous Australians is in a profound state of crisis. This is a contributing factor to alcohol and substance abuse (many longgrass people refer to alcohol as their pain killer and medicine) and violence against women and children. Families experience a continual cycle of grief and funerals;
- There is a shortage and neglect of public housing in remote communities and in town, and an epidemic of overcrowding. Shelter options for people when they come to town are limited. The public housing policies are culturally inappropriate -they do not accommodate extended families and the rules discriminate against indigenous peoples’ cultural obligations. There is an extremely high rate of failed tenancies for Indigenous people;
- Private rental is too expensive for Indigenous people on low incomes and Indigenous people nearly always face discrimination;
- Aboriginal hostels and church accommodation – these are always full. Mostly people coming in from remote communities to go to hospital stay here. Also the environment is fully controlled. You are not allowed to cook your own meals or make your own coffee. No extended family members are allowed. The cost consumes most people’s incomes;

- The role of the media in reporting on longgrass issues: The negative reporting by the media has actively aggravated racial tension and violence, as well as reinforced racial prejudices and stereotypes. In March/April 2003, there was a particularly aggressive campaign by the media against the longgrass people, during which the abhorrent idea of ‘permits for Aboriginals’ was even raised. The fear campaigns are particularly strong around the time of the Northern Territory elections and are very effective in gaining votes for right wing political parties;
- A series of by-laws are introduced to prevent longgrass people living in public spaces (e.g. issuing of fines for sleeping between dusk and dawn, for lighting a fire, or for leaving your possessions in a public spaces). In addition people’s access to basic services are removed (e.g. cut taps off in public spaces (the Council brings their own tap attachments), public toilets are locked up), with the result that many longgrass people have to walk long distances to bring water for their camps.

Dulcie Malimara (Uinawinga Project)

I have been in Darwin since I was 17. I had all my kids in Darwin. Even my brother, he is blind...we’ve been staying in Darwin all our lives. Anyway, we had a Housing Commission house for nearly 19 years. I had an injured neck and injured leg and went to hospital. My kids were staying in the house, but nobody was looking after them. So some of my people come along. I told my people not to make noise because that wasn’t my house. But they made a lot of noise so I got kicked out. I was in the hospital when my kids got kicked out. When I came out they wasn’t there. And that’s my big problem. I didn’t want to go back in the Housing Commission. I’m happy staying outside so I can sing, dance, cry, whatever I like. So I’m free enough to stay here. The Housing Commission, its really hard. You can’t even take your family. It’s really hard for us to go back in a Housing Commission, because I tried that a lot of times. That’s my story.

Dulcie and her sisters and brother were born in Arnhemland during and just after World War II. Some moved as children or young teenagers to Darwin in the 1950s. They retain connections with their home country near Maningrida, and have some traditional responsibility for certain lands there, but they have been Darwin residents for decades. Dulcie has lived in Darwin since 1966, when she went into Royal Darwin Hospital to bear her first child Marietta (now 32 years old). She has been a permanent Darwin resident for 32 years and brought up all her children here.

When she moved to Darwin, Dulcie lived in a caravan park on the outskirts of Darwin, and then moved to another. After cyclone Tracey (1974) the Housing Commission built houses for low-income people and provided Dulcie’s immediate family with a house in Moil suburb. Dulcie lived in that house for many years until she went to hospital. Family members came to Darwin to visit her in hospital and look after her young children, and stayed in her house. No-one ensured rent was paid. The visiting family members, un-acustomed to high-density living, caused too much noise. Dulcie’s family was evicted. When she left hospital she was homeless.

She and other members of her group have come together at or been dispersed to various underdeveloped areas around Darwin. This has included lengthy stays at Lee Point (twice) and Marrara Creek and other publicly owned land in the hands of the Commonwealth or Territory government agencies, which have generally moved them on after a few months. They were evicted very publicly from Lee Point a few years ago as trespassers.

