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## VIOLATIONS OF WOMEN'S HOUSING RIGHTS IN KENYA'S SLUM COMMUNITIES

### Introduction

The Government of Kenya has failed to protect the housing rights of women. Perhaps nowhere is this more evident than in the cases of women living in the vast slums of Kenya's growing cities. The growth of cities and towns in Kenya has created both opportunities and enormous difficulties. While urbanisation in and of itself is not inherently problematic, the pace and sheer scale of urbanisation has, in many places, far exceeded local government capacity or willingness to provide basic amenities to city residents, including adequate housing, water, electricity, and sanitation. This problem has been particularly pronounced in developing countries, and Kenya is no exception. In Kenya, urbanisation has resulted in the creation of vast urban slums, where thousands and sometimes millions of urban residents live in sub-standard housing conditions, without access to even the most basic services. Women bear the brunt of this reality, and are exposed to gender based violence and discrimination on a day to day basis.

### Urbanisation in Kenya

Kenya has experienced rapid urbanisation at an estimated rate of 7.3 per cent per annum, making it one of the most rapidly urbanising countries in all of Africa.<sup>1</sup> The population of people living in urban centres in general has increased to 34.5 per cent<sup>2</sup> from about 18.3 per cent less than a decade ago.<sup>3</sup> The proportion of Kenya's population which is urbanised is expected to increase to about 50 per cent by the year 2015.<sup>4</sup> In just ten years, between 1989-1999, the urban population swelled from 3.88 million to close to 10 million people, representing a staggering increase of 155 per cent.<sup>5</sup>

The rise of informal settlements in Nairobi city can be traced back to 1902 when European settlers first arrived. These settlers moved into various highland areas that later became part of the city. In doing so, they have displaced the indigenous population, causing them to settle adjacent to white farms, where they worked as agricultural labourers or as domestic servants. Informal settlements developed on the outskirts of high income areas. Because of their meagre incomes, the native people could only afford

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<sup>1</sup> UN-HABITAT, 'History of Urbanization and Proliferation of Slums in Kenya', *Twenty First Session of the Governing Council* [website], (16-20 Apr. 2007) <[http://www.unhabitat.org/downloads/docs/4628\\_72173\\_GC%2021%20History%20of%20Urbanization%20in%20Kenya.pdf](http://www.unhabitat.org/downloads/docs/4628_72173_GC%2021%20History%20of%20Urbanization%20in%20Kenya.pdf)>, accessed 22 Apr. 2008.

<sup>2</sup> Ibid.

<sup>3</sup> Washington H.A. Olima, 'The Dynamics and Implications of Sustaining Urban Spatial Segregation in Kenya: Experiences from Nairobi Metropolis', paper prepared for the International Seminar on Segregation in the City at Lincoln Institute of Land Policy, Cambridge, MA, 26-28 July 2001.

<sup>4</sup> UN-HABITAT (n. 1 above).

<sup>5</sup> Ibid.

to live in the poorest housing available. For more than two decades, the settlement structure in Nairobi was organised along racial lines, with whites and Asians occupying high income residential areas, while almost all the black natives of Nairobi lived in informal settlements.<sup>6</sup>

Today, more than 45 percent of Kenya's urban population are said to be living in Nairobi city. Nairobi's population is estimated at about 2.14 million, 55 percent of whom live in informal settlements.<sup>7</sup> Paradoxically, in terms of actual physical space, those living in informal settlements occupy only 5 percent of the city's residential areas. More than 200 hundred informal settlements in Nairobi are crammed into this tight space, accommodating more than half the city's residents. In Kibera, which accommodates the highest population density of any slum in Nairobi, 2500 people live per hectare (or 10000 square metres) of land. That is, on average, 1 person per every 4 square metres.

