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of Saint Mary's University of Minnesota/USA  
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**Violation of Women Rights  
Seen from a Kenyan Perspective**

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**Course: Justice and Peace in East Africa**

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**Date: April 2006**

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## 1. Introduction

### 1.1. Human Rights and the African Woman

Women experience discrimination and oppression in every culture. There is no society where they are treated as equals with men. Some of the offenses, like domestic violence or rape, are global problems. Others are found in specific cultural contexts. In this paper, I describe problems that are related to customs commonly practiced in Kenya. African readers have to judge whether these customs represent continental or regional attitudes. In particular, the following issues will be discussed: traditional role models, access to education, access to leadership positions, inheritance of land, beating as a sign of appreciation, bridewealth, polygyny, barrenness, wife inheritance, child marriages, female circumcision and food taboos. Not everybody links these issues to the discrimination of women. Others say that some customs only have become oppressive in the modern context. The field research and the literature review present the different viewpoints.

In today's society, African women have become more conscious about discriminating behavior and structures that oppress them and are articulating more openly their expectations to be treated as equal citizens endowed with inalienable rights. They feel supported by an international awareness that has found concrete expression in the Universal Declaration of Human Rights, proclaimed on December 10, 1948, by the General Assembly of the United Nations, and many other international declarations and covenants that address the special protection and promotion of women. In 1981, the Organization of African Unity (OAU) published the African Charter on Human and People's Rights, a charter that took into consideration the specific African context. Concerning the protection of women, Article 18.3 states: "The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."

The problem is to define discrimination cross-culturally because people, even women, from different cultures don't necessarily agree what that means in practice. Bo Göransson, the Swedish Ambassador to Kenya, writes in an article during the International Women's Day (in: Daily Nation, March 8, 2006, p. 9): "Frustrated or insecure men beat their partners, in Kenya and in my home country, Sweden. But there seems to be a difference in attitudes. In Sweden, no one would ever defend a wife beater... In Kenya, the view on domestic violence

is different. According to a study by the Health ministry, wife beating is accepted by a majority of Kenyans, also by the women: 'Two out of every three women think that wife beating or hitting is justified on the basis of at least one of the following reasons: wife burns food, argues with her husband, goes out without telling the husband, neglects their children or refuses to have sexual relations with the husband.' ”

## 1.2. Methodology

The field research is divided into two parts. The first part summarizes the viewpoints and the activities of three institutions (FIDA, KHRC and CLAN) and two women activists who are involved in promoting women rights and creating awareness in the Kenyan society about women issues. The second part presents personal experiences of women from different parts of society and age groups. I have interviewed some men, too, about family values and the question of land inheritance.

In the literature review, I quote an article about Kenyan African proverbs that shows how deep-rooted prejudices form the conscience of people towards women. Other publications respond to issues that have come up in the field research. I also compare the Universal Declaration of Human Rights with the African Charter on Human and People's Rights concerning the protection of women and their entitled rights.

The conclusion summarizes cultural patterns that define the role of women in Kenya and describes the tension between tradition and modernity as I have perceived it during my research.

## 2. Field Research

### 2.1. Promotion of Women and their Rights in the Kenyan Society

The number of organizations promoting and defending women in Kenya is very large. I have chosen the following three that seem to me representative in this area: FIDA, the Federation of Women Lawyers (app.: research no. 2, 2/2/2006), KHRC, the Kenyan Human Rights Commission (app.: no. 3, 7/2/2006), and CLAN, the Children's Legal Action Network (app.: no. 7, 7/3/2006). Additionally, I talked with a Mexican Comboni Sister who is the

coordinator for justice and peace issues in the Kenyan Province of her congregation (app.: no. 1, 22/1/2006) and with a Kenyan professor of Religious Studies who has investigated a lot on the grass-root level about the challenges of women in today's society (app.: no. 8, 11/3/2006). Although women issues are not the direct focus of her department, she got involved because religion and the role of women are closely linked together.

All of these five interviews point to the same challenges and problems that women face in Kenya. I summarize the main points without specific reference unless an opinion is held only by a certain person or institution.