Since 1995 they have lived at Fish Camp, with permission from the Kululuk Aboriginal Community. 'Fish Camp' is the residents' name for a makeshift shelter on the Kululuk, near the sea, between the Darwin suburbs of Ludmilla and Coconut Grove, south-west of the Dick Ward Drive and Totem Road intersection. The Kululuk Aboriginal people are the leaseholders of this land and there are a number of more permanent Kululuk campsites. The Fish Camp people are not Kululuk, but the Kululuk have permitted them to live temporarily at Fish Camp. But they are only allowed to stay on the condition that they have no permanency of tenure and may not build any permanent structures such as water pipes, a septic system, and buildings using cement or tin – presumably because these structures might signify adverse possession, breach by-laws or create similar legal difficulties. While grateful to the Kululuk, the Fish Camp residents have no assurance they can remain where they are, no proper shelter, water or sanitation. Their only security of tenure is the goodwill of the Kululuk people.

Jeannie Gadambua (interviewed 2003)

I left my home place Maningrida because of whitefellas stepping all over people, especially traditional owners. People in the community they don't know what happens after elections and what decisions are made, without someone sitting down and explaining what is happening. My people are dying from the distress. Some people are living in iron shacks. People were crowded into one house. If one person gets a house, everyone crowds in. And there are health problems from too many people in one house. One person with infected sores or some other problem and they spread in the house. Also they don't let people know how much money they have in their accounts, they just take money for house repairs, without giving any information. And some ballanda they just build new houses on top of sacred sites where we do ceremony. The people in the community, they can't challenge ballandas, ballandas just putting sand all over us. I've seen so many people from Maningrida graduate from Batchelor College and return to Maningrida to look for a job. But when they ask, they say it's hard for you because you can't do that. Maybe next month or next year I'll give you a job. That's how long people wait. They get sick of it. They fly to Darwin. They end up in the longgrass with their close relations, like aunties; they gather together, mix with oldies. Sometimes when they are drinking and I still hear their complaints, "no can't go back, what for? No, too hard, I'm sick of ballandas (non-Aboriginal people)". I want to tell this story to make other Longgrass people talk. Longgrass people don't have to be shut up about what's happened to their home community, they are going to have to talk. Like me, for instance, I went to every office, tried journalists, lawyers, nothing happened.⁵ I like the white people that are helping to move away the problems by teaching and helping Aboriginal people to run the place. But these people I can't talk to them. I just feel floating. Sometimes, I get angry with the kids because of the stress. Sometimes I sit and think about my people and ceremony and how I miss them since I haven't been back since 1998. I'm sort of getting distressed missing all my cultural stuff and people out there. They're still calling me to go back, but when I ask them for support, they're not able to because the ballanda stepped all over them.

Rona, Naree, Alison and Dave (interviewed 2003)

⁵ I did a protest in front of the Northern Territory Legislative Assembly in 2001 - "Unchain me from genocide, suicide and trauma" in 2003.

Rona - We were camped for six months here. Darwin City Council told us to move out. We did that and the other City Council told us to come back here. They were moving us backwards and forwards. We were getting sick and tired of them.

They came around about quarter past five in the morning. They had the spotlight (torch) on us. Waking people up with the frying pan. We told the City Council wait till they get up – then we can move. He started booting them with his foot. He hit that old man Albert; he can't hear when you talk to him. He was kicking my cousin sister May and her husband Frank.

Naree - They said "You mob black bastards. We didn't tell you mob to stay here, we told you to move yesterday".

Rona - He booted the fire. All the ashes been fly. Those ashes landed on one of the sheets. The sheet burnt, and Jack's wife got burnt on the shoulder.

Naree - They think they own the bush, they think they create the bush. Coppers were alright they weren't using bad language. Only the City Council.

Rona - We are the Longgrass people they should leave us alone. We know how to clean up the area. We feel no good when they push us backward and forward. About 20 people in this camp, mainly from Bathurst Island, I'm from Maningrida and Naree from Borroloola and one from Bagot, we all mixed up family.

Dave - We all look after one another share tucka (food), we clean everything and put it in the bin.