Nairobi's slums are characterised by inadequate housing, unemployment, delinquency and crime, a lack of clean water, insufficient drainage, poor sanitation, a lack of adequate public transport, and environmental degradation. Urban poverty continues to put new demands on the government and various stakeholders in development. Moreover, the current urban situation in Kenya is emblematic of the rapid deterioration of living conditions in human settlements, and it is only getting worse as population growth continues unabated. There has been a huge shortfall in the housing supply, estimated at 50,000 units per year, while production stands at about 30,000 units annually.<sup>8</sup> This acute shortage of urban housing has contributed immensely to the rapid formation and growth of informal settlements.<sup>9</sup>

Like elsewhere in Africa, the movement of women into Nairobi and other urban areas was traditionally restricted to women joining their husbands, who themselves worked as labourers in the city. Urban centres were considered a domain of men, as was paid employment. Women who moved to the cities were seen by some authorities as engaging in prostitution, a belief widely shared in those remaining in rural areas.<sup>10</sup> As the restrictions set by colonial administrators and social perceptions changed in Kenya, women's movement into urban areas became freer. The driving force behind urban migration, now for women as well as men, soon became economic opportunity.

In Kenya, COHRE recently interviewed women living in three slum communities. These communities are profiled briefly below.

### **Mukuru Kwa Njenga**

Mukuru Kwa Njenga slum (or Mukuru) sits on land that was once part of farm land owned by white settlers. The slum was established in 1958, and it originally housed primarily farm labourers. Later, it became a general place for the urban poor to come and build makeshift homes. With urbanisation, more and more people settled in the area, and the population of Mukuru's poor increased with the departure of the white settlers. Mukuru lies 10 kilometres south-east of Nairobi's city centre, along the city's industrial

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<sup>6</sup> Ibid.

<sup>7</sup> Olima (n. 3 above).

<sup>8</sup> UN-HABITAT (n. 1 above).

<sup>9</sup> Ibid.

<sup>10</sup> Winnie V. Mitullah, *Mobility and Gender: Reflection on Urban Situation in East Africa*, UN Doc. CM/MMW/2003/EP.7, 14 Jan. 2003.

area, and covers an area of 32 hectares of land. With a population of 75,000, this means that the slum houses some 2300 people per hectare.

Today, the land is government land, which the government leases to individuals and businesses for a period of ninety-nine years. This system has caused difficulty for the people who had previously settled in the area, as they have no legal security of tenure whatsoever. The private owners caused major demolitions in 1996, which met stiff resistance from the slum's residents and received major criticisms from human rights organisations. Furthermore, residents were not served with any eviction notice before their homes were ruthlessly destroyed. In 1999, the government officially handed the residents a formal eviction notice, which the people have successfully resisted to date.

Mukuru slum is home to people from mixed ethnic backgrounds. Like most unplanned settlements, Mukuru lacks basic infrastructure, and sanitation conditions are very poor. The place is congested, and residents complain of drug problems and criminal activities. Mukuru also lies next to an industrial waste disposal site, which spills over into the community and pollutes it with toxic material.<sup>11</sup>

### **Kibera**

Kibera is perhaps one of Africa's most notorious slums. The massive informal settlement is one of the largest on the continent, if not the largest. It emerged originally from a community known as 'Kibra Nubian Villages', which was established on a forested reserve in 1918 and carved out for Nubian ex-soldiers<sup>12</sup> who were brought to Kenya by Sir Samuel Baker and settled by colonial administrators on the periphery of Nairobi city south-west of the city centre. Today, Kibera is situated about 7 kilometres outside the city centre and occupies a space of 120 hectares.

Between 750,000 and 1 million people live in Kibera, with an estimated congestion ratio of 2500 people per hectare. Conditions in Kibera are some of the worst in the world. As BBC news reporter Andrew Harding wrote during his 2002 visit to Kibera:

This place is like an island – it's not really part of Kenya at all. The state does nothing here. It provides no water, no schools, no sanitation, no roads, no hospitals. ... Kibera's water is piped in by private dealers, who lay their own hosepipes in the mud, and charge double what people pay for the same service outside the slum. The security comes from vigilante groups - who, for a price, will track down thieves and debtors. Usually, the Nairobi police are too scared to come here. But if they do, they're just looking for bribes.<sup>13</sup>

### **Mathare**

Around Kenya's independence in 1963, a group of colonial era independence fighters illegally established Mathare on government land. While the new government was demolishing informal settlements, this group lobbied politicians not to demolish the Mathare Valley area. With political backing, the Mathare squatter community grew with almost *de facto* rights over the land.<sup>14</sup> The government later granted leasehold to a board

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<sup>11</sup> Anthony O. Lamba, 'Land Tenure Management System in Informal Settlements, A Case Study on Nairobi', MS thesis (International Institute for Geo-information Science and Earth Observation, 2005).