An officer at the KHRC explains the goal of promoting women: "Women rights are human rights. The Gender ministry is concerned about the participation and empowerment of women in society. They never had power and still today, they feel powerless. The KHRC stimulates grass-root structures for women; also the men are called to see their responsibility."

#### 2.1.1. Culture-Based Discrimination and Oppression

Challenges that women face in the Kenyan society appear in the following areas:

- *Traditional role models*: Many ethnic groups want to subject women and "worship" the male sex. Men are the providers and have the right to control. Women are put in the same category as children.  
The KHRC officer says that oppression is a way of socializing. Typically, the men concentrate on productive (earning money) and community (leadership) work. The women are given the part of reproductive work (childbearing). A husband controls his wife economically and prevents her independence by not allowing her to earn more money than him. Some women, having a higher salary than their husbands, have been forced to resign from their jobs for that reason and sought help at the KHRC.
- *Illiteracy*: Education is given preferably to sons because daughters will leave anyway when they are married off. The investment is not worth it.
- *Leadership*: If women receive higher education, it is mainly in female careers like teaching or nursing. Only few women are in leadership positions or involved in politics. Many doubt their capacity to make responsible, autonomous decisions and believe women need help from their husbands or other men.
- *Ownership*: Men are reluctant to do business with women and don't like to sell property to them.

- *Land inheritance*: In marriages, the husband is the owner of the land and usually also of the property (house, car, household goods, etc.). After his death, the sons and male relatives can disinherit the wife claiming the land, the other possessions and the money shared in the marriage.

The constitutional proposal, which was rejected in 2005, would have allowed women to inherit land. It was a break with customary law which says that everything belongs to the man, including the wife.

- *Wife inheritance*: The good idea was to provide social security; the caretakers were cursed if they would mistreat the widow. Today, many women reject the practice. Widows are deprived of their possessions and treated like property by the new husband. If she refuses to be remarried in the clan or if she is disobedient, she can be chased away.

Sexual violence is common, and HIV/AIDS is spreading among communities that practice wife inheritance. The women have to serve for the sexual pleasure of the man and have to give birth against their will. Often, the new husband doesn't take care of these children. Wife inheritance is mainly practiced in western Kenya.

- *Domestic violence*: "A man who loves his wife beats her." Some communities like the Kikuyu conserve this as their cultural patrimony, and even many women believe that this is right.

- *Polygyny*: FIDA considers polygyny as a violation of women rights. But those who are already living in this form of marriage shall continue.

The professor of Religious Studies thinks that this practice was acceptable in the traditional context. The problem today is that men practice hidden polygyny with mistresses. This oppresses both, the wife and the girlfriend.

- *Bridewealth*: This custom established good relations among families and legitimized the children born in the marriage. But today, some women are given away to the man who pays more. This is a form of forced marriage.

- *Single mothers*: Mothers without husbands are despised as bad examples, while the faithless fathers are praised as conquerors.

- *Food taboos*: Almost every Kenyan community has food restrictions for women, for example to abstain from chicken. This is humiliating. It is also discriminating that women in some communities are eating only after the men are full. In times of famine, there is no food left for them.

### 2.1.2. Discrimination against Girls

- *Forced marriages or child marriages*: This is practiced mainly among pastoralists like the Maasai, Samburu and Turkana. The girls are as young as 6 years and sold like cattle. For the father, it is a business. The married girls drop out of school and live like servants for the husband.
- *Female circumcision*: This initiation rite mutilates women and still is a resilient custom. According to women organizations, female circumcision, although practiced by the women themselves, is a result of patriarchal oppression. Women are forced to do it in order to comply with the men's demand. Uncircumcised women would not find a husband.

On the other hand, the professor of Religious Studies doesn't believe that the practice is harmful as such, only that it is outdated. "In traditional society, it made sense in the context of initiation. But today, there is only the circumcision without the seclusion period where girls learned about the customs of the clan. It is preferable to abolish the cut but to reintroduce the education of values." (app.: no. 8)

The CLAN officer describes the situation of girls as follows:

"African customs favor boys in many ways because of a paternalistic attitude. Girls are very vulnerable, and decisions are taken for them by male relatives, either the father or the husband. A lot of them don't receive a proper education and remain illiterate.