Naree - White people should realise things. Aboriginal people got more say than whites. Aboriginal people were the first ones here. We should all be family and friends because we are all made from dirt, doesn't matter what colour, we all made of dust, we shouldn't be prejudice.

One Mile Dam Community (from interview with David Timber, 2003)

In 1979 the Australian Defence Force granted a lease for an Aboriginal living area called One Mile Dam Community. The Kumbutjil Association fought for this lease. Today it continues to be a town camp that accommodates many longgrass people from the town area. Residents at One Mile Dam have long family histories of living in this area.

The community is in a state of profound neglect. Residents live in tin dwellings that are unbearably hot, forcing many residents to sleep outside at night. There are no fans. There are gaps between the floors and ceilings where rats, insects and wildlife enter. This creates ongoing problems with chewed cables, ant nests in power points and electric shocks. There are no cooking facilities. Residents share two abolition blocks. The dwellings are overcrowded. Some residents live in tents. These living conditions physically affect the health and well being of the residents. Residents expect housing to be developed to the Australian standards.

For 25 years the Australian Defence Force has been funded to service and maintain the community. The Australian Defence Force has been very paternalistic in its approach and not consulted the community members. Maintenance has only been provided in emergency situations (electric socks, burst water pipes or sewage problems).

The funding for the service maintenance was recently transferred to Yilli Rreung Housing. But the maintenance of the actual houses is still the responsibility of the Australian Defence Force. But they have made no efforts and the houses are now in an extreme state of disrepair. Neither the government nor the Australian Defence Force have responded to our requests for the housing to be improved.

The community members reformed the Kumbujil Association in 2004. They have initiated a project to resource independent consultants to work with residents to develop a sustainable well designed community housing model. They are seeking funding for other projects on rubbish collection, care of the dog population, public telephones and street lights, and for a community development worker to work with the community on these and other initiatives.

The Northern Territory Government and the Australian Defence Force are planning to develop the area for new inner city residences, which will require the One Mile Dam Community to be moved. Neither the Government, nor the Australian Defence Force has consulted the One Mile Dam Community about these plans.

Violator – Darwin City Council, police, Northern Territory Government, Housing Commission.

Duty Holder – Federal Government.

Victims – Longgrass people (women, children, old and disabled people), extended family that supports longgrass people.

Impacts –

- People living in such extreme poverty are sometimes not in a position to claim their rights. Longgrass people always experience some form of retribution/ further harassment from authorities for speaking up for their rights;
- Ill health - often hospital is a last resort for longgrass people;
- Continually forced to live in inhuman conditions is a form of violence;
- Impact of violence by community members and police - women, children, old people and disabled are more vulnerable;
- Material costs – costs to the Australian health system (mostly longgrass people enter the system through the accident and emergency/intensive care unit because they go to hospital as a last resort); cost of policing; court costs for processing fines; Darwin City Council, police and Lands Department costs for eviction processes; loss of property destroyed by police; cost of failed tenancies to public housing Commission, and costs of high surveillance and management of indigenous housing tenants; cost to local charities for food and clothing provision;
- Non-material costs – degrading people's well being and ability to function as a family member or member of the community.

Actions/Interventions –

- Legal challenges and action i.e. so far 3 anti-discrimination complaints have been made to Human Rights and Equal Opportunity Commission in the last 10 years. The result of the most recent complaint was a forced eviction at Yarrowonga (July 2004). In 2002-2003 a complaint on the Darwin

City Council By-Laws was heard but the Darwin City Council refused to acknowledge there were any problems. The complaint went to the Federal Court, but the complainants had to withdraw because of lack of legal representation and finances (i.e. Darwin is a small community and no lawyers were willing to take up the case because it was going against the Council and the government. Also many of the lawyers were unfamiliar with the possible human rights arguments in the case). So overall there are no practical outcomes from legal actions for Longgrass people.