<sup>12</sup> Nubian Soldiers were originally from Sudan.

<sup>13</sup> Andrew Harding, 'Nairobi Slum Life: Into Kibera', *BBC News*, 4 Oct. 2002.

<sup>14</sup> Lamba (n. 11 above).

of trustees established on behalf of the community. Plans to upgrade the settlement were reached in 1992, with support from the Federal Government of Germany, which signed an agreement between the Kenyan Government and the Catholic Archdiocese of Nairobi. This was the first slum upgrading programme in Nairobi. The pilot project was completed, and a new agreement to complete the rest of the upgrading was established and administered by the Catholic Archdiocese of Nairobi. The upgrading project was later halted, however, due to escalating violence and hostilities aggravated by former owners and local area politicians.<sup>15</sup>

The slum upgrading led to the improvement of infrastructure, including water supplies, sanitation facilities, and bitumen standard roads. Mathare also benefited from the establishment of one medical centre and two kindergartens. As it stands today, Mathare has a population of 23,000 people occupying 17 hectares of land.

### **Women's Migration to the Slums**

Women interviewed by COHRE noted several reasons for their migration into the slums of Nairobi. The women in the Mathare focus group discussion were quick to point out that the general position of women in society (as submissive and relegated to second-class citizen) is largely responsible for their problems. Women moved to Nairobi in pursuit of economic activities and with the conviction that the city had more to offer them than did rural towns or villages. Through COHRE's focus group discussions, two common scenarios emerged. The first scenario concerned women whose husbands were not engaged in any economic activities, and as a result, the family was languishing in abject poverty.<sup>16</sup> The second scenario concerned those women who had been widowed, divorced, or deserted by their spouses, or single women who possessed no land or property. The women in the former category left their husbands in the village, and after they had established themselves, encouraged their husbands to join them when possible. Women in the latter group often left their children back home with their relatives, depending on the arrangement and relationships they had with their relatives. Once they settled in the city, they were able to send money home for the care of their children. Some mothers alternatively brought their children to live with them. Single women who had problems independently accessing land in their villages also came to the city in search of new horizons.<sup>17</sup>

There is perhaps a broader implication in this search for economic opportunities, as it reflects a kind of skewed development between the city and the rural areas and between the city and other up-country towns. This disparity is a key factor in rural-urban migration. A number of women interviewed by COHRE came from areas around Kisumu, the third largest city in Kenya. The women noted that there is unequal development even within urban centres, with resources and infrastructure concentrated primarily in Nairobi. Therefore, other urban areas – not only the rural areas – experience limited economic potential, a factor which encourages people to move to Nairobi.

Economic opportunity in the cities, however, is not all it may appear to be for women. Women said that they find it difficult to benefit from many profitable schemes as a result

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<sup>15</sup> Ibid.

<sup>16</sup> Women interviewed in Nairobi also identified polygamy as causing women to move to cities.

<sup>17</sup> Land, which is communally owned, is controlled and shared amongst men. Brothers of single women prevent them from inheriting their parents' land. The only way that single women can acquire land is to buy it outright, an option which is often unaffordable to them.

of gender-based discrimination. Even in industries, women are relegated to poorer-paying jobs, because men are considered better suited to the higher-paying jobs, even when women could carry out these same jobs in reality. Women observed that they are disadvantaged in many situations which make them vulnerable to many abuses of their rights. They said that women in some instances are denied an education because of a preference for boys over girls, are discriminated against by stepmothers and other family members, and are disadvantaged due to forced marriage and unwanted pregnancies. They argued that women who have attained a certain level of education are perhaps better able to escape difficulties and compete for better paying jobs in industries, and they are therefore likely to live in better places.

Women living in the slums typically worked in low-wage and low-skilled jobs which paid them even less than their male counterparts in the same area. Some women resorted to commercial sex work in order to survive, placing them at risk of sexually transmitted diseases, including HIV/AIDS. Even what little money the women earned did not always stay within their control. When married, women often handed over their earnings to their husbands. The husbands, however, did not disclose their own income, little of which was used to support the family's needs. Some of the women COHRE interviewed disclosed that they lived with husbands who did not in any way contribute to the household's income and who actually demanded that the women give them money every day. The women said that they were forced to stay with their 'parasite' husbands for fear of the stigma faced by single women in the community.