Also, girls learn from a young age that they are not allowed to eat certain animals or parts of animals. But men can eat everything. This has a discriminatory message, and women adopt a subordinate mentality.

Girls are circumcised from the age of 9 years. Being initiated, they are regarded as full women and have to perform the function of women. They get married as children, they have to till the land and do other burdensome activities. As a result, they drop out of school. The men, on the other hand, are not active in food production.

CLAN works among the Kalenjin, Kuria, Maasai and Meru people where these problems are present. We approach the opinion leaders, elders, teachers and pastors in the villages and ask for a discussion with the local population. We don't force or threaten with the law but try to persuade with reason." (app.: no. 7)

### 2.1.3. Evaluation by Women Rights Activists

Traditional culture is seen as hostile and, at the same time, protective to women. Traditional institutions provided some justice among the sexes. But often, these institutions don't function anymore in modern society.

The professor of Religious Studies criticizes the custom that defines women only in their relation to a man, be it the father, the husband or the son. They have no home. When a girl is born, she is considered a person to be married off, and in the husband's family, she is considered a guest who came from outside. This attitude is the fundamental problem and the root of all discriminations against women. Unfortunately, for the majority of Kenyans, this is still normal.

The Catholic sister has noticed a causal relation between women oppression and poverty. "Poverty has a female face". In all aspects of social discrimination that lead to poverty, women are suffering the most. They have fewer opportunities than men but have to carry the burden of underdevelopment.

According to a program officer at FIDA, the most pressing women issues are property rights (land inheritance), domestic violence (beating, humiliation and rape), female circumcision and maternity leave (reproductive health rights). FIDA defends women in court. But before taking legal action, there is a mediation that is successful in many cases.

## 2.2. Experiences and Opinions of Kenyan Women and Men

### 2.2.1. Life in the Traditional Context

I interviewed separately two Kikuyu women, born in 1916 and 1937, who are first and second wife in the same marriage (app.: no. 4, 12/2/2006). They always got along very well and are close friends. Their husband died some years ago. Each wife had her own livestock and cooked separately for herself and the husband. The husband shared equally time and bed; none of the two was neglected. Traditionally, only men had authority. A woman wasn't allowed to express her desire for personal decisions. The second wife didn't answer my question if she had desired more freedom. Instead, she said that the rule of men is better than modern equality where couples quarrel and many relationships break up. Submission for the sake of stability in the family is better.

The first wife believes that the situation of women is worse today. The new opportunities and the awareness of rights don't protect women. The traditional role models of men and

women, respectively husband and wife, defined behavior and were a help for both of them. Disagreements could be settled in the homestead. This is better than making the matter public and going to court. There were only a few duties for a husband in relation to his wives: to give security and to provide land, clothing and children. A man who refused to take care of these things or became violent was disciplined by the elders. Women had to take care of the livestock and to cook for the husband. The first wife agrees that it is good to beat a disobedient wife as a corrective measure. In the traditional context, this was never arbitrarily. The rules in the village were simple for everybody. There were not so many options in life as it is today.

Both don't see a need for a woman to inherit land. They have a safe place on their son's land until death. Also their evaluation of the polygamous model is positive. Today, men often have mistresses. Maybe they would be more faithful if they were allowed to officially marry these women. Polygyny would prevent the spread of HIV/AIDS.

It is notable that the first wife has remained in the traditional religious context, while the second one has become a Seventh Day Adventist. Still, their view of life is the same.

In another interview, I spoke with a monogamous Kikuyu couple (app.: no. 4). The husband, born in 1936, and the wife, born in 1941, were both raised in polygamous families. The husband has suffered a lot under the constant quarrels between his mother, the first wife, and the second wife. He believes it is not possible for a man to be fair to several women. The wife has a positive memory of her childhood but thinks that the system is outdated. Today, men have their mistresses in any way. Polygyny would not prevent infidelity. It is a disrespectful attitude that has infected the society. Besides, women demand more today and would live out their jealousy as polygamous wives.