Vision Statement of the Longgrass Association calls for:

- Amend Darwin City Council By Law 103, which makes it an offence to sleep out between dusk and dawn;
- Amend Darwin City Council By Law 100 which allows workers to take blankets, bags and personal items that are stashed in public places;
- Open public toilets for use 24 hours a day;
- Legal service for longgrass people;
- Urgent housing for dialysis patients and their extended families in Darwin;
- Provision of dialysis machines in remote communities;
- Services to be located throughout Darwin and Palmerston and managed by longgrass people: overnight shelters with toilets, showers, washing facilities, lockers; housing for extended families; drop-in centres to access information and services; medical bus; coffee/information buses;
- Councils to regularly collect rubbish from all camps to ensure health standards are maintained;
- Allocation of space for longgrass people in present and future town planning for Darwin and Palmerston;
- Northern Territory Government, Darwin and Palmerston Councils and Night Patrol to consult regularly with Longgrass Association and Longgrass people about their needs;
- Respect (not racist stereotyping) of the Longgrass culture;
- Northern Territory Government and Darwin City Council need to amend past wrongs by reviewing policies that exclude and discriminate against Longgrass people.

Reginald Kipe, Vanuatu

Vanuatu is composed of many islands, with about 100 cultures, all different from each other. When talking about women in Vanuatu, their roles and responsibilities are more defined by customary laws, and these are deeply rooted in Vanuatu's traditional and cultural practices.

So, when talking of housing, or someone having a home, this usually means that you are also talking about the land the house is on, i.e. having a home means you have a land as well. Therefore, when considering women and land one will immediately think 'what does the custom say about that'?

Traditionally or customarily, Vanuatu has both matrilineal and patrilineal systems of land ownership, depending on where you come from. For example, where my colleague Marilyn originally comes from, matrilineal system of land tenure is allowed. However, reality shows that even though woman may inherit land, ownership and the privileges and power still attach to the men.

With regard to the other systems of inheritance, it is reaffirmed in the Constitution of Vanuatu, which like in other Pacific Island Countries, is the supreme law of the country. Chapter 12, Article 2 of the Constitution deals with land issues. The relevant articles are:

- 71 All land in the Republic belongs to the indigenous custom owners and their descendants.
- 72 The rules of custom shall form the basis of ownership and use of land in the Republic.
- 73 Only indigenous citizens of the Republic who have acquired their land in accordance with a recognised system of land tenure shall have perpetual ownership of their land.

Another important provision in the Constitution that shows the position of women in Vanuatu custom, after Independence is Chapter 15, Article 93 (2) and (3):

- (2) Until otherwise provided by Parliament, the British and French laws in force or applied in the New Hebrides immediately before the day of Independence shall on and after that day continue to apply to the extent that they are not expressly revoked or incompatible with the independent status of Vanuatu and wherever possible taking due account of custom.
- (3) Customary law shall continue to have effect as part of the law of the Republic.

In contrast to the constitutional provisions on land, the Constitution also provides in Chapter 2, Article 5 (1) for equal treatment:

- 5 (1)... all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex...:
 - (c) Security of the person.
 - (j) Protection for the privacy of the home and other property from unjust deprivation of property
 - (k) equal treatment under the law or administrative action...no law shall be inconsistent with this sub-paragraph insofar as it makes provision for the special benefit, welfare, protection or advancement of females, children and young persons, members of underprivileged groups or inhabitants of less developed areas.

From this it could also be implied that the constitution provides for women's right to adequate housing

To conclude, in a sentence, land tenure and land inheritance in Vanuatu is constitutionally regulated by custom, which in fact favours the men more than the women.

With regard to the property rights of women in Vanuatu, there are no matrimonial property rights per se, but women may have some rights where they have contributed substantively to the matrimonial home. Such cases are more likely to arise in urban areas. There are two possible ways women's claims may arise in this situation: if she can prove her contribution by quantifying it then accordingly compensation will be granted; or if she knows her rights then she can challenge any bias or prejudice incurred upon herself – which is why legal literacy for women is so important). The legal authority for this is the Toto Case, which was decided by the Supreme Court of Vanuatu in 2000. The dispute was over a piece of land, a beach in northern Vanuatu. The family had converted the land into a tourism attraction and the fee acquired from it was distributed between the family members. A matrilineal system of inheritance is recognised in this area. The male head of the family had two wives. The first wife had a daughter (eldest) and a son. The daughter was not given any inheritance, so the daughter's eldest son took the case to court, arguing that it was a violation of Article 5 of the constitution, which provided for equal rights to land. The Chief Justice was a foreign judge.