As in other cases highlighted in this report, some women interviewed in Nairobi decided to relocate to the city in pursuit of their husbands who came earlier to work as industrial labourers. Women in this situation complained that their husbands, over time, neglected their families in the village after having come to the city. Deprived of financial assistance, women followed their husbands to the city, sometimes only to discover that their husbands had married other women. This was not an uncommon occurrence, and women sometimes chose to leave their husbands in order to make an independent life in the city or seek a new marriage.<sup>18</sup> Others said that when they were neglected by their husbands, they sought to find their independence in the city, with or without their husband's companionship. A few of the more fortunate ones COHRE interviewed said that their husbands had asked them to join them in the city to try increasing their income opportunities and work jointly towards the improvement of the family's living conditions.

### **Gender-based Discrimination and Violence**

Women also cited gender-based discrimination and violence as reasons to leave their former homes and flee to the city. Widows and married women often fell prey to harassment, neglect, and verbal or physical attacks, particularly at the hands of in-laws. Widows interviewed by COHRE agreed that both before and after the death of their husbands, they were maltreated by their in-laws. This, they said, was made worse by the fact that homes in the rural areas are built within the same family compound or within close reach of their in-laws. This arrangement is a result of traditional land distribution, where pieces of land are often divided amongst sons by their father, who retains control over the land. Land in such communal arrangement often generates high competition among brothers. When her husband dies, a widow may become the target of harassment

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<sup>18</sup> This term is again used loosely to refer to cohabitant relationships.

by her mother-in-law and brothers-in-law, with the ultimate aim of chasing her off the land.

In these cases, even before actual disinheritance or property-grabbing occurs, women are coerced into giving up their property in order to escape escalating maltreatment. Returning to their own parents' home often does not assist these women, as they are usually not welcomed, especially by their own brothers. Too often, these women are left utterly destitute and with no place to go. In order to be able to educate and feed their children, widowed women interviewed by COHRE looked to the city as the only alternative.

In some instances, harassment from in-laws caused women to separate from their husbands, thus demonstrating it is an issue that not only impacts widows, but married women, as well. It should be noted, however, that COHRE's research revealed that mostly widows are affected. In these cases, harassment from in-laws also arose when a woman was of an ethnic origin different from her spouse, when she came from a relatively poor family compared to her husband's family, when she was older than her spouse, or when her tribe or clan was considered inferior and not good enough to provide a wife. The perpetrators of this kind of abuse are typically mothers-in-law, and many women either leave their spouse or persuade their spouse to move to a far-off place like the city.

One of the women interviewed by COHRE said she was harassed by both her father-and mother-in-law. Her father-in-law demanded a sexual relationship with her. Because of this, she said, it was easy to convince her husband to relocate. She commented, however, that in many cases, spouses side with their relatives against the wife, because a woman is expected to be submissive to her husband and his family, no matter the problem.

### **Forced Evictions and Disinheritance of Widows**

Disinheritance was also a major problem exacerbating women's poverty and pushing them into the slums. Most disinherited women had had land, household items, goats, and cows that constituted their household economic resources, only to have it all taken from them by their in-laws and other relatives. Women say this action is condoned by the cultural belief that women cannot own property. Customs dictate that immovable and movable property, such as land, houses, livestock, and other necessities, is best controlled by a male. Some women COHRE interviewed refused to call this a cultural tradition, but attributed the practice to competition over land that is becoming scarce and the greed espoused by relatives. Children who have lost their fathers are left to suffer with their mothers, and many times, children come to the cities along with the widowed women.