Interestingly, the couple thinks that today the men are more oppressed because they have lost their authority. Modern women criticize the Kikuyu culture unjustly and push men in a bad corner. It is good that the man is the head of the family because it grants stability. Since women demand equality, there are more quarrels and instability in the families. But the couple lives by the "new" model. The two discuss all matters of the family, and the husband says: "My wife is the better manager among us."

### 2.2.2. A Young Couple Living in the Rural Area

I visited a couple in Wanyororo, Nakuru District (app.: no. 9, 19/3/2006). The wife was born in 1969 and the husband in 1963. They have five children and own a small piece of land.

The wife feels fine with the traditional division of labor: She is responsible for the farm, and her husband earns money in the city. In 2005, she voted against the new constitutional proposal because of the plan to entitle women to equal inheritance rights. She doesn't want her sisters-in-law claim the land that her husband will receive from his father. Also her two daughters won't have any need to inherit because they will be taken care of in their future husband's family. An exception are unmarried daughters, but the customary law takes this into consideration and gives them a portion of the father's land.

At this point of the conversation, the husband entered. Now he was answering the questions I addressed to the wife. It was very difficult to get her talking again, and I insisted several times to hear her personal answer. A friend had told me before that husbands naturally speak for their wives in Africa. I continued the conversation asking about the desire of women for equality. The wife answered that God doesn't intend to give women equality. It is not desirable. And she added that today's family quarrels arise because women are more equal. If these women own land, there will be even more quarrels because they would have a material security to rely on in case of a separation. I asked why some women fight for equality. Initially, she couldn't imagine any specific reason. Then she supposed that their husbands might oppress them. But she is happy with her family life and to be an African woman.

The couple married traditionally, and bridewealth was given to the wife's family. She was able to freely choose her husband, and her daughters will also do the same. In her community, wife inheritance and female circumcision are not practiced. As member of the Adventist Church, she rejects polygyny.

### 2.2.3. Repudiation of a Barren Women

I spoke to a barren woman who was born in 1939 in Kakamega District (app.: no. 6, 25/2/2006). She got married at the age of 21 and moved with her husband to Mombasa. For 13 years, they lived without a child. Then they were asked to care for a baby which was born out of incest and rejected by the relatives. At about this time, the parents of her husband made pressure to get a second wife in order to have biological children in the family lineage. She had to agree. Because the husband is a Catholic and couldn't marry officially, the second wife was only a girlfriend who soon gave birth.

One day, when she returned from work, her husband had disappeared with the girlfriend and with all the possessions. The woman was only a toilet cleaner and suddenly left alone with the adopted son. Then the company transferred her from Mombasa to Nairobi. Because

she couldn't afford to pay rent, the two moved to Korogocho, a slum in the north-east of the capital, where they received a small hut for free. But when the government built a primary school, they were evicted and had to move to another quarter. Growing up in the slum, the adopted son joined a gang and was killed by his fellows when he tried to leave the criminal life. Today, the woman is sustained by her neighbors and the parish.

Her catastrophic life story and indirectly the death of her adopted son are caused by the husband's irresponsible escape. The abandonment is rooted in the traditional view that barrenness is a curse, and the anonymity of the modern city makes it possible to free oneself from the duty to care for these women. The traditional village, where everybody was related, ensured that barren women were taken care of. This testimony is an example of how some cultural attitudes unfold an oppressive dimension in the modern context.

#### 2.2.4. The Controversy about Land Inheritance

In the previous interviews, some of my informants have mentioned that women don't need to own land. Therefore, I interviewed five other Kenyans on the constitutional proposal to give women the right to inherit land (app.: no. 10, 21/3/2006). Two of them, one man and one woman, are opposed to that idea. They are Luhya (Western Province) where patrilineal traditions remain strong. "A constitution should be based on customary law. Today, foreign ideas clash with our tradition and bring confusion", explains the man. The woman trusts in the old system and that she will be taken care of by her sons when she becomes old. Besides, economical independence for women will cause more divorces.