Elements – While all elements are affected, the core element affected is security of tenure and freedom from dispossession. Since land tenure is regulated by custom, and the latter is deeply valued, unless women know their rights and have the courage to speak out, land tenure, even in matrilineal systems would be subject to male decisions and authority.

Sources – Constitution, CEDAW, CRC, Land Act, global conferences (Vienna, Istanbul and Beijing).

Over-riding principles – Gender equality and non-discrimination on the grounds of traditional beliefs, as provided in the constitution.

Causes/threats/obstacles/contributing factors – We have laws that provide for women's right to adequate housing and land, but there is inadequate enforcement.

Victims – Women, wife, widow, women with disabilities.

Vulnerable – Children, following generations, especially girls.

Impact/consequences – The confusion between custom and equality in the constitution could lead to conflict and violence.

Material costs – Loss of finance and property; loss of investment in matrimonial house.

Non-material costs – In Vanuatu, land is associated with wealth, or a source of wealth, and a means of survival. If someone doesn't have land, they are seen as landless/aimless. For women this can mean they may find it difficult to find someone to marry.

Violator – Could be anyone from the community or family.

Duty Holder – State/government since they pass the laws in Parliament; the Chiefs in the village as well because they are closely working with the government on land issues (i.e. Article 74 of the Constitution); the community may also bear a responsibility because the community may have knowledgeable people, or people who don't agree with a decision made by the common council, but who out of respect or due to the culture of silence, do not raise their voices.

Actions/Interventions –

- More legal literacy programmes;
- More awareness (on human rights instruments) for the community, but especially for political leaders (e.g. church leaders, parliamentarians, provincial leaders etc.);
- Networking and cooperation between NGOs to promote human rights;
- Parallel reporting to the treaty bodies and reporting to the Special Rapporteurs.

Elizabeth Tongne, Papua New Guinea

The Papua New Guinea (PNG) government promotes development of natural resources in rural areas. So many development projects that have been introduced in rural areas have resulted in removing communities. So rural people want to find alternatives to developing the natural resources and their land.

Most of the land in PNG is customarily owned (97%), with only 3% of the land being State owned. PNG is a big country with lots of different ethnic grouping, who have different ways of passing on land to the next generation. So the land tenure system is not the same in all parts of the country.

Case study 1 – Migrants into oil palm resettlement projects (West New Britain)

Maggie is 40 years old. She is married and has four children. When she was two years old the first logging company came to her village. The company asked her people for some land, which they purchased with some tobacco and an axe. Her father and the other men in the community were used as labourers to cut the bush down. Once the company established itself it brought in its machinery and started logging the land.

After the timber was logged, Maggies' parents and community were told to plant oil palm on the land. The company extended its activities in logging beyond the agreed land that was given in the first place. Later the Provincial government introduced a resettlement programme. People from all over PNG applied for blocks of land which they eventually got. A large number of families from all over PNG were moved in to settle on the blocks of land and grown oil palm. Housing is a big problem for women and men among both communities and settlers.

Maggie's home is surrounded by both the oil palm blocks and the logging company. Her village population has also increased, but cannot expand, because the oil palms take up the land. Women have to travel longer distances to find materials to build houses. These two forms of development have exploited Maggie's community's land for the past 40 years.

Issues –

- Her freedom to move around is threatened;
- There is an endless crisis between the settlers and her local community;
- Lack of materials for both landowners and settlers to build adequate housing;
- Labour intensive;
- Low income from oil palms;
- Uncertainty of children's future;
- Destruction of the environment;
- Pollution in the rivers and sea.