Kenya's legal system provides little relief to women who are threatened by disinheritance and property grabbing at the hands of in-laws. As other international human rights organisations have noted:

Kenya's constitution outlaws discrimination on the basis of sex, but condones discrimination in personal and customary laws — which are central to property rights. A number of statutes also have discriminatory elements. The Law of Succession Act provides that a widow's inheritance rights are terminated upon remarriage; widowers' inheritance rights do not terminate upon remarriage. The Law of Succession Act is poorly

enforced and has problematic exemptions. Case law establishes that family property may be evenly divided if the woman can prove contribution, but in practice, women rarely get property upon separation or divorce. Land laws, while not discriminatory on their face, do not promote or facilitate women's land ownership. Finally, customary laws based on gender distinctions give men greater rights than women over property.<sup>19</sup>

This lack of adequate legal protection leaves many women at the mercy of their in-laws. One woman participating in COHRE's research was fortunate enough to have a father-in-law who sided with her when her brother-in-law wanted to grab her land after her spouse's death. Because of the struggle to retain her land, however, she was not willing to go back and settle on her land. When she was asked whether she would return to the land left to her and her children in the village, she responded: "I would rather raise money and buy a piece of land that I would truly call my own and have peace."<sup>20</sup> Even when land or property is not grabbed from the widows, they often cannot exercise full control and use the land or property as they wish and for their personal benefit. This particular woman had filed a case against her in-laws, which was still dragging on in court. Even if she won her case, she felt it would be of no use to stay in a place where she would likely be harassed and which held no peace of mind for her. Even in those cases where women were not disinherited, they were challenged by the lack of support and lack of income which forced them to migrate to the city to look for jobs. Women interviewed said that even where land is not taken away, it is often too small for women to rely on for their subsistence. As they try to raise income through other means like petty trade, they realise that it is better to do business in the city where they can make better profits.

Moreover, widowed women faced the additional risk of wife inheritance, also known as 'levirate' marriage. Running away from wife inheritance in the rural areas forces many women to seek refuge in the city. This cultural practice is present in a few tribes of central and western Kenya. A widow, upon her husband's death, is expected to agree to be married to another man (usually a relative of her husband, often a brother, or one selected by her in-laws) in order for her to be able to remain on the piece of land and house left behind by her husband. Refusal to do this means the widow would lose her customary rights to retain her property and home. Two women in COHRE's sample group indicated widow inheritance as the reason they came to Mukuru.

### **Inadequate Attention to the HIV/AIDS Pandemic**

In the slums of Nairobi, the prevalence of HIV/AIDS among women is increasingly becoming both a push and a pull factor for why women are flocking to the city. The influence of the pandemic is twofold. First, women whose husbands died of HIV/AIDS-related diseases are often presumed themselves to be infected in their communities. Their in-laws send them away on accusation that they will infect more people in the family and will spread the disease to the entire community. Their children are also presumed infected and are denied a share in their fathers' property on the grounds that they will soon die. This social stigma could reflect limited awareness on HIV/AIDS, or it could be used as a convenient rationale for in-laws to disinherit widows. From the women's point

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<sup>19</sup> Human Rights Watch, 'Fact Sheet: Women's Property Rights Violations in Kenya,' 2003.

<sup>20</sup> Interviewee, focus group discussion II, Mukuru Kwa Njengo, Kenya.

of view, there is no effective mechanism in place to protect women affected by HIV/AIDS against family violence and discrimination. These circumstances reportedly pushed some women to seek a better life in the city. Second, women who do find themselves infected by the virus sometimes feel that relocation into the city solves the glaring social stigma they suffer in their communities and is also beneficial in terms of accessing free medical treatment, as well as care by non-governmental organisations (NGOs) and community AIDS workers. This is a level of care they would not be able to access in their previous homes. Moreover, in the city, these women are able to improve their economic status through income-generating work, allowing them to eat better and safeguard their health a bit more. Women also identified the existence of social support networks for persons living with HIV/AIDS in cities as a contributing factor to why they leave. Indeed, in Kibera, the COHRE team met with thirty-five members of a network of women living with HIV/AIDS. These networks assist women to access saving and credit schemes, raise money to assist each other in case of sickness or death, and offer spiritual and psychosocial support to help the women cope with their situation.

Young women and girls, when forced to drop out of school due to poverty or the loss of a parent, opted to search for jobs in urban areas in order to assist their mothers in supporting their younger sibling(s). Others came with the hope of working and attending college. Some young women whose mothers had remarried were chased away from their new homes by their stepfathers.