The supporters of the proposal argue that separation is already a common thing in Kenya. Women will leave violent or unfaithful husbands in any way and, therefore, should automatically be entitled to a portion of their parent's land. A mother of two daughters and one son has agreed with her husband to give all their children equal shares. There are so many uncertainties in life. In the end, the woman ends up to be the loser. Another mother who supports gender equality believes the resistance is still too high among the people. Women should save money and buy their own plot to avoid family conflicts. The last informant, a man, criticizes the patriarchal society and believes that women would care much better for land than many men do. Today, most of the land in Kenya is owned by men, but women work on it. They are the bread winners as wives or single mothers, but men sell the land without consulting the family and waste the money for stupid things.

### 3. Literature Review

#### 3.1. Proverbs as an Expression of the Culture towards Women

Hazael Ayanga (in: Wamue/Getui, 1996, pp. 13-20) has explored the attitude towards women in African proverbs. She states that people usually have in mind physical violence when talking about the mistreatment of women. But behind every action, there is an attitude that leads the (male) society to behave in a certain way. Culture bound behavior is displayed in many ways, especially in the oral tradition since it is propagated from generation to generation. According to Ayanga, the deep roots of violence against women are determined by cultural norms and attitudes. She illustrates how prejudices and discriminations have become cultural knowledge with proverbs from the Luo, Kikuyu and Kipsigis people in Kenya.

1. “*A woman is the middle bone that the clan chews after her husband’s death.*” (in Luo: Dhako chogo morudore gik libamba jok modong’to gweno.)

This proverb emphasizes that widows have to be inherited within the clan and that they have no choice like the bone to decide who “chews” them. They are clan property, and every clan member can force them to sexual intercourse. A woman doesn’t exist in her own right but only related to a man, whether it is the father, the husband or later the clan of the deceased husband. Among the Luo, people usually don’t ask “Who is she?” but “To whom does she belong?”

2. “*A son is a pole, but a girl is a wildcat.*” (in Luo: Wuoyi siro, nyako to ogwang.)

The idea is that sons are more important than daughters. Sons are permanent members (“poles”) of the clan, while daughters are not meant to be domesticated (“wildcats”). They roam in search for a husband to leave the family. Ayanga has heard of fathers who thank their new in-laws for helping them to get rid of the “wildcat”. This proverb manifests how boys are favored, and it is not surprising that they receive a better education, especially when parents with limited financial recourses have to choose among their children to whom to give preference. The son will be their caretaker.

3. “*Women have no upright words, but only crooked ones.*” (in Kikuyu: Aka matire cia nd’ro na cia nyiniko.)

The message that women can’t be trusted is widespread among Kikuyu men and many other Kenyan ethnic groups. It is a judgment about all women just for the reason of being a woman. The proverb implies also that men are not crooked, but upright.

4. “*Don’t let a wife know about a cow that is kept by a friend.*” (in Kipsigis: Mokin kanoe kwondo agobo tany nemi kamanagan.)

Men are encouraged to keep secrets to themselves, especially when it comes to possessions and how they are used. It is common that a husband keeps vital information from his wife. When he dies, the family may discover hidden business transactions or debts. The law obliges the widows to pay these debts. But husbands find it still normal to act on their own behalf in many areas of life.

5. “*Her chest is bitter.*” (in Luo: Kore kech.)

If a mother’s babies are dying in a row, the Luo suspect it is the milk of the woman that kills them. This is an accepted explanation for infant mortality and a reason why a husband is allowed to divorce his wife since he too is at risk of being killed. Women are blamed and have to suffer for situations beyond their control. Proverbs that would accuse men of similar things don’t exist.

These are just five examples out of many proverbs that are hostile to women. Ayanga concludes her survey that proverbs are a witness of the values of a culture and vehicles to transmit these values. They have to be critically examined, and some of them have to be abandoned if they do violence to women.

### 3.2. Conflicts in and around Marriage

Many problems women face in Kenya are related to marriage. In this section, their cultural background and their impact in modern society shall be explained briefly.

Marriage in Africa is a sacred institution with the purpose of procreation (cf. Kirwen, 2005, p. 149). Children ensure the family lineage; the offspring continues the cycle of life. Therefore, marriage is not an option but an obligation towards the community. It is never a

private decision among the spouses, but a community affair (cf. *ibid.* p. 136). In patrilineal societies, two families through their male elders have to agree upon the relation. Women are not directly involved in the negotiation (cf. *ibid.* p. 131).