Violators – ADB/World Bank/UNDP, Government of PNG, West New Britain Provincial government, local level government, churches.

Victims – Most affected are women and children.

Actions/Interventions – World Bank and UNDP to stop funding projects which fail to support the livelihoods of local communities.

Case study 2 – rural women migrating to urban areas (East New Britain)

Indigenous women from regional areas move to Rabaul (urban area) to find employment, to sell vegetables, to get services not available in rural areas or to come to hospital. But there is no short-term accommodation, and only poor and insecure long term shelter. They are vulnerable to rape and violence and forced to befriend others to get shelter. Women have no choices – there are no shelters, crisis centres and only limited access to welfare services. Women going to hospital have to seek shelter anywhere before they can find transport to return to their communities.

A woman and child left home to come and seek health services from a big hospital in town. This woman left her remote community because she was transferred from local authorities to the hospital because the disease could not be attended to in the rural health centres. She stayed in hospital and then had to return home by boat. She had no money to return so asked to live with her relatives, who were an hour away from hospital. She was raped by people of her own tribe.

The people in town have integrated with many cultures i.e. attitudes towards each other have changed. They are living in a society that has been occupied by plantations, where plantation workers were brought as slaves from all over PNG during the colonial times. So they don't have respect for indigenous people from remote areas, who have not integrated with other cultures.

A woman living in a house that was 3 meters above the ground. She had to jump from a high post to a high building when she was four months pregnant, and had to run away. She was raped in front of the family she was staying with.

Elements – Lack of housing, security and affordability (in both cases).

In rural areas – lease of land 500kina/hectare, security of tenure, public goods and services, accessibility, environmental natural resources.

Sources – PNG Constitution (i.e. IHD, equality and participation); Welfare Act (protects the rights of women and children); Beijing Platform for Action (1995).

Guarantees – PNG Constitution (equality /participation provisions).

Overriding principles – Non-discrimination – women have a lower status and lower value, especially women who are poor and illiterate.

Causes/Obstacles –

- The government's priorities are in development and economic gain, but not in provision of basic services for rural communities;
- Lack of housing policies to accommodate rural populations moving into town to access health services;
- Lack of information on land tenure within urban areas;
- Lack of security in land systems in other parts of the province means that more land is in threat of being extended for oil palms;
- Lack of information on land tenure systems in rural areas;
- Lack of information in rural areas on options for rental accommodation in urban centres.

Victims – Women, children, relatives.

Impact/Consequences – Transport costs; financial pressure; social disorder – low status, lack of security, marital problems.

Loss of land rights though changes to land tenure systems.

Duty Holder – Provincial Government, Local Level Government, PNG Government.

Violators – Churches, Council of Women, ADB (funding the cash cropping), logging company, New Britain Oil Palm.

Actions/Interventions for both urban and rural areas –

- Put in place substantive equality provisions – create an environment where women can participate and have real representation in New Britain Province’s urbanisation policy;
- Strengthen Government organic law to reform system on bottom-up planning;
- Lobbying with CDD/provincial government to work on a provincial housing policy including women representatives from church and both urban and rural areas;
- Education and awareness raising on right to adequate housing and women’s health and reproductive systems for women in rural areas;
- Parallel reporting;
- Transportation in and out of town for women;
- Assistance with hospital fees;
- Sustainable development of natural resources of the benefit of all present and future generations;
- Ensure services area available in rural areas so women do not have to move into town for health services.

ANNEX I:

CONTENTS OF
PARTICIPANTS' KIT

ANNEX I:

Contents of Participants' Kit

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4. Women's Right to Adequate Housing: Overview of reports of the Special Rapporteur on Adequate Housing of the United Nations Commission on Human Rights
5. Women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing - Commission on Human Rights resolution 2002/49
6. Special Rapporteur on Adequate Housing - Questionnaire on women and adequate housing
7. Women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing - Commission on Human Rights resolution 2003/22
8. Women and adequate housing study by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination, Miloon Kothari, in accordance with Commission on Human Rights resolution 2002/49
9. Index of Outputs on women's right to adequate housing, undertaken in preparation for the 2005 report (2001-2004).
10. Habitat International Coalition: Housing and Land Rights Network Press Release
11. United Nation Press Release: Special Rapporteur on Adequate Housing
12. Women and Housing: The Impact of Globalisation