### **Inadequate Housing Conditions in the Slums**

The vast majority of women interviewed by COHRE in the slums of Kenya did not own houses, but consider themselves tenants to house-owners (i.e. landlords).<sup>21</sup> The houses in the slums that women rent constitute single rooms measuring 10' x 10,' and they are congested on a small tract of land. Houses have little or no proper ventilation, leaking roofs, and crumbling walls. They lack proper access routes and are poorly lit. Fire outbreaks are a common occurrence.

For these meagre quarters, landlords charge high rents and often refuse to provide maintenance on the shacks in which women live. Women, who survive mostly on petty trade or are employed as labourers in the industries, often lack adequate income to pay their rent on time and on a regular basis. Landlords often seize their property in case of failure to pay (an average shack costs between KSh 500 to 1500, the equivalent of US\$ 8 to 24, per month).

Landlords collect their rents in harsh ways, sometimes by adding a lock to the door or removing the roof. Female tenants are at times harassed to exchange sex for having their rent waived. This predicament is made even direr in cases of women affected or infected by HIV/AIDS, as women try to cope with the personal and financial effects of the disease. In fact, landlords at times are reluctant to rent to women living with HIV/AIDS in the first place for fear that they might not be able to afford to pay.

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<sup>21</sup> Land in the slums is controlled by chiefs, and tenants or shack owners must pay tax for the use of land and the allocation of plots. Acquiring plots with proper title is very difficult, which makes security of tenure precarious for residents. It is even more complicated for women to acquire title because they must go to the chief with their brother, husband, or father. Furthermore, in Kenya, a woman's national identification card bears the names of her father or her husband. This makes it difficult for women to obtain land in their own name, as chiefs commonly recognise the male names on the identity card as the true owners. As a consequence, women are prevented from ever acquiring title.

Women also said that poor sanitation affects them and their children the most, because they stay in the slums longer compared to men. Women work within the slum, and they take primary responsibility for household chores. Their children play in what can only be described as appalling conditions, where no child should have to play. A lack of proper sanitation is responsible for diseases, such as cholera, intestinal worms, and malaria, which are inescapable due to the waterlogged open gutters. In Mukuru, industries dump dangerous chemicals and other undesirable rubbish, including expired food stuffs, at the entrance of the community. This only adds to the garbage already produced by the slum community itself. In many slums, human faeces are littered throughout. The infamous 'flying toilets' (a euphemism used for people having to relieve themselves in plastic bags, which are later tossed outside and strewn about the community) are caused by a lack of proper toilets. The toilets that are available are few and far between, and people must pay to use them, which most residents cannot afford to do. Women also said that they lacked clean water. They said that water is usually contaminated by close sewage pipe outbursts, since the practice of illegal water connections leads to the construction of water pipes alongside sewage pipes.

A lack of personal security in the slums is also of grave concern for women. Women in the slums of Nairobi expressed concern that there were many incidents of rape and sexual assault in their communities, the majority of which go unreported. Theft of property and violent attack by those under the influence of drugs were common. Insecurity was also caused by a lack of proper lighting at night and limited or non-existent policing. Corrupt authorities also failed to protect women from landlords and their abusive husbands.

### **Recommendations to the Kenyan Government**

Based on the above mentioned facts we hope that the CDESCR incorporates the following recommendations to the Kenyan Government into its concluding observations:

- To provide security of tenure, as a matter of priority, to women and their families living in slums.
- To combat violence against women in all its forms, and provide effective legal and other remedies to victims of gender-based violence.
- To invest in slum upgrading programmes and housing development programmes for the poor, ensuring women's effective participation.
- To ensure joint ownership of and control over housing, land, and property, as well as equal rights between men and women in marriage.
- To strengthen national legal protections for women's housing rights on the basis of non-discrimination and equality.
- To enforce women's inheritance rights and equal rights to marital property.
- To improve access to basic services, such as water and sanitation, and provide safer environments for women living in the slums.

- To fight against women's poverty and provide economic empowerment opportunities to poor and disadvantaged women.
- To improve the collection of data on the impacts of urbanisation, with particular emphasis on collecting gender-disaggregated statistics.
- To raise awareness about women's human rights, including women's housing rights, at community and institutional levels.

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