Bridewealth legitimates children who are born in that marriage; only then are they considered heirs of the father (cf. *ibid.* p. 116). Besides, bridewealth is a redistribution of assets and creates family alliances. Ideally, it prevents hostilities among clans and protects against divorce since both clans are interested to support the union.

Polygyny still is a natural form of marriage in many African cultures (cf. *ibid.* p. 152). Since children are the reason for marriage and a large number of them is considered a blessing, the popularity of polygyny is not surprising. Besides, the ability to manage a large homestead is a sign of leadership capability. Women play an active role in the system and often, the first wife encourages the husband to look for another wife as a support in the homestead. Women also can take the initiative and choose more wives for their husband by paying the required bridewealth.

The traditional African marriage system is described in an ideal state. But in real life, especially in the modern context, various problems arise. The main points have been presented in the field research (see 2.1.1.). This is confirmed by Shisanya, who has counseled many women and married couples (in: Getui/Ayanga, 2002, pp. 115-32). She states that bridewealth has been commercialized in many cases (cf. *ibid.* p. 120). The underlying factor on the side of the bride's family is material gain. The financial demands can force the bridegroom to take a loan that will be a burden for the young couple.

Despite affirmations that bridewealth is not meant to buy a woman, many husbands and his relatives claim a right on the wife that comes close to attain an asset. The women have to generate the amount of bridewealth that has been paid for them by working hard on the husband's farm, like a cow is expected to produce enough milk to compensate for the investment.

Also the intention to stabilize the family lineage by legitimizing children through bridewealth has become a disadvantage for those who are not recognized by their fathers. Children from single mothers or street children are left without protection and right to inherit (cf. Kirwen, 2005, p. 116).

The importance that is given to the blessing of children becomes a curse for barren women. They are labeled as "non-beings" (cf. Shisanya, in: Getui/Ayanga, 2002, p. 121). A

woman has no value for the husband's family as such but only in relation to how they benefit the clan to produce a great number of children. An infertile man is not harassed because his inability is taken care of by his brothers who generate children in his name. In-laws also can humiliate a woman who only bears daughters despite of the fact that the sperm determines the sex of the baby (cf. *ibid.* p. 123). The lack of children or the lack of sons is a reason either to divorce the wife or to look for a second one. Also domestic violence may originate because of this. Generally, men are known to try to resolve conflicts by beating their wives (cf. *ibid.* p. 126).

Forced marriages are still widespread in Kenya. A survey found out that 46% of the women are married off as teenagers in the rural area of Kajiado. 40% of the married teenagers had no choice; the other 60% formerly agreed, but the authors point out that the social pressure hardly leaves them the possibility to reject the marriage deal organized by the two families (cf. Njau/Njeru, 1997, p. 9-10). In fact, only 5% of the women in Kajiado have by themselves chosen their husbands (cf. *ibid.* p. 30). Usually, it is the mother who chooses the spouse and the father who gives the legal consent. The authors assume that forced marriages are a common reality in all traditional communities in Kenya.

In the same survey, women were asked to give their opinion on wife inheritance (cf. *ibid.* p. 12). 74% of the women rejected the practice. The most named reasons were "can cause AIDS and other diseases" (28.8%) and "mistreatment of the inherited wife" (24.5%). The most important reasons to accept wife inheritance are: "maintain family of the late husband" (36.4%) and "financial support" (18.2%).

Polygyny is not a central concern for African female writers as Western women might think. Shisanya, for example, names potential jealousies or quarrels connected to polygyny but finds it more troublesome when Christian male converts have to release all their wives but one. These women lose their protection, and their children are considered bastards (cf. Shisanya, in: Getui/Ayanga, 2002, p. 123-24). If they can't return to their own family, they become homeless.

Sometimes, polygyny is defended as if it would be in the women's interest by pointing out that often the first wife herself looks for a second one (cf. Kirwen, 2005, p. 152). But this doesn't eliminate the element of oppression because the following wives are dominated socially and economically by the first wife. In this way, the patriarchal society affirms and perpetuates women subordination.

### 3.3. Land Rights are Women Rights

Probably, the publicly most discussed issue concerning the situation of women in Kenya is land ownership, i.e. the right to purchase and to inherit land.