Section 2 – United Nations Treaty Documents

13. Legal Sources for the Right to Adequate Housing
14. Convention on the Elimination of All Forms of Discrimination against Women
15. CEDAW General Recommendation 19: Violence against women
16. International Covenant on Economic, Social and Cultural Rights (ICESCR)
17. Excerpts on adequate housing from Treaty Body General Comments
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ANNEX J:

COLLATION OF
EVALUATION RESPONSES

ANNEX J:

Collation of Evaluation Responses

Informal evaluation responses gathered after the first day indicated that participants enjoyed the introductory session and benefited from the presentation by the Special Rapporteur on Adequate Housing on the legal sources for the right to adequate housing, and information on the HIC-HLRN tool kit.

However, in terms of presentation style, participants felt that information sessions needed to be shorter in order to allow for more practical examples, questions, group work, participation and practical application. Participants also noted the need for energisers and ice-breakers between sessions. There was also a request for more discussion on overcoming the difficulties of applying the framework to issues. There were requests for written information to be provided in advance to enable people to follow the presentation, and for the information in the toolkit to be summarised even further. Some recognised the necessity of having a heavy input day to establish the groundwork for the remainder of the training session.

Some of the responses during the oral evaluation were:

“Coming from the area of violence against women it has been useful to have seen this side of the issues. More and more, now, we know how difficult it is for women to get housing. When the tool kit was first presented I was not sure about it. Now having done the homework, I can see how it can be used. It has also been a learning experience to have the SRAH here and speak directly with him about the women and housing questionnaire. Had he not been here I would have taken another three months to do the questionnaire instead of being able to do it immediately. The learning process had been simple and approachable, which will enable me to integrate it in our work on violence against women nationally and regionally.” -Merylyn Tahi

“Being from the Sexual Minorities Project we felt very supported. It was very inclusive. It was hard, but good. It would have been good to have a chance to do some strategic planning.” -Noelene Nabulivou

“This training session has been enriching. It’s like an opener. In Tonga, women often feel like they don’t need housing, but as a counsellor I see so many people that need housing and we don’t have a refuge or shelter. So this issue really needs to be taken up more. After this training I feel very at ease and very empowered.” -Betty Blake

“Looking at women’s housing and land issues using a rights-based approach has been very helpful, and I believe when shared with others it could empower them too. In future it would be useful to include other stakeholders (i.e. chiefs, landowners etc.) in these forums. That way, when women’s groups lobby them, they are already aware of these issues, and may then be more supportive of our ongoing work.” -Susanna Naivaga

“It is not very often I leave with something I can work with, and this time I feel I have the framework that will be useful to challenge those in power.” -Talo Havini

“It has been important to listen to the direct voices of grassroots people, in an informal setting where people can share their ideas and humour. It has been important therefore to have these consultations without the presence of other stakeholders. However, the involvement of other stakeholders is important on these issues. Therefore, it is important to make sure the findings are shared with them.” -Miloon Kothari

For the final evaluation of the training, 16 complete and 1 partially complete evaluation forms were received.

All participants enjoyed the programme, with 88% indicating their expectations had been met to a high standard and that the workshop had met its goals and objectives.

The topics that participants found most useful included:

- Legal sources for access to housing (including information on the different conventions and the UN system);
- Introduction to the loss matrix;
- Working with trainers to practically apply the human right to adequate housing framework, the tool kit and the matrix to real cases (4);
- Session on non-discrimination, gender and adequate housing;
- How to prepare a testimony.

It was felt that the topic on urban settlements was not directly useful.