Prof. Patricia Kameri-Mbote (Faculty of Law, University of Nairobi) highlights a memorandum submitted to the Constitution of Kenya Review Commission in which women demand “guarantees for their rights to land and outlawing of customary law and practices that derogated from human and women’s rights.” (in: ‘The Dawn’, October 2005, p. 5). This claim is necessary because the gender-neutral laws on property in Kenya are not helping women to overcome the structural barriers and customs. The current Kenyan Constitution protects against discrimination in Art. 70, and Section 82 states that no law shall be discriminatory “either in itself or in its effects.” However, the same Constitution exempts a number of laws explicitly from the provision against discrimination, such as laws affecting adoption, marriage, divorce and devolution of property, all areas that affect women directly. Prof. Kameri-Mbote concludes that women rights in Kenya are severely restricted. “Although women can acquire, own and dispose of property as they wish, these claw-back clauses sanction discrimination and application of customary law, which can be used to deny women the right to own property.” (ibid.)

Concerning marriages, a proposal of spousal co-ownership of matrimonial property has been made that would protect the wife from sale of jointly occupied land without her knowledge or consent. That this is a common problem is confirmed by several court cases. FIDA is defending a woman who has been evicted together with her children by the husband (cf. FIDA Kenya, 2004, p. 3-4, and personal explanation: app: no. 2). The husband sold the land where his wife used to live and, in collaboration with the new owners, demolished the house, farm crops and livestock when the wife refused to accept the deal. Today, the woman is a street beggar, and two of her sons ended up in jail because they wanted to take revenge against their father. FIDA made this case public because it not only demonstrates the obvious discrimination against women but also the judicial and police corruption in Kenya.

Another example of land eviction has been denounced by the Catholic Justice & Peace Commission (cf. Lenten Campaign 2006: Called to Dwell in Unity, Peace and Liberty, p. 7). A first-born daughter officially received a piece of land from her father as inheritance. After the father’s death, the brother invaded a portion of the land and later sold it to a neighbor. The community didn’t help the victim since it is not foreseen that daughters inherit.

Concerning widows, the survey of Dr. Njau and Dr. Njeru brings to light that 52.2% of the interviewed widows were allowed to own all types of property (including land) while 41.8% only inherited household goods and were restricted from owning valuable assets like land or houses. 6% of the widows received nothing (cf. Njau/Njeru, 1997, p. 13; 41). The two authors conclude that there is no viable protection of the widow's right to inherit property if the customary law is hostile to this idea.

### 3.4. The Universal Declaration of Human Rights and the African Charter on Human and People's Rights

The dispute on land inheritance and ownership reveals different views about individual human rights and customary law. The conflicting opinions are based on different value systems which have also been expressed in the Universal Declaration of Human Rights and the African Charter on Human and People's Rights.

The United Nations were mainly concerned with the protection of the individual whose rights are to be defended even against the collective. The preamble affirms the "dignity and worth of the human person and... the equal rights of men and women". The whole declaration addresses the rights of the individual. Only Article 29 mentions briefly general duties towards the community and that limitations may be justified to ensure morality, public order and the general welfare of society.

The OAU adopted in 1981 its African Charter that treats the human person both as an individual and as a member of the collective, referred to as "peoples". Article 18.3, which protects the rights of the woman, has been quoted already in the introduction. Article 20 affirms the "inalienable right to self-determination" for all peoples and Article 27 states that every individual has "duties towards his family and society" and that individual rights "shall be exercised with due regard to the ... common interest." According to Article 29, the individual has to "preserve the harmonious development of the family".

What if an ethnic group determines as its common interest that only men own and inherit property and that opposition to that custom would undermine the harmonious development of the family? The attempt to bridge the dichotomy between individual and communal interests is difficult to apply in concrete disputes that affect women.

## 4. Conclusion

### 4.1. Cultural Patterns that Define the Role of Women

The field research has shown that women who live in the traditional context have difficulties to understand the modern struggle for equal rights. They accept naturally that:

- the community and its tradition is more important than the individual.
- women don't need to exercise leadership because the community provides protection and justice.
- women are subordinate to men.
- stability is more important than equality which leads to quarrels.
- division of labor defines clear role models and helps to live according to the tradition.
- patrilineal inheritance laws should be kept. They also serve the wife (protection against in-laws).
- wife beating is justified if she breaks customary law.