In relation to methodology, 82% felt the methods and techniques used were of a high standard. Those that contributed most to the learning experience included:

- Group work; interactive/inclusive/participatory techniques;
- Practical applications of the tool kit;
- The positive and friendly environment;
- Access to facilitators with expertise in a range of areas (e.g. UN, gender etc.);
- Legal input and clarification from Imrana Jalal.

94% of the participants felt the materials were highly useful. Some felt that the documents were too technical and long. But most felt that the materials were clear, to the point, relevant and comprehensive. Participants appreciated having the resources available to take back, to refer to and share with other people at home. Some of the written aids can be used by organisations in their countries. A request was made for access to computers during the training to enable participants to prepare their testimonies.

Suggestions for improving the training sessions included:

- More action-oriented learning, i.e. a more participatory approach;
- More time for discussion in group exercises, particularly when developing testimonies;
- Having groups of no more than 3-4 people (otherwise people have to compete to be in the discussion);
- Simplifying the language;
- Clearer power point presentations;

- More input from RRRT and the Special Rapporteur;
- Provision of information on country ratifications of treaties;
- Shorter, more manageable days and sessions. Timings should be 0800-1200 / 1330-1700. A time-keeper should be appointed;
- Overall duration of 4 days too short.

Feedback on facilitators:

- The facilitators were clear, easily understandable and informative. Their critical, and sometimes humorous, observations positively added to the issues discussed. At some points there was limited time to participate or ask questions. As resource persons they had a wide breadth and depth of experience, including first-hand knowledge of the UN system. The use of clear examples and the recognition of local input was inspiring and helped to make the material relevant to local issues.

Other comments:

- There was too much information and a lot of new theory for participants to absorb within a short time;
- Training could have had a more practical focus on avenues available for promoting human rights avenues. In this way, people could evaluate whether the strategies outlined offered a realistic means for achieving real results for affected parties, and whether such efforts were actually worth the effort. It was also felt that there was a need for more hands on assistance for those who had never considered these issues from the perspective of the human rights framework before;
- Action plans could have been identified;
- The training was well structured, interesting and clear. Having the training occur first as a prelude to the consultations seemed to work very well. Such a chronology of events made for a very practical, skills-based training session, providing participants with tools that are urgently needed for substantively addressing the problems in participants' own countries. The trainers were sympathetic, articulate and kind and helped the learning process;
- Participants undertook a great deal of strategising at night, which was an added bonus;
- Networking with other CBOs/NGOs was strengthened.

Reports of Previous Women and Housing Consultations

- **Women and Adequate Housing**
Report of the African Regional Civil Society Consultation in Nairobi, October 2002,
Organised by UN-HABITAT in co-operation with the Office of the High Commissioner for Human Rights;
- **Interlinkages between Violence against Women and Women’s Right to Adequate Housing**
Proceedings of the Asia Regional Consultation on “The Interlinkages between Violence against Women and Women’s Right to Adequate Housing” in New Delhi, October 2003,
Organised by Asia Pacific Forum on Women, Law and Development (APWLD), International Women’s Rights Action Watch Asia Pacific (IWRAP-AP), Habitat International Coalition-Housing and Land Rights Network (HIC-HLRN), Centre on Housing Rights and Evictions (COHRE);
- **Vivienda con rostro de mujer – Mujeres y derecho a una vivienda adecuada**
Report of the Regional Consultation on “Women’s Rights to Adequate Housing” in Mexico City, Mexico, November 2003,
Organised by Coalicion Internacional para el Habitat, Oficina Regional para América Latina (HIC-AL);
- **The Alexandria Consultation: Women’s Right to Adequate Housing and Land**
مشاورة الإسكندرية: "حق المرأة في السكن الملائم و الأرض" الشرق الاوسط وشمال افريقيا
Report of the Regional Consultation on “Women’s Right to Adequate Housing and Land”,
Bibliotheca Alexandrina, Alexandria, EGYPT, July 2004,
Organised by Habitat International Coalition-Housing and Land Rights Network (HIC-HLRN) with collaboration and support from the United Nations Office of the High Commissioner for Human Rights.



Housing and Land Rights Network
HABITAT INTERNATIONAL COALITION