It seems to me that traditions are defended as long as the personal life experience has been positive. This is so in the case of the two polygamous wives (see 2.2.1.) and the young couple (see 2.2.2.). But the husband of the old couple (see 2.2.1.) rejects polygyny because he has suffered a lot under this form of marriage during his childhood. And the neglected barren woman (see 2.2.3.) doesn't trust in the justice of the traditional institutions.

### 4.2. Tradition and Modernity

Women in Kenya are torn between traditional and modern values. The desire for individual rights, enforced even against the own family or community, is a foreign idea that is embraced by those women who are brought up in modern society. All the interviewed women who are engaged in the fight for gender equality think from the perspective of the individual well-being and the right to self-realization and sometimes see themselves in a class struggle. African customs are judged by their promotion of political, social and cultural (gender) equality.

The reason for this critical attitude is the experience that the traditional system, if it ever was doing justice to women, surely is not working today. The two examples of land eviction and land theft (see 3.3.) are representative of a male dominated society where men want to

claim all the traditional rights and all the modern freedoms. In this view, it is not the woman who wants to abandon the old value system but the man has done already by refusing to be a responsible caretaker of his family. The financial dependency of wives might suppress quarrels among spouses, but the root of tension still remains. Positive exceptions like the young rural couple only prove the rule.

It seems to me that the struggle for gender equality is not just about rights. There is a deep mistrust towards contemporary men, and legislation only would help to “come even”. One informant said to me in private that she is looking for a husband who follows the traditional sound values (respectful, faithful caretaker) but wants to marry under modern terms of equality. There is something about the old times that is appreciated, maybe mystified, and, at the same time, the obvious benefits of gender equality are strived for. The dispute about traditional values and human individual rights displays the identity crisis in which Kenyans are living.

#### 4.3. Recommendation

The fight for women rights is still an enterprise of a few educated African women. In order to move in the right direction, women of all levels of society should articulate their experiences, needs and hopes for a society where their interests are safeguarded. I hope that my paper serves as a stimulation to begin a process of reflection in this country among women and between men and women.

## Appendix: Field Research Summary

1. 22/1/2006, Kileleshwa – Nairobi: Interview about women rights with a Mexican Comboni Sister who is the coordinator for justice and peace issues in the Kenyan Province of her congregation. She says in any area of marginalization (poverty, education, domestic violence, HIV/AIDS) women suffer most.
2. 2/2/2006, FIDA Nairobi: Interview about women rights with two program officers. The most pressing women issues are property rights, domestic violence, female circumcision and maternity leave.
3. 7/2/2006, KHRC Nairobi: Interview about women rights with an officer who supervises women groups in western Kenya. Women rights are human rights. The Gender ministry is concerned about the participation and empowerment of women in society.
4. 12/2/2006, Muguga – Kikuyu: Interview with two polygamous wives and a monogamous couple about life in the traditional village. Division of labor defined clear role models and helped to live according to the tradition. Stability is more important than equality among sexes which leads to quarrels.
5. 15/2/2006, FIDA Nairobi: Interview with a client who has been abused by the husband and now seeks a divorce.
6. 25/2/2006, Korogocho – Nairobi: Interview with a barren woman who has been abandoned by the husband because of her infertility.
7. 7/3/2006, CLAN Nairobi: Interview with an officer about the situation of girls in the Kenyan society. In rural areas they suffer especially under forced marriages and female circumcision.
8. 11/3/2006, Lang'ata – Nairobi: Interview with a professor of Religious Studies. In Africa, women are often defined in their relation to a man, be it the father, the husband or the son. This attitude is the fundamental problem and the root cause of all discriminations against women.
9. 19/3/2006, Wanyororo – Nakuru: Interview with a young couple who lives in the rural area. They practice the traditional division of labor and don't think that women need equality or inherit land.
10. 21/3/2006, city center Nairobi: Interview with five Kenyans about the constitutional proposal to give women the right to inherit land.

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